

(2001) 06 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : S.W.P. No's. 219 of 1991, 691 of 1992 and 2239-40 of 1997

Sardar Shabir Ahmad Khan

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 27-06-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 —
Rule 13, 21(2), 22, 22(1), 23

Citation : (2001) 3 UPLBEC 2641

Hon'ble Judges : Syed Bashir-Ud-Din, J; O.P. Sharma, J; A.M. Mir, J

Bench : Full Bench

Advocate : M.A. Qayoom, for the Appellant; R.A. Fida, for the Respondent

Judgement

O.P. Sharma, J.—The determination of inter se seniority of the direct recruits is the only question to be decided in these cases. The facts of

the case in brief are these. Vide Government Order No. Rev. (A) 464 of 1974, dated 8.10.1973 as many as 118 persons including the petitioners

case to be appointed as Naib Tehsildars in the Revenue Department. In terms of the order of appointment the appointees were to be on probation

for a period of two years within which they had to pass the departmental examination of Naib Tehsildars.

2. The case of the petitioners is that the departmental examination was held in the year 1975 in which they appeared and were declared successful

vide notification No. PSC/Ex-76/3, dated 7.11.1976 issued by the Public Service Commission. Consequently, Government vide order dated

9.2.1989 accorded sanction to the confirmation of the petitioners' services and those who had qualified the departmental examination. However,

earlier the Government had vide order dated 16.6.1980 issued tentative seniority list in which the petitioners were assigned seniority position at serial Nos. 194 and 199.

3. The petitioners challenged this order in writ petition 691/1982 with the specific prayer for quashing the aforesaid seniority list and determine the same in accordance with Rule 22 and Rule 24 of J&K Service (Classification, Control and Appeals) Rules, 1956.

4. While this petition was pending a fresh tentative seniority list was issued on 12.2.1986 and both the petitioners were assigned seniority at serial Nos. 24 and 25. The main grievance of the petitioners was thus redressed by assigning them correct position in the tentative seniority list on the basis of the date of passing of the examination.

5. The seniority position assigned to them in the tentative seniority list issued on 12.2.1986 was properly reflected in the final seniority list notified on 10.1.1993. But while writ petition No. 619/82 and S.W.P. No. 219 of 1991 filed by the petitioners were pending in which various interim orders were passed, the Government in flagrant disregard of these interim orders and ignoring the final seniority list dated 18.1.1993, issued orders dated 17.6.1998, 24.6.1997, 30.6.1997 and 9.7.1997 (Annexures P-19 to P-22).

6. In view of these subsequent developments the petitioners amended S.W.P. No. 2339-40/97 praying inter alia that they be promoted on the basis of final seniority list dated 18.1.1993 to the rank of Assistant Commissioner and granted all consequential benefits. The grievance of the petitioners is that although they rank senior to all the private respondents in S.W.P. No. 691 of 1982 yet they have been promoted to the higher rank on the basis of seniority assigned to them while their juniors stand promoted.

7. The stand of the official-respondents is that the petitioners have been assigned proper {seniority on the basis of their date of appointment. It is, however, admitted that one of the conditions of the appointment order by which the petitioners were appointed was that they had to pass departmental examination within two years. It is also admitted that only 28 out of 118 who were appointed Naib Tehsildars had passed the examination within the probation period of two years and petitioner's names also appeared in the list of 28 who had passed the examination.

However, as the probation period was extended by the Government by one year, therefore according to the official respondent, it is the length of

the service and not the date of the passing of the examination that will determine their inter se seniority. Further stand of the Government is that

while fixing inter se seniority of the direct recruits fitment of promotes in accordance with the ratio prescribed under the rules had to be made and

tentative seniority list dated 14.11.1990 was issued by assigning seniority to those who were in service between September, 1961 and December,

1988. This according to the official respondent became necessary to comply the judgment of this Court in OWP No. 94/85, Kishan Singh v. State

and Ors., decided by this Court on 18.9.1987. It is also the stand of the Government that position of the petitioners as reflected in the tentative

seniority list dated 14.2.1980 could not have been disturbed in the final seniority list issued on 18.1.1993 in view of the interim order of the Court

dated 12.3.1991 passed in CMP No. 476/91 filed in SWP No. 219/91. All subsequent orders of regularisation of Tehsildars and their further

promotions it is stated have been issued strictly in accordance with the seniority and rule position. Since the petitioners are not the members of

Gazetted Revenue Service it is further pleaded that they could not figure in the seniority list of Tehsildar issued on 24.6.1997.

8. However, it is the admitted case of the State that only 28 including the petitioners out of the total 118 candidates appointed to the Post of Naib

Tehsildars in 1973 had passed the departmental examination within two years. It is also admitted that probation period was extended for others.

How many others passed the examination during the extended period of probation is not relevant for the purpose of determining the seniority of the

petitioners either in terms of the appointment order or the provisions of the CCA Rules, 1956.

9. Since all the three petitions have been filed by the petitioners, it is not necessary to find out the reasons for filing separate petitions. This makes

reference to the order of appointment dated 8.10.1973 necessary, it reads as under-

Sanction is accorded to the appointment of the following as Naib Tehsildars in the grade of Rs. 340-700 on temporary basis on the terms and

conditions indicated below:

(i) That they shall undergo Revenue and Settlement training in the Revenue Training Schools, Srinagar/Jammu and pass the examination on the completion of said training.

(ii) That they shall within 2 years, pass the departmental examination for Naib Tehsildars conducted by the Public Service Commission, failing which they shall be liable to be discharged from service.

The petitioners figure at Serial Nos. 105 and 111 in this order of appointment. In case passing of the examination was not a condition precedent

for their confirmation, their inter-se seniority was to be determined according to the positions attained by and assigned to them in the order of merit

at the time of competitive examination as per clause (b) of proviso to sub-rule (1) of Rule 24 of the J&K Civil Services (Classification, Control and

Appeals) Rules, 1956 (hereinafter CCA Rules, 1956). But in case the appointment was subject to passing of examination with the probation

period, the seniority would be determined in terms of Rules 22 (1) (a) of the CCA Rules, 1956 and they would be deemed to have been

appointed against a substantive vacancy in a permanent cadre if the vacancy existed on the date of his appointment in terms of Rule 23 of these

Rules.

10. Before referring to these provisions it is necessary to consider the application of CCA Rules, 1956. The J&K Civil Services (Classification,

Control and Appeals) Rules, 1973 were notified vide SRO 471, dated 2.9.1973 (for short Recruitment Rules hereinafter). Rule 7 of these Rules

reads as under-

7. Probation.-(1) Persons appointed, whether direct or by promotion to any class or category in the service shall be on probation for two years

and their confirmation in the class or category shall be regulated under the provisions of the J&K Civil Services (Classification, Control and

Appeals) Rules, 1956.

(2) During the period of probation, the probationers in Class 1 shall have to qualify in the prescribed departmental examination.

(3) The Government may in the case of a person who fails to qualify in the departmental examination within the period prescribed in sub-rule (1)

above, extend the period of probation by one year. A probationer, who does not pass the examination within the extended period, shall be liable

to be discharged from service.

The twin requirements of Rule are (i) that confirmation will be regulated under the CCA Rules, 1956; and (ii) the appointee will have to pass the

prescribed departmental examination within two years which is the probation period though it could be extended by one year by the Government.

Rule 13 provides how the seniority of the members of the service shall be determined, it reads as follows-

13. Seniority.--(1) Seniority of the members of the service shall be determined in accordance with the provisions of the J&K Civil Services

(Classification, Control and Appeals) Rules, 1956.

(2) The offices concerned shall maintain an up-to-date and final seniority list of the members of the service as provided for in the J&K Civil

Services (Decentralization of and Recruitment to Non-Gazetted Cadres) Rules, 1969.

It is thus clear that confirmation and seniority of Naib Tehsildars is to be determined with reference to the provisions of CCA Rules, 1956.

11. Para 2 of the Government Order is thus nothing but reproduction of Rule 7 of the Recruitment Rules applicable to the service of Naib

Tehsildars.

So confirmation and seniority of the member of service has to be determined as per the provisions of CCA Rules. Since the petitioners admittedly

had passed the departmental examination within the probation period, Rule 21 (2)(b) of the CCA Rules alone is attracted, it reads as follows-

21. (2)(b) If such probationer has appeared with the prescribed period of probation for any such tests or for any examination in connection with

the acquisitions of any such qualifications, having passed all the other tests and acquired all the other qualifications, and the results of the tests or

examinations for such period he shall continue to be on probation until the publication, of the results of the tests or examinations for which he has

appeared or the first of them in which he fails to pass, as the case may be. In case the probationer fails to pass any of the tests or examinations for

which he has so appeared, the appointing authority shall forthwith by order, discharge him from the service.

So if the petitioners had appeared in the examination within the prescribed period of probation and have acquired such qualification even if the

results was declared after the period of probation, they will be deemed to have passed the examination within the probation period. This rule is

followed by Rule 22 (1)(a) of these Rules which reads as under-

22. (1)(a) If at the end of the prescribed period of probation, the appointing authority considers the probationer to be suitable for membership, it

shall as soon as possible, or in cases failing under clause (b) of sub-rule (2) of Rule 21 as soon as possible after the probationer has passed the

tests and examinations for which he has appeared, issue an order declaring the probationer to have satisfactorily completed his period of

probation. On the issue of such order, the probationer shall be deemed to have satisfactorily completed his period of probation on the date of the

expiry of the prescribed period of probation.

12. It is admitted case of the parties that by virtue of Notification No. PSC/ Ex.-76/3, dated 7.1.1976. 21 Naib Tehsildars including the petitioners

were declared having passed the departmental examination while the petitioner-Sardar Shabir Ahmed Khan figures at serial No. 15, the other

petitioners figure at serial No. 13 of this notification. In the notification it is also mentioned that the petitioners had appeared in the Session April,

1975 though the result was declared in January. 1976. It is thus admitted that the petitioners had appeared in the examination within two years

from the date of their appointment and were also declared successful. Ordinarily, the petitioners should have been appointed to the services in

terms of Rule 23 and their seniority fixed in terms of Rule 24 (b) of the CCA Rules. It appears the first step for confirmation was initiated by

publishing the tentative seniority list by order dated 16.6.1980 passed by the Finance Commissioner in which the petitioners figure at serial Nos.

194 and 199. They it appears immediately represented against the position assigned to them pleading inter alia that having passed the examination

within the probation period, they were entitled to higher position in the seniority list. Since their grievance was not redressed, they challenged the

tentative seniority list in S.W.P. No. 691/82.

13. While in the aforesaid petition the relief claimed by them was (i) to quash the tentative seniority list dated 16.6.1980 and assign them seniority

according to the Rules 22 and 24 of the CCA Rules alongwith other respondents, stop-gap promotions were made ignoring them.

14. During the pendency of the first writ petition the Government issued another tentative seniority list of Naib Tehsildars vide order dated

12.2.1986 in which both the petitioners were assigned seniority at serial Nos. 24 and 25. This according to the petitioners satisfied their grievance

because they were assigned right position.

15. Later on vide Government Order No. Rev (A) 48 pf 1989, dated 9.2.1989 the Government accorded sanction to the confirmation of 28 out

of the list of 118 appointees w.e.f 8.10.1975 the date they successfully completed the period of probation. The names of the petitioners figure at

serial Nos. 27 and 28 to annexure of this order. This shows that the Government in principle had accepted that only those Naib Tehsildars who

had passed the departmental examination within the probation period were entitled to be confirmed in terms of Rule 23 of the CCA Rules. This

Government Order is neither in compliance nor subject to any interim direction of the Court, therefore, the stand of the official respondents that

seniority list dated 18.1.1993 had to be issued without disturbing the position assigned to the petitioners because of the interim directions of the

Court passed in CWP No. 476/91 in SWP No. 219/91 is erroneous and contrary to the facts because having confirmed the petitioners vide

Government Order dated 9.2.1989 (supra), the Government had no option but to fix their seniority accordingly.

16. It appears despite the order of confirmation the petitioners were not considered for promotion while their juniors were promoted. Not only this

another tentative list was issued by the official respondent on 14.11.1990 where once action the seniority assigned to them in the tentative seniority

list was disturbed by assigning them serial Nos. 146 and 151. This order was challenged by the petitioners in S.W.P. No. 219/91. One of the

prayers made in the petition was that respondents be directed to issue final combined seniority list of promotes and direct recruits besides giving

them promotion and benefits retrospectively. Although final seniority list was issued on 18.1.1993 but with a following note appended to it-

The seniority has been assigned tentatively in pursuance of interim orflers dated 12.3.1991 of the Hon'ble High Court in W.P. No. 476/91,

S.W.P. No 219/91. The final seniority in respect of these two officers will be fixed after the final decision of the High Court is available or in case

the interim order is vacated/modified whichever is earlier.

17. The contention of Mr. Qayoom appearing for the petitioners is that this note is not only contrary to the provisions of the CCA Rules but also

against the Government order dated 9.2.1989 which had become final as it was not challenged. There is substance in the contention because the

final seniority list had to be framed not only in accordance with the Rules 22 and 23 of the CCA Rules but also in conformity with Government

order dated 9.2.1989, whether it is so, we will examine shortly.

18. While these petitions were pending the Government issued Government Order No. Revenue (A) 128 of 1997, dated 17.6.1997 whereby

sanction was accorded to the regular appointments of as may as 86 Naib Tehsildars to the post of Tehsildars in relaxation of rules w.e.f. 1.1.1984.

This was immediately followed by Government Order dated 24.6.1997 by virtue of which final seniority list of Tehsildars was notified. By another

order dated 30.6.1997 the Government promoted Tehsildars to the post of Assistant Commissioner. The Government, according to the

petitioners, ignored their claim for promotion on the basis of the order dated 9.2.1989 and proceeded to promote their juniors. In the meanwhile

before these orders were issued the petitioners had once again filed SWP No. 2239-40/97 in which the main relief prayed was that the notice

appended to final seniority list dated 18.1.1993 be quashed and the position assigned to them made absolute. While these petitions were pending,,

the aforesaid orders of promotion and seniority list was issued without considering the petitioners. These orders have been challenged by amending

the writ petition.

19. The question for determination is whether the seniority of the petitioners is to be determined with reference to the date of passing the

examination or on the basis of the merit assigned to them in the competitive examination on the basis of which they were appointed. This makes

reference to Rule 24 (I)(b) of the CCA Rules inevitable, it reads as under-

24. (I)(b) In the case of those recruited direct except those who do not join their duties when vacancies are offered to them according to the

position attained by and assigned to them in order of merit at the time of competitive examination or on the basis of the merit, ability and physical

fitness etc., in case no such examination is held for the purpose of making

selections.

The rule contemplates two situations in case of those recruited direct. In case the vacancies are offered to those recruited and they do not join the

position is different but if they join service after the vacancies are offered to them, the seniority will be determined on the basis of the position

obtained in the competitive examination. However, when the appointment is subject to passing of the departmental examination within the

probation period, the seniority will be regulated under Rule 23 of the CCA Rules and not Rule 24 (I)(b) as noticed above.

20. This makes a reference to Government Order dated 9.2.1989 necessary which is extracted below-

Whereas 118 candidates were appointed as Naib Tehsildars as direct recruits vide Government Order No. Rev (A) 464 of 1973, dated

8.10.1973 issued by the Revenue Department subject to the conditions-

(i) That they shall undergo Revenue and Settlement training in the Revenue Training Schools, Srinagar/ Jamniu and pass the examination on the

completion of the said training :

(ii) That they shall within 2 years pass the departmental examination of Naib Tehsildars conducted by the PSC, failing which they shall be liable to

be discharged from service.

Whereas it was mandatory in terms of the orders aforementioned to qualify and pass the departmental examination within a period of two years;

Whereas under the standing procedure, persons appointed as direct recruits with definite conditions of passing of examination become eligible and

can be considered for confirmation w.e.f. the date they qualify and successfully complete the period probation;

Whereas the candidates listed in the statement forming an Annexure to this order have satisfied the conditions of the order of their appointment

aforementioned and have qualified within two years of their appointment,

Whereas the Government have considered tffe cases of officers eligible for confirmation.

Now, therefore, sanction is accorded to the confirmation of the officers stated in the statement forming an annexure to this order as Naib

Tehsildars against lien from posts w.e.f 8.10.1975 the date they completed the two years period of service/probation. By order of the Government

of Jammu and Kashmir.

Sd/-

Deputy Secretary to Government.

The petitioners figure at serial Nos. 27 and 28 of the annexure to this order. So the Government was aware of the fact that it was mandatory for

the appointees to pass the departmental examination within two years and accordingly those who passed were confirmed in terms of Rule 23 of the

CCA Rules. However, they were required to be confirmed from the date of their appointment because the appointments were made against

substantive vacancies. Moreover, the view that they were to be confirmed w.e.f. the date they completed two years period of probation is

erroneous being against the mandate of Rule 23 of the CCA Rules. However, reference to this Government order has been made only to illustrate

that the Government has all along accepted the proposition that those who passed the departmental examination within the probation period of two

years will be entitled to confirmation as against those who passed during extended probation period. If that be so, as it really is, there was

absolutely no justification to make the seniority position assigned to the petitioners in the final seniority list dated 18.1.1983 subject to the result of

writ petition No. 219/91 because the Government had no option but to give effect to the order of confirmation.

21. But the grievance of the petitioners is that despite the order of confirmation, the Government did not assign them the seniority and as such they

have been denied promotion from the date they were due.

22. It is admitted that while the petitioner No. 1 was promoted to the post of Tehsildar vide Government Order dated 20.10.1992 in stop-gap

arrangement against a substantive vacancy, petitioner No. 2 came to be promoted as Tehsildar against available vacancy vide Government order

dated 1.6.1993 but both of them do not figure in the seniority list of Tehsildars issued vide Government order dated 24.6.1997. Justification for

this is that they have not been appointed to the post in accordance with the rule because their appointments were subject to clearance by the Public

Service Commission. If the names of the petitioners are not forwarded to the Public Service Commission for 5 to 6 years they cannot be held

responsible for that. But it is not necessary to go into this question In view of the

clear stand of the official respondents that it is the length of service

and not the date of passing the examination on the basis of which in terse seniority of 118 Naib Tehsildars appointed in 1973 has been determined.

How far this stand may now be considered with reference to the Recruitment Rules, 1973 and the CCA Rules, 1956 and the legal position. Rule 8

of the Madhya Pradesh Civil Service (General Conditions of Service) Rules, 1961 and Rule 12 appear to be identical to Rule 7 of the Recruitment

Rules and 23 of the CCA Rules. With reference to Rule 8 their Lordships in M.P. Chandoria Vs. State of M.P. and others, observed as under-

Rule 8 prescribes probation. Rule 8(1) envisages that a person appointed to a service or post by direct recruitment shall ordinarily be placed on

probation for such period as may be prescribed. The appointing authority may, for sufficient reasons, extend the period of probation by a further

period not exceeding one year. The probationer has to undergo such training and pass such departmental examination during the period of his

probation as may be prescribed. Sub-rules (4) and (5) are not relevant and are omitted. Sub-rule (6) of Rule 8 is relevant for the purposes of the

case which envisages that on successful completion of probation and passing the prescribed departmental examination, if any, the probationer

shall, if there is a permanent post available, be confirmed in the service or post to which he has been appointed.

While referring to Rule 12 of the aforesaid Rules, their Lordships held as under-

Under Rules 12, the seniority of the members of the service of a District Branch or group of posts of that service, shall be determined in

accordance with the principles laid down therein. Sub-clause (i) of clause (a) envisages that the seniority of a directly recruited Government servant

appointed on probation shall count during his probation from the date of his appointment, the proviso is not relevant. Sub-clause (ii) envisages that

the same order of inter se seniority of direct recruits maintained by confirmation of the normal period of probation. If, however, the period of

probation of any direct recruit is extended, the appointing authority should determine the date from which the candidate should be assigned

seniority. Until the probation is declared and he was confirmed in the post, he does not become a member of the service (sic) successful

completion of the probation and pass of the prescribed tests or conditions

precedent to declare the probation. So, mere passage of time one year does not entitle a probationer to be a member of the service. He remains to be on temporarily service. On declaration of probation, the Appointing Authority should confirm in a pending post available or the grant quasi-permanent status. As soon as the post is available, he should be confirmed. In view of the admitted position that he did not pass the test, the Appointing Authority considered that his seniority would be counted w.e.f. the date of his passing the test. Rule 12 (I)(ii) clearly empowers the Appointing Authority to assign, in these circumstances, the seniority in lower level than the one assigned by the Public Service Commission. We do not find any illegality committed by the authorities in giving seniority from the date of his passing the test.

23. It is thus clear that in case of those who passed the examination within the probation period, the seniority will count during his probation from the date of his appointment but in case of those who passed the examination during the extended probation period, it can be from the date of the passing of the examination or the date the vacancy becomes available whichever is later. A similar question arose in case Mohan Lal and others

Vs. State of Himachal Pradesh and others, . In that case Rule 11 of the Himachal Pradesh Excise and Taxation Department (Inspectorate Staff, Class III) Service, prescribes two years .probation for the Inspector and also for confirmation. The rule further provided that passing of the departmental examination with two years was necessary, failing which the service could be terminated. The position being identical the ratio will apply. After noticing Rule 11 their Lordships observed as under-

5. A reading of this rule would clearly indicate that a person appointed to a service shall remain on probation for a period of two years; The appointment letters issued to the parties indicate the conditions. One of the conditions, namely condition No. (vi) envisaged as under:

(iv) He shall have to pass the departmental examination in respect of both the Excise and Taxation within two years of his joining the duty failing which his services are liable to termination.

6. Therefore, it specifies that a candidate appointed to the post on probation shall have to pass the departmental examination in respect of both the Excise and Taxation within two years of his joining the duty.

24. As the question of seniority has been considered by their Lordships in C.A. No. 4258 of 1992, decided on 24.3.1994, while referring to this

case their Lordships observed as under-

In the case of Mohan Lal, in the second set of litigation, it was held that those who passed the test within two years would get seniority from the

date of joining the post and those who passed within the extended period of four years, would rank inter se seniority from the date of the passing

of the test. In case of those who did not pass the examination within the extended period of four years, it would be open to the State Government

to have their services terminated or to take such action as would be open to them. The first litigation had reached this Court. This Court in Ishwari

Kumar v. State of H. P., had held that such of the candidate passing the departmental tests, would get seniority from the respective dates of their

joining the post and the date of passing the departmental test relates back to the date of the appointment. But those who passed the examination

after the said two years would get seniority from the date of passing and would rank junior to those who passed the examination within two years.

So the petitioners having passed the examination within the probation period will rank seniors to those who passed during the extended period.

This view was reiterated and therefore the seniority of the petitioners was rightly decided.

25. Lastly an attempt was made to question the maintainability of the petition on the plea that those likely to be affected by restoring the seniority to

the petitioners are not party. This submission is factually incorrect because all those who have been shown senior to the petitioners are party in

SWP No. 691/82 which is pending and stands clubbed. But even otherwise this objection will not stand judicial scrutiny in view of the decision of

the Apex Court in General Manager, South Central Railway, Secunderabad and Anr. v. V. R. Siddhanti and Ors. 1974 (1) SLR 597, holding that

(para 16)-

16. As regards the second objection,, it is to be noted that the decisions of the Railway Board impugned in the writ petition contain administrative

rules of general application, regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erstwhile Grain

Shop Departments. The respondent-petitioners are impeaching the validity of

those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servants is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representatives. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as result of the readjustment of the petitioners' seniority in accordance with the principles laid down in Board's decision of October 16, 1952, were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition.

In view of the above, this objection does not survive and is accordingly rejected.

26. Conclusion: Happily it is a case where facts are not disputed and these facts are (i) that the petitioners were appointed Naib Tehsildars

alongwith 118 persons; (ii) that they were appointed subject to their passing Naib Tehsildars (Departmental Examination) within two years; (lii) that

as per Government Order dated 9. 2. 1989 (supra) only 28 out of total of 18 persons appointed on 8. 10. 1973 could pass the departmental

examination within the probation period; and (iv) that the petitioners have not been assigned seniority on the basis of their passing the examination

within the probation period (refer counter filed by the official respondent).

27. So if In view of these admitted facts the petitioners are entitled to the seniority position assigned to them in the final seniority list dated 18. 1.

1993 (supra), the note appended thereto shall be non est and liable to be quashed. But as this position was assigned because of interim order

without indicating their actual position in terms of Rules 22, 23 and 24 of the CCA Rules, respondent cannot be directed to promote them on the

basis of this seniority. However, if the stand of the State-respondent is noticed, the seniority has been assigned in violation of the terms of the order

of appointment, Recruitment Rules and Rules 22, 23 and 24 of the CCA Rules and the law laid down by the Apex Court. Having issued order of

confirmation of 28 Naib Tehsildars vide Government Order dated 9. 2. 1989, all

of them were to be declared senior to the remaining 90 Naib Tehsildars in whose case period of probation was extended. Since merit obtained in the departmental examination is not relevant, they were to be assigned seniority as per their rating in the order of appointment. However, this question need not be reopened in view of the fact that petitioners figure at serial Nos. 27 and 28 of the Government Order dated 9. 2. 1989. They are deemed to have accepted that all the 26 persons figuring above them are senior to them. So both the petitioners have to be assigned seniority immediately after Sh. Abdul Qayoom who figures at serial No. 104 of the order of appointment dated 8. 10. 1973 and at serial No. 26 of the Government Order dated 9. 2. 1989 (supra).

28. The Government therefore has no option but to fix the seniority of the petitioners on the basis of the continuous length of service i. e. with effect from 8. 10. 1973 the date they were appointed because they have passed the departmental examination within the probation period. The law contemplates no other situation but the one noticed above in view of what has been observed by their Lordships of the Supreme Court in Jagdish Lal and others Vs. State of Haryana and others, , with reference to a similar rule position under the Haryana Education Department Class-III Service Rules, 1974. In the course of judgment their Lordships held as under:

It would thus be seen that on appointment to a post or a grade in the Service either by direct recruitment or by promotion/transfer, the incumbent officer is required to be put on probation and on completion of the probation or extended probation period, upto a maximum of three years, the authority is enjoined to declare completion of his probation. In other words, the candidate is confirmed to the service. He gets appointed to a permanent vacancy subject to availability and thereafter he becomes full-fledged member of the service. It is settled legal position that confirmation is an inglorious uncertainty. Continuous length of service; if appointed according to the Rules on consideration of claims of eligible persons as on that date as per rules accords seniority and gets counted from the date of initial appointment by direct recruitment/promotion/ transfer to the cadre/post.

Since the petitioners have been appointed in accordance with the Rules and successfully completed the probation period, therefore, their seniority

has to be fixed on the basis of their continuous length of service commencing from 8. 10. 1973 as they admittedly have been appointed against substantive vacancies.

29. So in case the seniority assigned to them in the final seniority list dated 18. 1. 1993 is in accord with the Government Order dated 9. 2. 1989,

the note appended thereto will be non est and shall stand quashed. But in case the final list was issued only because the respondents were not in a

position to disturb their seniority assigned to them in 1986 (supra), in view of the interim direction of this Court, they will be assigned seniority on

the basis of their having passed the departmental examination within two years as stipulated in the order of appointment and the recruitment rules

w. e. f. the date of their initial appointment and entitled to be promoted as Tehsildars immediately after Sh. Abdul Qayoom. Hence it is directed

that the petitioners shall be promoted retrospectively from the date any of their juniors was promoted on notional basis till they were actually

promoted on stop-gap basis so as to entitle them the seniority in the cadre of Tehsildar and also the retrial benefits. The process of identifying as to

whether any person junior to them after the promotion of Sh. Abdul Qayoom has been promoted and granting them the notional promotion from

the same date should be completed within a period of four months from the date of the judgment failing which the delay will have to be explained.

All the three petitioners are decided accordingly without any order as to costs.