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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 18.12.2014

% W.P.(C) 4396/2008 and C.M. Nos. 461/2014 & 20687-88/2014

BHUWAN RAM & ANR.

..... Petitioners

Through:

Dr. Monika Gusain, Ms. Geeta Singh & Mr.
Hari Om Yaduvanshi, Advocates.

versus

UOI & ORS.

..... Respondents

Through:

Mr. R.V. Sinha, Advocate for respondents
No.1 to 3.

Mr. V.S.R. Krishna, Advocate for
respondents Nos.7 & 36.

% W.P.(C) 6345/2002 and C.M. No.10836/2002

C.R.C.S. ASSOCIATION & ORS.

..... Petitioners

Through:

Mr. K.C.Mittal & Ms. Ruchika Mittal,
Advocates.

versus

UOI & ORS.

..... Respondents

Through:

Mr. R.V. Sinha, Advocate for respondents
No.1 to 4.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The petitioners in W.P.(C.) No.4396/2008 challenge an order of the Central Administrative Tribunal (CAT/ Tribunal) dated 17.07.2007 in O.A. No.1694/2006 (they shall hereinafter be referred to as “the direct recruits”). In the other proceedings, i.e., W.P.(C.) No. 6345/2002, the writ petitioners challenge the correctness of an order of the CAT dated 20.09.2002 in O.A. No.354/2002 (for the sake of convenience, these petitioners – since they represent interests that are contrary to that of the direct recruits, shall hereafter be referred to as “the promotees”).

2. The controversy involved is with respect to the recruitment process which commenced in 1996-97 pursuant to the amendment, which was effective upon the Central Revenue Chemical Services (CRCS), an organisation which is part of the Central Revenue Control Laboratory (CRCL).

3. The CRCS comprises of posts in the cadre of Assistant Chemical Examiner (ACE) and Chemical Examiner (CE). Prior to 1993, the cadre of ACE was to be filled to the extent of 25% of vacancies by direct recruitment and the balance 75% by promotion from amongst eligible existing employees in the department. This ratio was changed after the amendment in 1993 (to 33⅓ % to be filled by direct recruits and 66⅔ % to be filled by promotes). After the amendment, the exercise of determining direct recruit vacancies was apparently conducted and for the vacancy year 1996, a requisition was sent to the Union Public Service Commission (UPSC) in respect of the posts of ACE and CE. These positions were advertised in December 1996 and subsequently, again on 14.02.1998. The direct recruit candidates had applied for these pursuant to this advertisement and participated in the recruitment process held in that regard.

4. In the meanwhile, pending the finalization of the recruitment process, some existing employees approached the CAT by filing O.A. No.2470/1998 (hereafter “the first proceeding”) claiming that the amendment to the recruitment rules were not justified and seeking the quashing of the notification advertising the vacancies in the cadre of direct recruit vacancies. During the pendency of these proceedings, the CAT had directed *status quo*. Ultimately, O.A. No.2470/1998 was dismissed on 17.05.1999. The promotees choose to prefer a writ petition being W.P.(C.) No. 3591/1999, which was dismissed on 18.01.2002. On account of pendency of litigation, the direct recruitments which had been, in the meantime, finalized by the UPSC could not be proceeded with. On 15.01.2001, 59 existing employees were promoted as ACEs.

5. Immediately after dismissal of the writ petition of the promotees, the appointment of the present direct recruits was sought to be challenged by the promotees by filing O.A. No.354/2002 (hereafter “the second proceeding”). In this round of litigation, the

promotees challenged the efficacy of the process of direct recruitment, which had been undertaken in 1998. The second proceeding was based on an intervening event, namely, the subsequent amendment to the rules made in 2000, whereby the post of ACE was to be filled by promotion to the extent of 100%, thus abolishing the direct recruitment quota altogether. On account of this development, the applicants in the second proceeding (i.e. the promotee cadre employees, who had not yet been appointed to the posts of ACE) through their Association alleged that the changed circumstances meant that the recruitment process itself had to be scrapped.

6. During this period, (i.e during pendency of O.A. No.354/2002) an interim order, directing *status quo* was made on 26.02.2002 by CAT. Ultimately, O.A. No.354/2002 was dismissed on 20.09.2002. This order, in the second proceeding is subject matter of challenge in W.P.(C.) No. 6345/2002.

7. The CAT, while dismissing the second proceeding, held that there was no force in the promotees' contention that vacancies notified earlier (for the period 1993-2000) too were governed by the subsequent rules, which came into force on 27.08.2000. Importantly, CAT noticed that the advertisement, which notified the vacancies for the recruitment year 1996 was concerned with vacancies in the cadre of CE too, and not in the cadre of ACE only. The CAT, accordingly, reasoned as follows in the order dated 20.09.2002.

"8. In the circumstances outlined in the above paragraphs, we find no force in the argument advanced on behalf of the applicants that the Government of India has in this case also decided to enforce the aforesaid recommendations relating to modification in the RRs w.e.f. 1.1.1996. We cannot, therefore, find any fault with the respondents' action in filling up the vacancies in the various posts of CRCS by relying on the July 1993 RRs. Vacancies in the posts of CRCS arising on or after 27.8.2000 will, of course, be filled in accordance with the new/ revised RRs notified on 27.8.2000. There is no allegation that the aforesaid new/ revised RRs notified on 27.8.2000 have been applied for filling up posts arising prior to that date. In the event, persons selected as CE Gr-I in accordance with the July 1993 RRs have already been appointed and they have assumed charge of the post of CE Gr-I. As regards the candidates selected for appointment as ACE, in accordance with the same RRS of July 1993, 11

candidates have been recommended by the UPSC but their appointment in the post of ACE is presently held up on account of the interim order of stay passed by this Tribunal on 26.2.2002.”

8. After dismissal, on 20.09.2002, of the second proceeding (O.A. No.354/2002), on 03.10.2002, the direct recruits were appointed as ACEs. Subsequently, the seniority list for the cadre of ACE, in these circumstances, was published on 27.04.2005. In this list, for the first time, the position of the direct recruits was reflected *en-masse* below the promotee quota employees, who joined on 15.01.2001.

9. The direct recruit ACEs felt aggrieved by the positions assigned to them in the seniority list and approached the CAT by filing O.A. No.1694/2006. The CAT rejected the challenge on the basis that since the direct recruits were appointed after the dismissal of O.A. No.354/2002 on 03.10.2002, the terms of the Office memorandum dated 07.02.1986, prevented a claim by them for assignment of seniority on the basis of slots, or positions prior to the point of time and in the years when they were actually not in the service. After analyzing the provisions of the office memorandum dated 07.02.1986 and keeping in mind the respective dates on which the direct recruits and the promotes entered the cadre of ACEs, the CAT held as follows, in O.A. No.1694/2006:

“23. Admittedly, there are no rules governing the fixation of inter se seniority of the applicants and promotees in the cadre of ACE. It is for this reason that O.M. dated 07.02.1986 has been relied upon for fixation of seniority (supra). A plain reading of the O.M. would show that its objective is not to keep the unfilled slots of direct recruits vacant and thereby give unintended benefit of retrospective seniority to the direct recruits when they were not even born in or borne on the cadre. This is also in keeping with the ratio of the judgments of the Hon'ble Supreme Court in the cases of Suraj Prakash Gupta & Ors. (supra) and Uttranchal Forest Rangers' Assn. (Direct Recruit) & Ors. (supra). It, therefore, does not advance the case of the applicants. As a matter of fact, in view of the judgments of the Hon'ble Supreme Court aforementioned, they cannot get seniority from a date when they have not even joined the service.

24. Copy of the noting from the file of the respondents, provided by the applicants as part of their rejoinder, is also of no assistance insofar as it is not the final order.

25. *Even otherwise, we find that the relief prayed for by the applicants cannot be considered or granted because the applicants have failed to implead all the promotees, who would be affected if any decision is given in the favour of the applicants. The four private respondents are at serial nos. 11, 31, 34 and 55 of the seniority list of ACE as on 15.03.2005 (supra). They are not even representative of all the batches of promotees and have been picked up at random.*

26. *Taking the totality of facts and circumstances of the case into consideration, we are of the opinion that the applicants have failed to make out a credible case in support of their claim for fixation of their seniority from a date prior to the date of their joining the service of the respondents."*

Contentions of direct recruits- in W.P.(C.) No.4396/2008

10. The direct recruits argue that the CAT's reasoning is flawed and unsustainable. It is urged on the basis of the pleadings that the vacancy position was known to the department in 1996, when the determination took place and a requisition was sent in September 1996, to the UPSC. Learned counsel for the direct recruits relied upon replies to the queries received under the RTI to say that as on the date when the requisitions were sent in 1996, there were 12 direct recruit vacancies and further 6 vacancies arose in 1997. The advertisement of 14.02.1998 itself refers to the reference received by the UPSC in 1996 and the total number of vacancies notified – advertised though on 14.02.1998 – as 11, including those based on reservation. It is argued that this is clear from the pleadings itself. Learned counsel for the direct recruits (petitioners in W.P.(C.) No. 4396/2008), refers to the pleadings of the Central Government in this regard, which support the contention with respect to the advertisement having been issued in 1996 itself and subsequently on 14.02.1998. Learned counsel submits that since the recruitment could never proceed on account of successive litigation and subsisting interim orders, the direct recruits cannot be prejudiced and put down in the seniority on a wrong interpretation of O.M. dated 07.02.1986. It is argued that considering the circumstances that the determination of vacancies took place in 1996, requisitions sent that year and even an advertisement was issued initially in December 1996 and subsequently again on 14.02.1998, the direct recruits cannot be visited with prejudice.

11. Learned counsel highlighted the fact that the first round of litigation itself had stalled the recruitment process for appointment of direct recruitment by filing of O.A. No.2470/1998. Even though it was dismissed on 17.05.1999, the appointment was not proceeded with on account of pendency of the writ petition filed by the promotees, who had approached this Court. That writ petition was dismissed on 18.01.2002. In the meanwhile, on 15.01.2001 the department promoted 59 persons as ACEs. Counsel argued that keeping in mind even the letter and express terms of O.M. No.07.02.1986 read with the subsequent office memorandum dated 03.07.1986, the present petitioners are clearly entitled to seniority on the basis of the slots available from the recruitment year 1996 since the vacancies were notified the same year in September 1996 to the UPSC.

12. Learned counsel for the UOI supported the submission of the direct recruits and contended that the subsequent ruling of the Supreme Court in *Union of India Vs. N.R. Parmar*, (2012) 13 SCC 340, governs the issue as to the combined effect of O.M. dated 07.02.1986 and O.M. dated 03.07.1986. It was submitted that since the department had determined the available vacancies as in 1996 and sent the requisition in September 1996, the direct recruits, regardless of their subsequent appointment are entitled to be given the slots available to them based upon the year of recruitment rather than from the date when they actually entered into service. Learned counsel also relied upon a subsequent judgment of the Supreme Court reported as *Asis Kumar Samanta Vs. State of West Bengal*, 2014 (10) SCALE 625.

Contentions of the promotees in W.P.(C.) No.4396/2008

13. Mr. V.S.R. Krishna, who appears for some of the contesting respondents in W.P.(C.) No.4396/2008, urged that this Court should not interfere with the findings of the CAT in O.A. No.1694/2006. Learned counsel emphasized that the terms of O.M. dated 07.02.1986 are specific in that where the recruitment rules do not expressly provide for the method of determining seniority, the general rota principle is inapplicable. Likewise, wherever both channels of recruitment, i.e. direct recruitment and promotion

are not resorted to on an annual basis, or that the regularity within the framework of the recruitment rules, the rota principle cannot apply. It was emphasized that the rota principle for the purpose of seniority, on a plain reading of O.M. dated 07.02.1986 and 03.07.1986 is to be applied only to the extent of availability of the concerned individuals, i.e. direct recruits or promotes, in their stream or channel. Thereafter, the available employees or officers from one source – which might be promotees or direct recruits, who should be given seniority and the excess direct recruits of the carried forward periods are to be bunched together, later.

14. Learned counsel emphasized that the Court is bound to attach weight to the recruitment year and as to whether requisitions were sent, in fact, to the UPSC for the purpose of resorting to direct recruitment. This he submitted assumes significance because if such an exercise is not done, and a rota principle is applied blindly across the board, promotees who are ultimately occupying the posts on the basis of their eligibility according to prescribed criteria, would be made to yield their seniority to later direct recruit, who might, in many instances, might not be qualified on the date recruitments are notified or requisitions sent.

15. In support of his argument, he relied upon a judgment of the Supreme Court in *State of Haryana & Others Vs. Balwant Singh & Others*, (1996) 9 SCC 209, where the Court after considering the circumstances where the recruitment process for the entry of the direct recruits was challenged and a status quo operated for more than eleven years ultimately resulting in the delayed entry of the direct recruits in 1985, held that the later date, i.e. in 1985 when the direct recruits actually entered the cadre would be determinative of their seniority in the cadre and not the date when the recruitment process commenced. The observations of the Supreme Court in that judgment are as follows:

“5. The question, therefore, is: whether the respondents are entitled to seniority from 7th June, 1972 as per the gradation list prepared by the Selection Board? Normally, the seniority of the candidates who are selected by the direct recruitment would be determined with reference to the merit list prepared by the Selection Board. But, unfortunately, in this case, they could not join the service due to the pendency of the writ

petition. The respondents themselves have to be blamed for the laches since they did not take any action, namely, impleading themselves in the pending writ petition nor filed any independent writ petition claiming for their appointment. After the dismissal of the writ petition, letters of appointment came to be issued in 1985 and they joined the service. It is settled law that the seniority of the candidates has to be reckoned from the date on which they joined the service and started discharging the duties of the post to which they came to be appointed. In that view, since the respondents joined the service in 1985-86, seniority cannot be given with retrospective effect from the date of the selection to the candidates appointed from the list of merit prepared by the Selection Board.”

16. Learned counsel next submitted that the interpretation in *Parmar* (supra) to the effect of the combined interpretation of the O.M. dated 07.02.1986 and 03.07.1986 has to be understood in the light of the facts which the Court had to decide. It was submitted that in that case vacancies for 1993-94 were identified and the written test conducted by the Staff Selection Commission (SSC) in December 1993. Thus, in the context of the fact situation before it, the Supreme Court concluded as follows:

“32. One finds attracted to the observations recorded in Jagdish Ch. Patnaik’s case (supra) wherein it was observed, “when the language used in the statute is unambiguous and on a plain grammatical meaning being given to the words in the statute, the end result is neither arbitrary, nor irrational nor contrary to the object of the statute, then it is the duty of the court to give effect to the words used in the statute because the words declare the intention of the law making authority best”. We are of the view that the aforesaid observations are fully applicable to the present controversy. We may add that the various ONs and letters issued by the DOPT (referred to above) do not leave room for any ambiguity.

33. Having interpreted the effect of the OM’s dated 7.2.1986 and 3.7.1986 (in paragraphs 20 and 21 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by the SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of. In all these cases the advertised vacancies were filled up in the original/first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried forward vacancies, or vacancies which came to be filled up by a “later” examination/selection process. The facts only reveal, that the examination and the selection process of direct recruits could not be completed within

the recruitment year itself. For this, the modification/amendment in the manner of determining the inter-se seniority between the direct recruits and promotees, carried out through the OM dated 7.2.1986, and the compilation of the instructions pertaining to seniority in the OM dated 3.7.1986, leave no room for any doubt, that the “rotation of quotas” principle, would be fully applicable to the direct recruits in the present controversy. The direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year.”

17. Learned counsel submitted that, in the present case, the facts are different in that even though the Union has contended that vacancies were identified in 1996 and requisition sent in 1996, the fact remains that recruitment proceeded after the advertisement issued on 14.02.1998. This altered the situation because during the intervening period, i.e. between December 1996 and February 1998, those who were ineligible to compete in the recruitment process for the vacancies identified in 1996 and advertised in December 1996 became eligible and qualified to appear in the test. Consequently, the promotees who acquired their right to be considered for promotion in accordance with their turn, for the vacancies existing in their slots, could not lose out and be made to suffer. It was emphasized that even in the year 2001, when the respondent promotees were, in fact, given the promotion to the post of ACE, it was in accordance with their turn and after their having fulfilled eligibility conditions such as qualification and the requisite experience in the feeder cadre and after their promotions having been duly approved by the concerned competent authority, in accordance with rules.

18. Learned counsel lastly submitted that the subsequent O.M. of 04.04.2014 clarifies that the past cases would not be re-opened and that the clarifications and the effect of the law in *Parmar* (supra) would not be made effective only in those cases where the issue is live.

Contentions in W.P.(C.) No.6345/2002

19. Mr. K.C. Mittal appearing for the petitioners (promotees) in W.P.(C.) No.6345/2002 urged that this Court should set aside the order in O.A. No.354/2002. It was submitted that the recommendations of the 6th CPC in paragraph 66.163, clearly

stated that direct recruitment quota in the CRCS should be abolished. It was urged that the administrative delay in giving effect to this proposal, which was otherwise given effect from 01.01.1996 should not act to the prejudice of the promotees, who would have been entitled to all the vacancies. Learned counsel urged that the exigency or that the Government of India acted upon the Pay Commission's report by amending the rules to give effect to it and notifying it as effective from 27.08.2000 should not blind the Court to the reality that this was founded on the policy accepted as on 01.01.1996. It was argued that, in these circumstances, the findings of the CAT, that since the recruitment rules were amended subsequently and brought into force in 2000, no fault can be found in continuing with the recruitment process, which had commenced earlier in 1998, cannot be sustained.

20. Learned counsel for the direct recruits, in reply, in W.P.(C.) No. 6345/2002 submitted that the CAT had noticed that the 5th Central Pay Commission recommendations were accepted by the Government finally on 30.09.1997, when the resolution was issued by Department of Expenditure. It was also submitted that the CAT went into the matter rather elaborately by calling for the departmental files and that after deliberations and consultations, which took quite some time, it was decided to scrap the direct recruitment quota by an amendment. The amendment was notified on 27.08.2000. Counsel argued that in the absence of any clear indication – express or intended, by the rule making authority that the rules were to be retrospective, the ordinary rule that they are to be construed to be prospective should apply.

Analysis & Conclusions

21. The previous discussion shows that the CRCS comprises of posts in the cadre of Assistant Chemical Examiner (ACE) and Chemical Examiner (CE)- the latter being higher, and promotional in grade to the former. Before 1993, the cadre of ACE was to be filled to the extent of 25% of vacancies by direct recruitment and the balance 75% by promotion from amongst eligible existing employees in the department. This *ratio* was changed after the amendment in 1993 (to 33⅓ % to be filled by direct recruits and 66⅔ %

to be filled by promotes). The determination of existing vacancies was finalized sometime in 1996 and a requisition was sent in September 1996, to the UPSC. The replies to the queries received under the RTI Act show that as on the date when the requisitions were sent in 1996, there were 12 direct recruit vacancies and further 6 vacancies arose in 1997. The advertisement dated 14.02.1998 mentions about the reference received by the UPSC in 1996 and the total number of vacancies notified – advertised on 14.02.1998 to be 11. These also include reserved vacancies.

22. Here, it would be worth noting that in *N.R. Parmar* (supra), the Supreme Court dealt with a similar issue, i.e *inter se seniority* of promotees and direct recruits in a cadre. The context was a claim of direct recruits who were waiting for appointment and when intervening promotions took place. The Court noticed the effect of existing Office Memoranda, and observed as follows:

"The O.M. dated 7.2.1986, was followed by another Office Memorandum issued by the Government of India, Department of Personnel and Training, dated 3.7.1986 (hereinafter referred to as, "the O.M. dated 3.7.1986"). The purpose of the instant O.M., as the subject thereof suggests, was to consolidate existing governmental orders on the subject of seniority. Paragraphs 2.4.1 to 2.4.4 of the O.M. dated 3.7.1986 dealt with the issue of inter se seniority between the direct recruits and promotees. The same are accordingly being reproduced hereunder:-

"2.4.1 The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

2.4.2 If adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees.

In other words, to the extent direct recruits are not available the promotees will be bunched together at the bottom of the seniority list below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of

vacancies for direct recruits and promotees as determined according to the quota for that year, the additional, direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be), in the seniority list based on the rotation of vacancies for that year. The same principle holds good for determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent year.

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

<i>1986</i>	<i>1987</i>
<i>1. P1</i>	<i>9. P1</i>
<i>2. D1</i>	<i>10. D1</i>
<i>3. P2</i>	<i>11. P2</i>
<i>4. D2</i>	<i>12. D2</i>
<i>5. P3</i>	<i>13. P3</i>
<i>6. D3</i>	<i>14. D3</i>
<i>7. P4</i>	<i>15. P4</i>
<i>8. P5</i>	<i>16. D4</i>
	<i>17. P5</i>
	<i>18. D5</i>
	<i>19. D6</i>
	<i>20. D7</i>

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

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

(emphasis is ours)

The following conclusions have been drawn by us from the O.M. dated 3.7.1986:-

(a) If adequate number of direct recruits (or promotees) do not become available in any particular year, "rotation of quotas" for the purpose of determining seniority,

would stop after the available direct recruits and promotees are assigned their slots for the concerned recruitment year.

(b) To the extent direct recruits were not available for the concerned recruitment year, the promotees would be bunched together at the bottom of the seniority list, below the last position upto which it was possible to determine seniority, on the basis of rotation of quotas. And vice versa.

(c) The unfilled direct recruitment quota vacancies for a recruitment year, would be carried forward to the corresponding direct recruitment vacancies of the next year (and to subsequent years, where necessary). And vice versa. In this behalf, it is necessary to understand two distinct phrases used in the OM dated 3.7.1986. Firstly, the phrase "in that year" which connotes the recruitment year for which specific vacancies are earmarked. And secondly, the phrase "in the subsequent year" which connotes carried forward vacancies, filled in addition to, vacancies earmarked for a subsequent recruitment year.

(d) The additional direct recruits selected, against the carried forward vacancies of the previous year, would be placed en-bloc below the last promotee. And vice versa.

It is, therefore, apparent, that the position expressed in the O.Ms. dated 7.2.1986 and 3.7.1986, on the subject of inter se seniority between direct recruits and promotees, was absolutely identical. This is indeed how it was intended, because the OM dated 3.7.1986 was only meant to "consolidate" existing governmental instructions, on the subject of seniority...

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25. Reference necessarily needs to be made to yet another office memorandum issued by the Government of India, Department of Personnel and Training, dated 3.3.2008 (hereafter referred to as, "the OM dated 3.3.2008". In view of the emphatic reliance on the OM dated 3.3.2008, during the course of hearing, the same is reproduced hereunder, in its entirety:

"New Delhi, dated the 3rd March, 2008

OFFICE MEMORANDUM

Subject: Consolidated instructions on seniority contained in DOP&T
O.M. No.22011/7/1986-Estt.(D) dated 3.7.1986
Clarification regarding

The undersigned is directed to refer to this Department's consolidated instructions contained in O.M. No.22011/7/1986-Estt.(D) dated 3.7.1986 laying down the principles on determination of seniority of persons appointed to services/posts under the Central Government.

2. Para 2.4.1 and 2.4.2 of the O.M. dated 3.7.1986 contains the following provisions:

2.4.1 The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees, which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

2.4.2 If adequate number of direct recruits does not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of available direct recruits and the promotees.

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

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

The following conclusions, in our view, can be drawn from the OM dated 3.3.2008:

(a) The OM dated 3.3.2008 is in the nature of a "clarification", to the earlier consolidated instructions on seniority, contained in the OM dated 3.7.1986 (referred to and analysed, in paragraph 21 above).

(b) The term "available" used in para 2.4.2 in the OM dated 3.7.1986 has been "clarified" to mean, both in case of direct recruits as well as promotees, for the purpose of fixation of seniority, would be the actual year of appointment "after the declaration of the result/selection", i.e., after the conclusion of the selection process,

and after the "completion of the pre-appointment formalities" (medical fitness, police verification, etc.).

(c) As per the OM dated 3.7.1986, when appointments are made against unfilled vacancies in subsequent year(s), the persons appointed would "not" get seniority with reference to the year in which the vacancy arose, or the year in which the recruitment process was initiated, or the year in which the selection process was conducted.

(d) As per the OM dated 3.3.2008, when appointments are made against unfilled vacancies in subsequent year(s), the persons appointed would get seniority of the year in which they are appointed "on substantive basis.

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33. Having interpreted the effect of the OMs dated 7.2.1986 and 3.7.1986 (in paragraphs 20 and 21 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by the SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of. In all these cases the advertised vacancies were filled up in the original/first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried forward vacancies, or vacancies which came to be filled up by a "later" examination/selection process. The facts only reveal, that the examination and the selection process of direct recruits could not be completed within the recruitment year itself. For this, the modification/amendment in the manner of determining the inter-se seniority between the direct recruits and promotees, carried out through the OM dated 7.2.1986, and the compilation of the instructions pertaining to seniority in the OM dated 3.7.1986, leave no room for any doubt, that the "rotation of quotas" principle, would be fully applicable to the direct recruits in the present controversy. The direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year."

(emphasis supplied)

23. The facts, as recounted in an earlier part of this judgment, are that the promotees' first attempt to forestall the recruitment resulted in the direct recruitment process not going ahead; the CAT had granted interim stay. After dismissal of their application O.A. No.2470/1998 on 17.05.1999, they filed a writ petition before this Court, being WP (C.) No. 3591/1999. That was dismissed on 18.01.2002. In the meanwhile, 59 persons were promoted to under the promotee quota. The direct recruitment process, which started in 1996 (and which had been finalized, but could not

culminate in the appointment of those recruits) was stalled on account of the litigation. Later, after the litigation ended, the direct recruits were actually appointed in October, 2002. The facts therefore clearly show that though the recruitment process commenced in 1996 with notification of vacancies in September, 1996 to the UPSC and issuance of advertisement, with the actual process being undertaken in 1998, the appointments were made only 2002. Therefore the examination and the direct recruit selection process could not be completed within the recruitment year itself. The modification/amendment in the manner of determining the *inter-se seniority* between the direct recruits and promotees, in terms of OM dated 7.2.1986, and the instructions pertaining to seniority in the OM dated 3.7.1986, clarify that the "rotation of quotas" principle would apply in the circumstances of the case. The facts are as closely parallel to *N.R. Parmar's* decision, as they can be, if not completely identical. There too, the Supreme Court held that interspersing promotees and direct recruits, in accordance with the instructions, was warranted; the promotees' arguments were rejected. As far as the reliance placed on *Balwant Singh & Others* is concerned, the Court is of opinion that the said decision turns on the facts; though the court held that seniority of direct recruits has to count from the date of appointment nevertheless, it had no occasion to deal with the OM's of 1986. Besides, *Parmar* has taken note of all the existent and applicable instructions and is a later decision. The submissions of the promotees therefore, have to fail. W.P.(C) 4396/2008 therefore, has to succeed.

24. So far as W.P.(C.) No.6345/2002 is concerned the promotees argue that the order in O.A. No.354/2002 requires interference. According to them, the recommendations of the 6th CPC in paragraph 66.163, states that the direct recruitment quota in the CRCS should be abolished. They say that administrative delay in giving effect to this proposal, (ultimately otherwise given effect from 01.01.1996) much later, cannot prejudice them and that the promotees are entitled to all the vacancies since the rules were amended in 27.08.2000 should not blind the Court to the reality that this was founded on the policy accepted as on 01.01.1996. It was argued that, in these circumstances, the findings of the CAT, that since the recruitment rules were amended subsequently and brought into force

in 2000, no fault can be found in continuing with the recruitment process, which had commenced earlier in 1998, cannot be sustained.

25. The CAT considered the fact that the 5th Central Pay Commission recommendations were accepted by the Government on 30.09.1997 –borne out by the fact that a resolution was issued by Department of Expenditure. Furthermore, the CAT called for the departmental files. These revealed that there was considerable debate and consultations, preceding the decision to scrap the direct recruitment quota by an amendment which was ultimately was notified on 27.08.2000. The amendment does not reveal any indication that it was to be retrospective. In these circumstances, the CAT's logic that the quota stood abolished prospectively, after the date of coming into force of the amended rules, is sound and reasonable. The Petitioner promotees were unable to show any compelling logic or *rationale* for the Court to conclude that the intent of the rule making authority was to give effect to the amendments, from an anterior date. Furthermore, the abolition of the quota (for direct recruits) in 2000 did not result in abatement of the recruitment process, as is sought to be urged by the promotees, because there is no provision to that effect. In such circumstances, Section 6 of the General Clauses Act, 1897 operates and renders pending processes/ proceedings legal and valid.

26. For the above reasons, we find no merit in W.P.(C.) No.6345/2002. The same is rejected. W.P.(C) 4396/2008 has to succeed. The findings and reasoning given in O.A. No.1694/2006 are, accordingly, unsustainable and are set aside. The UOI is directed to calculate the seniority of the direct recruits and promotees afresh in the light of the orders of this Court and in the light of the decision in *Parmar* (supra), within ten weeks. W.P.(C.) No.4396/2008 is, accordingly, allowed. Parties shall bear their own costs.

S. RAVINDRA BHAT, J

VIPIN SANGHI, J

DECEMBER 18, 2014
B.S. Rohella