(2012) 04 AHC CK 0044

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No''s. 23672 of 2006 and 56072 of 2010

Rajeev Mohan APPELLANT

Vs

C.A.T. Allahabad and Others RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:
- Administrative Tribunals Act, 1985 — Section 19, 19(1), 20, 20(1), 21
- Civil Procedure Code, 1908 (CPC) — Section 80
- Contract Act, 1872 — Section 16, 17, 19, 19A
- Limitation Act, 1963 — Section 10, 17, 22

Citation : (2012) 5 ADJ 66

Hon'ble Judges : Sunita Agarwal, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : R.P. Srivastava, Dr. R.B. Srivastava, Shashi Nandan, Vikas Budhwar, Chandan Sharma, Rajeev Mohan In Person, Shailendra and U.N. Sharma, for the Appellant; A.K. Nigam, A.S.G.I., 2006/92, A.N. Mahajan, K.K. Mishra, R.K. Upadhyay, Amit Sthalekar, Ashish Srivastava, Bharatji Agarwal, Govind Krishna, P.C. Yadav and S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon''ble Ashok Bhushan, J.—These two writ petitions were clubbed together and are being deciding by this common judgment. These writ petitions have been filed by same petitioner against the orders passed by the Central Administrative Tribunal (hereinafter called the "Tribunal") claiming seniority and other benefits as Income Tax Inspector. Hearing in both the writ petitions commenced together, but in Writ Petition No. 56072/2010, hearing was concluded and judgment reserved on 31.1.2012, whereas the hearing of the Writ Petition No. 23672/ 2006 could be concluded and judgment reserved on 21.3.2012. However, the issues'' involved in both the writ petitions being interconnected, both the writ petitions are decided by this common judgment. The facts giving rise to these two writ petitions are as follows:

Writ Petition No. 23672/2006: The petitioner appeared in the Income Tax Inspector Examination, 1987 conducted by the Staff Selection Commission as a candidate from Maharashtra Zone. The result of the aforesaid examination was declared on 25.6.1988 and the petitioner topped the said examination. The petitioner was issued appointment letter by the Office of Commissioner of Income Tax, Karnataka, Bangalore appointing him as Income Tax Inspector, Panaji, Goa where he joined as Income Tax Inspector on 13.10.1988. After his joining, petitioner submitted an application dated 28.1.1989 for transfer from Goa to Mumbai, which was rejected on 9.5.1989 on the ground that his request for transfer could be considered only after completion of 3 years of service since the transfer of the petitioner was inter-charge transfer. After completion of 3 years of service, petitioner made an application seeking his transfer to Kanpur Region. By an order dated 10.12.1991, passed by the Chief Commissioner Income Tax, Kanpur petitioner was transferred from Karnataka charge to Kanpur charge. The petitioner joined at Kanpur on 10.1.1992. The order dated 10.12.1991, provided that the petitioner shall reckon his seniority from the date when he join at Kanpur charge and his name shall be placed below all working Inspectors (Permanent/Temporary).

One Shri Ram Kumar Bhargava, filed an O.A. No. 1421/2001, in the Tribunal, at Allahabad Bench claiming determination of seniority as Direct Recruit Income Tax Inspector which was disposed of by the order of Tribunal dated 3.12.2011, directing for considering his representation pertaining to claim of seniority. In pursuance of the order of the Tribunal, the seniority of Income Tax Inspector was redetermined, adversely affecting the petitioner. The petitioner filed representation dated 10.6.2002 claiming following reliefs:

(A) Restoring his posing as Inspector of Income Tax in Maharashtra (Mumbai) region and to promote him as Income Tax Officer retrospectively and,

(B) Till the above relief A is given his name be placed above Shri Kapil Agarwal in the gradation list of Kanpur and,

(C) Till the relief B is given to him his name should be placed above all the direct recruited Inspectors who were not working in the Department at the date of his joining i.e. 10.1.1992.

When the representation dated 10.6.2002 was not decided, the petitioner filed O.A. in the Tribunal, Allahabad Bench being O.A. No. 917/2003 which was disposed of by the Tribunal by its order dated 13.8.2003, directing the Chairman, Central Board of Direct Taxes, New Delhi (hereinafter called the "CBDT") to decide the representation of the petitioner dated 10.6.2002 by a reasoned order. The Chairman, CBDT by its order dated 19.11.2003 rejected the representation of the petitioner.

Challenging the order dated 19.11.2003, the petitioner filed O.A. No. 1058/2004 in the Tribunal Allahabad Bench Allahabad. The Tribunal vide its judgment and order dated 10.2.2006 rejected the O.A. No. 1058/2004 both on merits and on limitation.

The Writ Petition No. 23672/2006 has been filed (hereinafter called the "First Writ Petition") praying for quashing the order dated 10.2.2006 passed by the Tribunal and also a mandamus to re-determine the seniority of the petitioner. Counter-affidavit, rejoinder affidavit and supplementary rejoinder affidavit has been filed in the first writ petition.

Writ Petition No. 56072 of 2010: The petitioner filed O.A. No. 1084/2010, in the Tribunal, Additional Bench Allahabad praying for quashing the gradation list of Income Tax Inspector as on 1.1.2002. Further a direction was sought restraining the respondents from making any further promotion until revised seniority list is published keeping in view, the judgment and order of the Apex Court dated 23.3.2006 in SLP No. 9181-9185-2005. The petitioner before the Tribunal claimed that after the transfer and joining of the petitioner at Kanpur, the gradation list was published by regional office on 1.9.1999 in which the petitioner was placed at Serial No. 140, whereas the private respondent No. 4 Shri Arvind Kumar Trivedi who was also a direct recruit Inspector was placed at Serial No. 142.

2. As noted above, O.A. No. 1421/2001, was filed by Shri Ram Kumar Bhargava before the Tribunal, which was disposed of by the order of Tribunal dated 3.12.2001, directing the respondents to consider the representation of Shri Ram Kumar Bhargava taking into consideration the judgment of the Principal Bench of the Tribunal dated 23.2.2000, passed in O.A. No. 2307/1999 in the case of Sanjeev Mahajan, wherein the Principal Bench had quashed the seniority list dated 8.2.1999 and directed for determination of seniority of Direct Recruits from the date on which the recruiting authority makes the selection of Direct Recruits. On the basis of the order of the Tribunal dated 3.12.2001, the entire seniority list of Income Tax Inspector Direct Recruits, promotees and inter-charge transferee was redetermined by giving seniority to the direct recruits from the date of sending requisition for selection to the recruiting authority. It was claimed before the Tribunal that the seniority list was prepared, but never published. In the seniority list as on 1.1.2002, the name of the petitioner was placed at Serial No. 387 and the name of the respondent No. 4, Shri Arvind Kumar Trivedi was placed at Serial No. 326, making the petitioner much junior to the respondent No. 4. Reliance was placed on the judgment of the Gujarat High Court dated 17.8.2004, in the case of Union of India v. N.R. Parmar, before the Tribunal as well as on the order of the Apex Court dated 20.3.2006 in Special Leave to Appeal (Civil) No(s) No. 9181-9185-2005.

3. The Gujarat High Court in the above judgment has held that direct recruits inspector are entitled to reckon their seniority from the date they actually joined. The Apex Court on 20.3.2006, directed the respondents to comply with the order of the Gujarat High Court regarding determination of seniority. Reliance was also placed on a judgment of the Principal Bench of the Tribunal dated 15.2.2007 in O.A. No. 2007/2005, where the Tribunal directed for revising the seniority list in

accordance with the judgment of the Gujarat High Court in the case of N.R. Parmar (supra).

4. Against the judgment and order of the Tribunal dated 15.2.2007, the Department filed the writ petition in this Court which was subsequently dismissed as withdrawn on an affidavit filed by the Department that the judgment of the Gujarat High Court has been complied with.

5. The Tribunal vide its judgment and order dated 4.8.2010, disposed of the O.A. No. 1084/2010, filed by the petitioner directing the respondents to decide the seniority of the petitioner in the light of the direction and observation of the Gujarat High Court in (Union of India v. N.R. Parmar) confirmed by the Apex Court prior to making any promotion. It was further observed that prior to finalisation of the seniority list, no promotion shall be made by the respondents. After the order of the Tribunal dated 4.8.2010, an application was filed on behalf of the Union of India to recall the order of the Tribunal dated 4.8.2010. Applications were also filed by one Chandra Kishore Singh & four others who were not party to the O.A.No. 1084/2010, praying for modification of the judgment and order dated 4.8.2010 to the extent that the respondent Nos. 1 and 2 be permitted to grant promotion to the post of Assistant Commissioner Income Tax for the recruitment year 2009-2010, wherein neither the applicants nor private respondents of the O.A. No. 1084/2010 are to be considered. The private respondents had also filed application for modification of order dated 4.8.2010. After hearing the applicants who had filed the application for recall/modification for recalling the order dated 4.8.2010, Tribunal recalled the order dated 4.8.2010 and also dismissed the aforesaid O.A. with the cost of Rs. 10,000/ - by the judgment and order dated 27.8.2010. Challenging the order dated 27.8.2010, of the Tribunal the petitioner had filed Writ Petition No. 56072/2010, (hereinafter called the "second writ petition"). Counter-affidavit has been filed in the writ petition by respondent Nos. 2 and 3 as well as the private respondents. Supplementary counter-affidavit has also been filed by the private respondents. Rejoinder affidavits and supplementary rejoinder affidavits have been filed by the petitioner.

6. We have heard Shri P.K. Shukla, Advocate appearing for the petitioner in the first writ petition, Shri Bharatji Agarwal, learned Senior Advocate assisted by Shri R.K. Upadhyaya for the respondents. In the second writ petition, petitioner Rajeev Mohan has appeared in person, Shri Bharatji Agarwal, learned Senior Advocate assisted by Shri Govind Krishna has appeared for the respondent Nos. 2 and 3 as well as Shri Santosh Kumar Pandey, Shri Saumitra Singh who appeared for the private respondents.

7. Shri P.K. Shukla, Advocate learned counsel appearing for the petitioner in the first writ petition, in support of the writ petition contended that the Tribunal committed error in dismissing the O.A. as barred by time. He submits that the petitioner having topped in the Income Tax Inspector Examination in 1987 from Maharashtra Region, was entitled to be appointed in Maharashtra Region and his

appointment in Karnataka Region and posting at Panaji, Goa was illegal. He was not made aware of all the facts at the relevant time and has been made to suffer without any fault of his. The petitioner joined at Panaji, Goa under bona fide belief that the aforesaid place was within the Maharashtra Zone and his posting was in pursuance of the selection under the aforesaid zone. It is submitted that the petitioner on compelling reason has requested for his transfer to Kanpur charge and he is entitled for all his benefits of his selection under Maharashtra Region with all consequential benefits. It is further submitted that one Shri Kapil Agarwal who also appeared in the examination from Maharashtra Zone and was lower in merit to the petitioner was transferred to Kanpur even before expiry of 3 years and had joined Kanpur before the petitioner and is being treated senior to the petitioner. It is further submitted that the seniority list of 1999 was clandestinely changed in the year 2002, putting the petitioner below the persons who were his juniors in the 1999 gradation list.

8. Shri P.K. Shukla, learned counsel for the petitioner referring to the supplementary rejoinder-affidavit, also contended that the act of the respondents by posting the petitioner at Karnataka charge was fraud within the meaning of Section 17 of the Contract Act, which is liable to be set-aside. Referring to Sections 10, 17 and 22 of the Limitation Act, it is contended that the claim of the petitioner cannot be said to be barred since it was based upon the fraud of the respondents wherein the period of limitation shall not run. It is further submitted that the O.A. No. 1658/2004, having been filed against the order passed by the Chairman, CBDT dated 19.11.2003, was well within time and the Tribunal erred in rejecting the O.A. No. 1658/2004, as barred by time.

9. Shri Bharatji Agarwal, learned Senior Counsel appearing for the Department refuting the submission of the petitioner contended that the petitioner sought his transfer to Kanpur Zone in pursuance of the order dated 10.12.1991, wherein it was clearly provided that his seniority shall be reckoned from the date when he joins at Kanpur Charge and he shall be placed in the bottom of all working Income Tax Inspectors working on the said date, and he cannot claim any benefit of earlier seniority. Referring to the circular dated 14.5.1990, it was mentioned in the transfer order that according to circular a person who applies for inter-charge transfer is not entitled for any benefits of his earlier service. Having accepted his transfer the petitioner cannot now turn around and say that he may be given the benefit of his services in the earlier zone. Petitioner who is governed by service regulations and the orders issued by the Government of India regulating his service conditions and seniority, reliance on the provisions of the Contract Act are misplaced. It is submitted that the aforesaid O.A. has rightly been rejected as barred by time, since the cause of action which arose to the petitioner by his transfer arose in the year 10.12.1991 when the transfer order was passed and the petitioner filed the O.A. in the year 2003 which was clearly barred by time. Petitioner had also no claim on merits to claim any seniority or benefits of his earlier services and the writ petition deserves to be dismissed.

10. The petitioner appearing in person in support of the second writ petition has submitted that the petitioner has been put to great loss and disadvantage by the acts of the department. He having topped in the Maharashtra Zone in the 1987 Income Tax Inspector Examination was illegally given appointment in another zone i.e. Karnataka Zone and was given posting at Panaji, Goa which was wrong committed by the recruiting body. The petitioner bona fide requested for his transfer to Mumbai which was rejected treating it to be inter-charge transfer. The petitioner was considered for transfer after 3 years and was transferred to Kanpur charge where he joined on 10.1.1992. The gradation list was prepared at Kanpur in the year 1999, wherein the petitioner was placed at Serial No. 140 and the respondent No. 4 and other private respondents were all shown junior to the petitioner in the said gradation list.

11. On the basis of the order of the Tribunal dated 3.12.2001, passed on the application filed by Shri Ram Kumar Bhargava, the entire seniority list was clandestinely changed in the year 2002 without circulating the draft seniority list and without inviting any objection. He contends that in the changed seniority list the respondents were shown above the petitioner. The changed seniority list was not even circulated among the Income Tax Inspectors. The changed seniority list was submitted before the Review Departmental Committee (hereinafter called the "DPC") on 18.4.2002, in which the name of the respondent No. 4 was considered on the basis of revised seniority list he was promoted as Income Tax Officer. The seniority list was thus changed in April 2002, whereas in the counter-affidavit filed in this writ petition the seniority list is being claimed as has been circulated on 21.8.2002.

12. The Gujarat High Court in its judgment dated 17.8.2004 in the case of N.R. Parmar (supra) after interpreting the relevant order of the Government of India regulating the determination of the seniority has laid down that the direct recruits are entitled to reckon their seniority from the date of their actual joining and they cannot reckon their date of seniority when the requisition was sent to the recruiting body or from the date when the selection was made. He submits that that Apex Court has passed an order dated 20.3.2006 in SLP (Civil) No(s) 9181-9185/05 directing that the judgment and order of the Gujrat High Court may be implemented, if not already implemented. He has also placed reliance on the order passed by the Tribunal, Principal Bench dated 15.2.2007 in O.A. No. 2007/2005, S.S. Rathore v. Union of India and others, wherein S.S. Rathore claimed direction to revise the seniority list in view of the judgment of the Gujarat High Court in N.R. Parmar''s case (supra) which was disposed of.

13. Writ Petition was filed by the Union of India and others, being Writ Petition No. 26772/2007, in this Court challenging the order of the Tribunal dated 15.2.2007. During oral hearing of the writ petition this Court made strong observation and asked for clarification as to why the judgment of the Gujarat High Court and the Apex Court is not being implemented, on which time was taken by the learned Senior Standing Counsel of the Income Tax Department and

the Senior Counsel communicated the observation of the Court to the Income Tax Department. The Department thereafter filed an affidavit in the writ petition stating that the judgment of the Gujarat High Court has been complied with, consequentially the writ petition was withdrawn. He submits that the judgment of the Gujarat High Court has not yet been complied with by the respondents and they had filed misleading affidavit before this Court in Writ Petition No. 26772 of 2007 since the seniority list has not yet been revised which was clandestinely changed as on 1.1.2002.

14. The petitioner contends that the private respondents were not working as Income Tax Inspectors on the date when the petitioner had joined at Kanpur and they have wrongly and illegally under a conspiracy have been shown senior to the petitioner to prejudice the legitimate claim of the petitioner. He submits that the order of the Tribunal dated 4.8.2010, directing the respondents to re-determine the seniority in accordance with the judgment of the Gujarat High Court was perfectly justified and has been recalled at the instance of the persons who have taken illegal benefits and at the instance of the persons who were not entitled to get the order recalled. He submits that the Tribunal committed error in dismissing the aforesaid O.A. without appreciating the facts and causing injustice to the petitioner. He submits that the Tribunal committed error in observing that the petitioner had no right to approach the Tribunal to claim implementation of the judgment of the Gujarat High Court as affirmed by the Apex Court. It is submitted that the Tribunal also erred in observing that the petitioner has no locus standi to file the O.A. It is further submitted that the view of the Tribunal that the present application is barred by principle of res-judicata is also erroneous. He submits that when the earlier application was filed in the Tribunal in the year 2004, rejecting the representation of the petitioner, the seniority list as on 1.1.2002 was neither circulated nor the petitioner was served the copy of the seniority list. He submits that in view of the interpretation as put by the Gujarat High Court and affirmed by the Apex Court, the respondents were under obligation to correct the seniority list of the Income Tax Inspectors including that of the petitioner and in not doing so the respondents have committed error. The Tribunal dismissed the O.A. on erroneous grounds and the petitioner is entitled for the reliefs as claimed above. He submits that it is not the petitioner who has submitted any wrong or misleading facts, but it is the respondents who are throughout concealing the relevant facts and misleading the Court.

15. Shri Bharatji Agarwal, learned Senior Counsel appearing for the Department submitted that the Tribunal did not commit any error rejecting the application filed by the petitioner. He submits that the only error if any, committed by the Tribunal was to dismiss the O.A. instead of hearing a fresh, after recalling the judgment and order dated 4.8.2004. He submits that present is not a case where this Court may enter into the merits of the claim of the seniority, since at best the Tribunal could be asked to hear the application of the petitioner on merit. He further supported the seniority list as on 1.1.2002. He submits that the petitioner was well aware of the seniority list as on 1.1.2002, otherwise he would not have

filed the representation dated 10.6.2002. The Tribunal has rightly rejected the O.A. as barred by constructive res-judicata. The Board vide letter dated 19.11.2003, considered and rejected the claim of the petitioner. The seniority is governed and regulated by Office Memorandum dated 7.2.1986, issued by the Government of India, Department of Personnel Training. Against the judgment of the Gujarat High Court in N.R. Parmar''s case (supra) SLP has been filed by the Department in which no stay has been granted. However, by letter dated 22.2.2006, all the parties were directed to maintain seniority as determined prior to 8.9.2004, except where there are specific orders of CAT/High Court.

16. The judgment of the Gujrat High Court in N.R. Parmar''s case (supra) was regarding dispute of inter-se seniority between direct recruits and promotees, whereas in the present case the dispute is between the petitioner who is inter-charge transferee (Direct Recruit) and the private respondents who are direct recruits. Clarification has has already been sought by filing I.A. in the Apex Court as to whether the judgment of the Gujrat High Court in N.R. Parmars'' case (supra) is to be applied in all zones which is still awaited, the petitioner is not entitled for any relief in this writ petition.

17. Learned counsel for the parties have referred to and relied on various decisions of the Apex Court, this Court and other Courts which shall be referred to while considering the submissions in detail. The order of the Tribunal in the first writ petition being Writ Petition No. 23672/2006, has been referred to and relied on by the Tribunal in its judgment and order dated 27.8.2010, which has been impugned in the second writ petition, hence it is necessary to first decide the Writ Petition No. 23672 of 2006. We, thus proceed to first consider the issues which have arisen for consideration in the first writ petition as well as second writ petition. The Tribunal by the impugned order dated 10.2.2006, has dismissed the application filed by the petitioner both on merits and on limitation.

18. The issues arising in both these writ petitions have some common threads and decision in the first writ petition shall automatically have effect on the result of the second writ petition. Following are the main issues which have arisen for consideration in these two writ petitions:

(1) Whether the O.A. No. 1058/ 2004, filed by the petitioner before the Tribunal, Additional Bench Allahabad has rightly been dismissed by the Tribunal by its judgment and order dated 10.2.2006 as barred by time

(2) Whether the petitioner was entitled for restoration of his posting as Inspector Income Tax in Maharashtra Region w.e.f. his joining in the Department and was entitled for promotion as Income Tax Officer retrospectively.

(3) Whether the petitioner was entitled to add his earlier period of working as Income Tax Inspector before his joining at Kanpur for the purposes of seniority and other benefits

(4) Whether the petitioner was entitled to be placed above all the Income Tax

Inspectors (Direct Recruits) who were not working in the Department at the time of his joining i.e. 10.1.1992 in Kanpur and the order dated 19.11.2003 of the Chairman, CBDT refusing the above prayer was erroneous

(5) Whether the gradation list as earlier finalised on 1.9.1999, was revised and changed w.e.f. 1.1.2002, after due circulation inviting objections from the affected persons including the petitioner

(6) What is the criteria or the basis for reckoning the seniority by direct recruits Income Tax Inspectors and inter-charge transferee

(7) Whether the petitioner can claim that the respondents were obliged to revise the seniority list of direct recruits Income Tax Inspectors existing w.e.f. 1.1.2002, after the judgment of the Gujarat High Court in N.R. Parmars'' case (supra) and the order of the Apex Court dated 20.3.2006

(8) Whether the inter-se seniority of Income Tax Inspectors of West Zone cannot be revised due to:

(i) Pendency of SLP against the judgment of the Gujarat High Court in Union of India v. N.R. Parmar, dated 17.8.2004

(ii) Order of the Supreme Court passed in SLP No. 22000-22009, Anil Kumar Sehgal and others v. Smt Anita Vinayak and others, dated 7.9.2009, directing the parties to main status quo regarding seniority

(iii) Order of Government of India dated 22.2.2006, with reference to SLP filed by the Department against the judgment of the Gujarat High Court in N.R. Parmar''s case (supra)

(9) Whether the Tribunal while considering the three applications filed for recall/ modification of the order dated 4.8.2010, passed in O.A. No. 1084/2010, was justified in dismissing the aforesaid O.A. itself while allowing the above three applications and recalling the order dated 4.8.2010

(10) To what relief, if any, the petitioner is entitled in both the writ petitions

19. The first issue to be considered is as to whether the O.A. No. 1058/2004 filed by the petitioner before the Tribunal was barred by limitation. For answering the issues, facts giving rise to filing of the O.A. No. 1058/2004 need to be again recapitulated.

As noted above, petitioner appeared in the Income Tax Inspector, Examination 1987 from Maharashtra Zone and joined his posting on 13.10.1988 at Panaji, Goa. His application to transfer him to Mumbai was rejected on 9.5.1989, observing that the application for inter-charge transfer could be considered only after completion of 3 years. Petitioner again made an application for transfer to Kanpur charge, which was granted by order dated 10.12.1991, in pursuance of which the petitioner joined at Kanpur on 10.1.1992. The gradation list of Income Tax Inspectors of the Kanpur Region was finalised and circulated on 1.9.1999, in which the petitioner was placed at Serial No. 140 and the respondent No. 4 was placed at Serial No. 142 and other private respondents were also shown below the petitioner. The gradation list of Income Tax Inspectors of 1999 was drastically changed in the year 2002 by which the petitioner became junior to the respondent No. 4 and other private respondents. When the petitioner came to know about the such change he thereafter submitted a detail representation dated 10.6.2002. In his representation dated 10.6.2002, petitioner raised several grievances including the grievance that he although topped the examination from the Maharashtra Region he was wrongly appointed in Panaji, Goa, which was under different region i.e. Karnataka region. Petitioner had also raised grievances against one Shri Kapil Agarwal who was lower in merit in the Maharashtra Region examination, but was transferred to Kanpur even before the expiry of three years and is shown senior to the petitioner. The petitioner in his representation dated 10.6.2002, has prayed for grant of several prayers. It is useful to quote the prayers in his representation dated 10.6.2002 which is to the following effect :

(A) Restore my posting as Inspector of Income Tax in Maharashtra (Mumbai) region w.e.f. my joining in the department and promote me to the post of ITO retrospectively, since my counterparts (junior to me in the merit list of Maharashtra Zone have been promoted and accordingly, my posting may be placed in Maharashtra (Mumbai) zone and

(B) Till such relief as sought for in point No. A above is given to me my name should be placed above Shri Kapil Agarwal in the gradation list of Kanpur and,

(C) Till such relief as sought for in Point No. B above is given to me my name should be placed above all the Inspectors (direct recruited Inspectors who were not working in the department at the date of joining i.e. 10.1.92 in Kanpur) and thus, honouring the terms and conditions as were mentioned in my transfer order passed by the CCIT, Kanpur (as Annexed).

20. One of the prayer i.e. prayer ''C'' in the representation dated 10.6.2002 was that his name should be placed above all the Inspectors (direct recruited Inspectors who were not working in the department at the date of joining i.e. 10.1.1992, in Kanpur). Petitioner in paragraph 22 of the representation dated 10.6.2002 has referred to the change of the seniority list which was alleged to have been affected clandestinely. It is useful to quote paragraph 22 of the representation dated 10.6.2002 which is to the following effect:

22. Recently to add more pain to my grief the gradation list had clandestinely been changed after the Court directions in the case of Shri Ram Bhargav, ITI resulting so many direct recruited Inspectors who were not working at the time of my joining here at Kanpur were promoted as ITO, this way the CCIT, Kanpur has belied and violated its own order of keeping me below all working direct recruited Inspectors stationed at Kanpur charge. At least two batches have been placed above me, and made senior to me because of these disturbances with the gradation list. Some Inspectors (promotees) aggrieved from this act of

administration took the shelter of High Court (Annexure XI) (also see Annexure-VIII). It is important to point out here that none of these promoted inspectors were working on the date of my joining at Kanpur and all joined after my joining at Kanpur. This is the most latest harassment out of the chain of harassment done to me right from the initiation of my service in the Income tax department way back from the year 1987.

21. Thus, apart from claiming restoration of his posting of the petitioner as Income Tax Inspector in Maharashtra Region and claiming all benefits of the period of his working prior to 10.1.1992, the petitioner had also claimed for placing him above direct recruit Inspectors who were not working in the department on 10.1.1992.

22. From the materials brought on the record, it is clear that the gradation list dated 1.9.1999 was changed in the year 2002 which was the seniority made effective w.e.f. 1.1.2002. In his representation dated 10.6.2002, petitioner has clearly claimed that gradation list had been clandestinely changed after some direction was given in the case of Sri Ram Bhargava resulting in so many Direct Recruit Inspectors who were not working at the time of the petitioner''s joining becoming senior to the petitioner. At this stage, it is also relevant to consider as on what point of time, the seniority list was changed. Several materials have been brought on the record by the petitioner as well as by the Department to consider the date when the changed seniority list was affected which shall be hereinafter be considered while considering the issue No. 5.

23. Suffice it to say that the gradation list dated 1.9.1999 was changed with regard to which the petitioner has submitted his representation dated 10.6.2002. When the representation dated 10.6.2002, of the petitioner was not being considered and no decision was taken by the authorities, petitioner filed O.A. No. 917/2003, in the Tribunal which was disposed of by the Tribunal vide judgment and order dated 13.8.2003 by passing following order:

By this O.A. u/s 19 of A.T. Act 1985 applicant has come with the grievance about his seniority and also wrong allocation of the region. The contention of the applicant is that he was selected by Staff Selection Commission Maharashtra he should have been posted in Maharashtra but he was posted in Goa which was under Control of Chief Income Tax Commissioner of Karnataka. Facing great difficulty, he sought transfer from Goa to Kanpur which has been allowed and applicant is presently serving as Income Tax Inspector at Kanpur. It is submitted that applicant has suffered loss in seniority on account of the lapse on the part of respondents in allocating wrong region and it requires rectification. The counsel for applicant has placed before us the copy of the representation which applicant has addressed to respondent No. 2 for redressal of his aforesaid grievances. Since applicant opinion, has already approached the Competent Authority in our opinion, it shall not be appropriate for this Tribunal to interfere at this stage except for a direction to respondents to consider and decide the representation of the applicant by a reasoned order.

For the reason stated above this O.A. is disposed of finally with the direction to respondent No. 2 Chairman Central Board of Direct Taxes, New Delhi to decide the representation of the applicant dated 10.6.2002 by a reasoned order within three months from the date a copy of this order is filed. In order to avoid delay it shall be open to the applicant to file a fresh copy of the representation alongwith copy of this order. No order as to costs.

24. After the above order of the Tribunal dated 13.8.2003, the Chairman, CBDT considered the representation of the petitioner dated 10.6.2002 and rejected the same vide his order dated 19.11.2003. The Chairman, CBDT noticed all the three prayers made in the said representation A, B and C and rejected the said representation. By rejection of the representation dated 10.6.2002, the petitioner''s challenge to the clandestine change in the gradation list of 2002 also stood rejected.

25. Challenging the said order dated 19.11.2003, petitioner had filed O.A. No. 1658/2004, which has been dismissed by the Tribunal as barred by time. The application was filed by the petitioner u/s 19 of the Central Administrative Tribunal''s Act, 1985 (hereinafter called the "Act, 1985"). It is relevant to note the relevant statutory provisions of the Act, 1985 pertaining to limitation for filing an application u/s 19 of the Act, 1985. Sections 19 (1), 20 and 21 of the Act, 1985 which are relevant in the present case are quoted below:

19. Applications to Tribunals. - (1) Subject to the other provisions of this Act a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation.--For the purposes of this sub-section, "order" means an order made -

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation [or society] owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation [or society] referred to in clause (a).

20. Application not to be admitted unless other remedies exhausted.-(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

21. Limitation--(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates;and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of subsection (1) or, as the ease may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

26. Section 20 of the Act, 1985 provides that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of his

grievances.

27. Petitioner submitted his representation dated 10.6.2002, for redressal of his grievances and when the said grievances were not redressed, he filed O.A. No. 917/ 2003 before the Tribunal and the Tribunal vide its order dated 13.8.2003, directed the Chairman, CBDT to decide the grievances and such grievances were subsequently rejected vide order dated 19.11.2003.

28. O.A. No. 1658/2004, was filed by the petitioner within the period of limitation as prescribed u/s 21 of the Act, 1985. The Tribunal has not rejected the application of the petitioner on the ground that it is barred by limitation as prescribed u/s 21 of the Act, 1985, rather it was influenced by the fact that the petitioner by filing the application in the year 2004, is raising the grievances which he ought to have raised in the year 1988, 1989 and 1992.

29. A Constitution Bench of the Apex Court had occasion to consider the provisions of Sections 20 and 21 of the Act, 1985 in a judgment in S.S. Rathore Vs. State of Madhya Pradesh, . In the said case, a Government Employee was dismissed on 13.1.1966. He preferred an appeal to the Divisional Commissioner which was dismissed on 31.8.1966, which order was communicated to the appellant on 19.9.1966. Notice u/s 80 C.P.C. was given on 17.6.1969 and suit was filed on 30.9.1969. The suit was dismissed as barred by time having not been filed within three years from the date of dismissal. One of the question arose as to when the right to sue first accrued i.e. on the date 13.1.1966, when the appellant was dismissed or after the appeal was dismissed. In the above context the Constitution Bench examined the provisions of Sections 20 and 21 of the Act, 1985. Paragraphs 15, 16, 17, 18, 19, 20, 21 and 22 which are relevant are quoted below:

15. In several States the Conduct Rules for Government servants require the administrative remedies to be exhausted before the disciplinary orders can be challenged in Court. Section 20(1) of the Administrative Tribunals Act, 1985 provides:

20(1). A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

16. The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of Section 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for Government servants of the Centre and several States have already set up such Tribunals under the Act for the employees of the respective States. The law is soon going to get crystallised on the line laid down u/s 20 of the Administrative Tribunals Act.

17. In this background if the original order of punishment is taken as the date when cause of action first accrues for purposes of Article 58 of the Limitation Act, great hardship is bound to result. On one side, the claim would not be maintainable if laid before exhaustion of the remedies; on the other, if the departmental remedy though availed is not finalised within the period of limitation, the cause of action would no more be justiciable having become barred by limitation. Redressal of grievances in the hands of the departmental authorities take an unduly long time. That is so on account of the fact that no attention is ordinarily bestowed over these matters and they are not considered to be Governmental business of substance. This approach has to be deprecated and authorities on whom power is vested to dispose of appeals and revisions under the Service Rules must dispose of such matters as expeditiously as possible. Ordinarily, a period of three to six months should be the outer limit. That would discipline the system and keep the public servant away from a protracted period of litigation.

18. We are satisfied that to meet the situation as has arisen here, it would be appropriate to hold that the cause of action first arises when the remedies available to the public servant under the relevant service Rules as to redressal are disposed of.

19. The question for consideration is whether it should be disposal of one appeal or the entire hierarchy of reliefs as may have been provided. Statutory guidance is available from the provisions of sub-sub-sections (2) and (3) of Section 20 of the Administrative Tribunals Act. There, it has been laid down:

20(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievances; or

(b) where no final order has been made by tee Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

20. We are of the view that the cause of action shall be taken to arise not from

the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months'' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation u/s 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of con-donation of delay of a total period of six months has been vested under subsection (3). The Civil Court''s jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was-filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation.''

The Apex Court in the said judgment clearly laid down that the cause of action shall not be taken to have arisen from the date of the original adverse order, but on the date when the order of the higher authority, where a statutory remedy is provided of entertaining the appeal or representation.

30. In the present case, admittedly the order was passed by the Chairman, CBDT on 19.11.2003 and the application was filed by the petitioner within the period of limitation as prescribed u/s 21 of the Act, 1985. The Tribunal in its impugned judgment dated 10.2.2006 has not adverted to the aforesaid statutory provisions of Sections 20 and 21 of the Act, 1985 and has without recording any finding that the O.A. No. 1684/2004 is barred by limitation u/s 21 of the Act, 1985 has dismissed the O.A. No. 1684/2004 as barred by time. The decision of the Tribunal that the aforesaid O.A. is barred by time cannot be sustained for more than one reason i.e.-

(I) The representation of the petitioner dated 10.6.2002 was decided by the Chairman, CBDT vide order dated 19.11.2003, against which order the O.A. was filed within time. The order passed by the Chairman, CBDT dated 19.11.2003 rejecting all the prayers of the petitioner gave a cause of action which could have been entertained and examined by the Tribunal in the O.A.

(II) The earlier gradation list which was published on 1.9.1999, was changed in the year 2002 which was complained by the petitioner immediately on 10.6.2002. The representation dated 10.6.2002 regarding grievance of the changed seniority list having been rejected vide order dated 19.11.2003, petitioner''s grievance of changed seniority list in the year 2002, was neither a stale claim nor could have been thrown as barred by time. More so, the Tribunal itself in paragraph 11 of the judgment has noticed the judgment of the Apex Court in Dwarka Nath Sharma Vs. Union of India (UOI) and Others, , wherein the Apex Court observed as under:

11. While the above are the latest cases, in an earlier case, Dwarka Nath Sharma Vs. Union of India (UOI) and Others, , of course, the Apex Court has held, "The appellant was entitled to make a representation against the seniority list and rejection of the representation actually would have given him the cause of action. In these circumstances, non-suiting him on the plea of limitation would not at all be justified.

31. The Tribunal in its impugned judgment has relied on several judgments of the Apex Court which needs to be noted. The first judgment relied on by the Tribunal is Hameed Joharan (d) and Others Vs. Abdul Salam (d) by L.rs. and Others, . In the said case, the Apex Court was considering Article 136 of the Limitation Act, 1963 which provides a period for execution of decree. The question was considered as to what are the meaning of words "executibility" and "enforceability". In the said case execution application was filed beyond 12 years period as provided in Article 136 of the Limitation Act, 1963, hence the judgment of the Court below dismissing the execution application as barred by time was upheld. The said case has no application in the present case. The next case relied on by the Tribunal is Administrator of Union Territory of Deman and Diu and Ors. v. R.D. Valand . In the said case the employee had made a representation in the year 1985 for promotion to the post of Assistant Engineer w.e.f. 1977. The said representation was rejected on 8.10.1986. Thereafter he filed application before the Tribunal in March, 1990 i.e. after four years. The application was rightly rejected as barred by time. In paragraph 4 of the judgment the Apex Court has noticed the relevant dates which are as follows:

4. We are of the view that the Tribunal was not justified in interfering with the stale claim of the respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28.9.1972. A cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when he made representation to the Administration. The said representation was rejected on 8.10.1986. Thereafter for four years the respondent did not approach any Court and finally he filed the present application before the Tribunal in March 1990. In the facts and circumstances of this case, the Tribunal was not justified in putting the clock back by more than 15 years. The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in

his way.

The Apex Court noticed in the above paragraph that when the representation was rejected on 8.10.1986, the applicant for four years did not approach any Court, thus the said case was on its own fact and has no application in the present case, whereas in the present case the petitioner has approached the Tribunal within a period of one year from rejection of his representation vide order dated 19.11.2003.

32. In Secretary to Government of India and Ors. v. Shivram Mahadu Gaikwad, 1995 Supp. (3) SCC 231 , which has been relied by the Tribunal, the employee was employed as Daily Wager (casual labour) being last appointed on 24.3.1986, was discharged from service on 7.10.1986. He filed the O.A. in the Tribunal in the year 1990. In the facts of the above case while holding that the application was barred by limitation the Apex Court observed as under:

2. When we turn to the judgment of the Tribunal we find that there is no mention about the question of limitation even though it stared in the face. It would immediately occur to anyone that since the order of discharge was of 7.10.1986 and the application was filed in 1990, it was clearly barred by limitation unless an application for condoning the delay was made u/s 21(3) of the Administrative Tribunals Act. No such application was in fact made.

The said case is clearly distinguishable, since the application was filed after four years and was clearly barred u/s 21 of the Act, 1985.

33. Another case relied on by the Tribunal is Y. Ramamohan and Others Vs. Government of India and Others, . The Apex Court found in the said case that the gradation list dated 3.5.1983 came to the knowledge of the appellant in the earlier proceedings in 1986, there was no justification for not approaching the Tribunal after more than 3 years in the year 1990. Thus, the said case was also on its own facts when the application was clearly barred u/s 21 of the Act, and has no application in the present case.

34. In view of the foregoing discussion, we are of the opinion that the O.A. No. 1084/2004, was filed within limitation as in accordance with Section 21 of the Act, and the Tribunal committed error in dismissing the application as barred by time.

35. Issue Nos. 2 and 3 being related to each other are being taken up together. The petitioner was transferred to Kanpur charge on a request of transfer made by the petitioner himself. The transfer order was passed on 10.12.1991, by the Deputy Commissioner, Income Tax, Kanpur Nagar. The transfer order dated 10.12.1991 has been referred to and relied on by the circular dated 14.5.1990. Transfer order dated 10.12.1991, has been filed as Annexure CA-2 to the counter-affidavit filed by the respondent Nos. 3 to 5. Paragraphs 2 and 3 of the transfer order dated 10.12.1991 are quoted below:

36. The Board''s order dated 14.5.1990 has also been referred to in the transfer

order dated 10.12.1991. It is relevant to have a look on the Board''s order dated 14.5.1990. The Board''s order dated 14.5.1990, clearly provides that for the purposes of seniority, any services rendered in earlier charge, from where a person is transferred shall not be counted and his seniority shall begin from the date when he joins in the new charge and all claims of promotion in the earlier charge or confirmation shall come to an end. The relevant paragraphs of the Board''s order dated 14.5.1990 are as follows:

2. The instructions contained in the above mentioned letter have been reconsidered consequent on the recent changes in the concept of confirmation and lien. As a result of such reconsideration, it has been decided that requests for inter-charge transfer of non-gazetted staff on really compassionate grounds may here-in-after be considered by the Cadre Controlling Authorities on merits and transfers, where considered necessary, may be effected subject to the observance of the following conditions:

(a)...

(b)...

(c)...

(d)...

(e) The direct recruits coming on transferes will be shown against direct recruitment quota and promotees against the promotion quota.

(f) The Service rendered in the old Charge will not be counted in the new charge for the purpose of seniority. He/she will be placed at the bottom of the list of the employees of the concerned Cadre in the new Charge. Seniority in the cadre in the Charge to which person is transferred will start from the day that person reports for duty in that charge. However, he will not rank senior to any official who belongs to a batch selected on merit whose inter-se-seniority is not regulated by date of joining.

(g) On transfer, the transferee will forfeit all claims for promotion/ confirmation in the old Charge. He/she will be eligible for promotion /accordance with the seniority allotted to him on transfer.

37. The transfer order of the petitioner dated 10.12.1991, clearly provided that the petitioner shall reckon his seniority from the date when he joined at Kanpur charge and his name shall be placed below all working Inspectors (Permanent/ Temporary). The transfer order further clearly mentions that any service rendered in Karnataka Region shall not be considered for promotion. The petitioner in his representation dated 10.6.2002, has also made a prayer for restoration of his posting in Maharashtra, (Mumbai) region with all benefits including promotion. The petitioner having not challenged the transfer order dated 10.12.1991, and accepted the transfer order by joining at Kanpur, cannot be heard complaining that the benefit of his earlier services had been denied at

Kanpur region. The Board''s order dated 14.5.1990, governs the service condition of all officers and employees who seek transfer from one region to another and the said service conditions are applicable uniformally to all the officers and employees. It was open for the petitioner to challenge the transfer order dated 10.12.1991 or any conditions imposed in the transfer order at the relevant time. He accepted his transfer order with open eyes and cannot be heard in saying that his posting at Maharashtra Region be restored and he be given benefit of his earlier services prior to his joining on 10.1.1992. The grievance raised with regard to the above context in representation dated 10.6.2002, were raised after more than a decade and could not be allowed. More so, the said cause of action arose to the petitioner in the year 1991 when the transfer order was passed.

38. Shri P.K. Shukla, learned counsel for the petitioner had vehemently contended that referring to supplementary rejoinder-affidavit filed in the first writ petition that a fraud was played on the petitioner. Before fraud, the petitioner was not aware of all the facts and as and when the fraud has been disclosed, the same can be examined and appropriate relief can be granted to the petitioner.

39. Shri P.K. Shukla, learned counsel for the petitioner has also referred to and relied on Sections 16, 17, 19 and 19A of the Contract Act. The submission of the petitioner''s counsel is that the petitioner when appeared from Maharashtra Region in the Income Tax Inspector Examination, 1987 and topped the list of Maharashtra Region, his dossier was wrongly sent by Staff Selection Commission to the Commissioner of Income Tax, Karnataka. It is submitted that the petitioner''s posting at Panaji, Goa was also wrongly given whereas he ought to have been posted in Maharashtra Region.

40. Petitioner''s case in the writ petition is that in the year 1989, after joining on 13.10.1988, petitioner immediately made an application for his transfer to Mumbai, which application was rejected stating that the transfer could be considered after completion of 3 years of service. Learned counsel for the petitioner submitted that his case was illegally treated as another charge transferee. Petitioner still was well aware that he was posted in Karnataka Region and not in Maharashtra Region in the year 1989 itself and thereafter he made an application again after three year''s completion of service for transfer to Kanpur charge which was allowed and transfer order was issued on 10.12.1991.

41. Petitioner is governed by the terms and conditions of the transfer order dated 10.12.1991, as well as by Board''s order dated 14.5.1990. There are two reasons due to which petitioner''s aforesaid grievances are not liable to be accepted.

Firstly- Petitioner cannot be heard in complaining against the service condition by which he is governed.

42. Shri P.K. Shukla, learned counsel for the petitioner laid much emphasis on the provisions of the Contract Act. He submits that in entering into the contract of service with the petitioner, the respondents have committed fraud and fraud vitiates all proceedings, thus neither the plea of limitation can be raised nor

service conditions can be relied by the Department. We do not find any force in the above submission of the learned counsel for the petitioner. A Government Servant is governed by rights and duties imposed by public law.

43. The Apex Court in Roshan Lal Tandon Vs. Union of India (UOI), , has laid down that the legal position of the Government Servant is more one of a status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement by the parties. It was further held that the Government Servant has no vested contractual right in regard to the terms of his service.

44. The Apex Court in Union of India (UOI) and Others Vs. Arun Kumar Roy, , had laid down following in paragraph 17 which is quoted below:

17. The question whether the terms embodied in the Order of appointment should govern the service conditions of employees in Government service or the rules governing them is not an open question now. It is now well settled that a Government servant whose appointment though originates in a contract, acquires a status and thereafter is governed by his service rules and not by the terms of contract.

45. The service condition of Income Tax Inspector is governed by the Board''s order dated 14.5.1990 issued by the Government of India, which is applicable to all the employees. Insofar as, not giving posting in Maharashtra Region is concerned, petitioner ought to have raised his grievances at the relevant time in the year 1989, even if he had genuine grievances before the competent authority. The grievance regarding his posting at Maharashtra region and giving benefit of his past services prior to his joining on 10.1.1992, cannot be considered after more than a decade. When the aforesaid cause of action first arose to the petitioner the petitioner has accepted the transfer order dated 10.12.1991, and joined at Kanpur region thus, his claim of benefit of earlier service or promotion on the basis of earlier services at Kanpur region are not available as per the express terms and conditions of the transfer order dated 10.12.1991 and Board''s order dated 14.5.1990 issued by the Government of India dated, hence no error has been committed by the Chairman, CBDT in rejecting the aforesaid prayers ''A'' and ''B'' as made in the representation dated 10.6.2002, thus the order of the Chairman-, CBDT dated 19.11.2003 insofar as he does not accept the prayer of the petitioner for restoration of his posting at Maharashtra Region and giving benefit of retrospective promotion as well as denying benefit of his earlier services prior to 10.1.2002 for the purposes of seniority.

46. One more contention of the learned counsel for the petitioner in this context also needs to be considered. One of the claim of the petitioner before the Tribunal was that one Shri Kapil Agarwal who was lower in merit in the Income Tax Inspectors Examination 1987 was transferred to Kanpur Zone before completion of three years and has been treated senior to the petitioner. One of

the relief in the representation dated 10.6.2002, was in above regard also. In the order dated 19.11.2003, the Board has considered the aforesaid plea of the petitioner. It was held that relaxation was granted to Shri Kapil Agarwal in transferring him to Kanpur Zone before expiry of three years due to special circumstances of Shri Kapil Agarwal and admittedly he having joined at Kanpur Zone earlier to the petitioner''s joining he shall rank senior to the petitioner. There is no dispute that Shri Kapil Agarwal was transferred by order of Chief Commissioner of Income Tax and had joined at Kanpur Zone earlier to the petitioner. The transfer of Shri Kapil Agarwal which took place before 10.12.1991, could not have been made an issue after expiry of more than a decade. We do not find any infirmity in the order of the Board dated 19.11.2003 rejecting the claim of the petitioner in above regard. We are thus of the view that the issue Nos. 2 and 3 are to be answered against the petitioner.

47. Coming to issue No. 4, the petitioner was entitled to be placed above all the Inspectors who were not working in the Department at the time of his joining i.e. 10.1.1992. Suffice it to say, that the said stipulation was clearly mentioned in the transfer order dated 10.12.1991 as quoted above. As per the Board''s order dated 14.5.1990, issued by Government of India quoted above also the person transferred to another charge is to be placed at the bottom of the seniority list.

48. As noted above, in his representation dated 10.6.2002, petitioner has made a specific prayer for placing him above all Inspectors who were not working in the Department at the time of joining i.e. 10.1.1992, which prayer was specifically made in Prayer ''C'' The Chairman, CBDT, has rejected the aforesaid prayer by order dated 19.11.2003. In the order dated 19.11.2003, following was mentioned in paragraphs 4 and 5 for rejecting the request of the petitioner for re-fixing the seniority:

4. In so far as (b) is concerned it is stated that as per instructions contained in Board''s letter F.No. A-22020/ 76/89-Ad. VII, dated 14.5.1990 an officer on inter charge transfer will be placed at the bottom of the list of the employees of the concerned cadre in the New charge. Seniority in the cadre to which person is transferred will start from the day that person reports for duty in that charge. However, he will not rank senior to any official who belongs to a batch selected on merit whose inter-se-seniority is not regulated by date of joining. As such the seniority of Sh. Mohan has been rightly fixed in Kanpur region.

5. In the light of the position mentioned in para 4 above 3, his request for refixing the seniority (relief sought at (c) above) of ITI has no force.

49. From the facts noticed above, it is clear that the petitioner was to be placed at the bottom of the seniority list of the Inspectors working on the date of joining. The petitioner''s grievance raised in his representation dated 10.6.2002, that the seniority list has been clandestinely changed, consequence of which is that he has been made junior to several Inspectors who were not working at the relevant time as Inspectors. The specific grievance raised by the petitioner in

paragraph 22 of the representation as quoted above has not been dealt with by the chairman, CBDT and the said grievance has been only cursorily rejected by the order dated 19.11.2003 and the order of the Chairman, CBDT dated 19.11.2003, thus rejecting the prayer ''C'' of the representation dated 10.6.2002 is held to be erroneous and unsustainable.

50. Issue Nos. 5, 6 and 7 being interconnected are taken up together.

Petitioner''s case in the second writ petition is that the gradation list was published on 1.9.1999 in which the petitioner was senior to respondent No. 4 and other private respondents. Copy of the gradation list as on 1.9.1999, in which the petitioner was placed at Serial No. 140 and the respondent No. 4 Shri Arvind Kumar Trivedi was placed at Serial No. 142 and Shri Ram Kumar Bhargava, respondent No. 5 was placed at Serial No. 145 has been filed as Annexure-5. The petitioner''s case is that after the gradation list dated 1.9.1999 was published, the respondent No. 5 Shri Ram Kumar Bhargava, filed O.A. No. 1421/2001 challenging the position assigned to him in the gradation list dated 4.9.1999. Shri Ram Kumar Bhargava, respondent No. 5 in his application has placed reliance on a Judgment of principal Bench of the Tribunal dated 23.2.2000, passed in O.A. No. 2307/1999, which relate to the seniority of the Income Tax Officer. The Tribunal vide its order dated 3.12.2001, disposed of the application filed by Shri Ram Kumar Bhargava. The Tribunal directed for consideration of representation of Shri Ram Kumar Bhargava, against the gradation list dated 1.9.1999 by following order:

The O.A. is accordingly disposed of finally with the direction to the respondent No. 3 to consider and decide the representation of the applicants by a reasoned order within a period of three months from the date of copy of this order is filed before him. To avoid delay, the applicants are given liberty to file a fresh representation alongwith the judgment of Principal Bench mentioned above and another related documents within two weeks. The representation, if any, shall be decided before making any further promotion.

At this stage, it is also necessary to consider the judgment of the principal Bench of the Tribunal as relied on by Shri Ram Kumar Bhargava, in his application.

51. One Shri Sanjeev Mahajan, Income Tax Inspector, filed O.A. No. 2317/ 1999 in the Principal Bench of the Tribunal, vide order dated 23.2.2000, the Tribunal quashed the seniority list and directed to determine the seniority of direct recruits from the date on which the Recruiting Authority makes the selection of direct recruits.

52. A Writ Petition No. 2604/2000, was filed in the High Court of Delhi. The High Court of Delhi vide order dated 25.9.2002, set-aside the order of the Triunal dated 23.2.2000 and remitted the matter to the Principal Bench for reconsideration. Subsequently, the O.A. No. 2317/1999, was dismissed as withdrawn on 26.4.2003.

53. Shri Ram Kumar Bhargava, in his O.A. dated 1421/2001 had relied on the order of the Principal Bench dated 23.2.2000, which was subsequently set-aside by the Delhi High Court vide order dated 25.9.2002. On the basis of the order of the Tribunal dated 3.12.2001, passed in O.A. No. 1421/2001, the earlier gradation list dated 1.9.1999 was changed. In the changed seniority list although the seniority was given to the promotee Inspectors and intercharge transferee Inspector from the date of joining, but seniority was given to the Direct Recruit Inspectors from the date of sending requisition to the Recruiting Authority. Copy of the seniority list dated 1.1.2002, alongwith the covering letter dated 21.8.2002 of Chief Commissioner of Income Tax has been annexed as Annexure-7 to the Second writ petition. In the changed seniority list as effective from 1.1.2002, the petitioner was pushed below the private respondents.

54. In the changed seniority list, Shri Arvind Kumar Trivedi, respondent No. 4 was placed at Serial No. 326, whereas the petitioner was placed at Serial No. 387 and Shri Ram Kumar Bhargava, was placed at Serial No. 329. The respective position of seniority of the petitioner and the respondent Nos. 4 to 13 were as follows:

55. The petitioner was placed in the seniority list at Serial No. 387 and the private respondents No. 4 to 13 were allocated following serial Nos. in the gradation list as on 1.1.2002.

S. No.

Name

CAT

EDQUAL

DOB

DOIT

DOPG

YOP

D/P

Recruit Year

Remarks

1

....

......

2.

....

......

326

Arvind Kumar Trivedi

GN

M.SC

18.1.68

20.10.92

20.10.92

1995

D

1990-91

327

......

329

Ram Kumar Bhargava

GN

B.SC

30.10.68

4.3.92

4.3.92

1997

D

1990-91

......

330

......

335

Raghven-dra Singh

GN

BA

1.9.66

15.1.93

15.1.93

1997

D

1990-91

336

338

Sangeeta Bansal

GN

M.Sc

1.1.68

25.5.92

25.5.92

1995

D

1990-91

339

347

Shiv Raj Singh Chauhan

GN

MA

MMIBM

15.7.57

11.5.92

11.5.92

1997

D

1990-91

348

350

Surya Kant Mishra

GN

B.Sc

20.6.63

1.9.92

1.9.92

1995

D

1990-91

351

354

Harish Kumar

GN

B.Sc, CA.(1)

6.3.69

10.3.93

10.3.93

1996

D

1991-92

355

360

Ajay Anand

GN

B.Sc.

14.9.68

12.3.93

20.7.93

1995

D

1991-92

365

366

Arjun Singh

GN

M.Sc

7.3.62

5.8.93

5.8.93

1999

D

1991-92

367

378

Brij Bhushan Singh

SC

MA

15.6.68

9.6.93

9.6.93

D

1991-92

386

387

Rajeev Mohan

GN

M.Com

30.6.65

13.10.88

13.10.88

1993

D

1991-92

On transfer

56. As noted above, the petitioner in his representation dated 10.6.2002 has cat-cgorically alleged that the seniority list was clandestinely changed. The petitioner in his second writ petition has categorically pleaded that the seniority list which was changed in the year 2002, which was never circulated nor the same was made avail able to the petitioner. Following was pleaded in paragraph 24 of the second writ petition

24. That as the seniority list as on 1.1.2002 was never circulated and a copy whereof was not made available to the petitioner as the criteria which was being sought to be adopted for the purposes of assigning seniority was itself illegal, contrary to the service jurispurdence. However, in the said seniority list which was alleged to be issued dated 1.1.2002, the name of the petitioner was placed at serial No. 387 whereas the name of one Shri Arvind Kumar Trivedi who is respondent No. 4 was placed at serial No. 326, making him senior by 61 stares.

57. Counter-affidavit was filed by the respondent Nos. 2 and 3 in which paragraph 24 of the writ petition was replied in paragraph 9 of the counter-affidavit which is to the following effect:

9. That the contents of para 24 of the writ petition as alleged is not correct and as such not admitted. However it is submitted that the seniority list was made public and circulated vide this office letter F.No. CCIT/KNP/ C&V/1389/2002-03/390 dated 21.8.2002 with the direction to circulate the seniority list through the Commissioners of Income Tax of the Region. It is not practically possible to provide a copy of the seniority list to individual official. It was circulated through CsIT. The position of the petitioner vis-a-vis Shri Arvind Kumar Trivedi in the Seniority List, as on 1.1.2002 mentioned in this para is a matter of record.

58. Petitioner in the rejoinder affidavit to the counter-affidavit filed by the respondent Nos. 2 and 3 has pleaded that the revised seniority list of 2002 was prepared before 10.4.2002. In paragraph 14 of the rejoinder affidavit, the letter dated 10.4.2002 written by the Deputy Commissioner, Income Tax has been filed as Annexure-4 by which Shri Ram Kumar Bhargava, was informed that the seniority in the Inspector cadre has been revised. Following was stated in the letter dated 10.4.2002:

To

Shri Ram Kumar Bhargava,

Income Tax Inspector,

Kanpur

Sub : Fixation of Inter-se seniority in the cadre of Inspector-

Regarding-

Please refer to your representation dated 12.12.2001 requesting for re-fixation of your seniority in the cadre of Income Tax Inspector.

In your above referred representation, you have raised various issues relating to fixation of your seniority vis-a-vis the departmentally promoted Inspectors.

In am directed to inform you that your representation has been carefully considered as per law and also in light of the order of the Hon''ble CAT Allahabad Bench in O.A. No. 1541/ 2001 and in M/A. No. 920/2002 also.

On the directions of the Hon''ble CAT Allahabad Bench by which your representation was to be decided within a period of three months for which the Bench was kind enough to give an extension of one month, you are, hereby, informed that, as per the various circulars and instructions of DOPT and CBDT issued from time to time as well as judgments of various Courts including those of the Hon''ble Supreme Court, your seniority in the Inspector cadre has been re-fixed and your name is, therefore, placed below Shri Ajai Kumar Agarwal and above Shri Deep Chand Chopra in the Recruitment Year 1990-91.

10.4.2002

(MANAS MEHROTRA)

Dy. Commissioner of Income Tax

(Admn.),

For Chief Commissioner of Income Tax (CCA)

Kanpur Region

59. It is further pleaded that the Departmental Promotion Committee (hereinafter called the "DPC") was held on 18.6.2001 for promotion to the cadre of Income Tax Officer for the recruitment year 2000-2001 and 2001-2002. After change of the seniority list, a Review Departmental Promotion Committee was held on 18.4.2002. The proceedings of the Review Departmental Promotion Committee indicates that the Review Departmental Promotion Committee in its minute dated 18.4.2002 has noticed that the seniority list of eligible candidates has undergone a change consequent to the order of the Tribunal dated 3.12.2001 in the case of Shri Ram Kumar Bhargava. It is useful to quote para 1.2 of the minutes which has been filed as Annexure 5 to the rejoinder affidavit.

1.2. The seniority list of eligible candidates put up before the original DPC has undergone a change, the reason being that consequent to the order of CAT, Allahabad dated 3.12.2001 in the case of Shri Ram Kumar Bhargava and others v. UOI, in the matter of inter-se-seniority of the Inspector in this Region, the Gradation List of Inspector has also been revised in terms of the instructions of the Board and DOP&T. Consequently, the inter-se fixation of seniority of it is of this Region has been refixed. Thus, the order of names of eligible candidates as on the particular date has changed. In this regard, it is to mention that the revised eligibility list includes the names of 12 candidates who have been promoted in the earlier years but who should have been considered alongwith the candidates of this DPC. Therefore, in order to fill up the vacancies in the ITO cadre, the panel to, be drawn up would exclude these 12 names and would consider names from further down the list of eligible candidates. Regarding re-fixation of inter-se-seniority in the cadre of ITOs by which the seniority of 12 candidates who have been promoted in earlier years should be refixed, the issue shall be dealt with administratively.

60. It is relevant to note that in the general category the name of Shri Arvind Kumar Trivedi, respondent No. 4 also came up for consideration as per the revised seniority list and he was recommended to be promoted as Income Tax Officer at Serial No. 72. In the aforesaid minutes, in paragraph 4 the DPC considered 73 officers and graded them as fit for promotion in which the name of Shri Arvind Kumar Trivedi, respondent No. 4 candidate was shown at Serial No. 72. Thus, the petitioner is right in his submission that the gradation list dated 1.9.1999 was revised in purported compliance of the order dated 3.12.2001 of the Tribunal in Shri Ram Kumar Bhargavas case and the said revision took place before 10.4.2002 since Shri Ram Kumar Bhargava was communicated on 10.4.2002 that his seniority has been refixed. The revised seniority list in which the respondent No. 4 has been show senior to the petitioner was also placed before the Review DPC on 18.4.2002, on the basis of which the DPC recommended the respondent No. 4 for promotion.

61. As noticed above, in the counter-affidavit paragraph 9 while replying to the allegations on the petitioner''s that the seniority list was never circulated it has been stated that in para 9 of the counter-affidavit that seniority list was made public and circulated vide letter dated 21.8.2002.

62. The conclusion is inescapable that the seniority list was revised before 10.4.2002 and was utilised for the purpose of promotion in the Review DPC held on 18.4.2002 and the alleged circulation of the same on 21.8.2002 as claimed by the respondents was meaningless. The seniority list was already revised and given effect to before 10.4.2002 i.e. without informing any affected party including the petitioner. It is relevant to note that the Tribunal in Shri Ram Bhargava''s case vide order dated 3.12.2001, has not determined any criteria for fixing the seniority and had only directed to consider the representation of Shri Ram Bhargava. Shri Ram Bhargava was claiming promotion/ seniority as per the

judgment of the Principal Bench of the Tribunal dated 23.2.2000, in the case of Sanjeev Mahajan and it is clear that the seniority list was revised as per the aforesaid judgment of the Tribunal.

63. As noticed above, the order of the Tribunal Principal Bench dated 23.2.2000, was subsequently set-aside by the Delhi High Court dated 25.9.2002. In view of the aforesaid conclusion, the issue No. 5 is answered as follows:

The earlier gradation list dated 1.9.1999, was revised and changed on or before 10.4.2002. The revised seniority list was neither circulated nor objections were invited from any affected Income Tax Inspectors including the petitioner. The circulation of the seniority list as on 1.1.2002 was made public only vide letter dated 21.8.2002, i.e. subsequent to its having been revised. The changed seniority list as on 1.1.2002 was also given effect to by affecting promotion as Income Tax Officer. The respondent Nos. 4 and 5 and other private respondents who were junior to the petitioner in the gradation list dated 1.9.1999, have been shown as senior to the petitioner in the revised seniority list.

64. The issue Nos. 6 and 7 which are inter-related are being considered together.

What is the criteria or the basis for determination of seniority of direct recruits and a direct recruit who has come by inter-charge transfer is the issue for consideration in these writ petitions. The petitioner as noted above, who was a direct recruit was transferred at Kanpur Zone by order dated 10.12.1991, in pursuance of which he joined at Kanpur region on 10.1.1992. The private respondents in the second writ petition being respondent Nos. 4 to 13, were recruited as direct recruit Income Tax Inspectors and posted on different dates as noted above. The private respondent Nos. 4 to 13 had joined as direct recruits subsequent to joining of the petitioner at Kanpur region.

65. What are the instructions and orders governing determination of the seniority of direct recruits, promotees and inter-charge transferee have to be looked into for considering and deciding the issues which have come up for consideration in these two writ petitions.

66. Determination of the seniority of the persons appointed to services and posted under the Central Government are governed by various orders issued by the Government of India from time to time. The Government of India had issued order dated 22.12.1959, for regulating the seniority. By a subsequent order dated 7.2.1986, general principles for determining the seniority of various categories of persons employed in central services were issued. A consolidated orders on the subject were issued again on 3.7.1986. The Government Order dated 7.2.1986, noted that the relative seniority of direct recruits and promotees was being determined according to rotation of vacancy between the direct recruits and the promotees based on the quota. It is useful to quote paras 2 and 3 which necessitated little change in the principle of determination which are quoted below:

No. 35014/2/80-Estt.(D)

Government of India

Ministry of Personnel, Public Grievances and Pension

(Karmik, Lok Shikayat Tatha Pensions Mantralaya)

Department of Personnel & Training

North Block, New Delhi-1

the 7 February, 1986.

OFFICE MEMORANDUM

Sub: General Principles for determining the seniority of various categories of persons employed in Central Services.

2. While the above mentioned principle was working satisfactorily in cases where direct recruitment and promotion kept pace with each other and recruitment could also be made to the full extent of the quotas as prescribed, in cases where there was delay in direct recruitment or promotion, or where enough number of direct recruits or promotees did not become available, there was difficulty in determining seniority. In such cases, the practice followed at present is that the slots meant for direct recruits or promotees, which could not be filled up, were left vacant, and when direct recruits or promotees became available through later examinations or selections, such persons occupied the vacant slots, thereby became senior to persons who were already working in the grade on regular basis. In some cases, where there was short-fall in direct recruitment in two or more consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly long years of regular service already to their credit. This matter had also come up for consideration in various Court Cases both before the High Courts and the Supreme Court and in several cases the relevant judgment had brought out the inappropriateness of direct recruits of later years becoming senior to promotees with long years of service.

3. This matter, which was also discussed in the National Council has been engaging the attention of the Government for quite some time and it has been decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unitended seniority over promotees who are already in position, would be dispensed with. Thus, if adequate number of direct recruits do not become available in any particular year, rotation of quotas for 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 benched together at the bottom of the seniority list, below the last position upto 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 years 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 vacancies for that year. The same principle holds good in 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 years.

67. The Government of India, thereafter issued the order dated 3.7.1986, consolidating all the orders issued from time to time on the subject. Paragraphs 2.1 to 2.4.2 provide for principles of determining the seniority of direct recruits and promotees. Paragraphs 3.1, 3.2 and 3.3 relate to seniority of transferees. It is useful to quote paragraphs 2.1 to 3.3 of the Government Order dated 3.7.1986 which are as follows:

No. 22011/7/86-Estt.(D)

Government of India

Ministry of Personnel, Public Grievances & Pensions

(Department of Personnel & Training)

dated 3.7.1986

OFFICE MEMORANDUM

Subject: SENIORITY - Consolidated orders on.

The undersigned is directed to say that instructions have been issued by this Department from time to time laying down the principles for determining seniority of persons appointed to services and posts under the Central Government. For facility of reference, the important orders on the subject have been consolidated in this Office Memorandum. The number and date of the original communication has been quoted in the margin so that the users may refer to it to understand fully the context in which the order in question was issued.

SENIORITY OF DIRECT RECRUITS AND PROMOTEES

2.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the U.P.S.C. or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

2.2 Where promotions are made on the basis of selection by a D.P.C., the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, 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 and is superseded by a junior such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.

2.3 Where persons recruited or promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit.

2.4.1 The relative seniority of direct recruits and of promotee shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based oh 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 list below the last position upto 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 years 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 vacancies 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.

ILLUSTRATION : Where the Recruitment Rules provide 50% of the vacancies of a grade to be filled by pro-motion and the remaining 50% by direct recruitment, and a assuming there are ten vacancies in the grade arising in each of the year 1986 and 1987 and that two vacancies intended for direct recruitment remain unfilled during 1986 and they could be filled during 1987, the seniority position of the promotees and direct recruits of these two years will be as under:

1986

1987

1.

P1

9.

P1

2.

D1

10.

D1

3.

P2

11.

P2

4.

D2

12.

D2

5.

P3

13.

P3

6.

D3

14.

D3

7.

P4

15.

P4

8.

P5

16.

D4

17.

P5

18.

D5

19.

D6

20.

D7

2.4.3 In order to help the appointing authorities in determining the number of vacancies to be filled during a year under each of the methods of recruitment prescribed, a Vacancy Register giving a running account of the vacancies arising and being filled from year to year may be maintained in the proforma enclosed.

2.4.4 With a view to curbing any tendency of under-reporting/ suppressing the vacancies to be notified to the concerned authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share failing to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated only as ad hoc promotees.

SENIORITY OF TRANSFEREES

3.1 The relative seniority of persons appointed by transfer to a Central service from the subordinate offices of the Central Government or other department of the Central or a State Government shall be determined in accordance with the order of their selection for such transfer.

3.2 Where such transfers are effected against specific quotas prescribed in the Recruitment Rules, the relative seniority of such transferees vis-a-vis direct recruits or promotees shall be determined according to the rotation of vacancies which shall be based on the quotas reserved for transfer, direct recruitment and promotion respectively in the Recruitment Rules. Where the vacancies in any quota or quotas are carried forward, the principles stated in para 2.4.2 will apply, mutatis mutandis in determining inter-se seniority of the appointees.

3.3 Where a person is appointed by transfer in accordance with the provisions in the Recruitment Rules providing for such transfer in the event of non-availability of suitable candidate by direct recruitment or promotion, such transferee shall be grouped with direct recruits or promotees, as the case may be. He shall be ranked below all direct recruits or promotees, as the case may be, selected on the same occasion.

68. Before we proceed to consider the criteria for determining the seniority as provided by the Government of India orders from time to time, it is useful to refer to the orders passed by the Principal Bench of the Tribunal, this Court, Gujarat High Court and the orders of the Supreme Court which have been repeatedly referred to in the pleadings of both the parties which are being referred to in the following chronological order:

(I) One Sanjeev Mahajan, Income Tax Inspector, filed OA No. 2317/1999 in the Principal Bench of the Tribunal questioning the interpretation of word ''available'' in the Government Order dated 7.2.1986. The Tribunal vide order dated 23.2.2000, quashed the seniority list prepared by the Delhi Region and directed for redetermination of the seniority of Direct Recruits Income Tax Inspector from the date on which the Recruiting Authority makes the selection of direct recruits.

The Delhi High Court, in Writ Petition No. 2604/2000 vide judgment and order dated 25.9.2002, set-aside the order of the Tribunal dated 23.2.2000 and remitted the matter back to the Tribunal for reconsideration. Subsequently, the Tribunal vide its order dated 26.4.2003 dismissed the O.A. as withdrawn.

(II) One Shri Ram Kumar Bhargava, filed O.A. No. 1421/2001, before the Tribunal, Additional Bench, Allahabad challenging the gradation list dated 1.9.1999, praying that the seniority be determined on the basis of judgment of the principal Bench of the Tribunal dated 23.2.2000 in Sanjeev Mahajan''s case. The Tribunal vide its order dated 3.12.2001, directed for redetermination of the seniority in consequence of which the seniority was redetermined with regard to which a communication Was issued to Shri Ram Kumar Bhargava on 10.4.2002 as noted above.

(III) The Chief Commissioner, Income Tax, Delhi had issued seniority list on 8.9.2003 by determining seniority of direct recruits, Income Tax Inspectors "From the date of initiation of recruitment process".

One Shri C.P.S. Yadav filed O.A. No. 2068/2003 before the Principal Bench Tribunal. The Tribunal set-aside the seniority list vide order dated 22.9.2004, and directed the seniority to be determined on the basis of Gujarat High Court''s judgment dated 17.8.2004, in Union of India and others v. N.R. Parmar.

(IV) A seniority list was prepared by Income Tax Inspector of Gujarat region dated 25.3.2003, of direct recruits, Income Tax Inspectors and several promotees filed O.A. Nos. 92/2003 and 123/2003 before the Tribunal Ahmedabad

Bench. The Tribunal quashed the seniority list. The order of the Tribunal was challegned by filing writ petition in the High Court of Gujarat by Union of India as well as by the Direct Recruits Inspectors. The leading case was Union of India and others v. N.R. Parmar.

The issues which had arisen for consideration before the Gujarat High Court were :

(I) As to whether complying with the Quota and Rota Rules, seniority of direct recruits should be reckoned on the basis of year in which the vacancies arose;

(II) Or the year in which the selection process was initiated;

(III) Or the year in which the candidates were selected and;

(IV) Or the year in which the candidates were actually appointed.

The Gujarat High Court delivered its judgment on 17.8.2004, holding that the Office Memorandum dated 7.2.1986 and 3.7.1986 clearly envisaged that seniority to the Direct Recruits can be given by the year of their actual appointment disregarding the year in which the recruitment process was initiated or completed. The writ petition was dismissed

(V) Writ petitions were also filed before the Delhi High Court raising the issue of determination of seniority between the direct recruits and promotees, which writ petitions were decided referring to the judgment of the Gujarat High Court dated 17.8.2004, Union of India v. N.R. Permar. Against the judgment of the Delhi High Court, Special Leave to Appeal No. 9181-9185/2005, Mukunk Lal and another v. Pritpal Singh and others, was filed in the Apex Court in which case the Apex Court passed the following order on 20.3.2006:

Learned Additional Solicitor General states that in terms of the observations made by this Court in its order dated 17.2.2006, an application for transfer of the writ petition pending before the Rajasthan High Court, Jodhpur Bench shall be filed within four weeks.

In the meantime the judgment and order passed by the Gujrat High Court may be implemented, if not already implemented, subject to the result of these special leave petitions.

However, those who have already been promoted, shall not be reverted.

List after four weeks.

(VI) One S.S. Rathore, a promotee filed O.A. No. 207/2005, regarding determination of seniority of Income Tax Inspectors before the Principal Bench Tribunal. By order dated 15.2.2007, the Tribunal directed the Department to revise the seniority list in the light of the Gujarat High Court judgment in Union of India and others v. N.R. Parmar.

69. Against the order of the Tribunal Principal Bench, Writ Petition No. 26772/

2007 was filed by the Department in the High Court at Allahabad. In the writ petition the issue was raised that the Income Tax Department has not implemented the order of the Gujarat High Court dated 17.8.2004 and order of the Supreme Court dated 20.3.2006. An affidavit was filed by the Department that the judgment of the Gujarat High Court has already been implemented, hence the Department be permitted to withdraw the writ petition. On the basis of the aforesaid affidavit, the writ petition was permitted to be withdrawn by the order of the Court dated 9.8.2007.

70. It is also relevant to note the pleadings in the second writ petition pertaining to criteria or the basis for determining/revising the seniority list of the Income Tax Inspectors. The seniority list dated 1.9.1999, was prepared on the basis of the date of joining of Direct Recruits/ promotees/inter charge transferee as Income Tax Inspectors, which list was subsequently revised.

71. The petitioner''s case in the writ petition is that the seniority list dated 1.9.1999 was changed and revised fixing the seniority of Direct Recruits from the date of sending requisition to the Recruiting Authority. It is useful to quote paragraphs 23 of the second writ petition which is to the following effect:

23. That it further transpires from the record that in alleged purported compliance of the order dated 3.12.2001 passed in Original Application No. 1421 of 2001 sought to be instituted by Ram Kumar Bhargawa and another, the entire seniority list as on 1.9.1999 was changed and a revised seniority list of the inter-se seniority of the promoted Inspectors and Inspectors came from inter charge transfer was fixed from the date of joining. So far as the inter-se seniority of direct recruit Inspectors is concerned, the same was fixed from the date of sending requisition to the recruiting authority. For the kind perusal of this Hon''ble Court, a photo-copy of the inter-se seniority list of the Inspectors as on 1.1.2002 is being filed herewith and marked as Annexure 7 to this writ petition.

Paragraph 23 of the writ petition has been replied by filing counter-affidavit by the respondent Nos. 2 and 3. In the counter-affidavit filed by the respondent Nos. 2 and 3, paragraph 23 of the writ petition has been replied in paragraph 8 of the counter-affidavit which is to the following effect:

8. That the contents of paras 19, 20, 21, 22 and 23 of the writ petition are matter of record needs no reply.

Thus, from the materials brought on the record and pleadings made, it is clear that in the changed seniority list of the year 2002, the direct recruits were assigned seniority from the date the recruitment process was initiated. It is also fortified by the letter dated 10.4.2002, which was relied by the Department informing the respondent No. 5 that the seniority list has been revised and he has been assigned the seniority of the Recruitment Year 1990-1991, which letter has been brought on record as Annexure-4 to the rejoinder-affidavit filed by the petitioner. Respondent No. 5 had joined as direct recruit on 4.3.1992 and he was given seniority of the Recruitment Year 1990-1991 i.e. from the date when recruitment process was initiated.

72. Now reverting back to the relevant criteria as laid down by the Government of India in its orders dated 7.2.1986 and 3.7.1986, it is to be found out as to what is the principle which is deducible from the aforesaid Government Order for reckoning seniority of the direct recruits. The Government Order dated 7.2.1986/ had noted that as per the practice followed at present is that the slots meant for direct recruits or promotees, which could not be filled up, were left vacant, and where direct recruits or promotees became available through later examinations or selections such persons occupied the vacant slots, thereby become senior to persons who were already working in the grade on regular basis. To do away with the advantage situation it was provided that the rotation of the direct recruits and promotees shall take place only to the extent of direct recruits and promotees ''available'' in any particular year. In case direct recruits are not available and the vacancies remain unfilled in a particular year, the vacancies are to be carried forward and added in the vacancies of the next year and thus selected against the carry forward vacancies were to be bunched together and were placed on the bottom of the direct recruits/promotees after complying the rotation. It is relevant to note that the relative seniority of the direct recruits is determined by the order of merit in which they are selected and a person appointed as a result of earlier selection is senior to those appointed as a result of a subsequent selection. Direct recruits thus can reckon their seniority when they take the vacancy meant for them under the rotation and the seniority amongst the direct recruits selected by one recruitment is on the basis of order of merit. Thus, direct recruits who are recruited on the basis of one selection shall take their seniority in order of merit irrespective of their date of joining, but the seniority can be reckoned for direct recruit in the year when they are actually available for appointment. The Government orders dated 7.2.1986 and 3.7.1986 do not provide that the direct recruits can reckon their seniority from the date when the process of recruitment was initiated or the '' date when the selection was held, rather the seniority is reckoned after appointment as per the quota meant for them.

73. The Gujarat High Court in N.R. Parmar''s case (supra) had interpreted the same very Government orders dated 7.2.1986 and 3.7.1986 and laid down following in paragraphs 10.1, 11, 12 and 13:

10.1 The basic rule for relative seniority of direct recruits and promotees, as laid down in paragraph 2.4.1 in O.M. dated 22.12.1959, is that their vacancies are to be rotated on the basis of the quota reserved for direct recruitment and promotion. However, in case adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority can take place only to the extent of the available direct recruits and promotees as clearly laid down by paragraph 2.4.2 in O.M. dated 7.2.1986. That provision is further clarified and illustrated to show that the unfilled direct recruit quota vacancies would be carried forward and added to the vacancies of the next year with the additional direct recruits selected against the carried forward, vacancies being placed en-bloc below the last promotee in the seniority list based on the rotation of vacancies for that year. Thus, any claim for seniority in the year in which a vacancy had arisen but not filled up could not have been entertained. The clear mandate in paragraph 2.4.2 referred hereinabove to the effect that rotation of quotas would take place only to the extent of the available direct recruits and promotees is not susceptible to any other interpretation.

11. However, the argument vehemently canvassed on behalf of the Department and the direct recruits was that the phrase "if adequate number of direct recruits do not become available in any particular year" has to be understood and applied in such a manner that no injustice is caused to the direct recruits whose recruitment process usually takes more than one year as also to ensure that quota rule was not violated by consistent failure to fill up in time the vacancies arising for DRs. It was to meet with such a situation that the Department had issued the advice dated 2.2.2000, according to which, the year of initiation of action for recruitment was relevant for the purpose of reckoning seniority of the DRs. It was vehemently argued that the said advice was meant to strike a balance between the interests and further promotional prospects of the DPs and DRs whose actual appointment might have been delayed due to administrative reasons and without any fault on their part. And, to that extent, departure from the rule that seniority has to be determined only on the basis of the respective date of appointment to the post was reasonable and legal as held by the Supreme Court in A.K. NIGAM (supra). It was also argued that while the departmental candidates for promotions would generally be available and can be easily promoted, the process of direct recruitment through SSC and the other necessary formalities always take a longer time resulting into delay in actual appointment of DRs.

12. Reading the expressions "direct recruits" and "do not become available in any particular year" in paragraph 2.4.2 in the context of the scheme provided for fixing seniority, it is clear that the DRs contemplated by the rule are those who are actually available for placement by rotation in the seniority list in a particular year. The candidates who are undergoing the process of recruitment cannot be said to be available for rotation of quotas till they are appointed. If later appointees against the quota of vacancies of an earlier year were to be considered for seniority in that earlier year, the clarification for carrying forward such vacancies and placing them in the seniority list en-bloc in the year of appointment would not have been required. Paragraph 2.4.4 of the O.M. dated 7.2.1986 takes care of the tendency of unreporting/suppressing the vacancies to be notified to the concerned authorities for DRs and provides for pushing down the excess promotees. It has no bearing on the promotees appointed against their own quota of the year concerned. Paragraph 2-4.2 read with its clarification and illustration clearly envisages giving of seniority to the DRs of the year of their actual appointment disregarding the year in which the recruitment process for DRs was initiated or completed. Realising the incongruity and injustice caused

by the DRs stealing a march over regular promotees by being placed against a reserved slot in the earlier year and in tune with the catena of judgments on the issue, the memos and clarifications have been issued by the DOPT with illustrations to leave no room for doubt. Such just and clear scheme circulated for uniform application cannot be supplanted by any inter-office memo or so-called advice so as to revert to the confusion which was sought to be cleared by the O.M. dated 7.2.1986 and 3.7.1986.

13. There was no dispute about the proposition that seniority of the it is, maintained region-wise, was to be assigned on year-to-year basis and the year for that purpose was the financial year commencing on 1st of April. It was fairly conceded by the learned counsel Mr. Mehta, appearing for the promotees, that within a year for which inter-se seniority was to be assigned among DRs and DPs, rota rule has to be applied to the DRs who are actually appointed in the particular year, disregarding to that extent the actual date of promotion of the promotees which may be earlier during that year.

74. The interpretation put by the Gujarat High Court in the aforesaid judgment clearly rejects the submission of direct recruits that they can reckon their seniority from any earlier date i.e. from the date of actual appointment and the year in which the process was initiated or completed has to be disregarded.

75. Learned counsel for both the parties have referred to and relied on a subsequent order of the Government of India dated 3.3.2008, by which clarification has been issued regarding the order dated 3.7.1986. It is useful to quote paragraphs 3 and 4 of the Government order dated 3.3.2008 which is to the following effect:

3. Some references have been received seeking clarifications regarding the term ''available'' used in the preceding para of the OM dated 3.7.1986. It is hereby clarified that while the inter-se seniority of direct recruits and promotees is to be fixed on the basis of the rotation of quota of vacancies, the year of availability, both in the case of direct recruits as well as the promotees, for the purpose of rotation and fixation of seniority, shall be the actual year of appointment after declaration of results/ selection and completion of pre-appointment formalities as prescribed. It is further clarified that when appointments against unfilled vacancies are made in subsequent year or years either by direct recruitment or promotion, the persons so appointed shall not get seniority of any earlier year (viz. year of Vacancy/panel or year in which recruitment process is initiated) but should get the seniority of the year in which they are appointed on substantive basis.

The year of availability will be the vacancy year in which a candidate of the particular batch of selected direct recruits or an officer of the particular batch of promotees joins the post/service.

4. Cases of seniority already decided with reference to any other interpretation of the term "available'' as contained in OM dated 3.7.1986 need not be reopened.

76. The clarification issued by the Government Order dated 3.3.2008, is to the same effect that the direct recruits seniority shall be the actual year of appointment after declaration of the results/ selection and completion of pre-appointment formalities as prescribed and the person appointed in the subsequent year shall not get the benefit of the earlier year, but should get the seniority of the year on which they are appointed. The clarification issued by the Government of India dated 3.3.2008, clarifies the doubts and questions which were raised from certain quarters.

77. At this juncture, it is relevant to consider one submission raised by the learned counsel appearing for the private respondents and the learned counsel appearing for the Department that circular dated 3.3.2008 has no application, since in paragraph 4 of the circular it was provided that the cases of seniority already decided with reference to any other interpretation of the term ''available'' as contained in O.M. dated 3.7.1986 need not be re-opened. Paragraph 4 of the order dated 3.3.2008 has to be read to mean that where determination of the seniority has already become final, same shall not be re-opened, but paragraph 4 cannot be read to mean that where determination has been questioned before the Tribunal or Court the same cannot be looked into or decided in accordance with law. Paragraph 4 of the aforesaid Government Order, thus in no manner affect the clarification issued by the Government of India with regard to the determination of the seniority list which is already under consideration in any Court or Tribunal.

78. Now the submission, which has been much pressed by the learned Senior Counsel appearing for the Department as well as by the private respondents is that the judgment of the Gujarat High Court interpreting the orders dated 7.2.1986 and 3.7.1986 were in context of inter-se dispute between the direct recruits and promotees, hence the said interpretation is not applicable or relevant in the present case, since in the present case the inter-se dispute is between the direct recruits and inter-charge transferee i.e. the petitioner. The principle for determination of seniority of direct recruits i.e. the relevant date from which the direct recruits can reckon their seniority cannot be different in context of the promotees or in context of inter-charge transferee. The date which can be reckoned for determination of the seniority of a direct recruit has to be the same in context of the promotees as well as inter charge transferee, and the interpretation put by the Gujarat High Court in N.R. Parmar''s case (supra) on the relevant criteria for determining the seniority of direct recruits is also relevant while determining the inter-se seniority between the direct recruits and inter-charged transferee. The Government Order dated 3.7.1986, also contains specific provision pertaining to determination of the seniority of the transferees in paragraphs 3.1 to 3.3.

79. According to para 3.2 of the Government Order dated 3.7.1986, seniority of such transferees vis-a-vis direct recruits or promotees shall be determined according to the rotation of vacancies which shall be based on the quotas

reserved for transfer, direct recruitment and promotion respectively. In the present case it is relevant to note that the petitioner was transferred under the quota meant for Direct Recruits which is clearly mentioned in the transfer order 10.12.1991 and he was adjusted against the quota meant for direct recruits. Para 2 of the transfer order dated 10.12.1991 stated as follows:

That the petitioner shall reckon his seniority from the date when he joined at Kanpur charge and his name shall be placed below of all working Inspectors (Permanent/Temporary)

Para 2 of the transfer order dated 10.12.1991 clearly provided that that the petitioner shall reckon his seniority from the date when he joined at Kanpur charge and his name shall be placed below of all working Inspectors (Permanent/ Temporary).

80. From the transfer order 10.12.1991 and Board''s order dated 14.5.1990, it is clear that the petitioner can reckon his seniority only from the date when he joins the transferred charge and he was to be placed on the bottom of all working Income Tax Inspectors which was subject to rider that "However, he will not rank senior to any official who belongs to a batch selected on merit, whose, inter-se-seniority is not regulated on the date of joining". The aforesaid rider protects the seniority of direct recruits who were selected and who belongs to a batch and selected on merit whose, inter-se-seniority is not regulated by the date of joining. As noted above, the seniority of all direct recruits is determined by the order of merit in which they are selected. Thus, the direct recruits joining in a year maintains his seniority according to the order of merit and a person who is above in the merit in a batch shall not be junior to another person in a batch who is below him in the merit, but may have joined earlier in point of time. Thus, any Income Tax Inspector who has joined earlier to the petitioner belonging to a batch shall be senior to the petitioner and all the persons who are above him in order of merit shall also be senior to a transferee irrespective of their date of joining.

81. One more aspect which needs to be noted is that the seniority is determined year-wise and the candidates recruited/selected by direct recruitment or promotion or transfer are to be placed in a particular year and their relative seniority is determined and fixed in a particular year-wise. The petitioner having joined at Kanpur Charge on 10.1.1992, his seniority is to be determined pertaining to the year 1991-92 (1.4.1991-31.3.1992). Any Officer be a direct recruit/promotee who joins in a subsequent year cannot claim seniority from any officer who has joined service in an earlier year. The submission of the learned counsel for the respondents that the judgment of the Gujarat High Court in N.R. Parmar''s case (supra) is not relevant for determination of the seniority of Income Tax Inspector in the Kanpur Region has to be rejected.

82. One of the submission which has been pressed by the learned counsel for the respondents is that the seniority is prepared Zone-wise of Income Tax Inspector

and the judgment of the Gujarat High Court was relevant for determining seniority of the Income Tax Inspector of Gujarat Zone. A perusal of the Government Orders dated 7.2.1986 and 3.7.1986 indicate that the Government has issued orders for laying down principles for determining the seniority of persons appointed to services and posted under the Central Government.

83. Thus, the orders issued by the Government are of general application and the principles for determination of seniority does not differ from zone to zone. The principles for determination which are relevant for direct recruits are well applicable on the interpretation of the above Government Orders in every zone.

84. From the aforesaid discussion, it is clear that the seniority of private respondents as direct recruits have been given from a date earlier to their appointment as direct recruits which was impermissible. The direct recruits can reckon their seniority in the year in which they have joined as direct recruits. The direct recruits cannot reckon their seniority from the year in which recruitment process begin or in the year when recruitment was completed. Government Orders dated 7.2.1986 and 3.7.1986 clearly provide that the direct recruits shall reckon their seniority in the year in which they were appointed. Inter-charge transferee shall also reckon his seniority in the year in which he joined on transfer and is to be placed on the bottom of all Income Tax Inspectors working on the relevant date.

85. The respondents in their counter-affidavit could not bring any relevant material to justify the basis on which they have been assigned seniority to the private respondents who were direct recruits as we have already found while considering the issue No. 5 that the seniority list was revised without circulation and without inviting any objection and the petitioner was completely kept in the dark by the respondents while they proceeded to revise the gradation list dated 1.9.1999 pushing down the petitioner in the gradation list, which was done in violation of the principles of natural justice and in violation of the general principles for determining the seniority.

86. We fully agree with the submissions and pleadings of the petitioner that the seniority list was clandestinely changed in the year 2002. We are further of the view that the judgment of the Gujarat High Court in N.R. Parmar''s case (supra) is relevant for determination of the inter-se-seniority between the petitioner and the private respondents. It is also relevant to note that the respondents in their pleadings in the first writ petition as well as in the second writ petition have categorically pleaded that the seniority list was revised in the year 2002 which was a subject-matter of determination in the petitioner''s earlier Original Application filed in the Tribunal and in the Writ Petition filed by the petitioner in the year 2006. The Tribunal by its judgment and order dated 27.8.2010, took the view that the issue of seniority as revised in the year 2002 was very much in issue in petitioner''s earlier O.A. filed in the Tribunal in the year 2004.

87. In the written submission also it has been submitted by the learned Senior

Advocate appearing on behalf of the Department which is as follows:

The present Writ Petition No. 56072/2010 is clubbed with Writ Petition No. 23672/2006. If earlier is decided in his favour, challenge to the seniority in the present writ petition will have no relevant, hence the earlier writ petition should be decided first.

88. It is also relevant to note the submission of the learned counsel for the respondents that the matter of seniority being subjudice before the Apex Court the department is not obliged to implement the judgment of the Gujarat High Court in N.R. Parmar''s case (supra).

89. The submission of the learned counsel for the petitioner to the contrary is that the Apex Court vide its order dated 20.3.2006 has directed for implementation of the Gujarat High Court judgment. It is relevant to note that the order dated 20.3.2006, was passed by the Apex Court in a case arising from Delhi Zone. When the Apex Court directed for implementation of the judgment of the Gujarat High Court in context of a case arising out of Delhi Zone, it is explicit that the interpretation put by the Gujarat High Court on the principles of determination of seniority are applicable in all zones. The submission of the learned counsel for the respondents that the issue of seniority being pending before the apex Court the Department is not obliged to revise the seniority list as per the Gujarat High Court also needs to be considered. The Apex Court in none of its order has restrained the Department from revising/correctly determining the seniority list.

90. From the above discussion, following principle emerge for determination of seniority between the direct recruits and inter-charge transferee (under direct recruit quota).

(1) The seniority of direct recruits can neither be reckoned from the date of sending requisition to the recruiting body nor the seniority can be reckoned from the date of selection.

(2) The seniority of direct recruits shall be reckoned from the date when they are available for appointment in any particular year in their quota as per the rotation of quota.

(3) The inter charge transferee belonging to direct recruit quota shall be treated to be direct recruit in the particular year when he joins after transfer and shall be treated to be an addition in the direct recruits available in the particular year.

(4) The seniority in the cadre of inter charge transferee shall start from the date the person reports for duty in that charge. However, he will not rank senior to any official to a batch selected on merit, whose inter-se seniority is not regulated by the date of joining.

91. Learned counsel appearing for the Department as well as learned counsel appearing for the private respondents submitted that the inter-se seniority of

Income Tax Inspectors of the West Zone (U.P.) cannot be revised. Three reasons have been put forward by the learned counsel for the respondents in support of their above submission.

92. The first reason put forward by the learned counsel for the respondents is that the judgment of the Gauhati High Court in N.R. Parmar''s case (supra) dated 17.8.2004 is pending before the Apex Court since the SLP which has been filed against the said judgment is pending. It has come on the record that the SLP filed against the judgment of the Gauhati High Court, no interim order has been passed by the Apex Court. In a subsequent SLP filed in the Apex Court arising out of the judgment of the Delhi High Court being Special Leave to Appeal Civil No. 9181-9185-2005, Mukunk Lal and another v. Pritpal Singh and others, the Apex Court observed that the judgment and order of the Gujrat High Court may be implemented, if not already implemented. Thus, according to the order passed by the Supreme Court itself on 20.3.2006, it is clear that the Supreme Court itself has observed that till the final decision in the pending Special Leave Petition, the order of the Gujrat High Court be implemented thus, the submission of the learned counsel for the respondents that the seniority cannot be revised since the issue is pending has no legs to stand.

93. The second reason given by the learned counsel for the respondents is that the order of status quo passed in SLP No. 22000-22002/2009, Anil Kumar Sehgal and others v. Smt Anita Vinayak and others. SLP was filed against the Division Bench judgment of this Court dated 19.8.2009 in Anil Kumar Sehgal v. Smt. Anita Vinayak, 2009 (7) ADJ 552.

94. From the Division Bench judgment of this Court, it is clear that the inter-se seniority of the persons appointed on the post of stenographers was subject-matter of dispute in the aforesaid writ petition and the matter was taken up in the writ petition before the Division Bench against which judgment Special Leave to Appeal (Civil) Nos. 22000-22002/2009 was filed in which following order was passed by the Apex Court on 7.9.2009:

Issue notice.

Mr. D. Mahesh Babu accepts notice on behalf of respondent No. 3.

Dasti service, in addition is permitted.

In the meanwhile, status quo in respect of inter-se seniority of the petitioners and the respondents as it exists today, shall be maintained.''

95. The said order clearly provides maintenance of status quo regarding seniority of the parties to litigation. It is not the case of the respondents that the petitioner or private respondents to these proceedings were party in the case of Anil Kumar Sehgal and others v. Smt. Anita Vinayak and others. Thus, the order of the Apex Court has no effect on the determination of the seniority of the Income Tax Inspector in the West Zone. It goes without saying that while determining the seniority of the Income Tax Inspector in the West Zone, the

seniority of these officers who were covered by the order of the Apex Court dated 7.9.2009, has not to be disturbed in disobedience of the order of the Apex Court.

96. The third reason which has been advanced by the learned counsel for the respondents is the order of Ministry of Finance dated 22.2.2006, on the subject of filing of SLP in the case of N.R. Parmar (supra) regarding fixation of inter-se seniority of the Income Tax Department. It is useful to quote the letter dated 22.2.2006, in extenso.

F.No. C-18012/26/2003-V&L Government of India

Ministry of Finance

Department of Revenue

New Delhi, the 22th February, 2006.

To

All CCIT

(Cadre Controlling Authority).

Sub : Filing of SLP in the case of Shri N.R. Parmar against SCA No. 3574/04- Fixation of Inter-se seniority of Inspectors of Income Tax Department as per judgment of Gujarat High Court-Holding of DPC to the grade of ITO.

Sir,

I am directed to say that vide letter F. No. A-12021.2.2004 As VII dated 8.9.2004 addressed to all CCITs (Cadre Controlling Authority) vide which it was directed that the stand taken/finalized by the Board in the case of Sanjiv Mahajan pertaining to Delhi charge would hold good in future also and all cases on the issue would be handled/defended in the light of clarification furnished in that case is to be considered as withdrawn with immediate effect.

It has now come to the notice of the Board that different Chief Commissioner of Income Tax (CCA) are interpreting the issue of fixation of inter-se seniority between direct recruit and promotee inspectors of Income Tax as outlined in OM. No. 3501/2/80 EST (D) dtd. 7.2.1986 of DOPT in their own way and that there is no uniformity in this regard.

In the case of N.R. Parmar and others, an OA was filed before CAT, Ahmedabad Bench which vide its order dated 12.1.04 quashed the impugned seniority list dated 25.3.2003 drafted by the CCIT Ahmedabad and directed not to disturb the seniority already assigned to persons in the finally published list of 1996-2000. The contention of Drs to assign seniority to Drs from a date earlier to the date of their appointment was also rejected. The CAT''s directions were challenged by the Department before Gujarat High Court by way of filing a WP, which was, however, dismissed and against which the Department has filed an SLP before the Supreme Court of India. The Hon''ble Supreme Court in its hearing held on

24.1.2005 has issued notice but has not granted stay on the operation of CAT/ High Court''s order.

The matter has been re-examined in the Board and it has been decided that the seniority of direct recruits and promotee Inspectors would continue as fixed by the CCIT before 8.9.2004 in their charges except in charges where there are express CAT/High Court''s order. The CcsIT are therefore requested to take necessary action accordingly regarding DPC''s etc.

This would, however, be subject to outcome of Apex Court judgment in SLP (Civil)-CC 12208-12209/2004 Union of India and others v. N.R. Parmar and others, which has been filed before the Supreme Court and without prejudice to the stand being taken by the Government therein. This fact should invariably mentioned in all the promotion orders.

Yours faithfully.

(Uma Singh)

Director (V&L)

Tele : 23092786."

97. The above order of the Government of India, Ministry of Finance dated 22.2.2006 was issued after the judgment of the Gujrat High Court. Two things which are relevant to be noticed from the aforesaid order is that the earlier letter dated 8.9.2004, addressed to all Cadre Controlling Authority to adhere to the stand taken in the case of Sanjeev Mahjan pertaining to Delhi charge would in future had been withdrawn with immediate effect.

98. As noticed above, in Sanjeev Mahajan''s case the stand taken by the Department that the seniority of direct recruit shall be fixed from the date the requisition was send to the selecting body. The Government of India also noticed various interpretations put by the Chief Commissioner of Income Tax of the earlier Government of India''s order dated 7.2.1986, on determination of seniority.

99. The Government of India noticed in the judgment of N.R. Parmar''s case (supra) of Gujrat High Court that it was the contention of the direct recruits to assign seniority from the date earlier to the date their appointment has been rejected. Reliance has been placed by the learned counsel for the respondents on the following part of the order:

The matter has been re-examined in the Board and it has been decided that the seniority of direct recruits and promotee Inspectors would continue as fixed by the CCIT before 8.9.2004 in their charges except in charges where there are express CAT/High Court orders. The CCsIT are therefore requested to take necessary action accordingly regarding DPC''s etc.

100. The above part of the order contemplates not to re-open the seniority which

was already finalised before 8.9.2004, but the said was with exception of there being no express orders of the CAT/High Court. The Government of India''s order dated 22.2.2006 clearly contemplates that where there are orders of the CAT/ High Court, the principle that seniority determined before 8.9.2004 shall not be re-opened shall be inapplicable.

101. In the present case, there was express order of the CAT dated 13.8.2003 passed in the O.A. No. 917/2003, directing the Chairman, CBDT to consider the representation of the petitioner dated 10.6.2002 wherein clandestine change in the seniority list of the year 2002 was an issue. The representation of the petitioner was rejected on 19.11.2003, against which action the petitioner filed O.A. No. 1658/ 2004, which was dismissed on 10.2.2006, against which writ petition No. 23672/ 2006 was filed and which is being decided by this judgment. Thus, in the present case there is no impediment for refixing or redetermining the seniority and the order dated 22.2.2006 directing not to reopen the seniority fixed prior to 8.9.2004 is not applicable.

102. Issue No. 9. The O.A. No. 1084/ 2010, filed by the petitioner was decided by the judgment and order of the Tribunal dated 4.8.2010, by which order the Tribunal disposed of the aforesaid O.A. directing the respondents to decide the matter of seniority in the light, directions and observations of the Gujrat High Court and affirmed by the apex Court prior to making any promotion. After passing of the order dated 4.8.2010, three applications were filed to recall the judgment and order dated 4.8.2010, details of which are as follows:

(I) Application No. 3289/2010 was filed by the respondent Nos. 1 to 3 in which following prayer was made:

"It is, therefore, most Respectfully prayed that this Hon''ble Court may graciously be pleased to allow this application and to recall the order dated 4.8.2010 passed by this Hon''ble Tribunal to modify/delete the order we make it further clear that prior to the finalization of the seniority list as observed above no promotion shall be made by the respondents" and also to afford an adequate opportunity of hearing to the respondents by way of counter-affidavit, so that justice may be done otherwise the applicants/ respondents will suffer irreparable loss and injury".

(II) Application No. 3285/2010 was filed by respondent Nos. 4,6,7,9,11 and 12 making following prayers:

"It is, therefore, Most Respectfully prayed that this Hon''ble Court be pleased to modify its order dated 4.8.2010 passed by Hon''ble Justice S.C. Sharma Member (J) and Hon''ble Mr. D.C. Lakha Member (A) in the above noted Original Application to the extent that while deciding the representation of the applicant in the above noted case the applicants respondent Nos. 4, 6, 7, 9, 11 and 12 may also be heard and their representations may also be decided as expeditiously as may be fixed by this Hon''ble Court and the controversy involved in this case may only be confined to the applicant and the respondents

4,6,7,9,11 and 12".

(III) Application No. 3272/2010 was filed by Shri Chandra Kishore Singh and four others (who were not arrayed as parties in the O.A.). In the aforesaid application following prayer was made:

"It is, therefore, Most Respectfully prayed that this Hon''ble Tribunal may graciously be pleased to suitably modify the judgment/order dated 4.8.2010 passed in the O.A. No. 1084 of 2010 to the extent that the respondent Nos. 1 and 2 be permitted to grant promotion to the post of ACIT for the Recruitment Year 2009-10, wherein, neither the applicant nor the private respondents of the O.A. No. 1084 of 2010 are to be considered or in the alternative keep one post reserved for accommodating the applicant of the said O.A., if found otherwise eligible.

103. All the aforesaid three applications were heard and disposed of by the judgment and order dated 27.8.2010, which is clear from the cause title of the judgment. As noticed above, in the application filed by the respondent Nos. 1 to 3 i.e. Application No. 3289/2010, the "prayer was made to recall the order dated 4.8.2010 or to modify/delete the order which was to the following effect: "We make it further clear that prior to the finalisation of the seniority list as observed above, no promotion shall be made by the respondents.

104. The respondent Nos. 1 to 3 also prayed by the above application that adequate opportunity of hearing be given by way of filing counter-affidavit. In the application filed by private respondents only modification of the order dated 4.8.2010 was sought to the extent that while deciding the representation of the applicant (writ petitioner) the respondent Nos. 4,6,7,9,11 and 12 may also be heard. In the application of non-parties a prayer was made that the respondent Nos. 1 and 2 be permitted to grant promotion to the post of Assistant Commissioner Income Tax for the Recruitment Year 2009-2010, wherein neither the applicant nor the private respondents were to be considered and in the alternative it was prayed that one post be kept reserved for accommodating the applicant i.e. the petitioner. While deciding the aforesaid applications, the Tribunal recalled the judgment and order dated 4.8.2010, and has also dismissed the applications on merits. The Tribunal also observed that the application was barred by limitation and on principles of constructive res-judicata. The Tribunal in its judgment dated 27.8.2010, has also noticed that the matter of seniority of the applicant is pending before the High Court (Writ Petition No. 23672/2006), hence the subsequent O.A. i.e. O.A. No. 1024/2010 is not maintainable. The Tribunal also noticed that the Apex Court has directed for maintaining status quo with regard to seniority. It is useful to quote following observations of the Tribunal made in paragraph 15 of the judgment:

The matter of seniority of the applicant is subjudice before the Hon''ble High Court of Allahabad. Moreover, in the related matter, the Hon''ble Apex Court ordered for maintaining the status quo with regard to seniority, and moreover this Tribunal is not the proper forum in order to ensure compliance of the order of the Hon''ble High Court of Gujrat and Hon''ble Apex Court. Considering all the circumstances and facts, as stated above, we are of the opinion that the impugned order dated 4.8.2010 deserves to be set aside, and in the light of the observations made in the body of the Order, it will not be suffice to set-aside the impugned order but rather the O.A. is liable to be dismissed and as the applicant tried to place the misleading facts hence, O.A. is to be dismissed on Special heavy cost.

105. We have already noted the order of the Apex Court dated 7.9.2009, where the order of status quo was passed in Anil Kumar Sehgal and others v. Smt. Anita Vinayak and others, which was not an order in any manner prohibiting the redetermination of the seniority of Income Tax Inspectors including the petitioner and private respondents.

106. We are of the view; that the Tribunal was deciding above three applications by which the applicants had prayed for modification/recall of the order to some extent. The Tribunal could have very well proceeded to decide the applications and to recall or modify the order. However, the Tribunal at the time of deciding the aforesaid applications for recall/modification of the order dated 4.8.2010, it was not appropriate to decide the various issues on merits when neither the counter-affidavit was filed in the O.A. nor there was relevant materials to decide the various issues including the res-judicata, limitation and other issues. The Tribunal could have very well recalled the order dated 4.8.2010 and ordered for fresh hearing of the application. Insofar, as the order of the Tribunal dated 27.8.2010, by which he had recalled the order dated 4.8.2010 is concerned, there was sufficient ground made by the applicants to recall the order dated 4.8.2010, which according to the respondents was prejudical to their rights and the order was passed without giving adequate opportunity to them, that ground was itself sufficient for recall of the order dated 4.8.2010, and we do not interfere with the order of the Tribunal dated 27.8.2010, insofar as it has recalled the judgment and order dated 4.8.2010. However, the part of the order of the Tribunal dated 27.8.2010 by which the Tribunal dismissed the O.A. No. 1084/2010 on merit is unsustainable and deserves to be set-aside. The Tribunal while considering the three recall applications could not have entered into various issues of merits of the case and dismissed the O.A. No. 1084/ 2010 on merit. Thus, the order of the Tribunal dated 27.8.2010, insofar as it dismisses the O.A. No. 1084/2010 is to be set-aside restoring the O.A. No. 1084/2010 before the Tribunal on its original file.

Issue No. 10. Now comes the issue of relief to which the petitioner may be entitled in these two writ petitions

107. We have already held that the gradation list dated 1.9.1999 was surreptitiously changed on or before 10.4.2002 on purported compliance of an order of the Tribunal dated 3.12.2001 passed in O.A. of Shri Ram Kumar Bhargava. Neither any seniority list was circulated before changing and revising

the seniority list nor any objections were invited from any affected persons including the petitioner before changing the seniority list in the year 2002. In the gradation list dated 6.9.1999, the petitioner was shown senior to the respondent No. 4, 5 and other private respondents whereas in the 2002 seniority list the position has been reversed and the petitioner has been made junior to the above private respondents. The seniority list could not have been changed without circulation and without inviting objections from the affected parties, thus the manner and procedure in which the Cadre Controlling Authority has changed the seniority list in the year 2002 is wholly arbitrary and in violation of the principles of natural justice.

108. As per the stand taken by the respondent Nos. 1 to 3, that the seniority list was circulated on 21.8.2002, the petitioner had raised his objection immediately after 18.4.2002 when the promotion was affected by respondent No. 4 as Income Tax Officer who was junior to the petitioner in the earlier gradation list and the case of the petitioner was not considered.

109. As noted above, the Review DPC held on 18.4.2002, after the earlier gradation list was changed in the year 2002. In view of the above, the seniority list which was changed on or before 10.4.2002, as on 1.1.2002 insofar as the petitioner and other private respondents are concerned deserves to be set-aside. The principle for determination of seniority of direct recruits and inter-charge transferee having been considered and noticed as above the seniority of the petitioner and private respondents deserves to be redetermined. Although the petitioner and some of the private respondents have been promoted as Income Tax Officer, but the promotion of the petitioner was affected as Income Tax Officer by order dated 8.9.2003, whereas the respondent No. 4 was promoted by decision dated 18.4.2002 and the seniority of Income Tax Officer which is maintained on All India Basis is directly dependent on the seniority in the feeder cadre i.e. Income Tax Inspector, thus the determination in the seniority is necessary to protect the interest of the parties.

110. As noticed above, the challenge to the seniority list of 2002 was very much there in Writ Petition No. 23672/2006 arising from the O.A. No. 1658/2004 and has already been held that the order of the Tribunal dated 10.2.2006 dismissing the O.A. is unsustainable, thus the order of the Tribunal dated 10.2.2006 deserves to be set-aside and the O.A. No. 1658/2004 deserves to be decided accordingly.

111. Insofar as, the second Writ Petition No. 56072/2010, arising from O.A. No. 1084/2010 is concerned, we have already held that the Tribunal committed error in dismissing the O.A. itself by its order dated 27.8.2010, while allowing the three recall applications to recall the order dated 4.8.2010, as a consequence of setting aside the order dated 27.8.2010, insofar as it dismisses the O.A. No. 1084/2010 is revived. However, no useful purpose will be served in directing the Tribunal to proceed to decide the O.A. No. 1084/2010 on merits since the issue of seniority of 2002 being very much the issue in Writ Petition No. 23672/2006,

which is being decided. O.A. No. 1084/2010, for all practical purposes has become infructuous, hence no useful purpose will be served in directing to decide the O.A. No. 1084/2010. In the result, both the writ petitions are decided in following manner:

(A) Writ Petition No. 23672/2006, is allowed with following directions:

(1) The order of the Tribunal dated 10.2.2006 is set-aside.

(2) The order of the Chairman, CBDT dated 19.11.2003, insofar as it holds that fixation of the seniority of the petitioner as on 1.1.2002 was correct and the petitioner is not entitled for refixation of his seniority is set-aside, the rest of the order dated 19.11.2003 is affirmed.

(3) The seniority list of Income Tax Inspectors as on 1.1.2002 insofar as, the petitioner and respondent Nos. 4 to 13 are concerned is set-aside. The respondent Nos. 3 and 4 are directed to redetermine the seniority of Income Tax Inspectors afresh in accordance with the observations made in this judgment.

(4) For redetermination of the seniority of Income Tax Inspectors, the respondent No. 3 shall circulate a tentative seniority list giving opportunity to file objection by affected persons including the petitioner and respondent Nos. 4 to 13. The exercise of redetermination of the seniority shall be completed within a period of four months from the date of filing of a certified copy of this judgment before the respondent No. 3.

(5) The respondent Nos. 3 and 4 shall take all consequential actions as per re-determination of seniority in accordance with law.

(B) Writ Petition No. 56072/2010 is allowed. The order dated 27.8.2010, of the Tribunal is partly set-aside insofar as it dismisses the O.A. No. 1084/ 2010. In view of the order passed in Writ Petition No. 23672/2006, no direction needs to be issued to the Tribunal to proceed to decide O.A. No. 1084 of 2010 afresh. The O.A. No. 1084/ 2010 having become infructuous is disposed of accordingly.

Parties shall bear their own costs.