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

% *Judgment Reserved on: October 03, 2013*
Judgment Pronounced on: October 22, 2013

\+ **W.P.(C) 3004/2010**

MANOJ YADAVA & ORS ..... Petitioners

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

Versus

RAJIV TANDON & ORS ..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.

Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for private respondents.

Mr.Sunny Choudhary, Advocate with Mr.C.D.Singh and Mr.Abhimanyu Singh, Advocates for State of M.P.

W.P.(C) 5976/2010

UNION OF INDIA & ORS ..... Petitioners

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.

Versus

RAJIV TANDON & ORS ..... Respondents

Represented by: Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for R-1.
Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by
Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates for R-2 to 10.
Mr.Sunny Choudhary, Advocate with Mr.C.D.Singh and Mr.Abhimanyu Singh, Advocates for State of M.P.

W.P.(C) 6040/2010

MANOJ YADAVA ..... Petitioner

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

Versus

NKM MISHRA ..... Respondent

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.
Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for private respondent.

W.P.(C) 6041/2010

MANOJ YADAV & ORS .... Petitioners

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

Versus

SURENDER KUMAR PANDEY & ORS ..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.

Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for private respondents.

W.P.(C) 6042/2010

MANOJ YADAV & ORS ..... Petitioners

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

Versus

PRABODH KUMAR SINGH & ORS ..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.

Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari,

Advocate for private respondents.

W.P.(C) 6043/2010

MANOJA YADAV ..... Petitioner

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

Versus

PRAVEEN KUMAR SINHA & ORS ..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.

Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for private respondents.

W.P.(C) 6045/2010

MANOJ YADAV ..... Petitioner

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

Versus

TAPAN KUMAR DEKA & ORS ..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.

Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for private respondents.

W.P.(C) 6048/2010

MANOJ YADAVA & ORS ..... Petitioners

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

Versus

Y ANIL KUMAR & ORS ..... Respondent

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.

Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for private respondents.

W.P.(C) 4479/2012

MANOJ YADAV & ORS ..... Petitioners

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

Versus

RAJIV TANDON & ORS ..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber

and Mr.M.P.Singh, Advocates for UOI.

Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for private respondents.

Mr.Sunny Choudhary, Advocate with Mr.C.D.Singh and Mr.Abhimanyu Singh, Advocates for State of M.P.

W.P.(C) 6651/2012

MANOJ YADAVA & ORS ..... Petitioners

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

versus

Y.ANIL KUMAR & ORS ..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.

Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for private respondents.

W.P.(C) 6652/2012

MANOJ YADAV & ORS ..... Petitioners

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

versus

TAPAN KUMAR DEKA & ORS ..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.

Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for private respondents.

W.P.(C) 6653/2012

MANOJ YADAVA & ORS ..... Petitioners

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

versus

PRABODH KUMAR SINGH & ORS ..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.

Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for private respondents.

W.P.(C) 6654/2012

MANOJ YADAVA & ORS ..... Petitioners

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by Mr.Arvind Nayyar, Mr.Pritpal

Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

versus

SURENDRA KUMAR PANDEY & ORS ..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.

Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for private respondents.

W.P.(C) 6655/2012

MANOJ YADAVA & ORS ..... Petitioner

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

versus

N.K.MISHRA & ORS ..... Respondent

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.

Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for private respondents.

W.P.(C) 6656/2012

MANOJ YADAVA & ORS ..... Petitioners

Represented by: Mr.Paramjit Singh Patwalia, Sr.Advocate instructed by

Mr.Arvind Nayyar, Mr.Pritpal Singh Nijjar, Mr.Pranav A.Kapoor, Advocates.

versus

PRAVEEN KUMAR SINHA & ORS ..... Respondents

Represented by: Mr.Rajeeve Mehra, ASG assisted by Mr.Ankur Chibber and Mr.M.P.Singh, Advocates for UOI.

Mr.Amitesh Kumar, Advocate with Mr.Mamta Tiwari, Advocate for private respondents.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. What is the ratio of the decision dated August 20, 1990 passed by the Central Administrative Tribunal deciding 62 Original Applications, lead matter being the Original Application filed by one Alok Kumar, which was upheld by the Supreme Court in the decision reported as 1992 (Supp.) 1 SCC 594 *Mohan Kumar Singhania Vs. UOI* falls for consideration in the instant group of writ petitions. A preliminary issue pertaining to limitation: whether the Original Application(s), being 7 in number, filed by the private respondents registered as OA Nos.412/2005, 2889/2005, 2890/2005, 2891/2005, 2892/2005, 2893/2005 and 1525/2006 were barred by limitation also arises for consideration.

2. Appointment to All India Group 'A' and Group 'B' services such as IFS, IAS, IPS etc. is through a process of selection conducted by the Union Public Services Commission (for short 'UPSC'). What is

popularly known as the Civil Services Examination (for short 'CSE') is held each year by UPSC, and as per the scheme a preliminary examination, serving as a Screening Test is held, followed by the main examination and an interview.

3. The time cycle of the CSE is such that commencing from the notice inviting applications till declaration of final result it takes over a year. Applications are invited for the ensuing exam in the months around October or November of the previous year. The preliminary examination is held in the month of June, with the main examination held in November, followed by interviews; and the results are announced by the middle of June of the next year. Allocation to various services is made with reference to the merit position in the select list taking into account the preference of the candidate(s).

4. The present case relates to a seniority dispute between the persons who appeared and emerged successful at the Civil Services Examination-1987 and as per their merit position cum preference were allotted the Indian Police Service.

5. It is trite that the journey pertaining to a dispute relating to seniority must commence with noting the relevant service rules having a bearing on the subject of seniority and thus we commence our journey by noting the applicable Rules, as they were when Alok Kumar and others fought a battle and as they were amended from time to time; and as they stand today.

6. Rule 4 of the Civil Services Examination Rules, 1986 (as originally enacted) read as under:-

"Every candidate appearing at the examination, who is otherwise eligible, shall be permitted three attempts at the examination, irrespective of the number of attempts he has already availed of at the IAS etc examination held in the previous year. The restriction shall be effective from the Civil Services Examination held in 1979. Any attempt made at the Civil Services (Preliminary) Examination held in 1979 and onwards will count as attempts for this purpose:

Provided that this restriction on the number of attempts will not apply in the case of Scheduled Castes and Scheduled Tribes candidates who are otherwise eligible.

Note: (1) An attempt at a preliminary examination shall be deemed to be an attempt at the examination.

(2) If a candidate actually appears in any one paper in the preliminary examination he shall be deemed to have made an attempt at the examination.

(3) Notwithstanding the disqualification/cancellation of candidature the fact of appearance of the candidate at the examination will count as an attempt."

7. Rule 2(e) of the IPS (Probation) Rules, 1954 (as originally enacted) read as under:-

"'Probationer' means a person appointed to the Service on probation."

8. The relevant portion of Rules 3, 3A, 5 and 7 of the IPS (Probation) Rules, 1954 read as under:-

"3. ***Period of Probation: -***

(1) Every person recruited for the service in accordance with the Indian Police Service (Appointment by Competitive Examination) Regulations, 1955 shall be appointed to the service on probation for a period of two years.

x x x

3A ***Confirmation: -*** *Where a probationer has completed his period of probation to the satisfaction of the Central Government, he shall, subject to the other provisions of these rules, be confirmed in the Service at the end of his period of probation.*

x x x

5. ***Training: -*** *(1) A probationer referred to in sub-rule (1) of rule 3 shall on appointment to the Service attend the Lal Bahadur Shastri National Academy of Administration and undergo such training therein and for such period as the Central Government may direct.*

(2) On completion of training at the Lal Bahadur Shastri National Academy of Administration a probationer shall undergo such further training at the Sardar Vallabhbhai Patel National Police Academy and for such period as the Central Government may direct.

(3) On completion of the training at the Sardar Vallabhbhai Patel National Police Academy, a probationer shall undergo such further training in the State to which he is posted and for such period as the Central Government may, in consultation with the State Government, direct.

x x x

7. ***Final Examination: -***

Every probationer shall during the course of training appear at a final examination to be conducted by the Director, Sardar Vallabhbhai Patel National Police Academy in accordance with such regulations as the Central Government may in consultation with State Government and the Commission from time to time, make."

9. Rule 10(1) of the IPS (Probation) Rules, 1954 (as originally enacted) read as under:-

"10. ***Seniority of Probationer:-***

(1) The Central Government shall prepare a list of all probationers nm to the Service under sub-rule (1) of Rule 3 and

are assigned the same year of allotment. Such list shall be arranged in order of merit which shall be determined in accordance with the aggregate marks obtained by each probationer –

(i) at the competitive examination.

(ii) in respect of his record in the Lal Bahadur Shastri National Academy of Administration and the Sardar Vallabhbhai Patel National Police Academy; and

(iii) at the final examination.

Provided further that if two or more probationers have secured equal number of marks in the aggregate, their order of merit shall be the order of their date of birth."

10. Relevant portion of Rule 3 of the IPS (Regulation of Seniority) Rules, 1954, dealing with the *'Year of Allotment'* of a directly recruited IPS officer read as under:-

"3. ***Assignment of year of allotment –***

(1) Every officer shall be assigned a year of allotment in accordance with the provisions contained in these rules.

(2) ……

(3) The year of allotment of an officer appointed to the service after the commencement of these rules shall be as follows:-

(a) the year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held."

11. On December 13, 1986 the Central Government amended the Civil Services Examination Rules, 1986 and inserted a second proviso to Rule 4, which reads as under:-

"Provided further that a candidate who on the basis of the results of the previous Civil Services Examination, had been allocated to the IPS or Central Services, Group 'A' but who

expressed his intention to appear in the next Civil Services (Main) Examination for competing for IAS, IFS, IPS or Central Services, Group 'A' and who was permitted to abstain from probationary training in order to so appear, shall be eligible to do so, subject to the provisions of Rule 17. If the candidate is allocated to a service on the basis of the next Civil Services (Main) Examination he shall either join either that Service or the Service to which he was allocated on the basis of the previous Civil Services Examination failing which his allocation based on one or both examination, as the case may be, shall stand cancelled and notwithstanding anything contained in Rule 8, a candidate who accepts allocation to a Service and is appointed to a service shall not be eligible to appear again in the Civil Services Examination unless he has first resigned from the Service."

12. Rule 8 and Rule 17 of the Civil Services Examination Rules, 1986 referred to in the afore-noted second proviso inserted in Rule 4, read as under:-

"8. A candidate who is appointed to the Indian Administrative Service or the Indian Foreign Service on results of an earlier examination before the commencement of this examination and continues to be a member of that service will not be eligible to compete at this examination.

In case a candidate has been appointed to the IAS/IFS after the preliminary examination of this examination but before the main examination of this examination and he/she shall also not be eligible to appear in the main examination of this examination notwithstanding that he/she has qualified in the preliminary examination.

Also provided that if a candidate is appointed to IAS/IFS after the commencement of the main examination but before the result thereof and continues to be a member of that Service, he/she shall not be considered for appointment to any service/post on the basis of the results of this examination.

x x x

17. Due consideration will be given at the time of making appointments on the results of the examination to the preferences expressed by a candidate for various services at the time of his application. The appointment to various services will also be governed by the Rules/Regulations in force as applicable to the respective Services at the time of his appointment:

Provided that a candidate who has been approved for appointment to Indian Police Service/Central Service, Group 'A' mentioned in column 2 below on the results of an earlier examination will be considered only for appointment in services mentioned against that service in column 3 below on the results of this examination.

Sl. No.	*Service for which approved for appointment*	*Service for which eligible to compete*
1.	*Indian Police Service*	*IAS, IFS and Central Services, Group 'A'*
2.	*Central Services, Group 'A'*	*IAS, IFS and IPS*

Provided further that a candidate who is appointed to a Central Service, Group 'B' on the results of an earlier examination will be considered only for appointment to IAS, IFS, IPS and Central Services, Group 'A'."

13. In view of the insertion of the second proviso to Rule 4 of the Civil Services Examination Rules, 1986 on March 31, 1987, the Central Government inserted clause (ee) in Rule 2 of the IPS (Probation) Rules, 1954 with effect from April 18, 1987. The newly inserted clause (ee) reads as under:-

"(ee) 'Exempted Probationer' means a person who, on being allocated to the Service, has expressed his intention to appear at the next examination as defined in the Indian Police Service (Appointment by Competitive Examination) Regulations, 1955,

and has been permitted to abstain from probationary training in order to so appear."

14. On the same day i.e. March 31, 1987 (when the second proviso to Rule 4 of the Civil Services Examination Rules, 1986 was inserted) the Central Government amended Rules 2(e) and 10(1) of the IPS (Probation) Rules, 1954 with effect from April 18, 1987. The amended Rules 2(e) and 10(1) read as under:-

"2(e) 'Probationer' means a person appointed to the Service on probation and include an 'exempted probationer' when he is appointed to the Service on probation'.

x x x

10. ***Seniority of Probationer: -***
(1) The Central Government shall prepare a list in two parts of all probationers who are appointed to the Service on the results of the same competitive examination. The first part shall consist of the probationers other than the exempted probationers and the second part of the exempted probationers who were selected at the same competitive examination. The probationers included in the first part shall be placed en bloc above the exempted probationers included in the second part. The list shall be arranged in the order of merit which shall be determined in accordance with the aggregate of marks obtained by each probationer or exempted probationer, as the case may be-

(a) at the competitive examination;

(b) in respect of his record in the Lal Bahadur Shastri National Academy of Administration and the Sardar Vallabhbhai Patel National Academy; and

(c) at the final examination.

Provided that if two or more probationers have secured equal number of marks in the aggregate, their order of merit shall be the order of their dates of birth." ***(Emphasis Supplied)***

15. On July 27, 1988, the Central Government repealed the IPS (Regulation of Seniority) Rules, 1954 and framed the IPS (Regulation of Seniority) Rules, 1988. Rule 4 of the IPS (Regulation of Seniority) Rules, 1988, dealing with inter-se seniority of the officers, reads as under:-

> *"4.* ***Inter-se seniority of the officers –***
> *The inter-se seniority of the officers who are assigned the same year of allotment shall be in the following order and in each category the inter-se seniority shall be determined in the following manner-*
>
> *(i) Direct recruit officers shall be ranked inter se in the order of merit as determined in accordance with Rule 10 of the Indian Police Service (Probation) Rules, 1954.*
>
> *(ii) Promotee officers shall be ranked inter se in the order of their dates of appointment to the service."*

16. Relevant part of Rule 3 of the IPS (Regulation of Seniority) Rules, 1988 (as originally enacted), dealing with *'Year of Allotment'* of a directly recruited IPS officer, reads as under:-

> *"3.* ***Assignment of year of allotment –***
>
> *(1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in these rules.*
>
> *(2) ……*
>
> *(3) The year of allotment of an officer appointed to the service after the commencement of these rules shall be as follows:*
>
> *(i) The year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held:*

Provided that, in case of exempted probationers, as defined in Clause (ee) of Rule 2 of the Indian Police Service (Probation) Rules, 1954, and the direct recruit officers, who are permitted to join probationary training under Sub-rule (1) of Rule 5 of the Indian Police Service (Probation) Rules, 1954 with the direct recruit officers of a subsequent year of allotment, they shall be assigned that subsequent year as the year of allotment." ***(Emphasis Supplied)***

17. A perusal of Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 would reveal that it prescribes the 'year of allotment' of a directly recruited IPS officer shall be the year following the year in which the competitive examination in which he emerged successful was held. Meaning thereby, if an officer was allocated IPS on the basis of his performance in the CSE -1987, his year of allotment shall be 1988.

18. Now, the proviso to Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 prescribes that the year of allotment in case of two categories of directly recruited IPS officers shall depend upon the year of they joining training, and not the year in which they appeared at the competitive examination. The two categories are as follows:-

(i) Probationers who seek permission to abstain from joining probation training in order to appear at the next Civil Services Examination and join training along with successful candidates of the next year's examination. Such probationers are called '*exempted probationers*' as defined in Rule 2(ee) of the IPS (Probation) Rules, 1954.

(ii) Probationers who are permitted to join training along with the probationers of a subsequent batch on any other grounds such as illness etc.

19. The year of allotment of officers falling in the two categories above depends upon the batch with which they join training with. Meaning thereby, if an officer is allocated IPS on the basis of his performance in

the CSE-1987 but does not join training with his batch mates i.e. the officers who were allocated to IPS on basis of their performance in the CSE-1987 after taking permission to do so from the competent authority and joins training with the subsequent batch of officers having their year of allotment as 1989, his year of allotment would be 1989 i.e. the year of allotment of the officers with whom he had joined training. To put it simply, the proviso to Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 envisages loss/depression of seniority of the IPS officers who do not join training with their batch mates i.e. the officers who have appeared in the same competitive examination.

20. One Alok Kumar, a civil service aspirant, appeared in the CSE-1987; the final result whereof was declared by UPSC in June, 1988. On August 30, 1988, a letter was sent to Alok Kumar informing him that he had emerged successful in the CSE-1987 and that tentatively he was allocated the Indian Railway Personnel Service. He was informed that if he was intending to appear in the next CSE i.e. CSE-1988 he would not be allowed to join the Probationary Training along with the candidates of 1987 batch, but would only be allowed to join the Probationary Training along with the candidates who would be appointed on the basis of the result of CSE-1988, in view of the prescription contained in second proviso to the CSE Rules, 1986. The letter further informed him that in the matter of seniority, he i.e. Alok Kumar, would be placed below all the candidates who would join training without postponement, if he appeared in the CSE-1988.

21. But in the meantime, the UPSC had already declared the result of the preliminary examination held in respect of the CSE-1988 and Alok Kumar was declared successful. Thereafter in October/November Alok Kumar appeared at the main examination held in respect of CSE-1988.

However, before Alok Kumar could appear at the interviews held in respect of CSE-1988 the concerned department sent a communication dated January 02, 1989 to Alok Kumar informing him that he had been allocated IPRS for the previous examination. He was further informed that once he joined the Probationary Training along with 1987 batch, he would not be eligible to be appointed on the basis of subsequent CSE by the UPSC.

22. On receipt of the aforesaid letters dated August 30, 1988 and January 02, 1989, Alok Kumar and 61 other persons (who had also received similar worded letters) and who were allocated IPS or a Central Group 'A' service (based on their performance in the CSE-1987) filed applications under Section 19 of the Administrative Tribunals Act, 1985 before various benches of the Central Administrative Tribunal including the Principal Bench at New Delhi assailing the legality of the second proviso to Rule 4 of the CSE Rules, 1986 and Rule 17 of the CSE Rules, 1986. All the Original Applications were transferred to the Principal Bench at New Delhi.

23. The aforesaid 62 Original Applications were decided by the Central Administrative Tribunal, Principal Bench, New Delhi by a common judgment dated August 20, 1990. The lead matter was the Original Application filed by Alok Kumar.

24. Based on the pleadings of the parties, following questions were formulated by the Tribunal for adjudication:-

> *"1A. Whether the 2nd proviso to Rule 4 of the C.S.E. Rules, 1986 (published in the Gazette India dated 13.12.1986) is invalid:-*
>
> *(i) as it puts an unnecessary embargo restricting the candidates who were seeking to improve their position vis-à-vis their career in Government service, and*

(ii) as the said proviso travels beyond the provision to which it is a proviso.

1B. Whether the proviso to C.S.E. Rule 17 is invalid as it places unwarranted restriction on candidates, who were seeking to improve their position vis-à-vis their career as those allocated to Central Services, Group 'A' are not entitled to get allocation to any other Service in Group 'A'?

2. Whether the second proviso to Rule 4 empowers the respondents to issue the Annexure 1 dated 30.8.1988 restraining the candidate of the 1987 batch allocated to a particular service from joining training with his batch mates who do not intend to appear in the subsequent C.S.E.?

3. Whether the second proviso to Rule 4 empowers the respondents to issue the impugned letter Annexure dated 2.1.1989 restraining the selected candidate for being considered eligible for appointment on the basis of subsequent C.S.E. if once he joined probationary training along with his 1987 Batch mates?

4. Whether the provisions of Art. 14 and 16 of the Constitution are violated by depriving the 1987 Batch from seeking further opportunity to better their career which provides for 3 attempts to each candidate to better their chances in their service career?

5. Whether there is an invidious distinction between the successful candidates of Group 'A' Service and Group 'B' Service, since the latter are not placed under any embargo like the successful candidate in Group 'A' Service?

6. Whether there is any hostile discrimination between General candidates and the candidates belonging to Scheduled Castes and Scheduled Tribes (SC & ST in brief) in the number of opportunities to be availed by candidates belonging to Group 'A' services?

7. Whether the rights given to S.C. & S.T. candidates under Rule 4 has been taken away by the 2nd proviso to Rule 4, and is it permissible in law?

8. Whether the C.S.E. Rules were required to be made under Art. 312 of the Constitution? If so, whether the C.S.E. Rules are made in accordance with the scheme envisaged in Art. 312? What is the effect?

9. Whether the C.S.E. Rules, 1986 are made in exercise of Executive powers of the Union under Art. 73 of the Constitution? If so, its effect?

25. The Tribunal answered questions Nos. 1A(i) and (ii) and 1B formulated above in the negative. In dealing with the aforesaid questions, the Tribunal examined Rules 4 and 17 of the CSE Rules, 1986 in great detail.

26. After examining Rules 4 and 17 of the CSE Rules, 1986 the Tribunal held that the second proviso to Rule 4 and Rule 17 thereof put following three restrictions on candidate(s) who had emerged successful at a given CSE:-

"(i) Where a successful candidate has been approved for appointment to the I.P.S., he would be eligible to compete for I.A.S., I.F.S. and Central Services, Group 'A' in the next CSE and one who has been approved for appointment in one of the Central Services, Group 'A' he will be eligible to only compete for IAS, IFS and IPS in the next CSE.

(ii) If a successful candidate is allocated to a Service on the basis of next CSE, he shall join either that Service or the Service to which he was allocated on the basis of the previous CSE.

(iii) Where a successful candidate who accepts allocation to a Service and is appointed to a Service shall not be eligible to appear again in the CSE unless he has first resigned from the Service."

27. The Tribunal held that aforesaid three restrictions put on the successful candidate(s) were not unreasonable and that said restrictions served a useful purpose, in that, they prevented a successful candidate from abandoning a Service allotted to him with the sole intent to better his chances at the next CSE. As a necessary corollary thereof, it was held by the Tribunal that the second proviso to Rule 4 of the CSE Rules, 1986 and Rule 17 of the CSE Rules, 1986 are valid and do not suffer from any vice.

28. Questions Nos.4 and 5: viz, whether the second proviso to Rule 4 of the CSE Rules, 1986 was discriminatory, was replied in the negative by the Tribunal. It was held by the Tribunal that the second proviso to Rule 4 of the CSE Rules, 1986 does not discriminate between Central Group 'A' and Group 'B' Services, for the reason the pay-scales and service conditions etc. of said two services were completely different; and thus the same cannot be compared with each other. Furthermore, the classification if any made, by the second proviso between Group 'A' and Group 'B' Services had a reasonable nexus with the object for which the proviso was enacted i.e. of preventing a successful candidate from abandoning a Service allocated to him with the sole intent to better his chances at the next CSE.

29. On the issue of Article 312 of the Constitution of India, it was held by the Tribunal that the said Article had no application in the case, for the same relates to creation of one or more All India Services, which is not the position in the case. With respect to question No.9, it was held by the Tribunal that the amendment in question (insertion of second proviso in the Rule 4 of the CSE Rules, 1986) is neither invalid nor beyond the powers of the Central Government, for the reason it is open to the Central

Government to exercise its executive power under Article 73 of the Constitution to make Rules to overcome a particular situation.

30. With respect to questions Nos.6 and 7, the Tribunal noted that a general candidate could take three attempts to qualify at the CSE whereas a SC/ST candidate could appear as many times at the CSE till he cross the age of 31 years. It was held by the Tribunal that the second proviso to Rule 4 puts restrictions on only those candidates who have been allocated to a particular Service after emerging successful in a CSE. It was further held that there is no distinction between a general candidate and SC/ST candidate once they have been allocated to a Service after emerging successful in a CSE. A large number of chances are given to a SC/ST candidate until he succeeds in CSE but the moment he emerges successful in a CSE and is allocated to a Service, he should be treated on the same lines as any general candidate is the reasoning of the Tribunal. Thus, the Tribunal held that the second proviso to Rule 4 does not infringe upon any of the rights enjoyed by a candidate belonging to the SC/ST category.

31. Most significantly, with respect to questions Nos.2 and 3, the Tribunal held as under:-

> *"Having expressed our views on these Rules, we now proceed to consider the two letters that have been issued by the cadre controlling authorities of the various Services. The first letter is of 30.8.1988 (Annexure 1 to the OA) addressed to the applicant, Shri Alok Kumar by Shri P.N.Ananthraman, Under Secretary to the Govt. of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), New Delhi. Paragraphs 3 and 4 of this letter are relevant which read as under:*
>
> *...*
>
> *Another letter dated 2.1.1989 (Annexure-2 to the O.A.) issued by the Joint Director, Estt. G(R), Ministry of Railways (Railway Board) informed the applicant in paragraph 4 that:*

….

In the first letter dated 30.8.1988, the applicant was informed that if he intended to appear in Civil Services (Main) Examination 1988, he will be allowed to join the probationary training along with other candidates of this examination and will be allowed to join the probationary training only along with the candidates who will be appointed on the basis of C.S.E. 1988. It was further indicated that in the matter of seniority, he will be placed below all the candidates who join training without postponement and he was required to inform the cadre controlling authority and only thereafter the latter would permit the applicant to abstain from the probationary training.

There were four embargoes firstly he would not be allowed to join the probationary training along with 1987 batch if he intended to appear in the C.S.E. 1988, secondly, he would not be allowed to join the training along with 1988 batch; thirdly, he would be placed below all such candidates who join the training without postponement. The fourth embargo is that only upon his informing the cadre controlling authority, he would be permitted to abstain from the probationary training.

A perusal of the 2nd proviso to Rule 4 of the C.S.E. Rules, 1986 would show that if the applicant expressed his intention to appear in the next Civil Services (Main) Examination for competing for I.A.S., I.F.S, I.P.S. or Central Services, Group 'A' and was permitted to appear, he shall be eligible to do so subject to the provision of Rule 17. If the applicant was allocated to Indian Railway Personnel Service which is a Group 'A' Service, he would only be entitled to compete for I.A.S., I.F.S. and I.P.S. There is nothing in the said proviso about the loss of seniority which is indicated in the letter dated 30.8.1988. The proviso only speaks about giving him a chance to appear in the ensuing or subsequent C.S.E. and if he succeeded therein, he had to join one or other service to which he had been allocated. He has to join the service allocated to him in the previous year or after the 1988 C.S.E. and if he joins one, the other would be cancelled and if he fails to join in both

the examinations, his appointment will be cancelled. This means that if the candidate wants to take third attempt having succeeded in the two C.S.Es, he cannot have a lien for in case of not succeeding in his third attempt, he would fall back upon the one of the two previous allocations. A question arises: whether the Government was entitled to put conditions, as in paragraph 3 of the letter dated 30.8.1988 (quoted above) in respect of seniority when this was nowhere indicated in the 2nd proviso to Rule 4? Similarly, the fourth paragraph of the letter dated 2.1.1989 speaks of two specific embargoes firstly, if the applicant was taking the C.S.E. 1988 and wants to be considered for appointment to service on the basis of Civil Services Examination, 1988 he cannot be allowed to join probationary training along with 1987 batch and he could only be permitted to report for probationary training along with 1988 batch on the basis of his success in 1987 Examination. The second embargo is that if he wants to join probationary training along with 1987 batch, he will not be eligible to be considered for appointment on the basis of subsequent C.S.E. This letter does not speak about resignation. But it is clear that in the 2nd proviso to Rule 4, there is a condition that if a candidate who accepts allocation to a service and is so appointed to a service he shall not be eligible to appear again in the C.S.E. unless he first resigns from the service. The letter dated 2.1.1989 makes it plain that in such a condition, he will not be eligible for consideration for appointment in the subsequent C.S.E. This came about presumably because by the time these also appeared in the Main Examination of C.S.E. 1988.

As a matter of fact, in the case of Shri Alok Kumar, he sat in the Preliminary Examination in June 1988. In August, 1988 he was informed that he was being tentatively considered for appointment to IRPS. He sat for the Civil Services (Main) Examination held in October/November, 1988 and he received the offer of appointment from IRPS on 2.1.1989. Thereafter, on 19.1.1989, he was informed that he was selected in IRPS and that foundation course will be started on 6.3.1989. The interviews are held by the UPSC in April, 1989 for the C.S.E. 1988. In his case, he was informed that he was selected in IRPS vide letter dated 19.1.1989 whereas he had taken the

preliminary and the C.S. (Main) Examination both. According to the 2nd proviso to Rule 4, he was not eligible to appear in C.S.E. 1988 unless he first resigned from the service. That situation did not emanates for he had already sat in the examination. The question would only arise when he had been allocated and appointed to a service. It appears, to get over this difficulty, letter dated 2.1.1989 indicated that he would not be considered eligible to sit in the examination. Under the second proviso to Rule 4, he had to resign only if he had been allocated and appointed to a service. This, as seen above, did not apply to the applicant, for he had not been allocated or appointed to a service before he sat in the prelims. The letter, that he would not be considered as eligible for the 1989 examination, came after he had done the prelims and appeared in the Main Examination. Further, his allocation to IRPS only came by letter dated 2.1.1989. This would mean that a new condition was being imposed by this letter dated 2.1.1989 which was not indicated in the 2nd proviso to Rule 4.

It will thus be seen that the letter dated 2.1.1989 imposed two new conditions; firstly, that he would have to take his training with the subsequent batch, i.e. 1988 batch in the service, secondly, he would not be considered eligible for appointment by virtue of 1988 C.S.E. None of these conditions find a place in the 2nd proviso to Rule 4. The letter dated 2.1.198 is, therefore, beyond the second proviso to Rule 4.

Similarly, the first letter dated 30.8.1988 speaks about his loss of seniority even in his own batch; which is not indicated or proposed in the second proviso to Rule 4. The applicant has been told that in case he takes the 1988 C.S.E. after obtaining an order for abstaining for probationary training, he would be taking his training with 1988 batch in his service and would be placed at the bottom of the 1987 batch. As a matter of fact, this is also not spelt out in the 2nd proviso to Rule 4. We are of the view that this letter also travels beyond what is provided for in the 2nd proviso to Rule 4 of the C.S.E. Rules, 1988. Both these letters imposed on the applicant conditions which were not indicated before he sat for the 1988 C.S.E. In our opinion, these two letters propose to lay down further rule than what was propounded in such conditions can be imposed on the like of

him, after they had appeared in the subsequent C.S.E.? Further, even if the second proviso to Rule 4 has been enacted in exercise of the executive power of the Union, whether such restrictions can be enacted by sending letters to individuals by different cadre controlling authorities? We are of the view that the conditions to which we have referred above contained in the letters dated 30.8.1988 and 2.1.1989 are beyond the Rule making powers of the cadre controlling authorities and in our opinion, they cannot be enforced. They have to struck down."
(Emphasis Supplied)

32. Lastly, the Tribunal summarized the conclusions arrived by it, as follows:-

"1. The 2nd proviso to Rule 4 of the Civil Services Examination Rules is valid.

2. The provisions of Rule 17 of the above Rules are also valid.

3. The above provisions are not hit by the provisions of Arts. 14 and 16 of the Constitution of India.

4. The restrictions imposed by the 2nd proviso to Rule 4 of the Civil Service Examination Rules, are not bad in law.

5(1) The letter issued by the Ministry of Personnel, Public Grievances and Pensions dated 30th August, 1988 and in particular, paragraph 3 and paragraph 4 of the letter dated 2.1.1989 issued by the cadre Controlling Authority, Ministry of Railways (Railways Board) are held to be bad in law and unenforceable. Similar letters issued on different dates by other Cadre Controlling Authorities are also unenforceable.

(ii) A candidate who has been allocated to the I.P.S. or to a Central Services, Group 'A' may be allowed to sit at the next Civil Services Examination, provided he is within the permissible age limit, without having to resign from the service to which he has been allocated, nor would he lose his original seniority in the service to which he is allocated if he is unable to take training with his own batch.

6. Those applicants who have been allocated to the I.P.S. or any Central Services, Group 'A', can have one or more attempt in the subsequent Civil Services Examination, for the Services indicated in Rule 17 of the C.S.E. Rules. The Cadre Controlling Authorities can grant one opportunity to such candidates.

7. All those candidates who have been allocated to any of the Central Services, Group 'A' or I.P.S. and who have appeared in Civil Services Main Examination of a subsequent year under the interim order of the Tribunal for the Civil Services Examination 1988 or 1989 and have succeeded, are to be given the benefit of their success, subject to the provisions of Rule 17 of the C.S.E. Rules. But this exemption will not be available for any subsequent Civil Services Examination." ***(Emphasis Supplied)***

33. It needs to be noted that before it decided the 62 Original Applications, by an interim order the Tribunal had allowed Alok Kumar and several similarly situated persons to join the requisite training for the service to which they had been allocated along with the 1987 batch i.e. the batch of candidates who had appeared at the CSE-1987 and did not intend to appear at the next CSE and additionally allowed them to appear at the interview held by the UPSC on the basis of the results of CSE-1988.

34. Aggrieved by the aforesaid judgment dated August 20, 1990 passed by the Tribunal, upholding the validity of the second proviso to Rule 4 of the CSE Rules, 1986 and Rule 17 of the CSE Rules, 1986, some candidates who had appeared in the CSE-1987 and were allotted IPS or a Central Group 'A' Service went marching to the Supreme Court and on obtaining Leave to Appeal had the Special Leave Petitions filed by them converted into Civil Appeals. The verdict of the Supreme Court came to be reported as 1992 Supp (1) SCC 594 *Mohan Kumar Singhania vs.*

Union of India. (Pertinently, the Central Government did not challenge the judgment dated August 20, 1990 passed by the Tribunal insofar it had quashed the paragraphs 3 and 4 of the letters dated August 30, 1988 and January 02, 1989 respectively).

35. In *Mohan Kumar*'s case (supra) the Supreme Court concurred with the view taken by the Tribunal that the second proviso to Rule 4 of the CSE Rules, 1986 and Rule 17 of the CSE Rules, 1986 are valid and that the Central Government was well within its right to amend Rule 4 of the CSE Rules, 1986.

36. On the issue of loss of seniority of the candidates who were allocated either IPS or Central Group 'A' Service on the basis of their performance at the CSE-1987 and intended to appear at the next CSE, to better their career prospects, the Supreme Court held as under:-

> *"113. One other argument advanced on behalf of the appellants was that the candidates who have allocated in Group 'A' services and whose training is postponed at their request have to lose their seniority whereas the candidates who have been appointed to Group 'B' services do not suffer such kind of disability and that they can even after their training retain their original seniority which they had at the time of their initial selection. This serious setback suffered by a candidate selected in Group 'A' services, according to the counsel for the appellants, indicates that there is an apparent discrimination between the two sets of candidates. This contention of the appellants, according to ASG, cannot be countenanced because the services under Group 'A' and Group 'B' are different services and, therefore, the conditions of a service of a particular service cannot be compared with other service especially when the services are not at par and more so when the other service, namely, Group 'B' service is less in rank and merit to that of Group 'A' service.*
>
> *x x x*

127. We shall now bestow our judicious thoughts over this matter and carefully examine the rival contentions of the parties in the light of the guiding principles, lucidly laid down by this Court in a series of decisions, a few of which we have already referred to hereinbefore. The selections for IAS, IFS and IPS Group 'A' services and Group 'B' service are made by a combined competitive examination and viva voce test. There cannot be any dispute that each service is a distinct and separate cadre, having its separate field of operation, with different status, prospects, pay scales, the nature of duties, the responsibilities to the post and conditions of service etc. Therefore, once a candidate is selected and appointed to a particular cadre, he cannot be allowed to say that he is par with the others on the ground that all of them appeared and were selected by a combined competitive examination and viva voce test and that the qualifications prescribed are comparable. In our considered view, the classification of the present case is not based on artificial inequalities but is hedged within the salient features and truly founded on substantial differences. Judges from this point of view, it seems to us impossible to accept the submission that the classification rests on an unreal and unreasonable basis and that is arbitrary or absurd.

x x x

140. Before parting with the judgment, we feel it has become necessary to give a specific direction to the respondents inclusive of the Union Public Service Commission in pursuance of the earlier directions given in our order dated December 7, 1990 (vide Annexure 'A'), which directions were given in pursuance of various interim orders passed by the Central Administrative Tribunal, Principal Bench, New Delhi and thereafter finally in its final judgment dated August 20, 1990, October 4, 1990 and October 5, 1990. For ready reference and to have a proper perspective, we would like to proliferate the following passage from our earlier order dated December 7, 1990:-

> *"Hence we permit all those candidates falling under paras 5(ii), 6 and 7 to sit for the Main examination subject to the condition that each candidate satisfied*

the Secretary, Union Public Service Commission that he/she falls within these categories and that the concerned candidates have passed the preliminary examination of 1990 and have also applied for the main examination within the due date. This permission is only for the ensuing examination. As we are now permitting those who have passed the preliminary examination of 1990 and have applied for the main examination on the basis of the unquestioned and unchallenged directions given under paras 5(ii), 6 and 7 of the judgment of the CAT, Principal Bench, New Delhi, the same benefit is extended to the other appellants who also satisfy those conditions as mentioned under paras 5(ii), 6 and 7."

141. On the strength of the above order, we direct the respondents inclusive of the Union Public Service Commission that all those candidates who have appeared for the Civil Services (Main) Examination, 1990, pursuant to our permission given in the order dated December 7, 1990 and who have come out successfully in the said examination and thereby have qualified themselves for the interview, that if those candidates completely and satisfactorily qualify themselves by getting through the written examination as well as the interview shall be given proper allocation and appointment on the basis of their rank in the merit list, notwithstanding the restriction imposed by the second proviso and our present judgment upholding the validity of the said proviso since the respondents have not questioned and challenged the directions given by the CAT, Principal Bench Delhi in paragraphs 5(ii), 6 and 7 of its judgment dated August 20, 1990. We would like to make it clear that the unchallenged directions given by the CAT in its judgment as well as directions given by us in our order dated December 7, 1990 are not controlled by any rider in the sense that the said directions were subject to the result of the cases and hence those directions would be confined only to those successful candidates who appeared for CSE, 1990 and no further. The seniority of those successful candidates in CSE, 1990 would depend on the service to which they have qualified. The seniority of the left out candidates would be maintained in case they have joined the service to which they have been

*allocated on the result of the previous CSE and such candidates will not be subjected to suffer loss of seniority as held by the CAT, Delhi in its judgment"**(Emphasis Supplied)***

37. On January 20, 1994 the Central Government issued a notification, amending Rule 3(3)(i) of the IPS (Regulations of Seniority) Rules, 1988, in that, the existing proviso to Rule 3(3)(i) (extracted in paragraph 11 above) was substituted with effect from July 27, 1988, with the following proviso:-

> *"Provided that if a direct recruit officer, other than an exempted probationer within the meaning of Clause (ee) of Rule 2 of the Indian Police Service (Probation) Rules, 1954, who is permitted to join probationary training under Sub-rule (1) of Rule 5 of the Indian Police Service (Probation) Rules, 1954 with the direct recruit officers of subsequent year of allotment, then he shall be assigned that subsequent year as the year of allotment." **(Emphasis Supplied)***

38. The reason to amend Rule 3(3)(i) of the IPS (Regulations of Seniority) Rules, 1988 with retrospective effect is contained in a memorandum issued by the Government pertaining to the amendment in question, relevant part of which memorandum reads as under:-

> *"Prior to 27th July, 1988, Rule 3(3)(a) of the Indian Police Service (Regulation of Seniority) Rules, 1954 provided that the year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held. From the Civil Services Examination, 1987, Rule 4 of the said examination provides inter alia that a successful candidate allotted to Indian Police Service on the basis of Civil Services Examination can appear at the next CSE only by seeking permission from Probationary training. Based on this provision in the rules for the Civil Services Examination, 1987 the following proviso was provided in Rule 3(3)(i) of the Indian Police Service (Regulation of Seniority) Rules, 1988:*
>
> *....*

The above proviso stipulates that YOA in the case of the following two categories of probationers shall depend upon the date of their joining training:

(i) Probationers who seek permission to abstain from joining probationary training in order to appear at the next Civil Service Examination and join training along with successful candidates of next year's examination. (They are called exempted probationers).

(ii) Probationers who are permitted to join training along with probationers of a subsequent batch on any other grounds.

In both the above categories, the YOA depends upon the batch with whom the concerned probationers join training.

2. The depression of seniority (Assignment of YOA) in the case of first category of probationers i.e., exempted probationers, was questioned while challenging the validity of Rule 4 of the Civil Services Examination. While upholding validity of Rule 4 of the Civil Services Examination Rules, the CAT, Principal Bench, held in Alok Kumar v. Union of India and others, that in case of exempted probationers their seniority cannot be depressed. This has been reiterated by the Supreme Court in judgment dated 13th September, 1991 in Mohan Kumar Singhania v. Union of India and others. In order to implement the judgment of the CAT, Principal Bench as also the Supreme Court of India, the Indian Police Service (Regulation of Seniority) Rules, 1988, would require to be amended.

3. The proviso to Rule 3(3)(i) of the Indian Police Service (Regulation of Seniority) Rules, 1988 applied to two categories mentioned in para 1 above, whereas the CAT/Supreme Court was in the case of only one category, namely, exempted probationers. In the case of exempted probationers, the year of allotment will be the year following the year of Competitive Examination whereas in the case of second category of probationers, namely those probationers, who obtain permission to join training late on any other ground, their year of allotment depends upon the year of allotment of probationers

with whom they join training. The existing proviso to Rule 3(3)(i) of the Indian Police Service (Regulation of Seniority) Rules, 1988 is being substituted with the following proviso:

....” ***(Emphasis Supplied)***

39. Sometimes thereafter, one Ashok Kumar, an IPS officer of 1989 batch, who had appeared at the CSE-1988 and was allocated IPS on the basis of his performance in said examination and had joined probationary training at the required time filed an Original Application before the Tribunal praying therein that the seniority list dated December 15, 1994 of IPS officers pertaining to 1989 batch officers, based on the provisions of amended Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 be quashed, and that a direction be issued to the Central Government to fix the seniority of the IPS officers of 1989 batch in accordance with unamended Rule 3(3)(i). In his application, Ashok Kumar contended that the Government committed an illegality in assigning same year of allotment to such IPS officers of 1989 batch who joined probationary training at the required time and exempted probationers of 1989 batch i.e. those officers who did not join probationary training at the required time but took exemption from joining the same, in order to appear at the CSE-1990, and joined probationary training along with IPS officers of 1990 batch. It was further contended by Ashok Kumar that in view of the prescription contained in the unamended Rule 3(3)(i) of the IPS (Regulations of Seniority) Rules, 1988, the year of allotment assigned to the exempted probationers of 1989 batch ought to have been the year of allotment which was allotted to the IPS officers of 1990 batch. In essence, Ashok Kumar challenged the notification dated January 20, 1994 insofar it retrospectively amended Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988.

40. Vide judgment and order dated March 16, 2000, the Tribunal dismissed the Original Application filed by Ashok Kumar holding that it became necessary for the Government to have retrospectively amended Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 which prescribed depression/loss of seniority of the exempted probationers in view of the categorical dictum of law laid down by the Tribunal in its decision in *Alok Kumar*'s case (supra): that the seniority of exempted probationers cannot be depressed, more particularly, when said dictum was approved by the Supreme Court in *Mohan Kumar*'s case (supra).

41. Nearly five years after the decision of the Tribunal in *Ashok Kumar*'s case (supra), Rajiv Tandon, an IPS officer of 1988 batch who had appeared at the CSE-1987 and was allocated IPS on the basis of his performance in said examination and joined probationary training at the required time filed an application before the Tribunal challenging the validity of the notification dated January 20, 1994, insofar it retrospectively amended Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 as also the seniority list dated October 25, 1994 of the IPS officers of 1988 batch, issued on the basis of the amended Rule 3(3)(i). In his application, Rajiv Tandon essentially advanced same contentions as were advanced by Ashok Kumar in his application. Additionally, Rajiv Tandon placed reliance upon Section 3(1A) of the All India Services Act, 1951 to contend that the Government could not have retrospectively amended Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988; particularly when such an amendment adversely affected the interest of the IPS officers of 1988 batch who had joined probationary training at the required time, in that, the amendment disturbed the seniority enjoyed by such officers for nearly 6 long years. Section 3(1A) of the All India Services Act, 1951 relied upon by Rajiv Tandon reads as under:-

*"3. **Regulation of recruitment and conditions of service -** ...*

(1A) The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable."

42. Cognizant of the fact that he was filing the Original Application in the year 2005 and was questioning the issue of seniority pertaining to a seniority list issued in the year 1994, on the issue of limitation it was pleaded by Rajiv Tandon that on October 25, 1994 the Central Government had issued a seniority list of IPS officers of 1988 batch on the basis of prescription contained in the amended Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988. Immediately thereafter on January 19, 1995, he submitted a representation to the Principal Secretary, Government of Madhya Pradesh who was required to forward the same to the Ministry of Home Affairs, Government of India. It was only on September 17, 2004 that the Ministry of Home Affairs, Government of India rejected his representation dated January 19, 1995. It was thus contended that the limitation commenced for filing the application only from the date when his representation was rejected i.e. September 17, 2004; and thus the application filed by him was within limitation.

43. Soon thereafter, twelve more IPS officers of 1988 batch, who had appeared at the CSE-1987 and were allotted IPS on the basis of their performance and had joined probationary training at the required time; namely: N.K.Mishra, Prabodh Kumar, S.Sundari Nanda, B.L.Soni, Pankaj Kumar Singh, Tapan Kumar Deka, Manmohan Singh, Pranab Nanda and Y.Anil Kumar filed six applications before the Tribunal challenging the notification dated January 20, 1994 insofar it

retrospectively amended Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 and the seniority list dated October 25, 1994 of IPS officers of 1988 batch.

44. On the issue of limitation, it was pleaded by the aforesaid twelve officers that they were not aware of the existence of the seniority list dated October 25, 1994 of the IPS officers of 1988 batch till the year 2005 and became aware about its existence only when the process for empanelment of DIG for the IPS officers of 1988 batch started in the year 2005. It was pleaded that the limitation for filing the application(s) started to run only when they became aware about the existence of the seniority list dated October 25, 1994 in the year 2005 and thus the application(s) filed by them were within limitation.

45. In the reply filed by the Union of India as also the replies filed by the writ petitioners, who were the respondents before the Tribunal, and we find who were the exempted probationers pertaining to the 1988 batch i.e. those who took CSE-1987, it was contended:-

(a) The filing of the Original Applications by 13 IPS officers of 1988 batch is highly belated since the same has been filed nearly 11 years after the seniority list dated October 25, 1994 was issued. The plea that said officers became aware about the existence of the seniority list dated October 25, 1994 only in the year 2005 on the commencement of process for empanelment of DIG is most fallacious. They pleaded that soon after the seniority list dated October 25, 1994 was issued the concerned State Governments duly sent letters to the officers concerned informing them the list being issued. The details of the letters issued by the State Government are being tabulated hereunder:-

Name of the State Government	Date of issuance of letter	Officer to whom the letter was sent

Rajasthan	November 24, 1994	B.L.Soni, Pankaj Kumar Singh
Madhya Pradesh	November 16, 1994	S.K.Pandey, S.L.Thaosen, Rajiv Tandon
Punjab	November 15, 1994	Prabodh Kumar
Bihar	November 24, 1994	Manmohan Singh
Chandigarh, Arunachal Pradesh, Mizoram	November 17, 1994	S.Sundari Nanda, Pranab Nanda

(ii) It became necessary for the Government to have retrospectively amended Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 which prescribed depression/loss of seniority of the exempted probationers in view of the categorical dictum of law laid down by the Tribunal in its decision in *Alok Kumar*'s case (supra): that the seniority of exempted probationers cannot be depressed, more particularly when said dictum was approved by the Supreme Court in *Mohan Kumar*'s case (supra).

46. Vide order dated December 23, 2008, a Division Bench of the Tribunal observed that the earlier decision rendered by the Tribunal in *Ashok Kumar*'s case (supra) may not be correct and referred the matter to a larger Bench, the relevant portion whereof, reads as under:-

> *"5. We have heard the learned counsel representing the parties and have gone through the judgment of this Tribunal in Ashok Kumar (supra). We need not give reasons at this stage, as that may appears to be a final expression of opinion, or in fact any such final opinion has been formed by us, but prima facie it appears that the judgment of this Tribunal in Ashok Kumar may need reconsideration. It will be an exercise in futility to hear elaborate arguments and then refer the matter to a larger Bench, if we may find that the view taken by this Tribunal in Ashok Kumar is not correct. Thus, by observing prima facie, that the law laid down in Ashok Kumar may not be correct and the same requires reconsideration, we refer this matter to a larger Bench.*

> *6. Before we may part with this order, we may mention that Shri G.D.Gupta, Sr.Advocate, representing private respondents, urged that the present Applications are barred by time, and, therefore, the same should be dismissed as such. While referring the matter to the larger Bench, we are not proceeding to decide the matter as such. We only want to ascertain, at this stage, the correct position in law. In case, we may follow the decision in Ashok Kumar (supra), these applications, in any case, shall have to be dismissed. In case, however the law as laid down in Ashok Kumar is not found to be correct, surely, the matter has to go before a Division Bench, wherein the respondents represented by Shri Gupta would be well within their right to seek dismissal of the Applications on the plea of bar of limitation.*

47. Vide judgment and order dated March 18, 2010 the Full Bench of the Tribunal held that the decision rendered by a Division Bench of the Tribunal in *Ashok Kumar*'s case (supra) does not lay down correct law and thus stands overruled for the reasons:-

a) In *Ashok Kumar*'s case (supra), the Tribunal did not correctly appreciate the dictum of law laid down by the Supreme Court in the decisions reported as (1994) 5 SCC 450 *Union of India vs. T.R. Mohanty* and 1993 Supp (1) SCC 730 *IAS (SCS) Association vs. Union of India* that retrospective operation of law cannot deprive a person an accrued right vested in him under a statute.

b) The conclusion arrived by the Tribunal in *Ashok Kumar*'s case (supra) that the ratio of law laid down by the Tribunal in *Alok Kumar*'s case (supra) that the seniority of the exempted probationers cannot be depressed was approved by the Supreme Court in *Mohan Kumar*'s case (supra) is fallacious. A reading of paragraphs 140-142 of the judgment of Supreme Court in *Mohan Kumar*'s case (supra) goes to show that therein the Supreme Court had only given a concession to the exempted

probationers who had participated in CSE-1990: that their seniority would not be depressed for they had participated in said examination pursuant to the interim orders passed by the Tribunal and Supreme Court and the fact that directions related to participation of the exempted probationers in subsequent examinations given by the Tribunal in its judgment dated August 20, 1990 were not challenged by the Central Government, which circumstance is further fortified by the fact that the stand taken by the Government before the Supreme Court in *Mohan Kumar*'s case (supra) was that the seniority of the exempted probationers needs to be depressed.

c) The reason given by the Government to amend Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988: that the amendment was necessitated to bring Rule 3(3)(i) in line with the dictum of law laid down by the Supreme Court in *Mohan Kumar*'s case (supra) is fallacious. In fact, the amendment in question runs contrary to the judgment of Supreme Court in *Mohan Kumar'*s case (supra); for a careful reading of said judgment shows that the Supreme Court had not approved the conduct of the exempted probationers of not joining the probationary training at the required time to improve their career prospects by appearing in the subsequent CSE.

d) The Central Government could not have retrospectively amended Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 in view of the clear prescription contained in Section 3(1A) of the All India Services Act, 1951: that no retrospective effect should be given to a Rule so as to prejudicially affect the interests of any person to whom the Rule is applicable, particularly when such retrospective amendment disturbed the seniority enjoyed by the IPS officers of 1988 batch for six long years.

48. Aggrieved by the judgment and order dated March 18, 2010 rendered by the Full Bench of the Tribunal, the exempted probationers of 1988 batch as also the Central Government filed W.P.(C) No.3004/2010, W.P.(C) No.5976/2010, W.P.(C) No.6040/2010, W.P.(C) No.6041/2010, W.P.(C) No.6042/2010, W.P.(C) No.6043/2010, W.P.(C) No.6045/2010 and W.P.(C) No.6048/2010 laying a challenge to the order dated March 18, 2010.

49. On December 13, 2010, a Division Bench of this Court passed an order in the above captioned petitions, the relevant portion whereof reads as under:-

> *"7. Without expressing any opinion on the view taken by the Full Bench of the Tribunal, but noting that the approach of the Tribunal is not correct and the cart has been put before the horse, we would be deferring hearing. We must observe that where a bar of limitation is raised as a pure question of law, since upon the plea being successful the jurisdiction of the Tribunal would be ousted, it would have been more appropriate if the Division Bench first decided the bar of limitation and only upon overruling the same should have made the Reference to a Full Bench.*
>
> *8. Be that as it may, we defer hearing of the above captioned writ petitions with a request to the Tribunal to decide the issue of limitation which needs to be decided by it with reference to the 7 Original Applications. We would request the Tribunal to decide the issue of bar of limitation qua the 7 Original Applications preferably within a period of two months from today."*

50. Needless to state, a Division Bench of the Tribunal proceeded to decide the issue of limitation which had cropped up in the aforesaid seven applications filed by the thirteen IPS officers of 1988 batch.

51. In dealing with the issue of limitation, following three questions were formulated by the Tribunal for adjudication:-

"i) Whether terminus a quo for limitation and the period prescribed under Section 21 of the Administrative Tribunals Act, 1985 would be applicable in the present case when the representation submitted by Rajiv Tandon was not governed by the relevant service rules?

ii) If terminus a quo for limitation is not to be governed by Section 21 of the Administrative Act, 1985, would the period of limitation shall have to be reckoned in the context of the provisions contained in the Limitation Act, 1963?

iii) If the period of limitation is not to be governed by the Limitation Act, 1963, what should be the reasonable time for an employee to approach a judicial forum as to redressal of his grievances?

52. Vide judgment and order dated March 07, 2012, the Division Bench of the Tribunal answered the three questions pertaining to limitation as under:-

a) The period of limitation and *terminus a quo* for the same provided under Article 21 of the Administrative Act, 1985 would be attracted only when an employee resorts to representation or appeal provided to him under the relevant service rules. If the representation is non-statutory, the limitation period prescribed under Section 21 and *terminus a quo* thereof would not be attracted. The view that Section 21 has no application in case of non-statutory/ordinary representations needs to be accepted in view of the settled legal position that if two views are possible, the one which leans in favour of advancing substantial justice needs to be accepted. When substantial justice is pitted against the procedural exigencies, it is substantial justice which will have precedence over procedural requirements. In the instant case, Section 21 has no application for the representation submitted by Rajiv Tandon was admittedly not governed by any service rules.

b) Article 137 of Limitation Act, 1963 has no application in the present case in view of the facts that Article 137 applies only to a 'civil court' and the Tribunal is not a 'court' or 'civil court'.

c) When there is no period of limitation provided under the statute, the *lis* cannot be dismissed on bar of limitation as held by the Supreme Court in the decision reported as (1997) 6 SCC 73 *Uttam Namdeo Mahale vs. Vithal Deo & Ors.*

d) Though on first blush or prima facie, there does appear to be some delay in the application filed by Rajiv Tandon, however it would not be just to dismiss the application on ground of delay. The delay normally comes in the way of a person if the claim is stale and meanwhile the impugned orders have attained finality or where the rights of third party may have accrued in the meantime or where the rights of adversaries have been settled. The law is that settled matters cannot be unsettled after a long distance of time, which is not the position in the instant case for the exempted probationers of 1988 batch had not gained in any manner at state level or all India level vis-à-vis the applicants before the Tribunal who had filed the applications in question on account of seniority assigned to them in the impugned seniority list dated October 25, 1994 and the career progression of exempted probationers of 1988 batch and the applicants before the Tribunal have remained same till the filing of the applications in question in the Tribunal. In this view of the matter, it was not unreasonable for the applicants before the Tribunal to have awaited the decision of the Government regarding their grievances.

e) Even if there was some delay in filing the applications in question, the same deserved to be condoned in view of the facts that the applicants were awaiting the decision of the Central Government under the bona fide hope and impression that the Government would do justice to them

and they had not gained in any manner at state level or all India level vis-à-vis the applicants before the Tribunal who have filed the applications in question on account of seniority assigned to them in the impugned seniority list dated October 25, 1994.

53. This necessitated the filing of W.P.(C) No.6479/2012, W.P.(C) No.6651/2012, W.P.(C) No.6652/2012, W.P.(C) No.6653/2012, W.P.(C) No.6654/2012, W.P.(C) No.6655/2012 and W.P.(C) No.6656/2012 which lay a challenge to the judgment and order dated March 07, 2012 holding that the seven Original Applications filed before the Tribunal were within limitation.

54. Though the Tribunal has reversed the sequence of the two issues which arose for consideration before it i.e. first decided the issue of merits followed by a separate decision on the issue of limitation; overlooking that an issue of limitation needs to be decided first because it relates to the jurisdiction, we propose to decide the issue pertaining to limitation first followed by the decision on the merits of the controversy.

55. Whereas Sh.Rajiv Tandon contended that the limitation in his case commenced from the date his representation dated January 19, 1995 was rejected by the Central Government on September 17, 2004 and thus the application filed by him in the year 2005 was within limitation, the remaining twelve officers contended that since they acquired knowledge of the existence of the seniority list dated October 25, 1994 in the year 2005, the Original Applications filed by them were within limitation.

56. Pertaining to the Original Application filed by Sh.Rajiv Tandon, there was a dispute on facts: Whether at all he had submitted a representation on January 19, 1995, but before us Sh.P.S.Patwalia learned senior counsel for the writ petitioners stated that we could proceed to

analyze the issue treating that Sh.Rajiv Tandon had made a representation, as claimed by him, on January 19, 1995. The said representation was admittedly rejected on September 17, 2004 when a reminder was sent by the State Government.

57. We have noted hereinabove in paragraph 52 the reasoning of the Tribunal as to why the Original Application filed by Sh.Rajiv Tandon (as also the applications filed by other officers) were within limitation, and thus we proceed straightaway to reflect upon the reasoning of the Tribunal on the subject of limitation.

58. Sections 20 and 21 of the Administrative Tribunals Act, 1985 prescribe limitation for filing an application before the Tribunal. They read as under:-

> *"20.* ***Applications not be admitted unless other remedies exhausted –***
>
> *(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.*
>
> *(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,*
>
> *(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or*
>
> *(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months*

from the date on which such appeal was preferred or representation was made has expired.

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

21. ***Limitation –***

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

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

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

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

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

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

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section

(1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

59. Section 3(r) of the Act defines the expression '*service rules as to redressal of grievances*' occurring in Section 20 as follows:-

"Service rules as to redressal of grievances", in relation to any matter, means the rules, regulations, orders or other instruments or arrangements as in force for the time being with respect to redressal otherwise than under this Act, or any grievance in relation to such matters."

60. As per Section 21, period of limitation prescribed is one year from the date when a final order, as contemplated by Section 20(2)(a) is passed. The limitation would be one year and six months if the statute contemplates an appeal or a statutory representation as mentioned in Section 20(2)(a) but no final order is passed. In other words, Section 21 provides for the period of limitation where *service rules as to redressal of grievances* provide for the remedy of appeal or a representation against a final order.

61. What happens when the service Rules do not provide for remedy of an appeal or representation against the adverse order or grievance? This question in turn gives birth to following two questions:-

(i) When does the cause of action arise in such cases?

(ii) What would be the limitation period in such cases?

62. The answer to the aforesaid question(s) is to be found in the decision of a Division Bench of the Karnataka High Court reported as 2004 (2) KCCR 721 *Sri M.F. Pasha vs. Union of India & Ors.* The facts of said case were that the petitioner, a police officer in the State of

Karnataka was aggrieved by the fact that his name was not included in the Select List of the year 1986 for promotion to the Indian Police Service from Karnataka state cadre. Between the years 1998-2000 the petitioner therein submitted representations to the State Government requesting to constitute a Review Selection Committee and include his name in the Select List of the year 1986. The State Government forward the representation to UPSC which rejected the same on November 14, 2000. Feeling aggrieved, the petitioner therein approached the Central Administrative Tribunal, Bangalore Bench praying that the order dated November 14, 2000 passed by the UPSC be quashed. The Tribunal dismissed the application filed by the petitioner therein on the ground that it was barred by limitation, which order was challenged by the petitioner therein before the Karnataka High Court contending therein that the application was filed by him within one year from the date when the order dated November 14, 2000 was passed by the UPSC. While repelling the aforesaid contention, the Division Bench observed as follows:-

> *"9.1) Where the Rules do not provide for filing of an appeal or making of a representation to a higher authority, the cause of action would be the date of adverse order (or occurrence of the cause for grievance) itself. The Supreme Court has pointed out that where the Rules do not provide for filing an appeal or making a representation to a higher authority, submission of a representation or repeated unsuccessful representation, will not furnish or extend the cause of action (vide S.S. Rathore v. State of Madhya Pradesh : AIR 1990 SC 10). Representation not contemplated or provided for in law cannot obviously furnish a cause of action.*
>
> *9.2) Section 21 refers only to cases where the Rules provide for an appeal or representation. There is no specific reference to grievances or orders in regard to which the Rules do not provide for a remedy by way of an appeal or representation.*

The scheme of the Act is to ensure that the aggrieved person exhausts the remedy invariably provided under the Service Rules (either by way of appeal or representation to a competent authority), before he approaches the Tribunal. It is in that context that the period of limitation is reckoned with reference to availing of such remedy provided under the Rules. But it does not mean that the Legislature did not intend to prescribe any period of limitation in regard to applications before the Tribunal relating to orders against which the Rules did not provide a remedy by way of appeal or representation. The legislative intent is to prescribe a limitation of one year from the date of cause of action to approach the Tribunal. Section 21 only enables the aggrieved person to treat the date of rejection of appeal/representation (or date of expiry of six months from the date of filing, where such appeal/representation is not disposed of by any final order) as the date of cause of action for reckoning the period of limitation. If the Service Rules do not provide for any remedy by way of appeal or representation, then there will be no 'postponing' of the date of cause of action and the period of one year shall have to be reckoned in the normal manner, that is, from the date of the adverse order.

9.3) Even assuming that on a strict or narrow construction of Section 21, the provision for limitation is restricted only to orders or grievances for which the Service Rules provide a remedy by way of appeal or representation, and not to other grievances, the position will not be much different, as in that event, the principle of delay and laches will apply. Applications seeking relief in respect of grievances will have to be rejected on the ground of delay or laches, if the aggrieved person does not approach within a reasonable time. Having regard to the legislative indication in Section 21, such reasonable time, can be taken as one year from the date of the cause for the grievance.

9.4) We are also conscious of the fact that there may be categories of cases where Section 21 may not apply. One is where the application challenges the vires of any Rules. The second is where applicant may approach a Tribunal not being aggrieved by any adverse order or action, but being aggrieved by the inaction on the part of employer, in which case Section

21 may not apply and the principle of delay and laches will apply.

x x x

11. The position may be summarized thus:

a) Where the Service Rules provide for a remedy by way of an appeal or a representation to a competent authority, then, the period of limitation will be one year from the date of final order rejecting the appeal/representation. Where the appeal/representation is not disposed of by a final order within six months from the date of presentation of such appeal or representation, the period of limitation will be one year from the date of expiry of such six months, that is, 18 months from the date of filing of appeal/representation;

b) Where the Service Rules do not provide any remedy by way of an appeal or a representation against a final order, the period of limitation for approaching the Tribunal will be one year from the date of such a final order;

*c) Where the grievance is in regard to inaction on the part of employer or failure on the part of employer to give a relief or benefit to the employee which is alleged to be due to the employee, though there is no 'limitation', the doctrine of delay and laches will apply and applicants who are not diligent will be refused relief." **(Emphasis Supplied)***

63. In our opinion the reasoning is sound and we adopt the same. Thus, the answer to the two questions we have framed in paragraph 61 above are answered:-

(i) Where the Service Rules do not provide for an appeal/representation in respect of an adverse order/grievance, the cause of action would arise on date of passing of adverse order or occurrence of the grievance, as the case may be. Filing of an appeal/representation not contemplated under Service Rules would neither furnish nor postpone the cause of action.

(ii) Where the Service Rules do not provide for an appeal/representation in respect of an adverse order/grievance, the limitation period would be one year from the passing of the adverse order or occurrence of grievance, as the case may be.

64. In the instant case, the impugned seniority list of IPS officers of 1988 batch was issued on October 25, 1994. Admittedly, the Service Rules do not provide for any representation/appeal to be filed against the seniority list. Thus, the cause of action for approaching the Tribunal for redressal of the grievance(s) arising out of the issuance of impugned seniority list arose on the date when the seniority list was issued i.e. October 25, 1994 and the limitation period was one year from said date. Sh.Rajiv Tandon may have submitted a representation on January 19, 1995, but he could not have awaited for eleven years to have approached the Tribunal merely because the Central Government paid no heed to his representation. It is not his case that he sent any reminder to the Central Government. Having chosen to sleep like Rip-van-winkle, he cannot put the clock back. As he slept, his children got married and had children. Thus, like Rip-van-winkle, Sh.Rajiv Tandon has to live with the adolescence of his grand children and cannot seek the company of his adolescent children.

65. No relief can be granted to a person who chooses to remain silent for long before making a claim. Dealing with a matter where seniority dispute was raised after more than a decade, in the decision reported as 1998 (2) SCC 523 *B.S. Bajwa vs. State of Punjab* the Supreme held as follows:

> *"The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches*

*because the grievance was made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter se had crystallized which ought not to have been reopened after the lapse of such a long period. At every stage others were promoted before B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition." **(Emphasis Supplied)***

66. Pertaining to the twelve other officers, they claim that they came to know about the existence of the impugned seniority list dated October 25, 1994 only in the year 2005 when the process for empanelment of IPS officers of 1988 batch for the post of DIG commenced.

67. We refer back to para 45 above in which we have made a tabulated chart recording therein the dates on which the State Governments of Rajasthan, Madhya Pradesh, Punjab, Bihar, Arunachal Pradesh and Mizoram and the administrator of the Union Territory of Chandigarh informed the 1988 batch IPS Officers that the Central Government had finalized the seniority list on October 25, 1994. The issuance of the letters by the State Governments is not in dispute. The argument that there is no proof that said letters were received by the officers who were applicants before the Tribunal, overlooks the fact that if an issue is raised after eleven years, proof of a communication being delivered would be difficult to find. We note that the statutory period to maintain dispatch and receipt registers is seven years and unless required to be kept if there

is a court case pending, said record is weeded out. We use the principle of: official acts are presumed to have been performed in the usual course of business and to disprove the presumption, the contrary must be proved. Thus, even as regards the other applicants before the Tribunal we hold that the claims by them which were filed by them after nearly eleven years were barred by limitation.

68. Since the Tribunal has adjudicated upon the merits, we would be failing in our duty not to reflect upon the issue on merits, because may be the court above us may disagree with the view taken by us on merits, and in said circumstance a remand shall follow requiring the issue on merits to be decided by this Court.

69. Pertaining to appointment to the Indian Police Service by direct recruitment, the undisputed position is that as per merit position the candidates empanelled undergo probation for two years and confirmed if probation is successfully cleared.

70. Prior to the year 1986, the year of allotment of a directly recruited IPS officer was the year following the year in which the competitive examination was held. Meaning thereby, if an officer was allocated IPS on the basis of his performance at the CSE-1987, his year of allotment was 1988 as per Rule 3(3)(a) of the IPS (Regulation of Seniority) Rules, 1954. Rule 10(1) of the IPS (Probation) Rules, 1954, as originally enacted, prescribed that the Central Government shall prepare a list of probationers who have been assigned same year of allotment. The probationers were required to be arranged in said list in order of merit which was to be determined in accordance with the aggregate marks obtained by each probationer at : (i) competitive examination; (ii) in respect of his record in the Lal Bahadur Shastri National Academy of

Administration and the Sardar Vallabhbhai Patel National Police Academy; and (iii) final examination.

71. Then came the crucial date: December 13, 1986, when the second proviso was inserted to Rule 4 of the CSE Rules, 1986. The newly inserted second proviso put undernoted three restrictions on the candidates who had emerged successful at a CSE but intended to appear in the next CSE to better their career prospects and wanted permission to abstain from probationary training in order to enable them to appear at the next CSE:-

i) Where a successful candidate had been approved for appointment to the I.P.S., he would be eligible to compete only for I.A.S., I.F.S. and Central Services, Group 'A' at the next CSE and the one who had been approved for appointment in one of the Central Services, Group 'A' was eligible to compete only for IAS, IFS and IPS at the next CSE.

(ii) A successful candidate allotted a service on the basis of the next CSE could join either that service or the service to which he was allocated on the basis of the previous CSE.

(iii) A successful candidate who accepts allocation to a service and is appointed to the service shall not be eligible to appear again at the CSE unless the candidate first resigns from service.

72. In view of the second proviso to Rule 4 inserted on December 13, 1986, the Central Government introduced the concept of '*exempted probationers'* in the IPS (Probation) Rules, 1954 i.e. the probationers who has been allocated to a Service on the basis of their performance at a CSE but intended to appear in the next CSE and sought exemption from probationary training.

73. Around that time, two very significant developments took place, in relation to the exempted probationers.

74. The first development was the amendment of Rule 10(1) of the IPS (Probation) Rules, 1954 on March 31, 1987. As per the amended Rule 10(1), the Central Government was required to prepare a list in two parts of all probationers who were appointed to the Service on the results of the same competitive examination. The first part was to consist of the probationers other than the exempted probationers and the second part was to consist of the exempted probationers who were selected at the same competitive examination. *Most significantly, the exempted probationers were required to be placed en-bloc below the other probationers in the list.*

75. The second development was the repeal of the IPS (Regulation of Seniority) Rules, 1954 by the IPS (Regulations of Seniority) Rules, 1988. As per the newly framed Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988, the year of allotment of directly recruited IPS officer except exempted probationers and other probationers who could not join probationary training at the required time due to some disability was to be the year following the year in which the competitive examination was held. In case of exempted probationers and other probationers who could not join probationary training at the required time, the year of allotment was to be the year when the candidate joined training with the batch of the next CSE. Meaning thereby, if an officer was allocated IPS on the basis of his performance in the CSE-1987 but did not join training with his batch mates i.e. the officers who were allocated to IPS on basis of their performance in the CSE-1987 and joined training with the subsequent batch of officers, having their year of allotment as 1989, his year of allotment would be 1989.

76. Needless to state, both, amended Rule 10(1) of the IPS (Probation) Rules, 1954 and Rule 3(3)(i) of the IPS (Regulations of Seniority) Rules, 1988 envisaged loss/depression of seniority of the exempted probationers.

77. Soon thereafter, letters were issued to the candidates who had emerged successful at the CSE-1987, apprising them of the service allocated to them and the three restrictions envisaged by the second proviso to Rule 4 of the CSE Rules, 1987 and the condition of loss of seniority of probationers prescribed in Rule 10(1) of the IPS (Probation) Rules, 1954 and Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988. Significantly, by that time, the successful candidates who intended to appear at next CSE had already appeared at the preliminary examination held in respect of next CSE i.e. CSE-1988.

78. 62 successful candidates, including Alok Kumar, who were allocated Central Group 'A' service filed applications before the Tribunal challenging the validity of the second proviso to Rule 4 of the CSE Rules, 1986 and the aforesaid letters issued to them. The aforesaid 62 applications were disposed of by the Tribunal by a common judgment dated August 20, 1990. The matter of Alok Kumar was treated as lead matter by the Tribunal. Vide judgment dated August 20, 1990 the Tribunal upheld the validity of second proviso to Rule 4 of the CSE Rules, 1986, but commented upon the validity of the letters issued to the successful candidates (letters dated August 30, 1988 and January 2, 1989 in case of Alok Kumar).

79. It was held by the Tribunal that the conditions relating to loss of seniority of exempted probationers contained in the letters is illegal for the reasons: -

(i) the condition relating to loss of seniority of exempted probationers contained in said letters travels beyond the scope of Rule 4 of the CSE,

1986 which forms the basis to issue the letters for the reason the said condition does not find mention in the second proviso;

(ii) the Government was not empowered to put the condition relating to loss of seniority of the exempted probationers in the letters when such condition was absent in the second proviso; and

(iii) the condition relating to loss of seniority of exempted probationers was not brought to the notice of the successful candidates before they had appeared in the preliminary examination held in respect of next CSE i.e. CSE-1988.

80. Significantly, Rule 10(1) of the IPS (Probation) Rules, 1954 and Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988, which envisaged depression/loss of seniority of exempted probationers in case of IPS was not brought to the notice of the Tribunal in *Alok Kumar*'s case (supra). This may be because, Alok Kumar, whose case was treated as lead matter by the Tribunal had been allocated Central Group 'A' Service on the basis of his performance in CSE-1987 and thus the provisions relating to the Indian Police Service (IPS) had no application in his case. But these provisions were relevant for other cases decided by a common order i.e. of those who had made it to IPS but sought exemption to better their chance.

81. The judgment of the Tribunal in *Alok Kumar*'s case (supra), insofar it upheld the validity of second proviso to Rule 4 of the CSE Rules, 1986 was challenged by the candidates in the Supreme Court in *Mohan Kumar Singhania*'s case (supra). Pertinently, the Government did not challenge the judgment of the Tribunal in *Alok Kumar*'s case (supra) insofar it had quashed the portion of the letters relating to loss of seniority of exempted probationers issued to the candidates.

82. In *Mohan Kumar*'s case (supra), the Supreme Court also upheld the validity of second proviso to Rule 4 of the CSE Rules, 1986. On the issue of loss of seniority of exempted probationers, it was held by the Supreme Court that '*the seniority of the left out candidates would be maintained in case they have joined the service to which they have been allocated on the result of the previous CSE and* ***such candidates will not be subjected to suffer loss of seniority as held by the CAT, Delhi in its judgment****'*. Yet again, Rule 10(1) of the IPS (Probation) Rules, 1954 and Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 which envisaged depression/loss of seniority of exempted probationers in case of IPS was not brought to the notice of the Tribunal in *Mohan Kumar*'s case (supra).

83. It is apparent that the two decisions proceeded to discuss whether the seniority could be depressed in light of the second proviso to Rule 4 of the Central Services Examination Rules, 1986 and not with reference to Rule 10(1) of the IPS (Probation) Rules, 1954 as amended on March 31, 1987 nor with reference to Rule 3(3)(a) of the IPS (Regulation of Seniority) Rules, 1988 which were promulgated on July 22, 1988.

84. Now, started the problem.

85. On January 20, 1994 the Central Government issued a notification retrospectively amending Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988, with effect from July 27, 1988. The prescription contained in the original Rule 3(3)(i) regarding loss of seniority of exempted probationers was removed in amended Rule 3(3)(i). Thus, after the amendment of Rule 3(3)(i) the seniority of exempted probationers was no longer required to be depressed.

86. The basis for the said amendment was the belief that dictum of law laid down by the Tribunal in *Alok Kumar*'s case (supra) was that seniority of exempted probationers cannot be depressed and that said dictum was

approved by the Supreme Court in *Mohan Kumar*'s case (supra). The same is evidenced from the contents of the memorandum which we have noted in paragraph 38 above, and we highlight the following passage: '*2. The depression of seniority (Assignment of YOA) in the case of first category of probationers i.e., exempted probationers, was questioned while challenging the validity of Rule 4 of the Civil Services Examination. While upholding validity of Rule 4 of the Civil Services Examination Rules, the CAT, Principal Bench, held in Alok Kumar v. Union of India and others, that in case of exempted probationers their seniority cannot be depressed. This has been reiterated by the Supreme Court in judgment dated 13th September, 1991 in Mohan Kumar Singhania v. Union of India and others. In order to implement the judgment of the CAT, Principal Bench as also the Supreme Court of India, the Indian Police Service (Regulation of Seniority) Rules, 1988, would require to be amended.*'

87. The aforesaid belief, that the dictum of law laid down by the Tribunal in *Alok Kumar*'s case (supra) was that the seniority of exempted probationers cannot be depressed overlooked the point that reasoning thereof of the Tribunal was on account of the fact that it was the second proviso to Rule 4 of Central Services Examination Rules, 1986 which was relied upon as the source of the power and nobody thought it fit to point out to the Tribunal Rule 10(1) of the IPS (Probation) Rules, 1954 as amended and Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988. The dictum of law laid down by the Tribunal was that the Central Government could not have depressed the seniority of exempted probationers by prescribing said condition in the letters issued to the candidates in view of the fact that said condition did not find mention in the second proviso to Rule 4 of the CSE Rules, 1986 which formed the

basis (as told to the Tribunal) of said letters and that the candidates had already sat at next CSE before said letters were issued.

88. We do not know as to what would have been the view taken if Rule 10(1) of the IPS (Probation) Rules, 1954 as amended and Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988, prescribing depression of seniority of exempted probationers was brought to the notice of the Tribunal and thereafter to the notice of the Supreme Court.

89. Pertaining to the decision of the Tribunal in *Ashok Kumar*'s case (supra), where it was held that it became necessary for the Government to have retrospectively amended Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 which prescribes depression/loss of seniority of the exempted probationers in view of the categorical dictum of law laid down by the Tribunal in its decision in *Alok Kumar*'s case (supra): that the seniority of exempted probationers cannot be depressed, more particularly when said dictum was approved by the Supreme Court in *Mohan Kumar*'s case (supra), again overlooked Rule 10 (1) of the IPS (Probation) Rules, 1954 and Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988, prescribing depression of seniority of exempted probationers for the reason once again the two rules were not brought to the notice of the Tribunal.

90. We highlight that in *Alok Kumar*'s case the condition pertaining to depression of the seniority in the letters issued was held to be illegal on account of lack of source of power, in that, the source of power shown was the second proviso to Rule 4 of the CSE Rules, 1986. The source of the power as per Rule 10(1) of the IPS (Probation) Rules, 1954 as amended and Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 was not shown.

91. As regards the Full Bench decision of the Tribunal which is challenged in the present case, we find that once again neither Rule 10(1) of the IPS (Probation) Rules, 1954 nor 3(3)(i) of IPS (Regulation of Seniority) Rules, 1988 has been considered. The only argument dealt with was with reference to Section 3(1A) of the All India Services Act, 1951.

92. The situation has become quixotic.

93. The condition in the letters dated August 30, 1988 and January 02, 1989 pertaining to depression of seniority were discussed by the Tribunal in *Alok Kumar*'s case with reference to the second proviso to Rule 4 of the CSE Rules, 1986 and not with reference to Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 or Rule 10(1) of the IPS (Probation) Rules, 1954 as amended on April 18, 1987. The reasoning of the Tribunal that the second proviso to Rule 4 of the CSE Rules, 1986 did not authorize the Government to depress the seniority was treated by the Central Government as if Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 was struck down. It was for said reason that the said Rule was amended with retrospective effect i.e. July 27, 1988, the date on which the IPS (Regulation of Seniority) Rules, 1988 were promulgated. Nobody argued and hence nobody decided: neither the Tribunal nor the Supreme Court, whether in law seniority could be depressed and whether Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 was valid as also whether Rule 10(1) of the IPS (Probation) Rules, 1954 as amended in the year 1987 was valid. This issue has not even been considered by the Full Bench of the Tribunal, and much less has been focused upon by the parties. The pleadings are completely silent.

94. A decision of a Court if given per incuriam i.e. without the Court's attention being drawn to the relevant statute has obviously to be ignored.

95. Thus, it would be useless for us to discuss whether the amendment in question fills a void or is it retrospective as conventionally understood. To fill the void: on account of it being required to be treated that the Rule pertaining to loss of seniority was struck down, (which as a matter of fact was not even discussed when *Alok Kumar*'s case was decided).

96. Regretfully, in the absence of learned counsel for the parties bringing to the notice of the Tribunal when *Alok Kumar*'s case was argued and secondly in the absence of it being brought to the notice of the Supreme Court when *Mohan Kumar*'s case was decided that the source of power to depress of seniority was to be found in Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 and Rule 10(1) of the IPS (Probation) Rules, 1954 as amended, and the issue of depression of seniority being decided with reference to the second proviso to Rule 4 of the CSE Rules, 1986; treating the decision as if Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988 was held to be bad in law, the void being filled up, the amendment was issued, we terminate our discussion by declaring that the decisions in the past were per incuriam and leaving the matter at that for the reason we have already held that the Original Applications filed were barred by limitation and it would be useless to remand the matter to the Tribunal with a direction that the parties should be permitted to amend their pleadings and then decide the matter on merits.

96. The writ petitions are allowed. Impugned decision dated March 18, 2010 challenged in W.P.(C) No.3004/2010, W.P.(C) No.5976/2010, W.P.(C) No.6040/2010, W.P.(C) No.6041/2010, W.P.(C) No.6042/2010, W.P.(C) No.6043/2010, W.P.(C) No.6045/2010 and W.P.(C)

No.6048/2010 are set aside. Order dated March 07, 2012 challenged in W.P.(C) No.6479/2012, W.P.(C) No.6651/2012, W.P.(C) No.6652/2012, W.P.(C) No.6653/2012, W.P.(C) No.6654/2012, W.P.(C) No.6655/2012 and W.P.(C) No.6656/2012 is also set aside. All writ petitions are allowed. OA Nos.412/2005, 2889/2005, 2890/2005, 2891/2005, 2892/2005, 2893/2005 and 1525/2006 are dismissed.

97. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

OCTOBER 22, 2013
mamta