

(1994) 02 DEL CK 0035

In the Delhi High Court

Case No : Civil Writ Petition No. 3153 of 1992

P.K. Thapar and Others

APPELLANT

Vs

Delhi Electric Supply Undertaking and Others

RESPONDENT

Date of Decision : 22-02-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Delhi Municipal Corporation Act, 1957 — Section 98

Citation : (1994) 1 AD 852 : (1994) 28 DRJ 593 : (1994) LabIC 1495

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : G.D. Gupta, Monica Puri, A.M. Singhvi, Jayant Nath, B.C. Pandey, A.K. Bansal, S.C. Gupta, M.K. Gupta and R.K. Gupta, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present petition has been filed by the promotee officers of Delhi Electric Supply Undertaking (for short DESU) impugning the provisional seniority list dated April 24, 1992, which has subsequently been confirmed and finalised by the Seniority list dated April 27, 1993, and continuation of the same on May 14, 1993. The challenge has been based on the interpretation of the Regulations made by the Municipal Corporation of Delhi u/s 98 of the Delhi Municipal Corporation Act, 1957, (hereinafter referred to as "1968 Regulations"). The said Regulations are known as " Delhi Electric Supply Undertaking (D.M.C.) (Seniority) Regulations, 1968, which fixes the basis of the relative seniority of direct recruits and promotees, as well as, the principle of rotation of vacancies vide clause 7 of the Regulations.

(2) The petitioners also amended the writ petition by moving an application C.M.No. 4966 of 1993) for urging certain additional grounds in support of their challenge to the final seniority list of Assistant Engineers. The challenge to the seniority rules was also made on the ground that the said rules became in-applicable to the present case, as the quota had collapsed, but in the alternative

the said seniority rules, to the extent of applicability to the case of the petitioners, became liable to be held as ultra vires, unconstitutional, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution. The above said application for additional grounds was allowed by an order of this Court dated September 21, 1993, as the counsel for the respondents did not object to the application being allowed.

(3) The petitioners were initially appointed as Operators in the DESU. They were directly recruited as Assistant Controllers on the basis of their selection in open competition and were promoted as Controllers on the basis of their further selection through a duly constituted Departmental Promotion Committee on different dates. The petitioners were then promoted as Assistant Engineers on adhoc basis and were subsequently regularised with effect from September 8, 1981 vide office orders dated September 8, 1981, June 21, 1982 and November 17, 1984 respectively. The petitioners were recruited within 13% of promotion quota from the post of Controllers.

(4) Recruitment Regulations for the post of Assistant Engineer (Electrical & Mechanical), 1980, as published in the Schedule (Annexure "P-3") and as framed by the Municipal Corporation of Delhi/ Delhi Electric Supply Undertaking, u/s 98 of the Mcd Act, 1957, may be referred to for the purpose of educational and other qualifications, required for direct recruits, as well as to recruitment by promotion/ deputation etc. Regulation 8 reads as follows:-

"8. Educational and Essential: other qualifications i) Degree in Electrical and required for direct Mechanical Engineering from recruits, a recognised University or equivalent. ii) 1 year's professional experience preferably in a large Electric Supply Undertaking."

Regulation 11 deals with recruitment by promotion/deputation/transfer and is to the following effect:

"11. In case of rectt. Promotion: by promotion/depu- 75% of the Promotion quota tation/transfer, i) Superintendent (Tech) with grades from which 3 years regular service in promotion/deputation/ the grade in the case of transfer to be made. Degree holder and 7 years regular service in the case of Diploma holders. (ii) Failing (i) above. Superintendent (Tech) with 5 years regular service in the grades of Superintendent (Tech) and Inspector combined together in the case of Degree holders and 10 years regular service in the case of Diploma holders. (iii) Failing (i) and (ii) above. Inspector with 5 years regular service in the case of Degree Holders and 10 years regular service in the grade in the case of Diploma holders. Note: The service in the grade of Superintendent (Selection Grade) shall count towards qualifying service in the grade of Superintendent (Tech.) for promotion. (b) 13% of the promotion quota G (i) Controllers with 3 years regular service in the grade in the case of Degree holders and 7 years regular service in the grade in the case of Diploma holders. (ii) Failing (i) above. Controller with 5 years regular service in the grade of Controller and Assistant Controller combined

together in the case of Degree holders and 10 years regular service in the case of Diploma holders. (iii) Failing (i) and (ii) above, Assistant Controller with 5 years regular service in the grade in the case of Degree holders and 10 years regular service in the grade in the case of Diploma holders. Note:- The service in the grade of Controller (Selection Grade) shall count towards qualifying service in the grade of Controller for promotion.

(5) The Regulations of 1968 govern the determination of the seniority and they were also framed, as required by law. It may be necessary to reproduce the relevant provisions of 1968 Regulations, which lay down the criteria for determining the inter-se seniority between the promotees i.e. the petitioners and the respondents 5 to 31 who are direct recruits, as under:

"DIRECTRECRUITS 5. The relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment, on the recommendation of the Selecting Authority, persons, appointed as a result of earlier selection being senior to those appointed as a result of subsequent selection. Promotees 6.(1) Where promotions are made on the basis of seniority subject to the rejection of the unfit and fitness is determined on the basis of confidential reports and trade test and/or interview the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion on the basis of Confidential reports and trade test and/or interview and as superseded by a junior, such person shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over a junior person who had superseded him. (2) Where promotions are made on the basis of selection by a Selecting Authority. the seniority of such promotees shall be in the order in which they are recommended for such promotion by the authority. (3) Where promotions to a grade are made from more than one grade, the eligible persons shall be arranged in separate lists in the order of their relative seniority in their respective grade and the selecting authority shall select persons for promotion from each list up to the prescribed percentage, if any, and arrange all the candidates selected from different lists in a consolidated order of merit which will determine the seniority of the persons on promotion to the higher grade. ILLUSTRATION: Where 75% of the vacancies in the grade of Head Clerk are reserved for promotion from the grade of Senior Clerks and 25% from the grade of Store-keepers, the eligible Senior Clerks and Store-keepers shall be arranged in the separate lists with reference to their relative seniority in these grades. The selecting authority will make selection of three candidates from the list of Senior Clerks and one from the list of Store-keepers. Thereafter the selected persons from each list shall be arranged in a single list in a consolidated order of merit assessed by the Selecting Authority, which will determine the seniority of the persons on promotion to the higher grade. NOTE: The seniority of the persons promoted but detained for some time on the lower post in the interest of service shall not be affected adversely. Relative Seniority Of Direct Recruits And

PROMOTKFS 7. The relative seniority of direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the recruitment regulations. Note (1): There shall be maintained a roster based on the reservation of vacancies for direct recruitment and for promotion in the Recruitment Rules. Where 75% of the vacancies are reserved for promotion and 25% for direct recruitment, each direct recruit shall be ranked in seniority below three promotees. Where the percentage is 50% each, every direct recruit shall be ranked below a promotee and the roster shall run as follow: 1. Promotion 2. Direct Recruitment 3. Promotion 4. Direct Recruitment, and so on. Appointment shall be made in accordance with this roster and seniority determined accordingly. If for any reason, a direct recruit or a promotee ceases to hold the appointment in the grade, the seniority list shall not be re-arranged, merely for a purpose of ensuring the proportion concerned. Note (2): A promoter shall not necessarily be placed over a direct recruit. The relative seniority of a departmental promotee vis-a-vis a direct recruit depends on the starting point in the roster. If the first point in the roster starts with direct recruit, the relative order of seniority amongst the departmental promotees and direct recruits will be, first direct recruit followed by a departmental promotee and vice-versa. Adhoc Appointment 8. Until persons appointed on adhoc basis to a grade are replaced by persons approved for regular appointment by direct recruitment, promotion or transfer, as the case may be, they will be shown in the order of their adhoc appointments and below all persons regularly appointed to the grade." The principles for determining seniority of the promotees vis-a-vis the direct recruits are specified in the regulation 7 as reproduced above.

(6) The first seniority list with which the petitioners are concerned is dated November 6, 1986 (Annexure P.7 to the writ petition) wherein the quota of direct recruits vis-a-vis the promotees was maintained in terms of the rota, as fixed by the Regulation 7 of the 1968 Regulations. This seniority list will indicate that there have been large number of promotee officers, who have been placed at a higher position than the direct recruits and vice versa, as the rota system was operative and the slots had to be filled up in terms of the Rule to maintain the proportion. It is, however, significant that no slot was kept vacant and all the appointments in the grade of Assistant Engineers, including both categories, took place in the years 1980-1981 except the appointment of Shri A.K. Bhandari direct recruit of 22.4.1983, shown at Serial no. 69. The petitioners obviously did not feel aggrieved by the said seniority list, as they contend that the quota and rota was continuing successfully and had not collapsed till that date. The provisional seniority list was earlier circulated on January 13, 1983, Annexure R.2 to the counter affidavit of respondents 8, 10 to 15. This list started from Serial No. 26 and continued till Serial number 152 and slots were not left vacant, as the direct recruits and promotees were all appointed almost simultaneously in 1980-1981. The slots, however, were kept vacant from Serial No. 153 and no names were

entered in the slots of any direct recruits and promotees, as obviously they had not been recruited. The learned counsel appearing for the petitioners has contended that the objections were filed on behalf of petitioner no.1 on March 18, 1983, and there has been no formal reply by the respondent DESU. The above said seniority list was later on finalised and another seniority list was issued vide office order dated November 6, 1986 (Annexure P-7 to the writ petition) which does not go beyond Serial No. 152.

(7) It may be noticed that the seniority list, as circulated in 1986, stopped at Serial No. 152 and no names were indicated thereafter and it is contended by counsel for the petitioner that at that relevant time in 1986, the petitioners had no cause of complaint, as they were under the impression that their representation was still under consideration as Desu was already ceased of the matter. Thereafter, the provisional seniority list was issued in April, 1992. The said list started from Serial No.153 and since by that time direct recruitment had taken place from 1984 onwards and the slots had thus been filled up. The seniority list showed the direct recruits, as recruited later than the promotees, senior to the petitioners, by determining their seniority as by the quota and rota on the basis of 1:1. It is, accordingly, contended that the subsequent seniority list, which was issued on May 14, 1993, contained names of direct recruits recorded as late as 1986 and they have been shown seniors to at least two of the petitioners i.e. petitioners 5 and 6, who were promoted within their quota from earlier dates. The names of the petitioners in the seniority list vis a vis direct recruits above them will make the following reading:-

Sl.No.	Name	Whether direct	Qualifications	Date of appoint-	of the recruited or	ment in the officer
159.	Sunil Kayal	Direct	B.E./Mech/ M.Tech.	27.6.1984		
160.	P.K.Thapar	P/Controller	A.M.I.E.	8.9.1981 (petitioner no. 1)		
175.	Suresh Klimar	Direct	B.E./Elcct.	13.6.1984		
176.	Gupta	N.K.Puri	P/Controller	A.M.I.E.	8.9.1981	
191.	Didar Singh	Direct	B.Sc.(Elcct)	13.7.1984		
192.	Ghera	R, P/	Controller	A.M.I.E.	8.9.1981 (petitioner no.3)	
207.	Roop Kumar	Direct	B.Sc. (Elcct.	28.6.1985		
208.	S.K.Sood	P/Controller	A.M.I.E.	8.9.1981 (Petitioner no.4)		
223.	Parveen Kr.Giri	Direct	B.Sc./Elcct	14.7.1986		
224.	S.C.Mehta	P/Controller	A.M.I.E.	8.9.1981 (petitioner no.5)		
239.	Om Parkash Dixit	Direct	Amie (Elect)	1.8.1986		
240.	R. K.Ugly	P/Controller	Amie	21.6.1982 (petitioner no.6)		

It is, Therefore, indicative from the reading of the seniority lists, as issued by Desu on 24.4.1992 and 14.5.1993, that the direct recruits, who were recruited in 1984, 1985 and 1986 were ranked as senior to the petitioners, who were recruited in the year 1981- 1982 for the reason that the slots, which had been kept vacant for direct recruits, had to be filled up in view of the subsequent appointment to the service in that quota.

(8) The counsel turn the petitioner has made the following submissions to impugn the seniority lists, as issued in the years 1992 and 1993:-

(A) that since the direct recruitment was not simultaneous with the selection of the promotees and there was inordinate delay in direct recruitment and since the

direct recruits, recruited as late as 1986, in pursuance to the advertisement of 1985, have been shown seniors to the petitioners and their seniority has been determined by filling the slots, it is imperative that the quota system, as provided under the Regulations had collapsed and the seniority of the petitioners became liable to be determined not according to the quota and rota but on the basis of continuous length of service. Regulation 7 of the seniority Regulations of 1968 would not apply to the facts of the present case, as the quota of promotees vis-a-vis the direct recruits could not be maintained simultaneously. The direct recruits recruited much later in point of time cannot be placed senior to the petitioners and the rotational method to determine inter se seniority had obviously become non-operative. The provision of Regulation 7 has to be read down in this regard. It will be arbitrary and unjust and viola live of provisions, as enshrined in Articles 14 and 16 of the Constitution of India to rank direct recruits, recruited as late as 1984, 1985 and 1986, higher than the promotees, who were regularly appointed to the service by a regularly constituted Departmental Promotion Committee in 1981 and when such promotions were within their own quota. (b) that in any case, the petitioners have also challenged the validity of Regulation, which permits the application of rota and for keeping the slots vacant on the basis of the roster as ultra vires, un-constitutional, arbitrary and vocative of Articles 14 and 16 of the Constitution of India. (c) that the present situation, which has arisen in respect of the seniority. has been taken care of by the Hon''ble Supreme Court in A.N. Pathak and Others Vs. Secretary to the Government, Ministry of Defence and Another, , which deprecated the practice of keeping the slots vacant and insertion of the names of direct recruits, as and when the recruitment is made.

(9) Dr. A.M.Singhvi, learned counsel appearing for Desu has raised a preliminary submission that the petitioners are estopped to impugn the seniority list for inordinate delay and laches on their part to impugn the same. He has contended that the provisional seniority list was circulated in the year 1983, which culminated in the issuance of another list in the year 1986. These retained the basis of roster and it was open to the petitioners to challenge the said lists in those years without waiting for the lists, as framed in 1992 (provisional) and 1993 (final), which are now sought to be impugned. He has relied upon the judgment as reported in Malcom Lawrence Cecil D'souza Vs. Union of India (UOI) and Others, and referred me to paragraph 8, which reads as follows:

"THE matter can also be looked at from another angle. The seniority of the petitioner qua respondents 4 to 26 was determined as long ago as 1956 in accordance with 1952 rules. The said seniority was reiterated in the seniority list issued in 1958. The present writ petition was filed in 1971. The petitioner, in our opinion, cannot be allowed to challenge the seniority list after lapse of so many years. The fact that a seniority list was issued in 1971 in pursuance of the decision of this Court in Union of India (UOI) Vs. Vasant Jayaram Karnik and Others, would not clothe the petitioner with a fresh right to challenge the fixation of his seniority qua respondents 4 to 26 as the seniority list of 1971 merely

reflected the seniority of the petitioner qua those respondents as already determined in 1956. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of stale claims made after lapse of 14 or 15 years. It is essential that any one who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. No satisfactory Explanation has been furnished by the petitioner before us for the inordinate delay in approaching the Court. It is no doubt true that he made a representation against the seniority list issued in 1956 and 1958 but that representation was rejected in 1961. No cogent ground has been shown as to why the petitioner became quiescent and took no diligent steps to obtain redress."

He has then relied upon the judgment of the Supreme Court in *S.S. Moghe and others v. Union of India and others* 1981 (2) SLR 291 to advance the proposition that the challenge to the seniority list cannot be upheld, as it is highly belated. No valid Explanation is forthcoming in this case as well from the petitioners as to why they did not approach this Court within a reasonable time and after appointments /promotions were made, in case they really did feel aggrieved by the said action of respondent No.1.

(10) On merits, Dr. Singhvi has argued that the length of service is irrelevant when the quota/rote system is in operation, as framed by the Regulations. There has been no break-down of the quota and rota system and none has been highlighted and shown by the petitioners. It is well settled that direct recruits, appointed subsequently have to be accommodated in the slots, which are kept vacant for them to effectuate the rota system and there is no violation of the equality clause and neither the action is arbitrary and violative of the Regulations.

(11) I will first dispose of the preliminary objection raised by the respondent Desu before I advert to the other questions, as argued and the law cited by both the Parties.

(12) There is no doubt that the first seniority list was issued by the respondent Desu in the year 1983. The said seniority list started with Serial No.26 and up to Serial No. 152, the persons were shown without any slots being kept vacant as the direct recruits and promotees were all appointed almost simultaneously in 1980-1981 and slots were only kept vacant from Serial No. 153 onwards. This list was not the complete list in itself and it is on record that the petitioner no. 1 filed his objections in respect of the same on March 18, 1983. The second seniority list was issued on November 6, 1986. The petitioners had no cause of complaint in respect of this list as well, as it only continued till Serial No. 152 and no slots were kept vacant till that number. The names of the petitioners were not included in this list nor the names of persons junior to them in the category of direct recruits were included except the name of Shri A.K. Bhandari at Serial No. 69. Obviously, there was no immediate grievance, as the final seniority list had not yet been framed and stopping at Serial No. 152 would give a normal impression that the representation of the petitioners was still under

consideration. Thereafter, the representations were submitted to Desu in (he year 1987 and nothing is indicative of the fact that the representations were finally disposed of by the Authorities. The provisional seniority list was issued for the first time on April 24,1992, obviously in view of the fact that the direct recruitment had taken place from 1984 onwards and slots could then be filled up. This list included the names of petitioners 1,2,3 and 4 at Serial Nos. 160,176, 192 and 208 respectively. Their dates of appointment was shown as Septembers,1981. The list ended at Serial No.210 and the officers were invited to send objections, if any. The last paragraph at the bottom reads as follows:-

"THIS is provisional seniority list. Objections/representations, if any, in respect of this list may he sent to this office within two months of the issue of this office order. In case no objections/ representations .ire received within the stipulated period, it will be presumed that the officers concerned have nothing to say in the matter and the list will be treated as Final and no representation on the subject will be entertained thereafter."

The above list was finalised only on April 27, 1993, after the objections were stated to be considered.

(13) The seniority list having been finalised only on 27th April, 1993, later in point of time than the date of filing the present writ petition, cannot debar the petitioners from seeking redress from this Court on the ground of delay. The continuation of the above seniority list was issued vide office order dated May 14, 1993 and the same reads as follows:

"OFFICEORDKR In continuation of office order No.E/Ao(P,VI)/Seniority/93-94/6 dt. 27.4.1993, a provisional seniority list of A.E./A Xen (E/M) in the scale of pay of Rs.2200/4100.00 as annexed to this office order, is circulated for information of all concerned. The objection, if any, to the said list and any representation should reach the Assistant Administrative Officer, Shakti Bhavan, Nehru Place, within 15 days of the dale of issue of this office order. In case no representations/ objections arc received from the officers concerned within the period mentioned above, the list will be treated as final and no representation in this regard will be entertained thereafter. This issue with the approval of G.M.(E)."

This list includes the names of petitioners 5 and 6 at Serial Nos. 224 and 240 respectively and their dates of appointment in the Grade are indicated as 8.9.1981 and 21.6.1982. This office order would leave no manner of doubt that the matter was still open and the concerned officers were asked to submit their representations/objections within the specified period. The Authorities obviously had circulated the final seniority list, as late as April, 1993, and provisional list (for petitioners 5 and 6) in May, 1993 and the petitioners could not in any way be held responsible for this delay. They could only approach the Court when there was final determination of their seniority. In this view of the matter, the preliminary submission made by the counsel for the respondents is misconceived and is rejected.

(14) The first case on which strong reliance has been placed by the learned counsel for the petitioner is A.N.Pathak and others (supra), which held that the direct recruit appointed later in point of time cannot steal a march over promotee to maintain quota rule. The facts are that the posts to be filled up by direct recruitment were kept vacant and as and when recruitment was made, the names of direct recruits were inserted at the places reserved for them regardless of the fact that there were many others who had put in more years of service than they. The following paragraphs may be reproduced as follows:-

"11.The posts to be filled in by direct recruitment are kept vacant and as and when recruitment is made, the names of direct recruits are inserted at the places reserved for them regardless of the fact that there are many others who had put in more years of service than they. This method works an additional hardship to the promotees in that they will not be confirmed though the required probation period has been completed by them only to allow the direct recruits to complete their period of probation. The combined operation of CIs. 10 and 11 , according to the petitioners, causes a double damage to them and the direct recruits consequently have double advantage. 12. Annexure "C" to the writ petition is the seniority list relating to the Senior Technical Officers. In this list, places 4,6,8,10,12 and 14 are kept vacant. These places will be filled in when direct recruits come. They will steal a march over those who have entered service earlier. The latter will be pushed down in the list. 13. We do not think it necessary to refer to the various decisions rendered by this Court on this question, In the cases of A. Janardhana Vs. Union of India (UOI) and Others, , O.P. Singla and Another Vs. Union of India (UOI) and Others, and in G.S. Lamba and Others Vs. Union of India (UOI) and Others, , length of service was given due importance in dealing with promotions and seniority. In the case of Narende'r Chadha v. Union of India, to which one of us was a party, it was held that to treat continuous officiation of one officer as temporary would be arbitrary and violative of Articles 14 and 16. In G.K.Dudani v. S.D.Sharma three Judge Bench of this Court, Madon, J. speaking for the Bench, approved the settled principle noted above. The promotees come into service, not by any fortuitous circumstances but they form an integral part of the regular cadre entitled to all benefits by the length of their service."

(15) The counsel for the petitioners has then cited the case of G.K. Dudani and Others Vs. S.D. Sharma and Others, to canvass the proposition that the petitioners, who were promoted within their own quota were duly selected by a regular Departmental Promotion Committee and they cannot be pushed down below the direct recruits, who were appointed subsequently in the years 1984, 1985 and 1986 respectively. The facts of this case as well as the law, which was settled in the case of AIR 1977 251 (SC) has been clearly referred to in paragraphs 10 and 11 of the said judgment, which read as follows:

"10.During the period 1960 to 1962 no direct recruits were appointed to the post of Deputy Collectors, but sixty-one Mamlatdars were promoted to that post. The

reason why no direct recruitments were made during this period was that on October 31, 1961, the Government sent a requisition for twelve posts of Deputy Collectors to the Gujarat Public Service Commission but the Commission raised certain queries with regard to the qualification prescribed by clause (c) of Rule 2 of the Recruitment Rules that the candidate should possess an "adequate knowledge of Marathi or Gujarati". The reason for this query was that on the reorganization of the State of Bombay, the State of Gujarat which came into being consisted of those areas of the State of Bombay which were predominantly Gujarati-speaking areas while the State of Maharashtra consisted of the territories of the State of Bombay of which the predominant language was Marathi and the City of Bombay of which Marathi was not the predominant language. Considerable correspondence took place between the Commission and the Government. Ultimately, a competitive examination for the posts of Deputy Collectors was held in July 1962. The results of this examination were declared in January 1963 and the Commission sent its recommendations in February 1963. The Government thereupon issued orders for appointment of the candidates so selected by the Public Service Commission in May 1963. Thus, in 1963 and later the direct recruits came to the appointed. The Government of Gujarat issued on December 12, 1971, a seniority list as on January 1, 1971. The list of the promotees was prepared on the basis of their continuous length of service and the list of the direct recruits was prepared on the basis of the dates of their respective appointments. A combined seniority list showing seniority inter se between the promotees and the direct recruits was also prepared. It may be mentioned that ever since 1941 in the Province of Bombay and thereafter in the State of Bombay and subsequently in the State of Gujarat the principle of continuous officiation had been admittedly followed. The direct recruits filed a writ petition in the Gujarat High Court being Special Civil Application No. 1401 of 1973 challenging the said seniority list. The Parties, apart from the State of Gujarat, namely, the promotees and the direct recruits, were arraigned in a representative capacity in the said writ petition. The grievance of the direct recruits was that the promotees who were promoted during the period 1960 to 1963 were given seniority over those directly recruited in 1963 and later. It was their contention that as the appointments to the cadre of Deputy Collectors were made on the basis of a quota allocation, a system of rotation should also apply. A learned single Judge of the Gujarat High Court by his judgment dated November 30, 1973, dismissed the said writ petition holding that Rule 1 of the Recruitment Rules required implementation of the quota as far as it was practicable and. Therefore, the promotions of Mamlatdars made between 1961 and 1963 were regular. The direct recruits thereupon filed a Letters Patent Appeal being Letters Patent Appeal No. 113 of 1974. In the said Letters Patent Appeal the direct recruits contended that the promotees had not been appointed in substantive vacancies, but were appointed in such vacancies only on the date on which they were confirmed. By its judgment dated November 12, 1975, the Division Bench of the Gujarat High Court held that the Government ought to have followed the roster method. The promotees thereupon approached this Court in appeal.

During the pendency of the appeal, on January 1, 1976, the Government prepared a seniority list on the basis of the judgment of the Division Bench. By its judgment delivered on November 1, 1976, and reported as AIR 1977 251 (SC) this Court partly allowed the said appeal filed by the promotees. 11. In Chauhan's case the Court accepted the Explanation given by the State of Gujarat for its inability to hold the examination. The Court summarized the conclusions it had reached as follows(at page 1053) (of SCR): (at pp. 261-62 of AIR): "1. The promotions of mamlatdars made by Government between 1960 and 1962 are saved by the "as far as practicable" proviso and Therefore valid. Here it falls to be noticed that in 1966, regular rules have been framed for promotees and direct recruits flowing into the pool of Deputy Collectors on the same quota basis but with a basic difference. The saving provision "as far as practicable" has been deleted in the 1966 rules.. The consequence bears upon seniority even if the year is treated as the unit for quota adjustment. 2. If any promotions have been made in excess of the quota set apart for the mamlatdars after rules in 1966 were made, the direct recruits have a legitimate right to claim that the appointees in excess of the allocable ratio from among mamlatdars will have to be pushed down to later years when their promotions can be regularised by being absorbed in their lawful quota for those years. To simplify, by illustration, if 10 deputy collectors" substantive vacancies exist in 1967 but 8 promotees were appointed and two direct recruits alone were secured, there is a clear transgression of the 50:50 rule. The redundancy of 3 hands from among promotees cannot claim to be regularly appointed on a permanent basis. For the time being they occupy the posts and the only official grade that can be extended to them is to absorb them in the subsequent vacancies allocable to promotees. This will have to be worked out down the line wherever there has been excessive representation of promotees in the annual intake.... 3. The quota rule does not, inevitably, invoke the application of the rota rule. The impact of this position is that if sufficient number of direct recruits have not been forthcoming in the years since 1960 to fill in the ratio due to them and those deficient vacancies have been filled up by promotees, later direct recruits cannot claim "deemed" dates of appointment for seniority in service with effect from the time, according to the rota or turn, the direct recruits" vacancy arose. Seniority will depend on the length of continuous officiating service and cannot be upset by later arrivals from the open market save to the extent to which any excess promotees may have to be pushed down as indicated earlier." After discussing the case law, the court then summed up the further conclusions "it had reached and gave the requisite directions for reframing the inverse seniority list. These conclusions and directions are as follows (at pages 1057-58) (of SCR): (at pp. 264-65 of AIR): "(a) The quota system does not necessitate the adoption of the rotational rule in practical application. Many ways of working out "quota" prescription can be devised of which rota is certainly one. (b) While laying down a quota when filling up vacancies in a cadre from more than one source, it is open to Government, subject to tests under Article 16, to choose "a year" or other period of the vacancy by vacancy basis to work out the quota among the

sources. But once the Court is satisfied, examining for constitutionality the method proposed, that there is no invalidity, administrative technology may have free play in choosing one or other of the familiar processes of implementing the quota rule. We, as Judges, cannot strike down the particular scheme because it is unpalatable to forensic taste. (c) Seniority normally is measured by length or continuous, officiating service- the actual is easily accepted as the legal. This does not preclude a different prescription, constitutionality tests being satisfied. (d) A periodisation is needed in the case to settle rightly the relative claims of promotees and direct recruits. 1960-62 forms period A and 1962 onwards forms period B. Promotees regularly appointed during period A in excess of their quota, for want of direct recruits (reasonably sought but not secured and because tarrying longer would injure the administration) can claim their whole length of service for seniority even against direct recruits who may turn up in succeeding periods. (e) Promotees who have been fitted into vacancies beyond their quota during the period B- the year being regarded as the unit- must suffer survival as invalid appointees acquiring new life when vacancies in their quota fall to be filled up. To that extent they will step down, rather be pushed down as against direct recruits who were later but regularly appointed within their quota."

(16) The earlier judgment of the Supreme Court A.K. Subraman and Others Vs. Union of India (UOI) and Others, may be of some relevance. .It was highlighted that when Assistant Engineers (Class II) are initially appointed in a regular manner, in accordance with the Rules to officiate as Executive Engineers, their seniority in service in Grade I will count from the date of their initial officiating appointment in Class I, provided their initial officiating appointment as Executive Engineers was within their quota and the seniority will not be reckoned from the date of their future confirmation in class 1. The conclusions in the judgment are summarized in paragraph 29, which also illustrate the enforcement of quota rule and reads as follows:

"TO summarise the conclusions- (1) When Assistant Engineers (Class II) are initially appointed in a regular manner in accordance with the rules to officiate as Executive Engineers, their seniority in service in Grade I will count from the date of their initial officiating appointment in Class I provided their initial officiating appointment as Executive Engineers was within their quota. (2). Their seniority will not be reckoned from the date of their future confirmation in Class 1. The above principle is, however, subject to one reservation, namely, if an Assistant Engineer before his confirmation in Class II were appointed to officiate in Class I in the grade of Executive Engineer, although within his quota, his seniority will count only from the date of his confirmation in Class II as permanent Assistant Engineer notwithstanding his earlier officiating appointment as Executive Engineer. (3) The quota rule will be forced at the time of initial recruitment, in an officiating capacity, to the grade of Executive Engineer and not at the time of confirmation. (4) The quota rule will be enforced with reference to vacancies in all posts, whether permanent or temporary, included in the sanctioned strength of the cadre (except such vacancies as are purely of a fortuitous or adventitious

nature) and the operation of the quota rule will not depend upon the availability or non-availability of Assistant Executive Engineers for appointment as Executive Engineers. The non-availability of Assistant Executive Engineers for recruitment to the grade of Executive Engineer will not postpone the regular recruitment of the Assistant Executive Engineers as Executive Engineers within their quota. (5) Once the Assistant Engineers are regularly appointed to officiate as Executive Engineers within their quota they will be entitled to consideration in their own rights as Class I Officers to further promotions. Their "birth marks" in their earlier service will be of no relevance once they are regularly officiating in the grade of Executive Engineer within their quota. (6) If Assistant Engineers are recruited as Executive Engineers in excess of their quota in a particular year they will be pushed down to later years for absorption when due within their quota."

(17) The interpretation of the quota and rota rule was also considered in B.S. Yadav and Others Vs. State of Haryana and Others, . This judgment related to the seniority of the officers in the superior judicial service of the State and reference is made to the judgment in N.K.Chauhan (supra) and the conclusions stated therein. This judgment highlighted the fact that the rules of quota and rota can co-exist. The following passage reads as under:

"Were not laying down that the rules of quota and rota cannot coexist. Service rules may so provide or they may yield to such an interpretation .In that event their validity may have to be tested in the total setting of facts. Therefore, whether the quota system has to be observed not only at the stage of initial recruitment but also at the stage of confirmation is not a matter of abstract law but will depend on the wording of the rules and the scheme of the rules under consideration. Any dogmatic assertion, one way or the other, is wrong to make. On a review of these authorities, all that we would like to say is that on a proper interpretation of the rules governing the Punjab and Haryana Superior Judicial Service, the rule of rota cannot be read into the rule of quota. In other words, the ratio of 2:1 shall have to be applied at the stage of recruitment but cannot, on the language of the relevant rules, be applied at the stage of confirmation."

(18) I may now refer to the Constitution Bench judgment of the Supreme Court in The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, , which laid down the law in respect of appointment of direct recruits and promotees and the relative seniority and the basis of its determination. It has been highlighted that where the appointment is made according to rules, seniority has to be counted from the date of appointment and not from the date of confirmation, as has been held in the earlier judgments, which have been referred to above. The validity of the quota rule has been considered as well and the Court has made reference to the situation where it becomes impracticable to act upon the quota rule. Reference may be made to paragraphs 21 and 23 of the said judgment:

"21.It has, however, been rightly suggested on behalf of the appellants that when recruitment is from more than one source, there (1) inherent invalidity in

introducing quota system, but as was thad in A.K. Subraman and Others Vs. Union of India (UOI) and Others, , the unreason- weeks mentation of such a rule may attract the frown of the equality under:-"her, if a rule fixing the ratio for recruitment from different sources is framed, it is meant to be respected and not violated at the whims of the authority. It ought to be strictly followed and not arbitrarily ignored. This, of course, may not prevent the Government from making slight deviations to meet the exigencies. If it is discovered that the rule has been rendered impracticable, it should be promptly substituted by an appropriate rule according to the situation. The question, however, is as to what is the conclusion if the quota rule is not followed at all continuously for a number of years,after it becomes impossible to adhere to the same. Admittedly in the present case direct recruits were not available in adequate number for appointment, and appropriate candidates in the subordinate rank capable of efficiently discharging the duties of Deputy Engineers were waiting in their queue. The development work of the State peremptorily required experienced and efficient hands. In the situation the State Government took a decision to fill up the vacancies by promotion in excess of the quota, but only after subjecting the officers to the test prescribed by the rules. All the eligible candidates were considered and the opinion of the Public Service Commission was obtained. The appointments were not limited to a particular period and as a matter of fact continued till 1950 when the fresh rules were introduced. 23. Mr. Tarkunde is right that the rules fixing the quota of the appointees from two sources are meant to be followed. But if it becomes impracticable to act upon it, it is no use insisting that the authorities must continue to give effect to it. There is no sense in asking the performance of something which has become impossible. Of course, the Government, before departing from the rule, must make every effort to respect it, and only when it ceases to be feasible to enforce it, that it has to be ignored. Mr.Tarkunde is right when he says that in such a situation the rule should be appropriately amended, so that the scope for unnecessary controversy is eliminated. But, merely, for the reason that this st?ep is not taken promptly, the quota rule, the performance of which has been rendered impossible, cannot be treated to continue as operative and binding. The unavoidable situation brings about its natural demise, and there is no meaning in pretending that it is still vibrant-with life. In such a situation if appointments from one source are made in excess of the quota, but in a regular manner and after following the prescribed procedure, there is no reason to push down the appointees below the recruits from the other source who are inducted in the service subsequently .The later appointees may have been young students still prosecuting their studies when the appointments from the other source takes place- and it is claimed on behalf of the respondents that this is the position with respect to many of the direct recruits in the present case- and, it will be highly inequitable and arbitrary to treat them as senior. Further, in cases where the rent themselves permit the Government to relax the provisions fixing within ratio, the position for the appointee is still better; and a mere de there from would raise a presumption in favor of the exercise power of relaxation. There would be still third consideration

officiate as in this context; namely, what is the conclusion to be drawn from deliberate continuous refusal to follow an executive instruction fixing the quota. The inference would be that the executive instruction has ceased to remain operative. In all these cases, the matter would however be subject to the scrutiny of the Court on the ground of mala fide exercise of power. All the three circumstances mentioned above which are capable of neutralising the rigours of the quota rule are present in the cases before us, and the principle of seniority being dependent on continuous officiation cannot be held to have been defeated by reason of the ratio by the 1960 rules."

(19) The summing up by the Court is in paragraph 44 and the same reads as follows:

" TO sum up. we hold that: (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. (C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly. (D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down. (E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date. (F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule. (G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject. (H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative. (I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers. (J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of service to unsettle a settled position."

(20) The facts of the above judgment are not fully applicable to the present case except to highlight that the petitioners were appointed within their own quota and according to regulations, and cannot be pushed down to make room for the direct recruits who were appointed much later in point of time. The quota having broken down as there was no simultaneous recruitment of direct recruits, the rotational system cannot be applied at the later stage of recruitment by keeping the slots vacant. The contention of the learned counsel for the petitioners that when the direct recruitment was not simultaneous with the selection of promotees and there was inordinate delay in the same, the direct recruits recruited as late as 1986 in pursuance to the advertisement of 1985 cannot be shown as senior to the petitioners has great force. The seniority Regulations, i.e. Regulation 7 ceased to apply to the present situation, as the quota was not maintained simultaneously. It will be inequitable and unjust if the promotees are placed below the direct recruits, who were recruited as late as 1984, 1985 and 1986, particular in view of the fact that the petitioners were at all times promoted within their quota and no one amongst them has been promoted in the quota, fixed for direct recruits.

(21) The learned counsel appearing for Desu has strongly contended that no instances have been cited by the petitioners to justify the argument that the quota and rota have collapsed and not a single factor has been pointed out except for delay in "appointment and delay cannot be held to amount to break down. There is also no violation of the regulations. He has cited the judgment of the Supreme Court in *Mervyn Coutindo and Others Vs. Collector of Customs, Bombay and Others*, which upheld the concept of rotational system in the matters of recruitment on the basis of quota, as prescribed for promotees and direct recruits. The following passage is cited:

" WHERE, therefore ,recruitment to a cadre is from two sources, namely, direct recruits and promotees and rotational system is in force, the seniority has to be fixed as provided in the Explanation by alternately fixing a promotee and a direct recruit in the seniority list. We do not see any violation of the principle of equality of opportunity enshrined in Art. 16(1) by following the rotational system of fixing seniority in a cadre half of which consists of direct recruits and the other half of promotees and the rotational system by itself working in this way cannot be said to deny equality of opportunity in Government service. The anomalies which have been referred to in the petition arise not on account of their being anything opposed to equality of opportunity in Government service by the use of the rotational system; they arise out of the fortuitous circumstances that in this particular service of Appraisers, for one reason or another, direct recruitment has fallen short of the quota fixed for it. It is merely because of this fortuitous circumstance that anomalies to which reference has been made in the petition have arisen. There is no doubt that if direct recruitment had kept pace with the quota fixed Therefore there would have been no anomalies in fixing the seniority list. The question, Therefore, narrows down to this: Can it be said that there is denial of equality of opportunity which arises out of the fortuitous, circumstance

and which is not a voice inherent in the rotational system? We are not prepared to say that the rotational system of fixing seniority itself offends equality of opportunity in Government service. Any anomalies which may have resulted on account of insufficient recruitment of direct recruits in the past cannot in our opinion be a ground for striking down the rotational system, which, as we have said, does not itself amount to denial of equality of opportunity in the matter of employment in Government service. It is regrettable that some anomalies have appeared because of insufficient recruitment of direct recruits in the past in this particular service. But that in our opinion can be no reason for striking down the seniority list prepared in 1963 which is undoubtedly in strict accordance with the rotational system based on the fixed quotas for recruitment of direct recruits and promotees."

The facts of this judgment cannot be equated with the facts of the present case. There is no infirmity in operating the rotational system, when the recruitment is from two different sources. The system, however, must not work out as inequitable, unreasonable and arbitrary in determining the inter-se seniority at a much later stage. Here in the present case, the petitioners were recruited as early as 1981 and 1982, whereas, the slots were kept vacant for the direct recruits, who were recruited in the subsequent years in 1984, 1985 and 1986 respectively. There is, Therefore, a long gap and there has been no simultaneous or near simultaneous appointment of direct recruits to justify the operation of, the rota system in that particular manner.

(22) The counsel for the respondents has next cited the judgment of the Supreme Court in *H.V. Pardasani and Others Vs. Union of India (UOI) and Others*, . It is reiterated "that the scheme Constituting a service to be manned both by direct recruits as also promotees is unexceptionable. The prescription of quota becomes necessary to work out such scheme and rota is well accepted method for giving effect thereto. Seniority based by the rota, Therefore, is also not open to attack". Paragraph 13 of the judgment reads as follows:-

"CONSIDERABLE argument was advanced in support of the petitioners" stand that in giving effect to the scheme prejudice has been caused to the petitioners. It is appropriate to take note here of the fact that the inter se seniority of the direct recruits and promotees in each of the cadres of Section Officers has not been challenged before us. Such fixation has been made years back. In the absence of challenge to such fixation, the consequential process of drawing up of Select List depending upon such seniority for promotion to Grade I (post of Under-Secretary) would not be open to challenge. The scheme contemplates drawing up of a combined list from out of the cadres of Section Officers and to entertain a challenge at this stage would naturally .if feet the respective seniority lists in the cadres and would involve many officers who have not been made parties to this proceedings. This Court has taken the view in many decided cases that if there is a quota rule to implement, the question of length of services becomes an irrelevant consideration (see *Mervyn Coutindo v. Collector of*

Customs, Bombay; K.N. Chauhan v. State of Gujarat and P.S.Mohal v. Union of India). A number of decisions were cited on behalf of the petitioners, a reference to all of which we have made in the connected judgment. As pointed out by us therein, in both the cases of A.Janardhana and P.S.Mahal this Court proceeded on the footing that there had been a breakdown in the enforcement of the quot

(23) The judging in the above mentioned case will also have no application when it is co-related to the facts of the present petition. The vacancies were filled up on the basis of selection according to rules and the petitioners were appointed within their quota. The only grievance has been that the slots were kept vacant for direct recruits, as respondent no. 1 could not take steps to make simultaneous selection and recruitment of direct recruits. It is also noticeable that inter se seniority of the direct recruits and promotees in each of the cadres of Section Officers, which had been fixed years back, had not been challenged in the case of H.V.Pardasani (supra). The Court rightly held that the consequential process of drawing of select list depending upon such seniority for promotion to Grade I post would not be open to challenge in the absence of challenge in the cadre of Section Officers.

(24) MR.S.C.GUPTA. learned counsel appearing for the private respondents has urged that the quota rule can only be substituted by an appropriate rule. In the present case, Regulation 7 of 1968 Regulations clearly specifies the quota and the operation of the roster and till that Regulation is on the statute book, no relief can be granted to the petitioners. He has relied upon the proposition A, Din the judgment of The Direct Recruit Class-11 Engineering Officers" Association and others (supra) to reiterate that when appointments are made from more than one source, it is permissible to fix the ratio for recruitment from different sources and if rules are framed in this regard they must p73 ordinarily be followed strictly. He has also sought support from the same judgment to advance the proposition "that it is highly desirable that a decision, which concerns a large number of Government servants in a particular service and it has been given after careful consideration of the rival contentions, is respected rather than scrutinised for finding out any possible error. It is not in the interest of service to unsettle a settled position over now and then."

(25) Mr. Gupta has argued that the promotions made should not be disturbed after a long lapse of time and the Court should not entertain petitions challenging seniority after inordinate delay. He has made reference to the judgment in K.R. Mudgal and Others Vs. R.P. Singh and Others, and Maloon Lawrence Cecil D" Souza v. Union of India and others (supra). It will not be necessary for me to deal with this contention once again, as I have referred to the submissions made by the counsel for Desu and rejected the same on the grounds, as indicated in the earlier part of my judgment. Suffice it will be to say that Desu has been circulating incomplete seniority lists and for the first lime. they circulated the impugned seniority list dated April 24. 1992 which was also provisional. Thermal list was issued only on April 27.1993,and another list was issued in continuation

on May 14, 1993. It cannot, Therefore, be said that the petitioners were guilty of delay and laches and the present petition is not entertainable. On the contrary, the issuance of different seniority lists would indicate that the matter was itself under consideration with the Authorities and no final decision was taken in this regard till the dates mentioned above. The objection of delay and laches has, Therefore, no force and cannot be sustained.

(26) Reliance is next placed on the judgment of the Supreme Court in *Ashok Gulati and Others Vs. B.S. Jain and Others*, . The questions raised were decided on their own facts and cannot have any application to the present case. On the contrary, the following passage where the Court refers to other judgments will support the contention of learned counsel for the petitioners. The same may be reproduced as under:-

"WE must also refer to the decision in *A. Janardhana Vs. Union of India (UOI) and Others*, where Desai J. had occasion to observe: "In other words after having rendered service in a post included in the service, he is hanging outside the service, without finding a berth in service, whereas direct recruits of 1976 have found their place and berth in the service. This is the situation that stares into one's face while interpreting the quota-rota rule and its impact on the service of an individual. But a voiding any humanitarian approach to the problem, we shall strictly go by the relevant Rules and precedents and the impact of the Rules on the members of the service and determine whether the impugned seniority list is valid or not. But, having done that we do propose to examine and expose an extremely undesirable, unjust and inequitable situation emerging in service jurisprudence from the precedents namely, that a person already rendering service as a promote has to go down below a person who comes into service decades after the promotee enters the service and who may be a schoolian, if not in embryo, when the promotee on being promoted on account of the exigencies of service as required by the Government started rendering service. A time has come to recast service jurisprudence on more just and equitable foundation by examining all precedents on the subject to retrieve this situation."

TO the same effect are the decisions in *O.P. Singla and Another Vs. Union of India (UOI) and Others*, , *G.S. Lamba and Others Vs. Union of India (UOI) and Others*, , *P.S. Mahal and Others Vs. Union of India (UOI) and Others*, and *Pran Krishna Goswami and Others Vs. State of West Bengal and Others*, . It must now be taken as well established after these decisions that in the absence of any other valid principle of seniority, the inter se seniority between direct recruits and promotees should as far as possible be determined by the length of continuous service whether temporary or permanent in a particular grade or post (this should exclude periods for which an appointment is held in a purely stop-gap or fortuitous arrangement). No doubt, there are certain observations in the two cases of *G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others*, and *Narender Chadha and Others Vs. Union of India and Others*, which seem to run counter to the view we have taken, but these decisions turned on

their own peculiar facts and are Therefore clearly distinguishable and they do not lay down any rule of universal application."

(27) I may now revert back to the facts of the present case, which may be recapitulated as follows :-

(A)the petitioners are possessing the requisite educational and other qualifications for promotion as Assistant Engineers in terms of the 1980 Regulations.

(B)They have been promoted on regular basis according to the Regulations.

(C)Promotions have taken place within the quota, as prescribed under the Regulations and there is no dispute in respect of the same and their dates of appointment in the grade of Assistant Engineers are as follows: (i) Shri P.K.Thapar (petitioner No. 1) 8.9.1981 (ii) Shri N.K.Puri (petitioner no.2) 8.9.1981 (iii) Shri R.Raghavan(petitioner no.3) 8.9.1981 (iv) Shri S.C.Sood(petitioner no.4) 8.9.1981 (v) Shri S.C.Mehta(petitioner no.5) 8.9.1981 (vi) Shri R.K. Ugly (petitioner no.6) 21.6.1982

(28) The respondents 5 to 31 were all appointed on different dates but not earlier than June 1, 1984 and not later than June 28, 1985. They have been ranked as senior to the petitioners although they have been appointed in the grade on subsequent dates only on the basis of the rotational system, as provided in Regulation 7 of the 1968 Regulations.

(29) The facts, as referred above, would accordingly indicate that the petitioners have already put in longer service as compared to respondents 5 to 31 and there has been no simultaneous appointment of direct recruits to keep pace with quota reserved for them. The latest seniority lists circulated as late as April 27, 1993, and May 14, 1993, further indicate that the direct recruits of the year 1985 and 1986 are ranking as senior to the promotees, who were appointed to the grade of Assistant Engineers as far back as September 8, 1981. There is a clear indication on the basis of the facts of this case that the roster could not be maintained as there was no simultaneous appointment of direct recruits in the service. The slots were kept vacant and the direct recruits were fitted in the slots when the recruitment was made.

(30) In view of the facts and circumstances of the case and on the basis of the settled law by the Supreme Court, there is no escape from the conclusion that the rotational system, as provided under the Rules has clearly collapsed as there has been no simultaneous recruitment of direct recruits within the recruitment year. The operation of the present seniority list, which has been impugned in this petition, will obviously cause heartburning to the petitioners who will rank junior to the direct recruits recruited as late as 1984, 1985 and 1986, particularly, in view of the fact that the petitioners have not occupied any position in the quota reserved for the direct recruits. They have all been appointed within their quota and according to the regulations. The matter can be looked at from another

angle to interpret the provision.

(31) Regulation 7 of the 1968 Regulations provides that "appointments shall be made in accordance with this roster and seniority determined accordingly." This provision can be read to mean that the appointments from both quotas have to be simultaneous to maintain the roster and as the same has not been done there can be no application of this provision which has become redundant. The direct recruits cannot now push down the respondents only to maintain roster, which has lost its significance.

(32) The Delhi Electric Supply Undertaking (DESU) was obviously aware of the hardship caused to the promotees on the operation of the rota rule and on January 28, 1992, amended the service regulations and made the instructions, issued by the Central Government, applicable to DESU. This notification dated January 28, 1992, has been filed with the counter affidavit of respondent no. 1. The amended rule reads as follows:- Schedule Amendment in Regulation No.2 of Dusk (DMC) Service Regulations. 1977 (a) In Regulation No.2, clause (b) after the existing sub clause (ix) the following sub clause shall be added:

"(X) Consolidated orders on seniority as applicable to the Central Government employees and order/instructions issued by the Central Government there under from time to time."

"DATED 24.2.1992 Office Order Subject: Amendment in Desu (DMC) Service Regulations, 1977) A copy of the Delhi Administration (LSG) Notification No. F.2/102/75- LSG/621 dated 28.1.1992 on the above noted subject, is circulated herewith for information and guidance of the officers and other employees of the undertaking."

(33) It may be pertinent to refer to the instructions of the Central Government, which are also filed with the counter affidavit as now applicable to Desu as well in terms of the above amendment. The relative seniority of direct recruits and promotees is determinable on the basis of Office Memorandum No. 22011/7/86-Estt.(D) dated 3.7.1986 issued by Department of Personnel & Training, Government of India. The order reads as follows: Seniority of Direct Recruits and Promotees

"2.4.1 The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. 2.4.2 If adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available the promotees will be bunched together at the bottom of the seniority below the last position up to which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment

quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent year where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter in that year while seniority will be determined between direct recruits and promotees to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en bloc below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancy for that year. The same principle holds good for determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent year. The amendment of the Regulations and the application of the order issued by the Central Government, as referred above, would clearly indicate that Desu was alive to the resentment of the promotees who were placed en bloc junior to direct recruits for whom slots were kept vacant. Learned counsel for DESU. however, contends (hat this amendment should only be prospective and cannot be applied to the case of the petitioners. I am not inclined to agree with the submissions. This amendment follows the order of the Central Government on seniority, issued as far back as 1986, which means that the respondent was always considering the injustice caused to the petitioners and such similarly situated persons and it has now been upheld that the rote-quota is applicable only to the extent of direct records and promo lees available within a particular year. In case, the direct recruits arc not available in a particular year, promo lees will be clubbed together at the bottom of the Seniority list. The facts of the present case clearly indicate that all the direct recruits have been recruited beyond that period and they cannot, Therefore, get precedence over the petitioners.

(34) The learned counsel for Desu has reiterated that the amendment, as referred above, will be prospective and will not ensure for the benefit of the petitioners..It may not be necessary for me to say anything more except to cite paragraph 14 from the judgment of the Supreme Court in A.N.Pathak and others (supra), which reads as follows:-

"THE learned counsel for the respondents found it difficult to justify the validity of the rules and the lists in the light of the various decisions of this Court which have consistently leaned in favor of the promotees based on their length of service and seniority, in cases where there was inordinate delay in making direct recruitment. He tried to justify the inequity saying that the new rules have tried to rectify it. We are not satisfied with this Explanation since that is little consolation to the petitioners. We are of the view that the grievance of the petitioners is justified in law. The rules enabling the authorities to fill in vacancies for direct recruits as and when recruitment is made and thereby destroying the chances of promotion to those who are already in service cannot but be viewed with disfavor. If the authorities want to adhere to the rules strictly all that is

necessary is to be prompt in making the direct recruitment. Delay in making appointments by direct recruitment should not visit the promotes with adverse consequences, denying them the benefits of their service."

(35) For the aforesaid reasons, the writ petition is allowed. Rule is made absolute. The respondent. Delhi Electric Supply Undertaking, is directed to re-draw the Seniority lists dated April 27, 1993, and May 14, 1993 and prepare the list afresh after giving the petitioners the positions they would have been entitled to but for the offending provisions of Regulation 7 of 1968 Regulations.

(36) There will be no order as to costs.