
(1986) 12 GUJ CK 0006
In the Gujarat High Court

C.M. Parikh and Others

APPELLANT

Vs

V.M. Mehta and Others

RESPONDENT

Date of Decision : 01-12-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 226, 309

Citation : (1987) 1 GLR 362

Hon'ble Judges : S.A. Shah, J;R.C. Mankad, J

Bench : Division Bench

Judgement

S.A. Shah, J.—All these five Letters Patent Appeals involve common questions of law and facts and, therefore, at the request of the Advocates of (he parties they were heard together and are now being disposed of by this common judgment.

2. The learned single Judge (N.H. Bhatt, J.) by his common judgment delivered on 20-2-1978 disposed of Special Civil Applications Nos. 1838 of 1973, 1996 of 1976, 1997 of 1974, 2303 of 1974 and 1573 of 1975. Special Civil Application No. 1838 of 1973 was an omnibus petition and, therefore, separate petitions were filed by the respective petitioners individually. No appeal has been filed against the order in the said petition. Being aggrieved by the judgment and order in Special Civil Application No. 1996 of 1974 two Letters Patents Appeals have been filed viz. Letters Patent Appeal No. 39 of 1979 is filed by Shri C.M. Parikh and Others, and Letters Patent Appeal No. 95 of 1979 is filed by Shri V.M. Mehta. Against the judgment and order in Special Civil Application No. 1997 of 1974 also two Letters Patent Appeals have been filed, viz. Letters Patent Appeal No. 34 of 1979 is filed by C.M. Parikh and Others, and Letters Patent Appeal No. 96 of 1979 is filed by Shri S.C. Acharya. Against the judgment and order in Special Civil Application No. 1573 of 1975 Letters Patent Appeal No. 77 of 1979 is filed by Shri N.L. Doctor. No Letters Patent Appeal has been filed in Special Civil Application No. 2303 of 1974. In short, two Letters Patent Appeal in Special Civil Application No. 1996 of 1974, two Letters Patent Appeals in Special Civil Application No. 1997 of 1974 and one Letters Patent Appeal in Special Civil

Application No. 1573 of 1975 have been filed.

3. The above special civil applications were filed in this Court under Article 226 of the Constitution of India challenging the Seniority List and Select List (Annexures "A" and "B" to Special Civil Application No. 1996 of 1974) of the Superintendents and Assistants in the Secretariat Cadre, which is a subordinate service.

4. In the then State of Bombay, services were divided into classes, viz. Provincial Services and Subordinate Services. The posts in Provincial Services were Gazetted posts consisting of Class I and Class II posts, whereas the posts in the Subordinate Services consisted of Class III employees. These Subordinate Services were again divided into two Divisions, viz. Upper Division and Lower Division. Upper Division consisted of three cadres, viz. Superintendents, Senior Assistants and Junior Assistants. Lower Division consisted of Clerks and Typists. A Clerk or Typist could be promoted to the post of Junior Assistant, a Junior Assistant to the post of Senior Assistant, and a Senior Assistant to the post of Superintendent (Class III). After the post of Superintendent (Class III) higher promotional post was that of Assistant Secretary, which is a Class II post, in the Provincial Services. Here we are concerned with the seniority and promotion to the cadre of Superintendent which was subsequently re-designated as "Section Officer."

5. In the erstwhile State of Bombay, Recruitments to the aforesaid posts were governed by the Bombay Civil Services (Classification and Recruitment) Rules, 1939 (hereinafter referred to as "the Rules of 1939"). Since, in the instant case, we are concerned with the question of promotion, it is not at all necessary for us to consider the question of direct recruitment. Avenues of promotion were available to the employees right from the posts of Clerk-typists to the posts of Assistant Secretaries, i.e. Class II posts.

6. Rule 139 of the Subordinate Services was amended under the powers conferred upon the Governor under Article 309 of the Constitution of India 22-5-1957. The amended rule which is numbered as Rule 123, being relevant for our purposes, reads as under:

123. The ministerial staff in the Secretariat and attached offices is divided into two divisions:

A-Upper and B-Lower A(1) Upper Division:

(i) Superintendents-appointments shall be made by promotion from among senior assistants;

(ii) Senior Assistants - appointments shall be made by promotion from among Junior Assistants;

(iii) Junior Assistants-Appointments shall be made either

(a) by nomination on the results of a competitive examination held by the Bombay P.S.C., or

(b) by promotion from among members of the Lower Division:

Provided that not more than one out of every four vacancies in the posts of Junior Assistants shall ordinarily be filled by promotion:

(2) to be eligible for appointment by promotion a candidate must:

(i) hold a degree in Arts, Law, Science, Agriculture or Commerce of a recognised University or possess an equivalent qualification;

(ii) have attained the age of 18 years old and;

(iii) not have attained the age of 30 years in the case of members of the lower division appointed on the recommendation of the commission and who have graduated while in service and in any other case 24 years on the first day of the month immediately following the month in which the post are advertised by commission.

A bare look to this rule shows that an employee in the Lower Cadre has a right to be considered for promotion to the higher cadre, if he held a Bachelor's Degree in Arts, Law, Science, Agriculture or Commerce of a recognised University or possessed an equivalent qualification. This rule does not mention the criteria for promotion though qualification and age are mentioned. However, in these appeals we are more concerned with the criteria for promotion from the lower cadre to the higher cadre.

7. At the outset the learned Government Pleader appearing on behalf of the respondent-State Government has stated that the criteria for promotion from the lower cadre to the higher cadre upto the post of Assistant Secretary, which is a Class II post, is seniority-cum-merit. On this concession being made by the learned Government Pleader, and the learned Advocate General appearing on behalf of the State Government also has not disputed this statement, we shall have to decide all these appeals on the basis that promotions from the lower cadre to the higher cadre were governed by the criteria of seniority-cum-merit, which is well-known in service jurisprudence.

8. Having seen the recruitment rules and the criteria for promotion which has been conceded by the State Government, we will now examine the grievances of the appellants (in the light of the concession made by the State Government).

9. The recruitment rules which were in force in the erstwhile State of Bombay have continued to remain in force after 1-11-1956 when the Bigger Bilingual State of Bombay was formed, under which regions of Gujarat, Saurashtra, Kutch and certain parts of Vidarbha region were merged. Thereafter, the Rules of 1939 were actually amended, as stated above, under the powers conferred under Article 309 of the Constitution of India on 22-5-1957 and, therefore, there is not an iota of doubt that these Rules are Statutory Rules and were in force during the period when the Bigger Bilingual State of Bombay was in existence.

10. It has been argued that for the purpose of promotion a select list was

required to be prepared, and the Government of Bombay had issued a Circular Memorandum dated 14-12-1959 (Annex. T to Special Civil Application No. 1996 of 1974 - page 103). Alongwith the said Circular Memorandum a set of general principles regulating preparation and revision of select lists for promotion from lower to higher posts was annexed. Clause (2) of the General Principles states that the list should be drawn up with due regard to the general principles regarding promotions laid down in G.R.P. and Section Department No. 4099 of 1934 dated 18-12-1950. Under the scheme of these general principles, the Selection Committee ordinarily has to enter the names of the selected officers provisionally on the list and their fitness for unconditional retention on the lists has to be reviewed at the next revision of that list. This clause is important because when an officer is retained unconditionally his seniority will be determined from the date of his entry on the unconditional list, and he will be treated senior to the employees who are brought provisionally on the list, even though they may be senior in the cadre. The whole dispute has arisen between the parties on account of the aforesaid Clause (2) which lays down that the list should be drawn up in accordance with the general principles regarding promotions laid down in the Government Resolution dated 18-12-1950.

11. Lengthy arguments have been advanced on behalf of the appellants in all these appeals that the general principles of select lists are applicable to the cadre to which the principles of Government Resolution dated 18-12-1950 are applicable, and rightly so, because the select list is to be prepared in accordance with the principles laid down in the Government Resolution dated 18-12-1950, which is a criteria for promotion from the lower to higher cadre. It is, therefore, necessary to reproduce the said resolution in order to appreciate the arguments advanced by both the parties before us. The relevant portion of the said resolution dated 18-12-1950 (Annex. T - page 101 of Spl. Civil Application No. 1996 of 1974) reads:

Principles to be observed in connection with promotion from a lower to a higher grade service of post.

In supersession of the orders contained in paragraph 1 of G.R., P. & S.D. No. 4099 of 1934 dated the 18th March, 1947, the Government of Bombay in consultation with the Bombay Public Service Commissioner, is pleased to direct that the following principles should be observed in connection with the promotion of officers from a lower to a higher grade service or post by selection:

(a) No Officer should be so promoted unless his record shows that he possesses the necessary positive qualifications for the higher grade service or post such as personality, professional qualifications, initiative, strength of character and readiness to assume individual responsibility.

(b) No Officer who has the positive qualifications referred to in (a) above should be passed over by an officer junior to him unless the latter has, in addition, really exceptional ability or qualifications; and

(c) In assessing merit of officer on comparative basis for the purpose of principles (a) and (b) above the ability, energy, initiative, integrity, etc. of the officers concerned should be taken into consideration over a series of years wherever possible and the judgment should be formed after carefully considering reports of at least three different superior officers.

2. The above principles shall not apply in the case of promotion to such key posts as Heads of Departments where Government's discretion is absolute.

3. In all other cases the principles will apply but their application will be subject to any special orders which Government may pass in regard to any particular services.

4. xxx xxx xxx (Emphasis supplied).

12. The main plank of the arguments of the appellants herein is that the aforesaid resolution is applicable in connection with the promotion of officers from the lower to the higher cadre by selection. That is, it applies only to the officers and not to Class III employees, and when the criteria for promotion is selection, and further Clause (e) of para 1 of the said resolution provides "assessing of merit of officers on comparative basis for the purpose of principles (a) and (b), it clearly shows that this resolution is applicable only where promotion is based on merit-cum-seniority and/or by selection.

13. As a necessary corollary the appellants have argued that the principles of select list are applicable only to the promotional posts where the criteria of promotion is either merit-cum-seniority or selection. We will deal with this argument as also the aforesaid Government Resolution of 1950 at an appropriate stage.

14. In order to appreciate the contentions raised by the appellants, it is necessary to refer the facts in brief from Letters Patent Appeal No. 95 of 1979 (In Special Civil Application No. 1996 of 1974). In that petition Shri V.M. Mehta, the petitioner, was recruited in year 1951 as Junior Assistant in the Secretariat Services of the then State of Saurashtra. On the formation of the Bigger Bilingual State of Bombay he was absorbed as Senior Assistant in year 1956, and after the bifurcation of the said Bombay State into State of Maharashtra and State of Gujarat, he was allocated to the State of Gujarat and was absorbed as Senior Assistant in year 1960. He has joined 31 respondents. Respondent No. 1 was the State of Gujarat, whereas respondents Nos. 2 to 31, except respondents Nos. 11, 14 and 17, were working as Senior Assistants in year 1960. Respondents Nos. 11, 14 and 17 were allocated and absorbed in the State of Gujarat and Stenographers, Grade I, and thereafter promoted to the posts of Superintendent under the Scheme framed by the State Government on 16-3-1962.

15. It is not disputed that so far as recruitment (which included promotion) is concerned, the parties were governed by the Rules of 1939 as amended in year 1957. The Senior Assistants who were allocated and absorbed from Saurashtra

were governed by the Saurashtra Civil Service (Classification and Recruitment) Rules, 1956 which were similar to the Rules of 1939 and, therefore, nobody has disputed that these employees were governed by the Rules of 1939, as amended, when they were allocated to the State of Gujarat.

16. Shri V.M. Mehta appears to have been promoted to the higher cadre of Superintendent on 23-8-1962, as shown in Annexure "C" to the petition, and was occupying the said post continuously without interruption till he was further promoted. In January 1966 the State Government published the seniority list of Assistants (common cadre), which is produced at Annexure "A" to the petition. This list is not now challenged by anybody. However, in year 1970 the State Government published the seniority list of Superintendents (Section Officers) by which the petitioners of all the petitions appear to have been aggrieved because the said list does not reflect their inter se seniority in the lower cadre, and some of the Assistants junior to the respective petitioners who were promoted alongwith the respective petitioners or subsequently are shown senior to the petitioners in the cadre of Superintendents, and being aggrieved by such illegal list, the respective petitioners filed the aforesaid special civil applications, challenging the same.

17. There is no dispute that the respective petitioners are senior to some of the respondents in the cadre of Assistants and, therefore, were shown below the petitioners in the seniority list of Assistants (Annexure "A"), but some of them are shown senior to the respective petitioners in the seniority list of Superintendents (Section Officers). Therefore, all these petitions were filed to quash and set aside the said seniority list.

18. On behalf of the State Government affidavit has been filed. It is explained therein that those respondents who have been shown senior to the respective petitioners are shown senior, because their names were entered unconditionally in the select list of Assistants, whereas the names of the respective petitioners were first entered in the provisional list, and thereafter unconditionally subsequent to the respondents who are shown senior to them and in accordance with the select list principles. Those whose names were entered unconditionally in the select list are treated as senior to the employees whose names are first entered provisionally in the select list.

19. The question, therefore, that arises for our consideration is whether the competent authority was justified or right when it selected the employees from the cadre of Assistants and entered the names of some of them provisionally on the list, whereas the names of some of them entered unconditionally on the first selection, and on that account those Assistants who might be junior to some of the petitioners can claim seniority over them. In other words, the moot question that arises for our consideration is, when promotions are governed by the criteria of seniority-cum-merit, and in the Selection Committee selects employees, if they are not found unfit, is it permissible to the Selection Committee to place some of the selects on the unconditional list and some of them on the provisional

list?

20. If the petitioners are selected and promoted to the highest cadre of Superintendents (Section Officers) and are continued on the promotional posts on account of the vacancies, can they be denied their seniority over their juniors who may have been simultaneously promoted but their names were entered unconditionally in the select list?

21. Before we deal with the respective submissions of the parties, it will be necessary to refer to some of the resolutions and events which have some bearing on the issue involved in these appeals. As stated above, by Government Resolution dated 14-12-1959 principles of select list were revised by Circular dated 3-10-1960 whereby directions were given to prepare the select list of Class II Officers for promotion to Class I posts. Thereafter, by Government Resolution dated 12-10-1960 common cadre of Superintendents was formed on experimental basis for one year. It was also decided to give promotion to this common cadre of Superintendents from the common seniority list of Assistants which is to be prepared by the General Administration Department. The reason for passing this resolution was that till that date Class III posts were Departmental posts, i.e. this cadre was not the Central cadre but remained in the Departments, and promotions were given from the lower to higher cadre department-wise.

22. By Circular dated 22-9-1961 Government applied Government Circular dated 3-10-1960 for promotion from the non-Gazetted posts to the Gazetted posts, i.e. from Class III to Class II posts. Again by Circular dated 22-7-1962 Government framed rules to constitute a committee for preparing select list for promotion to the higher posts, both non-Gazetted and Gazetted. On 16-3-1962 the State Government made a scheme to promote Stenographers to the posts of Superintendents and Assistants. On 29-5-1964 two cadres, viz. Senior Assistants and Junior Assistants, were merged and common cadre of Assistants came into existence with effect from 1-10-1964.

23. On 14-6-1966 in exercise of the power under Article 309 of the Constitution of India, recruitment rules of Assistants were framed. Under the Scheme of the said Rules appointment to the post of Assistant in the upper division was to be made by selection on the basis of the result of the competitive examination, or promotion from lower Division or by transfer from amongst the Stenographers (Grade I), and thereafter, as we have seen in January 1966 seniority list of Assistants was published, and in 1970 seniority list of Superintendents (Section Officers) was published.

24. The above are the relevant documents and events which we shall have to consider while examining the submissions of the petitioners.

25. Mr. B.R. Shah, learned Advocate for the appellants-petitioners in Letters Patent Appeals Nos. 95 of 1979 and 96 of 1973, has raised the following contentions which are also adopted by Mr. N. J. Mehta, learned Advocate for the

appellant in Letters Patent Appeal No. 77 of 1979:

(1) Bombay Government Resolution No. 4099 of 1934 dated 18-2-1950 is not applicable for promotion to the post of Superintendent, and it applies only where recruitment is to be made by selection or on the basis of merit-cum-seniority.

(2) Even if aforesaid Government Resolution of 1950 is found to be applicable. Government has treated it as the principles adopting seniority-cum-merit before the Supreme Court in Prabhakar Yeshwant Joshi and Others Vs. The State of Maharashtra and Others, , and before this Court (B.K. Mehta, J.) in A.A. Shaikh v. State of Gujarat Special Civil Application No. 437 of 1982, decided on 26-4-1982.

(3) Principles of paration of select list applied by Bombay Government Resolution dated 14-12-1959 were not applicable to promotion for Class III post in years 1961 and 1962.

(4) It is well recognised that the promotions from the lower to higher cadre in Class III are given on the criteria of seniority-cum-merit, and in absence of any rule, the general criteria of seniority-cum-merit ought to have been adopted, and if the criteria for promotion is that of seniority-cum-merit, then the differentiation made between the employees selected by placing some unconditionally in the select and some provisionally in the select list is arbitrary and discriminatory.

26. The appellants-petitioners have advanced lengthy arguments before us regarding the applicability of Government Resolution dated 18-12-1950 (hereinafter referred to as "the Government Resolution of 1950") for promotion from the post of Assistant to the post of Superintendent (now Section Officer). But we are relieved from considering most of the arguments on this issue because Mr. K. T. Dave, learned Assistant Government Pleader for the Stale Government, has conceded that the criteria for promotion to the higher carde of Superintendent in Class 111 post is that of seniority-cum-merit. This concession made before us is similar to the concession made before the Supreme Court in case of Prahakar Yeshwanl Joshi (supra) and before this Court (B.K. Mehta, J.) in case of A.A. Shaikh (supra). It is, therefore, not necessary for us to enter into the various facts of the arguments advanced by Mr. B.R. Shah in respect of the applicability of Government Resolution of 1950.

27. Before the learned single Judge (N.H. Bhatt, J.) detailed arguments had been advanced regarding the applicability of Government Resolution of 1950, and also regarding the principles of select list as applicable by Government Resolution dated 14-12-1959 (hereinafter referred to as "the Government Resolution of 1959"). In our opinion, Government Resolution of 1959 which lays down the principles of preparation and revision of select list is directly linked with the Government Resolution of 1950, because according to Clause 2 of the principles of Select List, selection has made in accordance with the principles laid down in the Government Resolution of 1950. In cases where this Government Resolution of 1950 is applicable, the select list has to be prepared in accordance with the

principles laid down in Government Resolution of 1959.

28. Again, subsequent Government Circulars dated 30-10-1960, 22-9-1961 and 27-7-1962 expand the scope of preparation of select list. By the 1960 Circular, select list was required to be prepared for promotion from Class II post to Class I post. By the 1961 Circular the same is expanded and made applicable to the promotions from non-Gazetted posts to the Gazetted posts and by the 1962 Circular the same was made applicable to all promotions from the lower to higher cadres, both in Gazetted and non-Gazetted posts. Can it not, therefore be said that till then the preparation and revision of select list was confined to Classes of posts mentioned in Circulars?

29. In our opinion, it is not necessary to decide the applicability of principles of preparation and revision of select list because we shall have now to proceed on the footing that the promotion from the cadre of Assistant to the cadre of Superintendent is governed by the principles of the criteria of seniority-cum-merit. The criteria of seniority-cum-merit is a well-known criteria and the same judicially interpreted by the Supreme Court in *State of Mysore v. Saiyed Mahmood* AIR 1968 SC 113, thereafter by this Court (J.B. Mehta, J.) in *Smt. Zarna P. Vaidya v. State of Gujarat* Special Civil Application No. 1292 of 1976 decided on 15-9-1977, and again by this Court (B.K. Mehta, J.) in Special Civil Application No. 437 of 1986 of case of *A.A. Shaikh* (supra). The principle that emerges from the aforesaid decisions is that if an employee is found unfit to hold the promotional post then only he can be superseded. The only exception under which seniority can be disregarded is when an outstanding junior is available. Further observation is that comparative merit is to be considered only if the length of service is equal between the two officers. In the normal cases, seniority has to be respected.

30. If this is the principle of criteria of seniority-cum-merit viz. rejection of unfit employee to hold higher post, will it be permissible to differentiate between the employees who are found fit (who are not found unfit) to divide them into two categories, viz. provisionally included and unconditionally included in the select list? In our opinion, when an employee is considered and found fit either by the higher authority or the Selection Committee for promotion to the higher cadre post, then in such a case it necessarily follows that the employee who is senior must be promoted earlier as and when vacancy arises. Promotional rights of an employee who has been found fit cannot be denied by placing him in the provisional category or the list. The only exception to this principle is that if it is found that there is another outstanding junior he can be promoted earlier than his senior. In the instant case no such case has been made out by the State Government before us.

31. We have considered the arguments of the learned Assistant Government Pleader as well as the learned Advocate General and also the affidavits. No material is placed before us to show that all the Junior Assistants who have been included in the unconditional select list were outstanding. It appears that the

Selection Committee has fallen into an error in applying the principles laid down in the Government Resolution of 1950 and reading that resolution as laying down the criteria of comparative merit, i.e. merit. It also appears to us that the Selection Committee has found the employees whose names have been included unconditionally in the select list as possessing better merits than the employees whose names have been included provisionally in the select list. But one thing is very certain that the Selection Committee has found the employees of both the groups as not only possessing merits for the higher posts, but in consequence thereof all of them were actually promoted to the higher cadres and some of them were further promoted. In other words, none of them has been reversed on the ground that they were not possessing merits for the higher posts.

32. The aforesaid admitted position leads to a clear conclusion that the Selection Committee had not only found all the Senior Assistants whose names were included either provisionally or unconditionally fit to hold higher post but were actually promoted to the cadre of Superintendent. In absence of any material before us to show that the employees whose names were included unconditionally in the select list were outstanding juniors, the differential treatment given to the employees whose names were included provisionally in the select list is clearly not based upon any rule or principle and can be said to be arbitrary. As said earlier, it is possible that the Selection Committee might have applied the wrong test. It might have misdirected itself by adopting the principle of comparative merits because at that time the Government had not come out with a clear case that promotion to the higher cadres was governed by the principle of seniority-cum-merit and not merit-cum-seniority or comparative merits.

33. It is not necessary to consider the arguments and counter arguments regarding preparation of select list and application of various resolutions in view of the fact that even if the select list is to be prepared, in cases where promotions are required to be made by adopting the principle of seniority-cum-merit criteria there can be only one list of officers who are found fit (not unfit) to hold the higher posts with the only exception that if any outstanding junior is found within the zone of consideration he can be placed higher above his seniors. In this view of the matter we hold that the appellants-petitioners of Letters Patent Appeals Nos. 77, 95 and 96 of 1979 are entitled to retain their seniority over their juniors whose names have been entered unconditionally in the select list and on that count had been treated as senior to these appellants-petitioners.

34. Since many of the employees whose seniority has thus been affected have retired and have not filed any petition, we do not intend to strike down the whole of the seniority list dated 2-4-1970 since long time has elapsed, and we grant the relief only to the employees who are the appellants before us in the aforesaid appeals.

35. The case of the appellants in Letters Patent Appeals Nos. 34 and 39 of 1979 stands on a different footing. They claim seniority over the appellants in the

aforesaid Letters Patent Appeals Nos. 77, 95 and 96 of 1979 in the seniority list of Assistants and consequently in the seniority list of Superintendents (now Section Officers). In the view which we have taken, insofar as the appellants in Letters Patent Appeals Nos. 77, 95 and 96 of 1979 are concerned, the claim made by the appellants in Letters Patent Appeals Nos. 34 and 39 of 1979 shall have to be rejected. These appellants, who were respondents in Special Civil Applications Nos. 1996 and 1997 of 1974, were recruited as Stenographers. They were later on appointed as Assistants under Government Resolution dated 16-3-1962 where under the Government had made a Scheme for promotion of Stenographers, Grade-I, to the Upper Division of Subordinate Secretariat Service. They were promoted under the said Scheme as Assistants in 1964. They were then promoted to the posts of Superintendents. It is, therefore, obvious that these appellants are junior to the appellants in Letters Patent Appeals Nos. 77, 95 and 96 of 1979 in the cadre of Assistants. We agree with the reasoning and conclusions reached by the learned single Judge that these appellants would rank junior to the appellants in Letters Patent Appeals Nos. 77, 95 and 96 of 1979 (original petitioners). We, therefore, do not find any substance in Letters Patent Appeals Nos. 34 and 39 of 1979 and they deserve to be dismissed.

36. In the result. Letters Patent Appeals Nos. 77, 95 and 96 of 1979 are allowed. The judgment and order passed by the learned single Judge insofar as the appellants in these appeals are concerned are quashed and set aside, and it is directed that seniority of the appellants in these appeals in the cadre of Superintendent (now Section Officer) shall be determined on the basis of their seniority in the lower cadre of Assistants irrespective of the fact that their names were first entered provisionally and later on unconditionally in the select list. In other words, seniority of the said appellants in the cadre of Assistants shall be reflected in the cadre of Superintendent (now Section Officer). As a result of the above direction, the appellants in Letters Patent Appeals Nos. 95 and 96 of 1979 shall be deemed to have been promoted to the cadre of Superintendents with effect from the date they were actually promoted to that cadre and their seniority in the cadre of Superintendent shall be re-fixed on that basis. So far as appellant in Letters Patent Appeal No. 77 of 1979 is concerned, since he has been granted deemed date of promotion of May 1, 1959, as officiating Senior Assistant, he shall be placed above his immediate junior respondent R.M. Adalja in the seniority list of Senior Assistants and Assistants. Appellant in said Letters Patent Appeal No. 77 of 1979 shall be deemed to have been promoted to the cadre of Superintendents from the date on which his immediate junior respondent R.M. Adalja was promoted; and his name shall be placed above said respondent R.M. Adalja in the seniority list of Superintendents (now Section Officers). Further promotions of the appellants in the aforesaid three appeals, being Letters Patent Appeals Nos. 77, 95 and 96 of 1979 shall be given on the basis of their re-fixed seniority as aforesaid; and they shall be given deemed date of promotions on the higher posts. The appellants of the said appeals shall be given all consequential monetary and other benefits including arrears of

difference in the salary on the basis of re-fixation of their seniority and deemed dates of promotion. If any of the appellants have retired they shall be given all the pensionary benefits also on the basis of refixation of their seniority and deemed dates of promotion.

37. The State Government and concerned authorities are directed to carry out the above directions within three months from the date of receipt of the writ of this Court.

Letters Patent Appeals Nos. 34 and 39 of 1979 shall stand dismissed.

There shall be no order as to costs in all these appeals.

Orders accordingly. Writ to be sent down forthwith.