

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 6.07.2012

+ **W.P.(C) No.8018/2010**

Union of India & Ors. ... Petitioners

versus

Shri Vikas Keraba Suryawanshi & Ors. ... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr.Parag Tripathi, ASG with
Mr.V.S.R.Krishna, Mr.Shadan Farasat
& Mr.Vaibhav Joshi.

For Respondents : Mr.Naresh Kaushik, Advocate for the
respondent/UPSC.

Mr.Vijay Hansaria, Mr.Maninder
Singh, Sr.Advocates with Mr.Satya
Mitra Garg & Mrs.Manju Aggarwal,
Advocates for respondent Nos.1 to 15.

Mr.A.K.Bhardwaj, Advocate for
respondent No.16.

Mr.Rakesh Kumar Garg, Advocate for
the intervener.

+ **W.P.(C) No.8017/2010**

S.K.Mehra & Ors. ... Petitioners

versus

Union of India & Ors. ... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Anil Kumar Gupta,
Mr. N.A. Alvi & Mr. Vivek Singhal

For Respondents : R.N. Singh and Mr. A.S. Singh,
Advocates for Respondent Nos. 1 to 3

: Mr. Naresh Kaushik, Advocate for the
respondent no. 4/U.P.S.C

: Mr. S.M. Garg, Mr. Sneha Kalita and
Ms. Manju Aggarwal, Advocates for
private respondent Nos. 6 to 20

: Mr. G.D. Gupta, Sr. Advocate with Mr.
Rakesh Kumar Garg, Advocate for the
applicants/Intervenors.

AND

+ **W.P.(C) No. 7990/2010**

Sanjay Pandey & Ors. ... Petitioners

versus

Union of India & Ors. ... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. A.K. Behara & Mr. Ramesh
Gopinath Advocates for Petitioners.

For Respondents : R.N. Singh and Mr. A.S. Singh
Advocates for Respondent Nos. 1 to 3

: Mr. Naresh Kaushik, Ms. Aditi Gupta
and Ms. Amita Kalkal Chaudhary
Advocate for the respondent
No. 4/U.P.S.C

: Mr. Mukul Rohtagi, Mr. Vijay Hansaria
& Mr. Maninder Singh, Sr. Advocates

with Mr.Satya Mitra Garg & Mrs.
Manju Aggarwal, Advocates for private
respondent Nos. 6 to 20

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MS. JUSTICE VEENA BIRBAL

ANIL KUMAR, J.

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1. The petitioners, Union of India and ors. in WP (C) 8018 of 2010, have challenged the order dated 2nd November, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1052/2010 alongwith the connected Miscellaneous Applications in M.A Nos. 2410, 2415, 2427, 2428, 2562 and 2594/2010 titled as 'Vikas Keraba Suryawanshi & Ors v. Union of India & Ors' wherein the Tribunal held that the Civil List published by the petitioners is not exclusively for seniority, but rather it is a directory of officers of different grades with their particulars including transfers and postings. In the circumstances while answering the reference, The Tribunal directed the petitioners to draw a seniority list within a period of two weeks by applying the relevant rules and thereafter, also allowed two weeks more time to the affected parties to represent against the said seniority list. A further period of two weeks was allowed to the petitioners to dispose of the representations, if any, and to finalize the seniority list. It was further directed that the finalized seniority list be published and thereafter, the DPC be held in association with the Union

Public Service Commission. In the meantime the petitioners were directed not to act upon the promotions already effected by the DPC and to consider the claim of the Promotees to promotion as per the settled final seniority list and it was also directed that if during the interregnum any of the officials have retired and were later on found to be fit for empanelment then the petitioners were to accord them promotions with all the consequences. With these directions the Tribunal had disposed of the original application bearing O.A. No 1052/2010. The petitioners in the said writ petition WP (C) 8018/2010 have prayed for quashing of order dated 2.11.2010 in O.A no. 1052 of 2010 and connected Miscellaneous applications and also sought that the said petitioners be allowed to grant promotion to the grade of Junior Administrative Grade (JCIT) on the basis of the DPC that concluded on 23.09.2010. An application C.M 6728 of 2011 had also been filed in the said writ petition by respondent no.1/ Sh. Vikas Keraba Suryavanshi under Section 151 of Code of Civil Procedure seeking directions to take into consideration the information obtained under Right to Information Act i.e Office Notes of the Directorate of HRD (CBDT) contradicting the stand taken by the official Petitioners in the present writ petition and thus dismiss the writ petition and quash the ad-hoc promotion to the post of JCIT dated 30.3.2011 and sought directions to the official petitioners to comply with the directions of Tribunal given by order dated 2.11.2010 impugned before this Court.

2. The petitioners in the WP (C) 8017 of 2010 are the direct recruit officers of Indian Revenue Service (Income Tax) of the year 2000 and 2001 batch. According to them official Respondents had held Departmental Promotion Committee (DPC) on 20.09.2010 to 23.09.2010 through which the petitioners were to be promoted to the rank of Joint Commissioner of Income Tax, since these petitioners were in the zone of consideration as per the seniority list prepared by the official respondents. They have challenged the order of Tribunal dated 2.11.2010 quashing the DPCs held from 20.9.2010 to 23.09.2010. These petitioners have sought quashing of Tribunal's order dated 2.11.2010 and have also sought that the official respondents be directed to act upon the minutes/result of DPCs and promote the petitioners and other eligible officers of 2000 and 2001 batch of IRS from grade of DCIT to JCIT. In the said petition an application for intervention has been filed by Sh.M.M.S Attri contending that by the time DPC took place, the applicant had superannuated in August, 2010 though he is a promotee Deputy Commissioner promoted on 01.01.2005. He has also sought reiteration of directions of Tribunal in paras 36 and 37 of order dated 2.11.2010.

3. The Petitioners in WP(C) 7990 of 2010, S.K.Mehra & ors Vs Union of India & ors have also sought quashing of order dated 2.11.2010

passed by the Tribunal in O.A No. 1052 of 2010 filed by Respondent nos. 6 to 20 and dismissal of said Original Application filed by the said private respondents. The petitioners have also sought directions to the respondent nos. 1 to 3 to give promotion to the petitioner to next higher grade of JCIT. In the said petition an application being C.M. No. 1006 of 2011 for intervention has been filed by Sh.M.M.S Attri contending that by the time DPC took place, the applicant had superannuated in August, 2010 though he is a promotee Deputy Commissioner promoted on 01.01.2005. He has also sought reiteration of directions of Tribunal in paras 36 and 37 of order dated 2.11.2010.

4. To comprehend the dispute the relevant facts as enumerated in WP (C) 8018 of 2010 titled as Union of India & ors Vs Shri Vikas Keraba Suryawanshi & Ors are that the respondents are the Direct Recruited Officers of 2002 and 2003 batches of the Indian Revenue Service (Income Tax). The Direct Recruits of 2002 were appointed on or about 20th August, 2002 on the basis of the results of the Civil Services Examination 2001 conducted by the Union Public Service Commission, while the Direct Recruit Officers of 2003 batch were appointed in August, 2003.

5. In the year 2001, the petitioners had created a large number of Group "A" posts due to a comprehensive Cadre restructuring of the

Income Tax Department. While creating these posts it was also decided by the competent authority that all the posts sanctioned in the various grades would be filled through promotions from the feeder grade.

6. Consequently by a detailed order dated 31st August, 2001 a one-time relaxation of the Quota Rule under Rule 7(2) of the IRS Rules, 1988 was given as per the terms of the powers given under Rule 15 by the petitioners. Therefore there was a diversion of the quota of the Direct Recruits to that of the Promotees and as a result of the said relaxation the 993 vacancies (484 vacancies for the year 2000-2001 and 509 vacancies for the year 2001-2002) in the grade of ACIT in the IRS was to be filled up by promotion from the feeder grade i.e. the ITOs, in view of the relaxation of Rule 7(2) of the Indian Revenue Service Rules, 1988. The order dated 31st August, 2001 whereby one time relaxation was granted is as under:-

F. No.A-32013/08/2000-Ad VI
Government of India
Ministry of Finance
Department of Revenue

New Delhi, the 31st August, 2001
ORDER

Subject: Creation of additional posts in the Income Tax Department pursuance of Cadre restructuring-filling up of the posts of Assistant Commissioner of Income Tax by promotion of ITO- One time relaxation in the Indian Revenue Service Rules, 1988.

WHEREAS a large number of Group "A" posts viz. CCIT, CIT, Addl.CIT, JCIT, DCIT and ACIT have been

created vide sanction order No.A-11013/3/98-Ad. VII dated 24th October, 2000 consequent upon a comprehensive Cadre restructuring of the Income Tax Department. While creating these posts in Indian Revenue Service it has been decided by the competent authority that all the posts sanctioned in the various grades shall be filled up through promotions from the feeder grade.

AND WHEREAS in the grade of Assistant Commissioner of Income Tax, a total of 293 additional posts have been created. Similarly in the higher grade 675 additional posts have been created and another 25 posts shall stand sanctioned during 2001-2002. Once these 700 (675+25) posts are filled up in the higher grades, a total number of 993 posts are available in the grade of Assistant Commissioner of Income Tax, 484 vacancies will pertain to the year 2000-2001 and 509 vacancies to the year 2000-2002.

AND WHEREAS Rules 7(2) IRS Rules stipulates that 50% of the vacancies in the grade of Assistant Commissioner of Income Tax shall be filled up by Direct Recruitment on the basis of Civil Services Examination and the remaining vacancies shall be filled up by promotion of Income Tax Officer. However, it has been decided by the competent authority to fill up all these 993 posts by promotion of Income Tax Officers (Group 'B') in relaxation of the existing Indian Revenue Service Rules, 1988. Accordingly it has been decided to relax Rules 7(2) of the said rule, as a one time measure, in terms of the powers conferred on Central Government under Rule 15 of the IRS Rules, 1988 with the approval of Department of Personnel & Training and Union Public Service Commission.

AND WHEREAS the DOP&T and UPSC have conveyed their approval to relax the relevant provisions of the Indian Revenue Service Rule 1988 for diversion of direct recruitment quota vacancies arising in the grade of Assistant Commissioner of Income Tax as a one time measure for filling up all the vacancies in the grade of ACIT by promotion of ITOs.

NOW THEREFORE 993 vacancies (484 vacancies for the year 2000-2001 and 509 vacancies for the year 2001-2002) in the grade of Assistant Commissioner of Income Tax in IRS will be filled up by promotion from the feeder

ITOs in relaxation of Rule 7(2) of the Indian Revenue Service Rule, 1988.”

7. Thereafter, letters were written by the Department of Revenue to all the Chief Commissioners of Income Tax on 26th August, 2009, 6th November, 2009, 1st January, 2010, 4th February, 2010, 16th February, 2010 and 18th March, 2010, requiring them to furnish the deficient list of ACRs/APARs of the officers of 2000 & 2001 Batches along with the left over batches, for convening a DPC to the grade of JCIT for the year 2010-11. On becoming aware of these communications and examining the list of officers for whom the deficient ACRs were sought by the Department, comprising of 237 officers in total, the respondents became apprehensive that the promotee officers of 2001 and 2002 were being given seniority in gross violation of Rule 9(iii) of the Indian Revenue Service Recruitment Rules, 1988 (hereinafter referred to as “IRS Rules, 1988”) based on the seniority of the employees denoted in the Civil List of the IRS.

8. According to the respondents no official seniority lists have been published by the IRS Department till date and that the Department has only published a Civil List from time to time which **carries the names of the officers akin to a seniority list**. The grievance of the respondents is that the latest available Civil List of the year of 2006, clearly reveals that Rule 9(iii) of the IRS Rules, 1988 has not been

complied with, since the Promotees and the Direct Recruits of the 2000 batch have been matched and arranged on 1:1 basis and after the Direct Recruits of the 2000 batch have been exhausted, the remaining promotes have been clubbed together before the first promotee of the 2001 batch i.e. the subsequent batch. The same trend is observed with respect to the Promotees and Direct Recruits of the batch of 2001 as well, since the Direct Recruits of 2001 batch have been exhausted, the excess Promotees of 2001 batch have been bunched above the first promotee officer of the 2002 batch. According to the respondents even though there was relaxation of Quota Rule under Rule 7(2) of the IRS Rules, 1988 by order dated 31st August, 2001 however, there was no relaxation of the Rota Rule under Rule 9(iii) of the IRS Rules, 1988 and thus instead of bunching the Promotees of 2001 and 2002 batches, they ought to have continued to be matched with the Direct Recruits of 2002 and 2003 batches respectively as per the 1:1 ratio prescribed under Rule 9(iii).

9. The respondents therefore, approached the Central Administrative Tribunal, Principal Bench, New Delhi by filing an original application bearing O.A. No. 1052/2010 contending *inter alia* that the petitioners could not carry out promotions in the absence of a seniority list and that the Civil List is not the seniority list as it contains a disclaimer in itself stipulating that it “does not purport to be an

authentic document for seniority and other particulars of the members of the service". The respondents also alleged that there were many discrepancies evident in the Civil List regarding the seniority of the Direct Recruits vis-a-vis the Promotees.

10. The respondents further referred to another original application being O.A No.524/1998 titled as "Prabhakant Ayodhyaprasad & Ors v. Union of India" wherein relaxation made by order dated 15th November, 1990 in similar circumstances was challenged. As per the respondents even in the case of Prabhakant Ayodhya Prasad (supra) it was held that relaxation with regard to "quota" rule was justified however, since in the said order no justification was given for upholding the relaxation regarding the "rota" rule, therefore, the same could not be deemed to be relaxed in the facts and circumstances.

11. Thus, the Tribunal in the said case had held that the relaxation in "quota" rule and diversion of 176 vacancies from the direct recruit quota to the Promotees quota was not arbitrary in any manner and was in conformity with the provision of Rule 15 of IRS Recruitment Rules, 1988. However, since there was no relaxation to the seniority rule, therefore, the action of the petitioner to give en-block seniority to 176 Promotees below the Direct Recruits and Promotees of 1990 batch was not in accordance with the Indian Revenue Service Rules.

12. Thus the respondent's' had prayed for the following relief before the Tribunal:

[i] Direct the Respondent Nos.1 & 2 to fix the seniority of officers of the 2000 Batch and that of the later Batch of the Indian Revenue Service following the 1:1 ratio as per the Rules for Regulating Recruitment to the Indian Revenue Service, 1988.

[ii] Direct the Respondent Nos.1 & 2 to implement the ratio of 1:1 between Direct Recruits and Promotees from the date of appointment and grant all other consequential benefits.

[iii] Restrain the Respondent Nos.1 & 2 from giving further promotion to the Promotees, appointed beyond their quota, to the grade of JCIT in the proposed DPC for the year 2010-11, without first finalizing the seniority position as per the ratio of 1:1 for Direct Recruits and Promotees.

[iv] Direct the Respondent Nos.1 & 2 to prepare and publish a seniority list following the ratio of 1:1 as mandated by the RR Rules, 1988.

[v] Direct the Respondent No.5 to bring before this Hon'ble Court the entire records pertaining to the sanction as mandated by para 15 of the RR Rules 1988.

[vi] Grant such other reliefs as may be prayed for and as the Court may deem fit to-grant; and

[vii] Grant the costs of this Original Application."

13. The petitioners had refuted the pleas and contentions of the respondents by contending *inter-alia* that similar issues, as raised by the respondents in the original application, had been raised in O.A No.417/2005 titled as "Sh.Sanjay Punglia and Ors v. Union of India and Ors" which were declined by the Central Administrative Tribunal,

Ahmedabad Bench by a detailed judgment dated 26th February, 2007 with cost of Rs.1000/- payable by each applicant.

14. Relying on Rule 7(2) of the IRS Rules, 1988 it was contended that it contemplates that 50% of the vacancies in the grade of Assistant Commissioner of Income Tax is to be filled by direct recruitment, while the remaining vacancies (i.e 50%) are to be filled by promotion of the Income Tax Officers (ITOs). The petitioners had asserted that the competent authority with the approval of the Department of Personnel and Training and the UPSC had decided to fill up all the newly created 993 posts, pursuant to the cadre restructuring, by promotions from the feeder grade of Income Tax Officer (Group B), as a one-time relaxation of the existing IRS Rules, 1988. Consequently 993 posts were bifurcated for two years, i.e. 484 vacancies for 2000-2001 and 509 vacancies for the year 2001-2002 and a detailed order No.A-32013/08/2000-Ad.VI dated 31st August, 2001 was passed and thus, it was contended that in the circumstances the reliefs claimed by the respondents were not available to them.

15. A specific plea was raised by the petitioners that the respondents are seeking to challenge the settled seniority after a gap of more than eight years and, therefore, their claim is in any case barred by time, as was the claim of the applicants in the case of Sanjay Punglia (*supra*) which was also declined on the ground of delay.

16. The petitioners also relied on the decision of Sh.Sanjay Punglia (supra) to point out that the Ahmedabad Bench, Tribunal had specifically noted that neither the order dated 31st August, 2001 which prescribed the relaxations of the IRS Rules, 1988 nor any specific order of inter se seniority was challenged by the Direct Recruits of 2002 and that the original application was filed on mere apprehension. The Tribunal, therefore had rejected the claim of the Direct Recruits of 2002 in Sanjay Punglia (supra), without going into the merits.

17. After taking into consideration the pleas and contentions of both the parties the Tribunal, Principal Bench by order dated 16th September, 2010 held that it is a moot point whether the O.A No.417/2005 titled as 'Sh.Sanjay Punglia and Ors v. Union of India and Ors' could be dismissed as barred by limitation. It was also held that it is also a moot point whether it was correct to hold in Prabhakant Ayodhya Prasad that by the order of relaxation, "quota" rules could be relaxed but not the "rota" rule. The Tribunal, therefore, decided to refer the matter to the Larger Bench. The relevant order dated 16th September, 2010 of the Tribunal referring the matter to the Larger Bench is as under:-

6. In the instant OA as well as in the OA number 417 of 2005 before the Ahmedabad Bench the challenge is not to the order dated 31.08.2001. The plea is to follow the rule

regarding 1:1 seniority between the Promotee and Direct Recruit officers and to issue a seniority list as per the Recruitment Rules, i.e., in the ratio of 1:1 as provided in Rule 9 (iii) *ibid*. In the light of this it is a moot point whether the OA number 417 of 2005 could be dismissed as barred by limitation. It is also a moot point whether it was correct to hold in Prabhakant Ayodhya Prasad (*supra*) that by the order of relaxation 'quota' rules could be relaxed but not the 'rota' rule.

7. The issue has very wide ramifications and seniority of very large number of officers is involved. In view of this and in the light of the judgment in Prabhakant Ayodhya Prasad (*supra*), cited above, which may not have laid down the correct law, it would be necessary to place this matter before a Larger Bench for consideration. The Registry will place this before one of us (Honourable Chairman) for constitution of a Larger Bench."

18. However, prior to the Tribunal referring the matter to the Larger Bench by order dated 16th September, 2010, in M.A No.792/2010 and 1323/2010 filed by the respondents, the Tribunal had passed the order dated 7th July, 2010 holding that the ad-hoc promotions made, if any, shall be subject to the outcome of the original application and also directed the petitioners to keep their seniority list ready for the perusal of the Tribunal.

19. After the reference was made to the Larger Bench by the Tribunal another application being M.A No.2410/2010 was filed by the private respondents seeking restraint against the petitioners for staying the meetings of DPC for promotions to the post of JCIT scheduled to be held from 20th to 23rd September, 2010 pending the disposal of the original

application. The application was considered by the Tribunal on 20th September, 2010 and at the instance of the counsel for the respondents that the result of DPC may be put in a sealed cover, the Tribunal ordered that the DPC may go on but the result thereof be put in a sealed cover. The order dated 20th September, 2010 is as under:-

20.09.2010

MA-2410/2010 in OA-1052/2010

Present: Mr. Chetan Sharma, Senior Advocate with Mr. R.K. Singh, counsel for the applicant
Mr. R. N. Singh and Mr. VSR Krishna, counsel for respondents
Ms. Alka Sharma, counsel for UPSC

MA-2410/2010

Applicant, by way of interim direction, seeks an order of restraint upon the respondents staying the meeting of DPC for promotion to the post of JCIT scheduled to be held from 20th to 22nd September, 2010 pending disposal of the Original Application. The matter, vide orders dated 16.09.2010, has been referred to Full Bench. We are *prima facie* of the view that the order as sought for by the applicants would be passed only by the Full Bench. However, counsel limits his prayer, at this stage, only to the extent that DPC may go on but the result be put into sealed cover for the purpose of showing it to the Tribunal at the time of final arguments. Direction as sought for, it appears to us, would not adversely affect the respondents. Since no order affecting the parties adversely, at this stage, has to be passed, we proceed to pass orders on this Misc. Application.

Having heard arguments, we order that the DPC may go on but the result thereof be put into sealed cover to be shown to the Tribunal. Let the Full Bench be constituted for 22.09.2010. Arguments shall be heard in the Full Bench and no adjournment shall be granted in the matter.
Process DASTI.

20. The Larger Bench of the Tribunal was therefore required to decide on the correctness of the law laid down by the Ahmedabad Bench of the Tribunal in Sanjay Punglia (supra) as well as the law laid down in Prabhakant (supra) as the issue had wide ramifications on the issue of seniority for a large number of Indian Revenue Officers involved.

21. After the matter was referred by the Tribunal to the Larger Bench by order dated 16th September, 2010, an affidavit dated 18th October, 2010 was filed on behalf of petitioners contending **that the petitioners have been operating the Civil List as the seniority list** for the purpose of consideration of the promotion of IRS (I.T. Officers) from one grade to another and that all the promotions made in the cadre have been based on the inter-se seniority position of the officers indicated in the Civil List. Therefore, it was urged that the accepted position is that the Civil List is also used as the seniority list and that the disclaimer in the Civil List has only been given as a measure of abundant caution so as to indicate that in case of any dispute, the particulars of the officers given are subject to verification from the original records. The petitioners also contended that even the respondents themselves had been promoted from the post of DCIT to the post of ACIT on the basis of their seniority denoted on the Civil List and thus they are estopped from doubting the operation of the Civil List as the seniority list, which takes

into account the rota and quota of the officers in terms of the statutory recruitment rules. The relevant portion of the affidavit dated 18th October, 2010 filed by the petitioner is as under:-

iv) That in this connection the official respondents would like to submit that the department has been till now operating the Civil List as the seniority list for the purpose of consideration of the promotion of the IRS(IT) officers from one grade to another. All the promotions made in the cadre till now have been based on the inter se seniority position of the officers indicated in the Civil List. Therefore it is an accepted position that the Civil List published by the department from time to time is also used as the seniority list for the purpose of consideration of promotion of the officers. The disclaimer on the first page of the Civil List has been given as a measure of abundant caution so as to indicate that in case of any dispute the particulars of the officers given therein are subject to verification from original records at the time of entry into service/promotions to various grades, service books and other relevant documents. It also indicates that in the case of any discrepancy the officers may bring the same to the notice of the department for rectification.

v) That it may be submitted that it is based on these Civil Lists only that the applicants have been promoted to higher levels. Further a perusal of the Civil Lists issued itself would show that the same has been prepared by taking into account the quota and rota of officers in terms of the statutory RRs except in cases where due to exigencies of service, specific relaxations have been taken in terms of the statutory RRs. Accordingly the present application is barred by limitation since the issue pertains to the period 2001 and also promissory estoppel.

vi) That presently there are more than 500 vacancies in the grade of Joint Commissioner of Income Tax and the officers who are under consideration for promotion are to the tune of around 330. Hence any promotions made to the level of JCIT is not going to effect the applicants since they are not even in the eligibility zone having not put in the requisite years of service for consideration for promotion to JCIT.”

22. The petitioners also filed another affidavit dated 20th October, 2010 stating the vacancy positions in the grade of JCIT (Joint Commissioner of Income Tax) as on that day and the number of officers likely to be promoted consequent to the DPC held on 20th to 23rd September, 2010. The petitioners also disclosed that the last officer considered by the DPC held on 23rd September, 2010 is a Promotee Officer of 2001 batch who is placed at SI Number 743 of IRS Civil List 2006 whereas the direct recruit officer of 2002 batch is placed at serial Number 849 of the same IRS Civil List, 2006 which reveals that the number of vacancies in the grade of JCIT are far in excess to the number of officers available for promotion. Consequently, the number of vacancies in the grade of JCIT would still be available even after eligible officers considered by DPC held on 23rd September, 2010 are promoted. With the facts and figures the petitioners contended that none of the respondents' promotional rights and prospects would be adversely affected since they have neither completed the eligibility requirement for promotion nor are they within the range for being considered for promotion to the level of JCIT by the DPC which concluded on 23rd September, 2010.

23. The relevant para of affidavit dated 20th October, 2010 giving the vacancy positions in the grade of JCIT (Joint Commissioner of Income Tax) is as under:-

"1. That the vacancy position in the grade of JCIT (Joint Commissioner of Income Tax) as on date and the number of officers likely to be promoted consequent to the DPC held on 20th to 23rd September, 2010, as intimated by the CBDT (Central Board of Direct Taxes) is as under:

- | | | | |
|----|---|---|-----|
| A. | Total number of vacancies in the grade of JCIT reported to the DPC for the vacancy year 2010-11 | : | 503 |
| B. | Total number of eligible DCITs (including those officers in whose case minimum, eligible service has been relaxed by one year) as on 01.01.2010 available for consideration | : | 385 |
| C. | Number of officers out of (B) above, who have retired or expired, upto 30.09.2010 | : | 046 |
| D. | Maximum number of officers available for promotion, if found fit by the DPC (i.e. B-C): | | 339 |
| E. | Minimum number of vacancies which would still be available even after promotions are made (i.e. A-D) | : | 164 |

24. The Larger Bench heard both the parties at length and decided to consider the grievances raised in the original application, rather than answering the reference, directed to it, regarding the correctness of the orders passed by the two Tribunals in the cases of Sanjay Punglia (supra) and Prabhakant (supra). Thus the Larger Bench considered the issue of whether or not the Civil List is to be treated as a seniority list

and if not then what would be the methodology apt in law to publish a seniority list as per the statutory rules.

25. The Larger Bench observed that with regard to the contention of limitation in relation to the decision of the Ahmedabad Tribunal in Sanjay Punglia (supra) holding that the non-challenge to the order dated 31st August, 2001 is barred by delay and laches, it would not hold good in the present facts and circumstances as what has been challenged in the present original application is the non-settling of the seniority. The Larger Bench held that after the categorical finding as to no seniority list being issued by the petitioners, which they were bound to make as per Prabhakant Ayodhya Prasad (supra), it gives a recurring and continuing cause of action to the respondents to assail any act of the petitioners whereby the seniority list has not been issued as per the methodology laid down under the statutory rules.

26. With regard to the issue of whether the Civil List is the seniority list, the Larger Bench observed that in the counter reply the petitioners had failed to take a proper stand that the civil list is the seniority list and that instead they had given a very evasive reply until the additional affidavit dated 18th October, 2010 was filed wherein they finally took the stand that the civil List is the seniority list. However, the Larger Bench

did not accept the stand taken by the petitioners on the ground that the Civil List itself contains the disclaimer stating otherwise.

27. It was further observed that even though as per the additional affidavit dated 20th October, 2010 the position of the unfilled vacancies had been clarified and the petitioners had assured that the respondents would be considered as and when they would become eligible, the Larger Bench held that until the issuance of the final seniority list it would be very difficult to foresee and pre-determine the juniority and seniority of the Direct Recruits vis-a-vis the Promotees, since as per Schedule II of the IRS Rules, 1988 if an officer is appointed to any post and Service, all the persons senior to him shall have to be considered irrespective of their eligibility. In this regard the Tribunal also placed reliance on the decision of the Apex Court in *Union of India & Another v. Hemraj Singh Chauhan & Ors.*, 2010 (3) SCALE 272.

28. The Larger Bench also held that the Civil List is not exclusively a seniority list and that it is merely a directory of officers of different grades with their particulars, including transfers and postings and in case of any discrepancies or mistakes in any of the incorporated information relating to the officers, the redressal of the same is not immediate, as it would be corrected only after the next Civil List is published. In this regard the Larger Bench also relied on the decision of

the Apex Court in *Union of India & Anr. v. P.K. Roy & Ors.* AIR 1968 SC 850, in which the methodology to be adopted while examining a gradation list, which forms the basis of the promotions, was outlined.

The relevant portion of the Larger Bench's reasoning is as follows:

“34. The Apex Court in *Union of India & another v. P.K. Roy & others*, AIR 1968 SC 850, while examining the gradation list, which forms basis of promotion, laid down a methodology in a Constitution Bench, which overrides any other decision of the lower coram under Article 141 of the Constitution, whereby a preliminary draft seniority list is prepared as per the statutory rules and on publication representations are invited by the affected persons and on consideration of the representations, a final seniority list is to be published. The aforesaid view was also taken by the three-Judge Bench in *Prabhakant Ayodhya Prasad* (supra), where the denial of opportunity to the officers to make representation against the gradation list has been held to be invalid in law.

35. The aforesaid ratio decidendi mutatis mutandis applies to the seniority list on an analogy and the prerequisite for preparation of final seniority list to be followed by the official respondents. The published civil list, by no stretch of imagination and even by applying the test of a common reasonable prudent man, shall not be treated as a seniority list. Perhaps the official respondents, when it has not been pointed out on judicial intervention to them that the civil list is not a seniority list, have perpetuated this illegality in the past. However, we being the judicial fora cannot shut our eyes to such an illegality in view of the Article 14 of the Constitution. The question before us is whether the issue gathered from the rival contentions is to treat the civil list where statutory rules are followed to place the officers on both sides in appropriate places, cannot be countenanced unless there is a seniority list against which, on its draft, an opportunity is accorded to the applicants and other categories and on dealing with the objections a

final seniority list issued. The task of preparing the seniority as per Rule 9 (iii) of the Rules being the prerogative of the departmental authorities, we would not interfere in that arena to substitute our own views. When a duty is cast upon the administrative authorities to act as per the apt methodology and as per the statutory rules, acting contrary to that methodology, would be an exercise *de hors* the rules and constitute an illegality.”

29. Therefore, the Larger Bench by its judgment dated 2nd November, 2010 directed the petitioners to draft a seniority list within two weeks against which the affected parties were allowed to make their representations in case of any grievances and thereafter it was directed that the final seniority list be published. Meanwhile, as per the directions of the Larger Bench, the promotions effected by the DPC held by the petitioners were not to be acted upon and as per the settled seniority list, the claims of the Promotees were to be considered specifically, and those who had retired in the interregnum, if found fit on empanelment, were to be accorded the promotions with all consequences.

30. It is against this order of the Tribunal (Larger Bench) dated 2nd November, 2010 that the petitioners have approached this Court under its writ jurisdiction by contending *inter alia* that the reference made to the Tribunal was:

6. In the instant OA as well as in the OA number 417 of 2005 before the Ahmedabad Bench the challenge is not to the order dated 31.08.2001. The plea is to follow the rule regarding 1:1 seniority between the Promotee and Direct Recruit officers and to issue a seniority list as per the Recruitment Rules, i.e., in the ratio of 1:1 as provided in Rule 9 (iii) *ibid*. In the light of this it is a moot point whether the OA number 417 of 2005 could be dismissed as barred by limitation. It is also a moot point whether it was correct to hold in *Prabhakant Ayodhya Prasad* (*supra*) that by the order of relaxation 'quota' rules could be relaxed but not the 'rota' rule.

7. The issue has very wide ramifications and seniority of very large number of officers is involved. In view of this and in the light of the judgment in *Prabhakant Ayodhya Prasad* (*supra*), cited above, which may not have laid down the correct law, it would be necessary to place this matter before a Larger Bench for consideration. The Registry will place this before one of us (Honourable Chairman) for constitution of a Larger Bench."

31. The Tribunal even after taking note of the specific point of reference, instead of answering the same, had altogether proceeded on an entirely separate issue, outside the very scope of reference, and directed the petitioners to draft a seniority list within a period of two weeks. As per the learned ASG, Sh. Parag Tripathi Sr. Advocate the answer to the reference was of grave importance, since on its very basis the seniority of around 3500 members of the IRS was to be determined.

32. The reference was made regarding the issue of the correctness of the law laid down in the two cases of *Prabhakant Ayodhya* (*supra*) and *Sanjay Punglia* (*supra*). However, since the Tribunal failed to determine

this very issue, the learned ASG contended that doubt still remains regarding which of the two views is to be complied with while drafting the seniority list as desired by the Tribunal. Thus, it is urged that even if it is accepted that the Civil List is not the seniority list, entailing the drafting of a fresh seniority list, it is not clear if the quota-rota principle followed in the case of Prabhakant (supra) has to be complied with or if it is the principle enumerated in the case of Sanjay Punglia (supra). Since the ratio in both the cases are contrary to each other, the learned ASG contended that there was a need to clarify the same by the Tribunal, as only then could a seniority list have been properly drafted. According to him in the absence of any conclusive finding on the question of whether the law laid down in these two judgments is correct or not, no purpose could conceivably be served by preparing a fresh seniority list, since while preparing the seniority list, the Department would have to follow the law laid down in either of the said two judgments and regardless of which view is adopted, the said seniority list would be challenged. According to him the seniority list can be drawn properly only if the issue referred to the larger Bench of the Tribunal is adjudicated.

33. It is also submitted that the impugned order of the Tribunal is found to be unworkable, since the Larger Bench of the Tribunal failed to detail as to from which year the fresh seniority list has to be drafted and

to whom the said seniority list is to be intimated. In light of all the aforementioned road blocks the learned ASG contended that since the very direction of the Tribunal is un-implementable, therefore the same deserves to be quashed and the impugned judgment is liable to be set aside.

34. The learned ASG also contended that the Tribunal based its directions to draft a seniority list on the presumption that as on date there is no seniority list in the IRS, which is not correct in its understanding since as expressly argued even before the Tribunal, the IRS Civil List is the Seniority List. The learned ASG also urged that the Tribunal had erred in concluding that the IRS Civil List 2006 cannot be held to be a seniority list even by the common tests of a prudent man, since as per the learned ASG the said list is prepared in strict compliance of the provisions, as prescribed in the IRS Rules 1988 i.e. Rule 5, 9(i), 9(ii), 9(iii) and 10 and DOPT OM No. 22011/7/1986-Estt. (D) dated 03-07-1986. It is also pointed out that the IRS Civil List has definite parts for different grades like ACIT/DCIT, Joint /ADL. CIT, CIT and CCIT, and is published on an annual basis. It contains all the service details of an employee like the Date of Birth, Date of Promotion and Date of Joining in IRS, which are relevant for determining his/her seniority position. The IRS Civil List also has additional information i.e. Qualification and Details of present posting, which is mentioned therein

as a matter of convenience for both publishing and reference. According to the learned ASG, the serial number mentioned in the list clearly denotes the Seniority Position of the officers in their respective grade. It is also contended that this fact is even further substantiated by para '2' of the said list which clearly prescribes that "all the IRS Officers are given the opportunity to represent against any discrepancy" found in the said list.

35. The learned ASG has further contended by way of affidavit dated 7th December, 2010 filed before this Court, that right from the publication of the first Civil List, representations have been made by officers in respect of inaccuracies in the Civil List, which have been duly dealt with and corrections were also effected on the Civil List wherever called for. By way of example, the petitioners have enclosed certain orders passed in this regard which are marked as Annexures A-1 to A-7 in WP (C) 8018 of 2010.

36. According to the learned ASG, the Tribunal erred in placing strong reliance on the disclaimer stipulating that "it does not purport to be an authentic document for seniority" which was the petitioners way of affording a measure of abundant caution and to provide for any corrections in case of any dispute by falling back on the original service records. It is vehemently argued that it was certainly not with the

intension of negating the very functionality of the Civil List as the Seniority List.

37. The learned ASG further contended that the Tribunal erred in noting that the petitioner had not taken a specific stand that the Civil List is the Seniority List, while on the contrary the petitioners had submitted the same in the reply to the original application, as well as specifically asserted this stand in detail by way of affidavit dated 18.10.2010 whereupon it was impressed upon the Tribunal that the Civil List is being operated as a Seniority List, however, this was disregarded by the Tribunal on account of its own surmises and conjectures. The learned ASG further contended that the Tribunal placed its reliance on the disclaimer however, it did not properly understand its import or purpose and wrongly concluded that immediate redressal could not be provided in the Civil List in case of any wrong perceived in the placement of the officer on the list.

38. Sh. Parag Tripathi, the learned ASG, also pointed out that it is on the very basis of the Civil List alone that the respondents themselves have enjoyed the benefits of promotion to the Senior Scale of the Deputy Commissioner of Income Tax, based upon their respective positions in the said list. Therefore, the learned ASG contends that the respondents are estopped from challenging the IRS Civil List. Thus it is contended

that to direct the petitioners to draft a separate Seniority List over and above the Civil List at this juncture would negate every promotion made since the very inception of the IRS on the basis of the seniority denoted on the Civil List and this in turn would only cause chaos in the administrative side of the IRS department.

39. The learned ASG, has also urged that the promotions for the officers of the year 2001 & 2002, which had been finalized by the DPC and approved by the UPSC in terms of the IRS Rules, 1988 had been made pursuant to the Relaxation Order dated 31.8.2001 which resulted in the diversion of the posts at the entry level of the IRS from the quota of the Direct Recruits to that of Promotees. It was also pointed out that this relaxation order was passed under Rule 15 of the IRS Rules 1988 and no challenge, direct or indirect to this Relaxation Order has been made either in the order of reference, or before the Larger Bench of the Tribunal or even in the OA No. 417/2005, Sanjay Punglia (supra). Therefore, since there is no challenge to the order of relaxation, the learned ASG contended, that the same cannot be invalidated by the backdoor technique of alleging that the rota rules should be followed, which in any case has been followed by the petitioners with respect to the inter se seniority of the employees (Promotees and direct recruits) of a particular batch as opposed to a uniform application of the rota rules

irrespective of the batches they belong to as demanded by the respondents.

40. According to the learned ASG, the promotions in the instant case, both for the Direct Recruits and the Promotees, were assigned to the batches of 2000 and 2001 and not even one of the Direct Recruits in the concerned year have raised any challenge to it. Rather the Direct Recruits of 2000 and 2001 have filed a supporting Writ Petition in this Court challenging the very order of the Tribunal, due to the fact that the extraordinary embargo in giving effect to the results of the promotions held by the DPC has adversely affected the DRs of 2000 and 2001 as well. On the other hand, it is the Direct Recruits of 2002 and 2003, who have challenged the same before the Tribunal, who were neither borne in the cadre at the time of relaxation nor are they even today eligible for being considered for promotion to the post of JCIT. Therefore, the learned ASG contended that the order of the Tribunal has resulted in the complete miscarriage of justice, and hence it deserves to be set aside.

41. Learned ASG also submitted that on the basis of the quota rota system, the vacancies for the year 2000 and 2001, for the Direct Recruits were 24 and 26, respectively. The total number of ACIT posts which were available on account of cadre restructuring and diversion of

posts from DR to PR Quota, after Relaxation Order dated 31-08-2001 was 993, and out of these 984 appointments were made on regular basis. While fixing the relative Seniority between the Direct Recruits and Promotees, the Rota Rule (as per Rule 9(iii) of IRS Rules 1988) was followed for the 50 Direct Recruits i.e. 24 in the year 2000 and 26 in the year 2001, by arranging them in the ratio of 1 : 1 with the Promotees of the respective years. The balance promotee (i.e. $984-50=934$) were bunched and kept at the bottom of their respective years i.e. 2000 and 2001, because 50% of the 993 posts of ACIT i.e. 497 belonged to the PR Quota as per Quota Rule (i.e. Rule 7(2) of IRS Rules 1988) and the balance 496 posts of the ACIT were diverted from DR to PR Quota, pursuant to the diversion and relaxation of the Quota Rule under Rule 7(2) of the IRS Rules 1988, by order dated 31-08-2001 with due approval of the DOPT and UPSC. Thus it is urged that since the order of relaxation has not been challenged by the respondents, the purpose behind the same cannot be thwarted by demanding that the rota be maintained between the Promotees and direct recruits across all batches or that the promotees of 2000 & 2001 be matched with the Direct Recruits of 2002 & 2003 who are junior to the promotees on account of their subsequent appointment.

42. The Learned ASG also relied on the judgment of Direct Recruit Class II Engineer Officers' Association & Ors. v. State of Maharashtra &

Ors. AIR 1990 SC 1607, wherein the Supreme Court clearly held that where the Quota Rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

43. The petitioners also contended that the Tribunal had completely lost sight of the fact that none of the respondents who approached the Tribunal were personally affected in any manner by the results of the promotions, cleared by the DPC and announced by the UPSC. The learned ASG also vehemently argued that the Tribunal erred in not properly appreciating the affidavit dated 20.10.2010 submitted on behalf of the petitioners, in which it was specifically stated that the respondents were not eligible to be considered for promotion to the grade of JCIT as they had not completed the requisite 5 years as DCIT (Sr. Scale) and also that no officer junior to the said respondents had been considered for promotion. The learned counsel further emphasized that the respondents have no locus to challenge the said promotions since even after the promotions are effected by the petitioners, there would still be around 170 vacancies in the grade of JCIT which would be more than sufficient to absorb all the respondents, whenever they would become eligible for the said promotion.

44. It is further contended that the Tribunal failed to appreciate the fact that the promotions to the grade of JCIT decided by the DPC and announced by the UPSC, could have been allowed at the time, subject to further orders, but instead it was entirely stayed by the Tribunal. As per the learned counsel for the petitioners on account of the impugned order the entire exercise of the DPC pursuant to the cadre-restructuring had been rendered ineffective and consequently it has wrecked complete chaos in the administrative side of the IRS Department.

45. Per Contra the learned senior counsel, Sh. Vijay Hansaria on behalf of the respondents has refuted the pleas of the petitioner, by contending *inter alia* that the Tribunal had precisely determined the issues pertaining to the original application and had also aptly dealt with the question of reference. It is contended that the Tribunal had rightly resolved the controversy in the present matter by directing the petitioners to draft a seniority list, since without this very basic requirement being fulfilled, the position of the respondents along with the other employees of the department could not be ascertained and the drafting of the same would to a great extent also resolve the long drawn dispute existing in the minds of the employees.

46. The learned Senior Counsel has primarily reiterated the pleas made on behalf of the respondents before the Tribunal and has very emphatically asserted that the Civil List is not the seniority list and cannot be construed to be a seniority list under any circumstances. It is urged that the petitioners cannot be allowed to wriggle out of the specific stipulation in the Civil List, stating that the Civil List is for the purpose of information and guidance only and does not purport to be an authentic document for seniority. The stipulation as enumerated in the preface of the compilation of the Civil List of the Indian Revenue Services is as under:-

“The Civil List is for the purpose of information and guidance only and does not purport to be an authentic document for seniority and other particulars of the members of the Service which can be determined from the original records at the time of entry into Service and promotion to various grades, Service Books and other relevant documents.”

47. Learned Senior Counsel also asserted that despite interim observations and directions by the Tribunal to keep the seniority list ready for the perusal of the Tribunal, neither was any seniority list produced, nor was it disclosed nor was it pleaded before the Tribunal that the Civil List is the seniority list for all intents and purposes. In this regard specific reliance has been placed on the order dated 7th July, 2010 of the Tribunal whereby the petitioners were directed to keep the seniority list ready for the perusal of the Tribunal.

48. The learned senior counsel further pointed out that, even during the pendency of the present writ petition, instead of issuing a seniority list, the writ petitioners have issued on 17th January, 2011 a draft Civil List of the Indian Revenue Services, 2011 as on 1st January, 2011. This Civil List has been issued after the Civil List of 2006 which was issued in the year 2007. It is also submitted that earlier the petitioners were issuing the Civil List without inviting objections, while on 17th January, 2011 for the first time the draft Civil List has been issued for the purpose of inviting objections, if any against the same. Thus it is argued that even the draft Civil List is contrary to the stand taken during the present writ petition, that the Civil List is the seniority list for all intents and purposes, as even in the letter dated 17th January, 2011 nowhere does it specifically stipulate that it will be treated as a seniority list. In the circumstances, it is impressed upon this Court that the petitioners are misleading the Court by contending that the Civil List is the seniority list. Reliance is also placed on the judgment *Vijayadevaraj Urs v. G.V. Rao & Ors*, 1982 (2) Kar.L.J 97 to buttress the plea that the Civil List published by the Government is not a Seniority List or Gradation List of the officers in any cadre.

49. Learned senior counsel has also drawn attention to the fact that while drawing the seniority list of ITOs a proper procedure was followed

inasmuch as a draft seniority list was circulated and published amongst the concerned officers and their objections were invited before issuing the final seniority list after considering the objections. However, in the same department for the respondents such a draft seniority list was not prepared and contradictory stands have been taken. Even the draft Civil List is addressed only to the Chief Commissioner of Income Tax and it is not marked to the concerned officers, nor does it give any opportunity to the respondents or other officials to file objections to the said list.

50. Learned senior counsel has also relied on the written submission filed on behalf of the petitioner (CBDT) dated 26th October, 2010 filed before the Tribunal in O.A. No.1052 of 2010 where in para 23, it is categorically stated that it is not disputed that the formal seniority list was not drawn up for the IRS. The stipulation made in the said written submission is as under:-

“It is not in dispute that the formal seniority list was not drawn up for IRS. However, it is under IRS Civil List published annual basis, which has always been operated as seniority list, right since inceptions of IRS itself. The seniority of officers of IRS Civil List fully confirmed with IRS Rule 1988 and DOP&T OM dated 3rd July, 1986.”

51. On behalf of the respondents, certain inaccuracies have also been pointed out to establish that the Civil List could not be the seniority list in the facts and circumstances. In the Civil List incorporating the

promotions, transfers and postings till 10th January, 2007 referring to Page 241, it is contended that at serial no.109 is a promotee officer whereas at serial no.110 and 111 there are Direct Recruits. At serial no.112 is again a promotee officer which does not reflect the quota and rota rule of one promotee officer and one direct recruit. Similarly, other inflections at page no.253 at serial nos.223, 224, 225; at page no.323, at serial nos.847, 848, 849, 853, 854 & 856 and at page no.337 at serial nos. 978, 979, 980, 981 have been pointed out as well.

52. The learned senior counsel for the respondents has further contended that the relaxation order dated 31.8.2001 clearly reveals that it only deals with relaxation of the Quota Rule under Rule 7(2) as a one-time relaxation and that it does not deal with the issue of inter se seniority which is governed by Rule 9(iii) of the IRS Rules 1988. Since Rule 9(iii) has not been dealt with, it is contended that the said rule needs to be complied with and thus instead of bunching the Promotees of 2000 and 2001 below the last Direct Recruits of 2000 and 2001, they ought to be continued to be matched in 1:1 ratio as per Rule 9(iii) with the Direct Recruits of 2002 and 2003 respectively.

53. The learned senior counsel has also expressly refuted the plea of the petitioners that the relaxation of the quota rule would imply an implicit or deemed relaxation of the Rota Rule. According to the learned

counsel the relaxation order itself, clearly reveals that there was no opinion given regarding any necessity and expediency given in the said order nor was there any consultation regarding the relaxation of Rule 9(iii) made with the UPSC nor was any express order stipulating that there is relaxation of Rule 9(iii) made at the time. Also as per the learned counsel Rule 7 and Rule 9 of the IRS Rules, 1988 are independent of one another and thus relaxation of one would not automatically imply the relaxation of the other, since in case of relaxation the express and unambiguous provision under Rule 15 prescribes that there has to be an “order”, “for reasons to be recorded in writing” and “in consultation with the Union Public Service Commission” and in the order dated 31-8-2001 there is nothing that has been recorded with regard to the relaxation of Rule 9. Therefore, as per the learned counsel for the respondents the assumption of implied relaxation of the Rule 9(iii) on relaxation of Rule 7(2) is against the letter and spirit of Rule 15 of the IRS Recruitment Rules, 1988.

54. The learned senior counsel for the respondents has further contended that there is no conflict between the rotation rule of seniority and the assertion that the Direct Recruits of a later batch cannot claim seniority before they are born in the Cadre. The learned counsel for the respondent clarified that in the present matter the respondents are not claiming the vacancies of Direct Recruits of earlier years which were

filled by Promotees. The respondents are only asking for determination of seniority list based on the roster as mandated by Rule 9(iii) of the IRS Recruitment Rules. It is also contended that ante-jumping of later direct recruit is not permissible in law, but pushing down of excess promotees appointed in excess of their quota is a well settled law. Therefore, it is urged that the rotational system of seniority which provides for pushing down excess promotees is not in conflict with the assertion that Direct Recruits of later batches cannot claim retrospective seniority. In support of this contention the learned counsel has relied on the judgment of *Mervyn Coutindo & Ors vs Collector Of Customs, Bombay & Ors*, (1966) 3 SCR 600, and *Suraj Parkash Gupta & Others vs. State of J & K Others*, (2000) 7 SCC 561.

55. The learned senior counsel also contended that since the Promotees had been appointed in excess of their prescribed ceiling of 50% quota for promotion, thus, it is urged that the Promotees of 2001 and 2002 had been promoted on an ad hoc basis, therefore, they should not be entitled to count their ad hoc service for computing the length of continuous officiation for determination of their seniority. Hence it is submitted that such ad hoc promotion should not be equated with regular appointment by counting the same for seniority. Thus, the Promotees who had been appointed against the vacancies in excess,

ought to have been pushed down to be adjusted against the quota of their category during the subsequent years.

56. The learned counsel for the respondents has relied on the judgment of the High Court of Gujarat in Prabhakant Ayodhya Prasad (supra). In the said judgment dated 16.8.2001 clear distinction had been made between the relaxation of Rule 7(2) (quota rule) and relaxation of Rule 9(iii) (rota rule). It was also held that the power of relaxation is exercised in light of necessity or expediency, however, the question of giving higher seniority to the person who is appointed in violation of the quota by way of relaxation has no relevance whatsoever with the necessity and expediency of the Department. It is also pointed out that the Union of India had filed an SLP before the Supreme Court against the order dated 16.8.2001 of the High Court of Gujarat. The Supreme Court however, by its order dated 8.2.2002 had dismissed the SLP filed by the Department. Consequently, the learned senior counsel contended that the observations of the High Court of Gujarat, regarding the difference in the relaxation of the Quota Rule and Seniority Rule has attained finality.

57. Further the learned counsel for the respondents has relied on the judgment of B.S. Gupta v. Union of India and Ors. 1973 (3) SCC 1 (1st BS Gupta case) wherein Rule 3(iii) of the Income Tax Officers (Class I)

Service (Regulation of Seniority) Rules 1973, which is similar to Rule 9(iii) of the IRS Rules 1988, was challenged questioning its validity and fairness. According to the learned counsels for the respondents the non-implementation of Rule 9(iii), the provisions of which had been held as just and fair and non violative of Article 16 of the Indian Constitution, is not only against the very principles laid down by the Constitutional Bench of the Supreme Court, but also is violative of the statutory provisions of the IRS Rules, 1988. It is further contended that the ratio of the BS Gupta (supra) has been upheld by the Supreme Court in the case of S.G Jaisinghani vs. Union of India and Ors., AIR 1967 SC 1427; BS Gupta v. Union of India (BS Gupta 2nd case); 1975 (3) SCC 38, Kamal Kanti Dutta & Ors. v. Union of India & Ors; 1980 (4) SCC 38 and Hundraj Kanyalal Sajnani v. Union of Indian & Ors. 1990 (Suppl) SCC 577.

58. The learned counsel for the respondents has also argued that the OM of DOPT dated 3.7.1986 is not applicable for the Indian Revenue Service, since the same has been superseded by the IRS Rules, 1988. It has been pointed out that OM dated 3.7.1986 is a consolidated order on seniority which refers to another DOP&T OM No. 35014/2/80-Estt.(D) dated 7.2.1986. Para 6 of the OM Dated 7.2.1986 clearly states that “The General Principles of seniority issued on 22nd December, 1959, referred to above, may be deemed to have been modified to that extent.”

Therefore, it is contended that the OM dated 7.2.1986 has only the modifying effect on its original OM dated 22.12.1959 and thus it would only be applicable in the cases in which the OM dated 22.12.1959 is applicable. In turn OM dated 22.12.1959 clarifies on the issue of its applicability in para 1 wherein the following has been stated:

“These principles shall apply to the determination of seniority in Central Civil Services and civil posts except such services and posts for which separate principles have already been issued or may be issued hereafter by Government.”

Therefore, the learned counsel for the respondents contended that the said para makes it amply clear that it does not apply to the Indian Revenue Service, for which statutory rules, i.e. the IRS Recruitment Rules, 1988, are already in place, which lay down the principles for determining the seniority of the officers of the cadre.

59. The learned senior counsel has also relied on the judgment of Union of India v. Sri Somasundaram Vishwanath, AIR 1988 SC 2255 wherein it was observed that if there is a conflict between the executive instruction and the Rules framed under the proviso to Article 309 of the Constitution, the Rules will prevail. Similarly, if there is a conflict in the Rules made under the proviso to Article 309 of the Constitution, and the law, the law will prevail. Further, it was contended that it is a

settled principle of law that the statutory rules create enforceable rights which cannot be taken away by issuing executive instructions.

60. In any case the learned senior counsel points out that OM dated 3.7.1986 itself stipulates in para 2.4.4 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 quota prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share falling to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated as ad-hoc promotees. Thus it is contended that the petitioners ought to be directed to comply with the directions of the Tribunal, which has been issued after duly observing the IRS Rules, 1988, the Civil List and the relevant facts and circumstances.

61. This Court has heard both the parties in detail and has also perused the entire records pertaining to O.A. No. 1052/2010 comprising of the original application, the counter affidavit, the additional affidavits as well as the Civil List of 2006 along with other important documents incidental thereto. The records of other writ petitions WP(C) 8017 of 2010 and WP(C) 7990 of 2010 have also been perused.

62. It is not disputed that a complete cadre restructuring exercise, was done in the year 2001, wherein various grades were given enhanced sanctioned strength commencing from the grade of CCIT, CIT etc. At the stage of the entry-level grade of IRS, 993 additional posts were made out of which, as per Rule 7(2) of IRS Rules 1988, 50% of 993 i.e.497 was the share of the Promotees while the remaining 50% was the share of the Direct Recruits. However by relaxation order dated 31-8-2001, the share of Direct Recruits, was diverted to the quota of the Promotees, in order to alleviate the stagnation in the feeder cadre.

63. It appears that the said relaxation order was not challenged by any of the Direct Recruits either in OA No. 417/2005, Sanjay Punglia (supra) or the impugned order of reference. Since the same has not been challenged and over 11 years have elapsed since the said relaxation had been effected, the validity of the same could not be questioned, prima facie and it appears that the said relaxation order has attained finality in law. In any case in view of the reference made to the Tribunal, this question and other pleas and contentions ought to have been determined by the Tribunal before directing the petitioners to draw the seniority list, if the Civil List is not to be treated as seniority list. Therefore, the validity of the relaxation order dated 31-8-2001 is not to be assessed by this Court in exercise of its writ jurisdiction when the same has not been determined by the Tribunal.

64. The dispute pertaining to the relaxation order dated 31-8-2001 with regard to its application and its consequence i.e. whether or not the said relaxation order resulted in the relaxation of the Quota Rule alone or whether by relaxing the Quota Rule, the Rota Rule was relaxed as well also ought to have been determined and answered by the Tribunal. Whether the new seniority list is to be drawn or the Civil List is to be treated and considered as seniority list, unless these issues and the reference made to the Tribunal is determined, the petitioners ought not to have been directed to first draw the seniority list.

65. At the first instance itself the petitioner has contended that the Larger Bench of the Tribunal had failed to answer the very reference made to it and rather it had gone beyond the scope of reference by directing the petitioners to draft a seniority list. The respondents on the other hand have contended that the reference has been answered in substance by the Tribunal and that the drafting of the seniority list as per the IRS Rules 1988 is the need of the hour, which would be a fair redressal of their grievances.

66. Though the validity of relaxation order dated 31-8-2001 has not been questioned in the present writ petitions, however, its application has led to conflicting judgments because of which reference was made

to the Full Bench of the Tribunal. The Tribunal instead of answering the reference has directed the petitioners to first draw the seniority list. The dispute about the seniority of the promotees and direct recruits is required to be sorted out in view of the contentions raised by the parties and cannot be resolved by merely drawing the seniority list.

67. The Tribunal, larger Bench, had to answer whether Prabhakant Ayodhya Prasad (supra) had correctly laid down the law or not. Apparently the Tribunal has not answered it and has rather directed the petitioners to draw the seniority list. In the circumstances the contention of the respondents that the Tribunal in substance has answered the reference cannot be accepted. If it has not been clarified that along with 'quota', the principle of 'Rota' was also exempted or not, drawing of seniority list would be a futile exercise. If the petitioners draw the seniority lists without following the 'rota', the direct recruits would challenge it. If the petitioners draw the seniority list following the 'rota', the promotees would challenge it. Therefore, even if the Tribunal was of the view that civil list cannot be construed as 'seniority list', it should have answered the reference before giving directions for preparation of seniority list.

68. The question referred to the Larger Bench of the Tribunal by order dated 16th September, 2010 has been reproduced above. Perusal

of the same makes it abundantly clear that the reference made to the larger bench was to determine the correctness of the law laid down in the case of Sanjay Punglia (supra) and the case of Prabhakant Ayodhaya Prasad (supra) which are contrary to each other. Therefore, in the circumstances it is imperative to determine whether or not when the quota rule is relaxed, the relaxation of the rota rule will also follow or not. The Tribunal primarily adjudicated on the issue of whether the Civil List is to be treated as a seniority list or not and if not then what would be the methodology apt in law to publish a seniority list. Though a detailed order has been given by the larger bench, it is clear that, instead of rendering a decision on the correctness of the law laid down in the above mentioned two judgments, the Tribunal deemed it more appropriate to direct the petitioners to draw a seniority list within a period of two weeks. It further directed that the promotions already effected by the DPC held by the petitioners be not acted upon. And as per the settled final seniority list, claims of the Promotees be specifically considered for promotion and those who have retired during the interregnum, if found fit on the empanelment, would be accorded the promotions with all consequences.

69. In the circumstances, whether this Court should decide that the relaxation in quota under Rule 7 (2) of the IRS Rules, 1988 will also relax the rota contemplated under Rule 9 (iii) as well? Both the sides

have advanced the arguments in this context. However, whether it will be appropriate for this court to decide the said issue when the Tribunal's larger Bench has not addressed it at all. The plea of learned counsel for the direct recruits that in substance the tribunal had answered it cannot be accepted and is not borne out from the reading of the judgment impugned before this court. The question had to be specifically determined i.e whether the 'rota' will also be relaxed in the circumstances or not.

70. What is the scope of jurisdiction of the Tribunal and to what extent the Order of the Tribunal can be assailed before the High Court in exercise of its powers under Article 226 of the Constitution of India was dealt with by the Supreme Court in the matter of *L Chandra Kumar Vs Union of India*, (1997) 3 SCC 261 holding that the Central administrative tribunal will be the court of first instance in the areas of law for which it was constituted. In para 93 of the said judgment it was held by the Supreme Court that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of a statutory legislation by overlooking the jurisdiction of the Tribunal except the legislation which creates the particular Tribunal is challenged. The Supreme Court in *L. Chandra Kumar (supra)* at page 309 in para 93 had held as under :

93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. **However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts.** The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

71. In the circumstances it will be appropriate for the Tribunal to decide the reference made to its larger bench and not for this Court to decide the question of reference in the first instance in exercise of its

jurisdiction under Article 226 of the Constitution of India. In the circumstances the decision of the Tribunal directing the petitioners to prepare the seniority list without deciding the question referred to its larger bench is liable to be set aside as the Tribunal is liable to first decide the reference made to it.

72. The contention of the petitioners that the directions of the Tribunal are completely incapable of implementation cannot be brushed aside for the simple reason that the Tribunal did not even specify from which year the petitioners would have to issue the Seniority List and for which Grades in the Income Tax Department. Merely directing the drafting of the seniority list without enunciating the manner and the principles to be adhered to while doing the same has rendered the entire direction futile.

73. Whether the Civil List is the seniority list or not or can be considered as Seniority list or not, the Tribunal has held that the Civil List cannot be even construed as Seniority list. The petitioners assert that the Civil List has served as the seniority list since the inception of the IRS. The respondents have contended that the Civil List is not the seniority list and have relied on the disclaimer in the preface of Civil List which categorically states that it does not purport to be an authentic for seniority and other particulars of the members of the

service. The Tribunal after taking into consideration the pleas and contentions of both parties concluded that the Civil List is not seniority list on the following grounds:

(i) That there was lack of a proper stand taken by the petitioners before the Tribunal that the Civil List is the Seniority List.

(ii) That the disclaimer contained in para 3 of the Civil List is clearly reflective of the fact that the Civil List is not the Seniority List.

(iii) That the opportunity of redressal provided by the Civil List is unsatisfactory, since any correction would be effected only after a new Civil List would be published, after the lapse of one year.

74. Regarding the plea of the petitioners, it was observed that the stand taken in the Counter Affidavit as well as the additional affidavit was “rather an evasive reply”. However a perusal of the said affidavit clearly shows that it was far from evasive. In fact a very specific and categorical stand was taken regarding the Civil List being the seniority list in the affidavit dated 18th October, 2010. The plea of the petitioners is as follows;

“iv) That in this connection the official respondents would like to submit that the department has been till now operating the Civil List as the seniority list for the purpose of consideration of the promotion of the IRS QD Officers from one grade to another. All the promotions made in the cadre till now have been based on the inter se seniority position of the officers indicated in the Civil List. Therefore,

it is an accepted position that the Civil List published by the department from time to time is also used as the seniority list for the purpose of consideration of the promotions of the officers. The disclaimer on the first page of the Civil List has been given as a measure of abundant caution so as to indicate that in case of any dispute the particulars of the officers given therein are subject to verification from original records at the time of entry into service/promotions to various grades, service books and other relevant documents. It also indicates that in the case of any discrepancy the officers may bring the same to the notice of the department for rectification.

v) That it may be submitted that it is based on these Civil Lists only that the applicants have been promoted to higher levels. Further a perusal of the Civil Lists issued itself would show that the same has been prepared by taking into account the quota and quota of officers in terms of the statutory RRs except in cases where due to exigencies of service, specific relaxations have been taken in terms of the statutory RRs. "

75. The Tribunal has also noted that no specific rebuttal to the respondent's plea that the Civil List is not the seniority list had been made by the petitioners. This observation of the Tribunal is contrary to record and the pleas and contentions raised on behalf of the petitioners.

76. The Tribunal rejected the Civil List to be the Seniority List on account of the disclaimer contained in para 3 of the Civil List which has been reproduced hereinabove. However it is imperative to note that the said disclaimer had been duly explained by the petitioners on two grounds. Firstly that the disclaimer was by way of abundant caution;

and secondly that the disclaimer is inherent in every seniority list for the sole purpose that if the list contains an error, the member of the Cadre who is affected by the error has a right to object to it. This is particularly true given the fact that the Civil List also stipulates in para 2 of its preface that all the IRS Officers are given the opportunity to represent against any discrepancy found in the said list. Therefore the disclaimer referred to by the respondents and relied upon by the Tribunal must be read as a whole which then would not lead to the inference that the Civil List is not the Seniority List.

77. The Tribunal also concluded that in its view the Civil List only amounted to a "Directory of the Officers" and that in case of any discrepancy or mistake, "the redressal is not immediate". The Tribunal further observed that any redressal would be corrected only after a fresh list is published, which is after a lapse of one year. However as has been vehemently argued by the learned counsel for the petitioners on the basis of affidavit dated 7.12.2010 (along with Annexures A-1 to A-7) it is clearly evident that the moment a change is required in the Civil List, which operates as a seniority list, an Office Order is issued and the placement of that officer is made with a S.No. with the alphabet 'A', to indicate the precise placement of the said officer. The petitioners also provided an illustration by stating that, if say an officer is at S. No. 4 in the CIT grade, and pursuant to a redressal of the grievance by a

CAT Order, the said employee is assigned the rectified position of S. No. 84-A in the CCIT grade and is placed in between S. No. 84 and 85, which becomes a normal whole number, once the next year's select list is published. This plea of the petitioners has not been sufficiently refuted by the respondents and therefore in the facts and circumstances it cannot be held that the redressal and the opportunity to represent against the same is not given to the officers of the IRS in the said Civil List, which is one of the essential elements for constituting a Seniority List.

78. By affidavit dated 7th December, 2010 filed before this Court, the petitioners have also contended that instead of directing the petitioners to draw a fresh seniority list, the Tribunal ought to have evaluated the Civil List in the backdrop of the Rules and Regulation of the IRS and ascertained whether the same had been adhered to or not. In case it was found that the entire Civil List was in transgression of the Rules, only then it would have been appropriate to direct the petitioner to re-draft the Civil List in view of its findings on the interpretations of the Rules. This would have in turn assured that any unnecessary delay would have been avoided and a conclusion could have been arrived at, ending the already contentious litigation on the controversy of Quota Rota between the Direct Recruits and the Promotees.

79. The petitioners had repeatedly asserted before the Tribunal and have contended before this Court that the Civil List itself is the Seniority List of the members of service, grade wise, and takes into consideration the provisions of Rule 9 (iii) of the IRS Rules 1988 relating to rotation of vacancies between the Direct Recruits and the Promotees of a particular year and all the left over officers, whether Promotee or Direct Recruits are bunched together and kept at the bottom of that year. It has also been pleaded that the said Civil List has operated as a Seniority List since the very inception of the IRS for promotions up to the level of Chairman Central Board of Direct Taxes without any objections from any member of the service, be it Direct Recruits or Promotees. The learned counsel for the petitioners also drew our attention to the fact that all the officers have been promoted to the next level and higher levels on the basis of such lists and have since retired. In the circumstances the direction of the Tribunal is not clear as to whom the alleged draft seniority list is to be circulated. In any case, if the Tribunals' directions are allowed then in effect it would lead to unsettling the position for over 29 years which in turn would result in the massive disruption of the administrative side of the Department.

80. On behalf of the petitioners it was also clarified that presently there are no records available for the period prior to the year 1981. However the seniority position of the officers in the cadre as on

01.01.1981 was examined and duly considered while preparing the IRS Civil List of 1981, as a composite Seniority List of all grades in the IRS. The learned ASG also pointed out that there are no records available with the Department with respect to any separate and distinct seniority list being used prior to 1981. Therefore, the respondent's contention that there was Seniority List in the I.T. Department before is of no consequence, especially when a Civil List which in itself is a seniority list, as it has all the ingredients of seniority list, has been in operation since 1981. It is also noteworthy that the respondents have not produced any other seniority list in support of their assertions that the Civil List is not the seniority list.

81. The respondents have also contended that the petitioners have prepared fresh seniority List in the past on many occasions as is evident in the cases of S.G. Jaisinghani (supra), B.S. Gupta (1st case) (supra), B.S. Gupta (2nd case) (supra) and Union of India v. Vasant Jayaram & Ors, (1970) 3 SCC 658. Thus it is pleaded that another seniority list had been in operation at that time and thus it is clear that the Civil List is not the seniority list. However, the learned ASG has pointed out that it is evident that all the four judgments mentioned above, relied on by the respondents for doubting the operation of the Civil List as the Seniority List, are pertaining to the period of 1967, 1972, 1974 and 1970, which is much before 1981, which was when the

first Civil List was drafted. It is further asserted that during the said period of about 7 years i.e. 1965 to 1972, there were at least 4 cases where the list showing the inter-se seniority of officers in the Income-tax Department was challenged. The challenge was adjudicated till the Supreme Court and in 3 out of above 4 cases, the said list showing the seniority was quashed. However, the list showing seniority was confirmed by the Apex Court in 1974 in the case of B.S.Gupta (2nd Case) (supra). Therefore, the Government apparently felt the need for a more transparent system of informing its officers, about their seniority position and therefore from 1981 a consolidated Seniority List for all Class-I grades in the Income Tax Department, in the name and style of 'Civil List of Officers of IRS (IT)' was issued and widely circulated. Thereafter, in consequence thereof the IRS Civil List has been issued regularly, on an annual basis, which provided the officers their up to date seniority position and a continuous/multiple opportunity for pointing out discrepancy, if any, including with regard to their seniority position.

82. It was also asserted that in the preface to the Civil List of 1982 (appearing at page-69 of the counter-reply) there is no disclaimer whatsoever on the seniority aspect. Another pertinent fact is that, since 1981 i.e post IRS Civil List (annually), although there have been Court cases with regard to seniority position reflected in the Civil List, there

has been no case claiming that the IRS Civil List is not being operated as the Seniority List, except in the instant case. Thus, the learned ASG has urged that the IRS Civil List has stood not only the test of time but it is the seniority list, as it has all the ingredients of a seniority list and in the circumstances the nomenclature and disclaimer, which has also been satisfactorily explained by the petitioners, will not change its character, format and its purpose.

83. The learned counsel for direct recruits are unable to explain that if the Civil List is not the Seniority list how the seniority had been determined since the inception of the IRS up until now. It is also pointed out by the petitioners that upto now there was no dispute regarding the Civil List being the Seniority List since 1981. It is for the first time only now that the same is being questioned.

84. The respondents, direct recruits, have not been able to rebut the plea of the petitioners that even their own promotions had been effected by their position in the Civil List. The respondents have merely contended that the plea that even their promotions have been effected as per their position on the Civil List is a grave misrepresentation of facts. How it is grave misrepresentation of facts has not been answered by the respondents, direct recruits.

85. It has been also contended on behalf of the respondents that the ACITs are promoted to DCITs only by their having completed the requisite minimum number of years of service in a particular cadre/scale. It has also been contended that the promotion from the post of ACITs to DCITs does not involve any selection process and no formal DPC is constituted by involving UPSC for holding promotions. Thus it is asserted that the Civil List was not the basis of their promotion. However, the petitioners have clarified this aspect by referring to the Schedule II to IRS rules 1988, which clearly prescribes the method of recruitment for DCIT (Senior Scale), as “Promotion on the basis of Seniority-cum-fitness” and that the “Officers in the Junior Scale with not less than 4 years regular service in that Grade” is the field of selection and the minimum qualifying service. It has been further asserted that promotions from the grade of ACIT to the grade of DCIT are made on the recommendations of the Selection Committee constituted by the Department and following all the guidelines prescribed for holding DPCs. There is also change of Pay scale/Grade pay of the officers on promotion to DCIT. Merely because the UPSC is not involved in such DPC it would not render the process of granting Senior Scale as not a promotion to DCIT, since all the procedures of promotion laid down by the guidelines, such as Vigilance Clearance, if there is any adverse entry in ACR/APAR or pending Disciplinary Proceedings, etc. are all checked. Thus appointment from ACIT to DCIT

is a promotion and that it is based on the seniority denoted in the Civil List as was done in the case of the respondents as well.

86. It is also imperative to note that only the respondents who comprise of a few Direct Recruits out of 3600 IRS Officers in the service, have assailed the IRS Civil List as not being a seniority list and that too after the lapse of so many years since the inception of the IRS. Thus, their plea that the Civil List which has operated since 1981 and no other seniority list has been produced by them has to be repelled and cannot be accepted.

87. During the hearing, the Civil List was placed before this Court and the petitioners have cited many individual examples to show that any change on account of either Government orders, notifications or the orders passed by the Tribunal in the past have been incorporated in the Civil List. The allegation that the Civil List is only a Directory of the officers as contended by the respondents, is also negated by the fact that the Direct Recruits and the Promotees have been matched in the ratio of 1:1, except when the excess Promotees of a particular batch had been bunched up before the subsequent batch of Direct Recruits and promotees.

88. In the rejoinder filed by the petitioner dated 25th January, 2011 before this Court, the petitioners have highlighted the essentials or characteristics of a seniority list which cannot be refuted by the respondents, direct recruits. The relevant portion of the rejoinder is as follows:

“c) CHARACTERISTICS OF A SENIORITY LIST

That as a matter of fact, the tests for finding out as to whether a list of officers is a Seniority list or not, existence or otherwise, of following characteristics will have to be ascertained:-

- i) Whether the list shows Name, Serial Number, Post occupied and other relevant details of members of the service.
- ii) Whether the list has been prepared taking into account Rota-Quota Rules, as stipulated in the Recruitment Rules.
- iii) Whether such a list has been understood and accepted as a Seniority list, by a majority of members of the service.
- iv) Whether the said list is used by DPC for recommending promotions to the higher grades in the service.
- v) Whether as a result of Court’s directions, members of the service have been assigned a higher or lower position in the seniority assigned or on any other criteria, in such list.

89. The above characteristics would render a particular list as a Seniority list and distinguish it from a mere directory of members of a service. It is submitted that the present Civil List satisfies the different characteristics as indicated at (i) to (v) above.

90. The learned senior counsel, Sh. Vijay Hansaria has also pointed out that, even during the pendency of the present writ petition, the petitioners have issued on 17th January, 2011 a draft Civil List of the Indian Revenue Services, 2011 as on 1st January, 2011. This Civil List, has been issued after the Civil List of 2006 which was issued in the year 2007. It is also submitted that earlier the petitioners were issuing the Civil List without inviting objections, while on 17th January, 2011 for the first time the draft Civil List has been issued for the purpose of inviting objections, if any against the same. Thus it is contended that even the draft Civil List is contrary to the stand taken during the present writ petition, that the Civil List is the seniority list for all intents and purposes, as even in the letter dated 17th January, 2011 nowhere does it specifically stipulated that it will be treated as a seniority list. However, are per foregoing reasons the Civil List has been established to be the seniority list. If the plea of the respondents regarding applicability of the rota would succeed, they would be entitled for amendment and modification in the Civil List in accordance with law and rules. The other discrepancies in the draft Civil List of 2011 which are not pertaining to the grievances raised by the respondents, they will be corrected, if required in accordance with rules and regulations. The discrepancies, if any, are to be rectified by representing against the same through the proper channel as prescribed by the Rules, but such discrepancies will not change the character of the Seniority list.

91. The learned counsel for the respondents, direct recruits, have failed to point out any ingredient of seniority list which is not present in the Civil List. If the parameters of seniority list are, say three, and the Civil List has more parameters which are required to determine the seniority, it will not lose the character of seniority list. Therefore, for the foregoing reasons the findings of the Tribunal that the Civil List is not the Seniority list cannot be accepted and is erroneous and is liable to be set aside. The Civil List is the Seniority List and has been used as seniority list since 1981 and can continue to be used as seniority list in future also. The petitioners are, however, required to correct it as and when any errors are established in it.

92. Therefore, the decision of the Tribunal that the Civil List is not the seniority list is erroneous and it is set aside. The Civil List is directed to be taken as seniority list as has been taken since 1981. The discrepancies or errors, if any, in the civil list are liable to be corrected at the instance of appropriate officers in accordance with the rules and regulations and the law laid down by the Courts.

93. Consequently, the decision of the Tribunal to prepare a fresh seniority list after inviting objections from the concerned persons is set aside. If any officer will have any objection to his placement in the Civil List, he would be entitled to make representation to the petitioners who

will consider the same and shall carry out the modification or amendment in the Civil List/seniority list in accordance with the rules and regulations and the law laid down by the Courts

94. The Tribunal by impugned order dated 2nd November, 2010 has also granted stay against the promotions recommended by the DPC, the results of which were placed in the sealed cover before the Tribunal during the hearing. Even though it was held that the rights of the Promotees who have been empanelled and recommended for promotion in the said DPC would be protected and that if they would be found to be within the zone of consideration and are eligible for promotion after the drafting of the fresh seniority list, then irrespective of their retirement, they would receive all the consequences of such a promotion.

95. The learned counsel for the petitioners have explained painstakingly that 503 vacancies have remained unfilled and the work of the IRS Department has suffered a good deal as a result of restraint granted against promotion. It is also contended that since the respondents have failed to point out any irregularities in the Civil List pertaining to the issue of seniority, there is no reason to not give effect to the recommendation of the DPC which was duly constituted and which has made recommendations on the basis of existing seniority

which can be inferred from the list. The petitioners have also assured that no promotee officer junior to the respondents had been considered by the said DPC.

96. It has been disclosed that the last officer considered by the DPC which was held on 23rd September, 2010 for promotion from the grade of DCIT to JCIT was Sri Samporana Nand who is a promotee of the 2001 batch and is placed at Sl. No. 743 in the List of 2006. First direct recruit officer of the 2002 batch is placed at Sl. No. 849 of the same IRS List.

97. By affidavit dated 20th October, 2010 which has been referred to hereinabove, the petitioners have also highlighted that 164 vacancies would still remain after the promotion pursuant to recommendation consequent to the DPC held on 20th to 23rd September, 2010. The figures as given by the petitioners are as under:

- A. Total number of vacancies in the grade of JCIT
Reported to the DPC for the vacancy year 2010-11 : 503
- B. Total number of eligible DCIT (including those officers
In whose case minimum eligible service has been
Relaxed by one year as on 01.01.2010
Available for consideration : 385

- C. Number of officers out of (B) above, who have
Retired or expired, upto 30.09.2010 : 046
- D. Maximum number of officers available for
Promotion if found fit by the DPC (B-C) : 339

Thus the number of vacancies in the grade of JCIT which would still remain unfilled would be above 164. Thus the number of vacancies in the grade of JCIT as on date are far in excess to the number of officers now available for promotion and therefore, even after promotion of eligible officers considered by DPC held on 23rd September, 2010, vacancy in the grade of JCIT will still be available. In the circumstances the respondents, direct recruits, promotional rights and prospects will be adversely affected since they had not completed the eligibility requirement for promotion nor are they were within the range for being considered for promotion to the level of JCIT by the DPC which concluded on 23rd September, 2010.

98. In the circumstances the inconvenience to those officers who have been recommended for promotion to the grade of JCIT shall be much more, in case the recommendation is not implemented till the finalization of the seniority list till after the decision of reference made to the Tribunal. If that be so, the balance of convenience in the facts and circumstances is in favour of those promotee officers whose cases

have been recommended by the DPC held on 23rd September, 2010. Though the Tribunal by the impugned order had held that the claim of such promotee officers shall be considered after finalization of the seniority list and those who would retire during this interregnum shell, if found fit on empanelment, would be accorded promotions with all consequences. However in the entirety of the facts and circumstances and for the foregoing reasons, there is no justification not to implement the recommendations of the DPC held on 23rd September, 2010. The learned counsel for the direct recruits have not been able to demonstrate successfully that though they were not eligible, since they had not completed the eligibility requirement for promotion nor are they were within the range for being considered for promotion to the level of JCIT by the DPC which concluded on 23rd September, 2010, still they will suffer irreparably in the facts and circumstances. Considering all these factors it will be appropriate to set aside the directions of the Tribunal by the impugned order that the promotion effected by the DPC be not acted upon. The said direction is therefore, set aside. The petitioners shall be entitled to implement the recommendations of the DPC held on 23rd September, 2010, however, implementation of the recommendations of the said DPC shall be subject to the outcome of the reference which is to be decided by the Tribunal and drawing up of the seniority of promotees and the direct recruits on the basis of the same.

99. Therefore, in the facts and circumstances and for the foregoing reasons, the impugned order dated 2nd November, 2010 in O.A No. 1052 of 2010 and M.A Nos. 2410, 2415, 2427, 2428, 2562 and 2594 of 2010 titled Vikas Keraba Suryawanshi & ors Vs Union of India & ors impugned by the petitioners in WP (C) 8018 of 2010 titled as Union of India and ors. Vs Vikash Keraba Suryawanshi & ors is set aside. It is held that the Civil List operated by the petitioners is the seniority list for the officers of IRS Department and it will be liable to be amended/modified according to the reference which is to be decided by the Tribunal. The Tribunal is directed to decide the reference made to it as expeditiously as possible in the facts and circumstances of the case. In the meanwhile the petitioners shall be entitled to implement the recommendations of the DPC held on 20th September, 2010 to 23rd September, 2010 subject to outcome of the reference to be decided by the Tribunal. All the pending application in the said petition being WP (C) 8018 of 2010 are also disposed of. The writ petition 8017 of 2010 titled Sanjay Pandey & ors Vs Union of India is also allowed in terms of the order passed in WP(C) 8018 of 2010 and the recommendation of DPC held on 20.09.2010 to 23.09.2010 be implemented by the petitioners subject to outcome of the reference which is to be answered and decided by the Tribunal. The writ petition 7990 of 2010 titled S.K.Mehra & ors Vs Union of India is also disposed of in terms of the order passed in WP(C) 8018 of 2010. The Union of India & ors are

directed to give the petitioners in the said writ petition all the consequential benefits subject to outcome of the reference which is to be answered and decided by the Tribunal. Considering the facts and circumstances, the parties in the above noted writ petitions are left to bear their own costs.

ANIL KUMAR J.

July 6, 2012.
'vk'

VEENA BIRBAL J.