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

Decided on : 28.07.2014

+ **W.P.(C) 5973/2003 and C.M. Nos.15324/2009, 2461/2010 & 18215/2011**

TRILOCHAN SINGH

..... Petitioner

versus

UOI & ORS.

..... Respondents

+ **W.P.(C) 598/2004**

UNION OF INDIA

..... Petitioner

versus

SH. BRIJ KISHORE SINGH AND ORS.

..... Respondents

Through: Mr. Shamit Mukherji & Dr. Ashwani Bhardwaj, Advocates, for petitioner in W.P.(C) 5973/2003.

Mr. Arun Bhardwaj, Advocate for respondent/UOI in W.P.(C) 5973/2003.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

MR. JUSTICE S. RAVINDRA BHAT, J. (OPEN COURT)

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1. This common judgment disposes of two writ petitions one - preferred by promotee officers to the Delhi-Andaman & Nicobar Islands Police Service (hereafter "DANIPS")- being W.P.(C) 5973/2003 and the other, W.P.(C) 598/2004, by the Union of India. Both petitions impugn the

correctness of two orders of the Central Administrative Tribunal (CAT) in OA 1418/2002, dated 26-02-2003 and the order dated 01-04-2003, rejecting the review petition (RA 87/2003). The earlier petition was listed today. When it was taken up, parties mentioned about W.P.(C) 598/2004. With consent of parties, that matter too was directed to be listed, and was finally heard along with W.P.(C) 5973/2003.

2. The Petitioners in W.P.(C) 5973/2003 (hereafter called “the promotees”) belong to DANIPS. Appointment to that service is through two channels, spelt out in Rule 5 of the Delhi and Andaman and Nicobar Islands Police Service Recruitment Rules, 1971; it is in the ratio of 1: 1 as between promotees and direct recruits, which can, for reasons to be recorded, be varied in the exigencies of public service. The Petitioners were appointed by promotion, after their selection through the procedure of selection set out in Rule 24. They were not appointed under Rule 16. They were appointed to the promotional post of Assistant Commissioner of Police (ACP), in terms of Rule 25. Rule 4 of the DANIPS Rules determines the strength of the service; Rule 14 prescribes the conditions of eligibility and procedure for selection; it is through a committee which has to consider eligible officers under Rule 5 (1) (b) *“who have served in the respective cadre or posts, as the case may be, for not less than two years and prepare a list of officers recommended for appointment after taking into account the actual vacancies at the time of selection and those likely to occur during a year.”* The selection is based on merit and suitability. Rule 14 (2) provided that seniority of eligible officers had to be determined by the Central Government having due regard to the dates of their appointments on a

regular basis to the respective cadre or posts, the pay scales of the posts etc. Rule 15 requires consultation with the Union Public Service Commission (UPSC). Rule 16 provides that appointment to the Service “*shall be made in order of merit in the list referred to in sub-rule (4) of Rule 15 with due regard to the proportion specified in Rule 5.*”

3. A seniority list determined *inter se* seniority of direct recruits and promotees. This led to a round of litigation, whereby the CAT was approached; by its order dated 31-03-1992, the application was disposed of. Aggrieved parties approached the Supreme Court. The Court disposed of the appeals in its judgment reported as *Union of India v H.C. Bhatia* 1995 (2) SCC 48; the Central Government was directed to prepare a fresh seniority list in the light of the Court’s observations. The Supreme Court held pertinently, that:

“...but the facts of the present case would show that though the appointments were stated to be officiating these continued for a very long period, which in the case of Respondent 1 was of about 12 years as he came to be appointed under Rule 25 on 6-11- 1972 and was fixed permanently in the slot meant for promotees on 28-7-1984. An officiating appointment for over a decade cannot be treated as fleeting appointment with no service benefits to be given. Any other view would very seriously prejudice such a service-holder who, even after having rendered service equal to those of permanent appointees for a long period, and that too for proper functioning of the Service, would be denied the benefit of the same for no cogent reasons. Any other view is bound to have a demoralising effect in the Service as a whole. As the appointments under Rule 25 are also to duty posts, which may form part of the strength of Service because what has been stated in Rule 4(3), we are of the view that justice of the case and the need to preserve the efficient functioning of the Service would require to treat the

appointments of the respondents as permanent, despite their having been first appointment on officiating basis.

8. The real hub lies in the placement of the respondents in the seniority list. Shri Tulsi has urged that we may not do anything, because of the long period for which respondents have served, which would be against the principle of seniority embodied in Rule 29. As per clause (c) of sub-rule (2) of this rule inter se seniority has to be determined according to the "rotation of vacancies between direct recruits and promotees", which shall be based on the quotas of vacancies reserved for direct recruitment and promotion under Rule 5, which, as already noted, is in the ratio of 1: 1. The learned counsel, on the strength of recent decision of this Court in Syed Khalid Rizvi v. Union of India¹ contends that present is not a case where seniority can be determined on the basis of continuous officiation. Shri Tulsi earnestly prays that we may not depart for the requirement of Rule 29 as sanctity of law is greater than interest of some individuals. It is also submitted that the present is not a case as to which it can be said that quota rule has broken down, in which case alone, seniority which is required to be determined on the basis of quota can be fixed on the basis of length of service. We are reminded that the quota rule has become an inseparable part of our service jurisprudence, as 1 1993 Supp (3) SCC 575: 1994 SCC (L&S) 84: (1994) 26 ATC 192 it allows a harmonious combination of fresh blood and old experience, and we may not do anything to cause dent to this useful principle.

9. The strenuous contention of Shri Gupta, appearing for the respondents, is that the present is a case on all fours with O.P Singla v. Union of India in which case this Court in a similar situation took the view that seniority was required to be determined on the basis of length of service, despite there being quota in appointment to the Service in that case also, which was taken to have broken down.

10. In our view, a few scattered appointments against the quota rule as have been given here, cannot be taken to be breakdown of the principle of quota. Such appointments are at times made in exigency of service because of non- availability

either of direct recruits or suitable incumbents for promotion. In Singla's case breakdown was read because of the language of the service rule concerned and the way appointments had come to be made. The fact situation and provision in the rules are different here. Singla case cannot, therefore, come to the aid of the respondents.

11. *According to us, the just and proper order to be passed would be to direct the appellants to treat the dates of officiating appointments of the respondents as the dates of their regular appointments and then to place them in the seniority list as required by Rule 29 i.e. to interpose a direct recruit in between two promotees as per their respective inter se seniorities; and we direct accordingly. The seniority would, therefore, be refixed of all concerned, not as per length of service alone as ordered by the Tribunal, but as indicated by us.*

12. *Before closing, it is required to be stated that we have not appreciated the stand taken by the appellants. This is for the reason that employers like the appellants, who are required to be model employers, should not take a stand which is unfair. They have to treat both the wings of the Service fairly, as both are equally important insofar as they are concerned. The need for making this observation has been felt because what we find is that despite an incumbent like Respondent 1 having served for more than a decade following his appointment, the stand taken is that he should be taken to have become a member of the Service from 1984 and not from 1972, being oblivious of the fact that for more than 12 years he had discharged the functions of the higher post to the satisfaction of all concerned. Denial of such long period of service for the purpose of seniority is an unjustified and arbitrary act which a model employer has to eschew...*"

4. A seniority list was drawn up and published on 2-08-1995; this was again challenged by certain direct recruits in OA 791/1996 before the CAT. The application was dismissed on 30-12-1996. Later, 51 other promotee officers sought parity with the applicants who had benefited pursuant to the

directions in *H.C. Bhatia (supra)*, by filing OA 384/1998 before CAT. This was disposed of on 7-01-1999 by a direction to the Union to grant the same relief to the officers as in the case of *H.C. Bhatia (supra)*. The list prepared was challenged; the matter was heard by this Court, in W.P.(C) 2012/1999. That writ petition was disposed with a direction to the Union to take into account the representations of the direct recruits since the seniority had been fixed on a tentative basis. A seniority list was finally prepared and published, on 14-5-2002. This became the subject matter of challenge in the present round of proceedings, before the CAT, in OA 1418/2002. The CAT set aside the seniority list.

5. The direct recruits who approached the CAT relied on Rule 29 (ii) (c) of the Rules, which reads as follows:

“(c) 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 quotas of vacancies reserved for direct recruitment and promotion under Rule 5.”

The direct recruit applicants argued that in view of the above rule, the bunching of promotees, done, after giving them benefit of the judgment in *H.C. Bhatia (supra)*, was not authorized by law. The promotee- Petitioners had relied on an amendment of the rules, made in 1991, which by Rule 28 (2) stated that *inter se* seniority had to be determined as between direct recruits and promotees on the basis of the instructions of the Central Government, prevailing issued from time to time. The CAT, however, rejected their contention, holding that the pre-amended Rule 29 applied and that the amended rule could be pressed only in the case of those promotees

who entered the force after the date of the amendment, since it was prospective in nature.

6. The Petitioners argue that the CAT fell into error in holding that the promotees could not claim the benefit of seniority from the dates they entered service and that their *inter se* seniority had to be fixed terms of the ratio prescribed in Rule 5, by virtue of the unamended rules. It was submitted that even before the amendment made on 6-9-1991, another amendment to the same effect had been brought in, on 16-11-1988 to the Rules. The effect of the earlier amendment was the same as in the case of the 1991 amendment. It was submitted that these facts were specifically mentioned before the CAT, which nevertheless held that seniority had to be determined in accordance with the quota indicated, on a rotation of vacancies, which resulted in direct recruits appointed later securing places above the promotees, which was contrary to the prevailing Central Government instructions, especially those contained in the Office Memorandum dated 3-7-1986. That provided that when recruitment does not take place and carry forward recruitment is done by bunching vacancies, the direct recruits appointed against such carried forward vacancies are to be bunched below all those appointed in terms of the vacancies available as per quota, for each category of appointments to the cadre. The Union supports their contentions, and argues that no previous judicial order required the exclusion of their previous period of continuous officiation in service.

7. Counsel for the respondents had urged- before the CAT – that the interpretation placed in the impugned order is correct and ought not to be disturbed. It was submitted that Rule 29 clearly envisioned the interlacing of

direct recruits and promotees against vacancies falling to their respective quotas, and not according to the entry into the service, or in accordance with other principles which had no statutory basis. It was also submitted that the rules of 1991 were inapplicable. They also argued that promotee officers appointed to DANIPS on officiating basis were not appointed regularly and therefore were disentitled to benefit of their period of officiating appointment, for the purposes of seniority.

8. As stated earlier, Rule 5 fixes the relative quotas for entry into the DANIPS. Rules 24 and 25 as they stood earlier, dealt with selection for officiating appointment (to DANIPS posts) and Officiating appointment to such posts. They read as follows:

“24. Selection for Officiating Appointment.-If at any time the Central Government is of the opinion that the number of officers available in the list referred to in sub-rule (4) of Rule 15 for appointments to duty posts is not adequate having regard to the vacancies in such posts, it may direct the Committee to consider the case of officers who have officiated for a period of not less than three years in any of the cadres mentioned in clause (b) of sub-rule (1) of Rule 5 and prepare a separate list of officers selected. The selection for inclusion in the list shall be based on merit and suitability in all respects for officiating appointments to duty posts with due regard to seniority. The provisions of sub-rules (3) and (4) of Rule 14 and Rule 15 shall apply mutatis mutandis in the preparation of the selection list under this rule.

25. Officiating appointment to duty posts of the Service.- (1) If a member of the Service is not available for holding a duty post, the post may be filled on an officiating basis- (a) by the appointment of an officer included in the list referred to in sub-rule (4) of Rule 15, or

(b) if no such officer is available, by the appointment of an officer included in the list prepared under Rule 24.

(2) Notwithstanding anything contained in these rules if the exigencies of public service so require, a duty post for which a member of the Service is not available may be filled on an officiating basis by the appointment with prior consultation with the Commission of an officer belonging to a State Police Service on deputation for such period or periods ordinarily not exceeding three years as the Central Government may consider necessary.

(3) Notwithstanding anything contained in these rules, where appointment to a duty post is to be made purely as a local arrangement for a period of not exceeding six months, such appointment may be made by the administrator from persons who are included in the list prepared under sub-rule (4) of Rule 15, or Rule 24 or who are eligible for inclusion in such a list

(4) Any appointment made under sub-rule (3) shall be reported by the Administrator to the Central Government forthwith.

9. The pre-existing rule, before the 1988 amendment which dealt with seniority, read as follows:

“29. Seniority.- The Central Government shall prepare a list of members of the Service arranged in order of seniority as determined in the manner specified below:

(1) Member of the Service appointed at the initial constitution under Rule 17 shall be ranked inter se in the order of their relative seniority in the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service: Provided that if the seniority of any such officer had not been specifically determined before the commencement of these rules, it shall be as determined by the Central Government.

(2) Seniority of person appointed to the Service under clauses (a) and (b) of sub-rule (1) of Rule 5 after the initial constitution under Rule 17, shall be determined as follows:

(a) Persons recruited on the results of the competitive examination in any year shall be ranked inter se in the order of merit in which they are placed at the competitive examination on the results of which they are recruited, those recruited on the basis of an earlier examination being ranked senior to those recruited on the basis of later examination.

(b) The seniority inter se of persons recruited by selection shall be determined on the basis of the order in which their names are arranged in the list prepared under Rule 14, those recruited on the basis of an earlier selection being ranked senior to those recruited on the basis of a later selection. (c) 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 quotas of vacancies reserved for direct recruitment and promotion under Rule 5."

10. The 16-11-1988 amendment, to the extent it is relevant, reads as follows:

"1 (1) These rules may be called the Delhi and Andaman & Nicobar Islands Police Service (Amendment) Rules, 1988.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Delhi and Andaman & Nicobar Islands Police Service Rules 1971, for clause (ii) of Rule 29, the following shall be substituted, namely:

"(ii) The seniority of persons recruited to the service after the initial constitution shall be determined in accordance with general instructions issued by the government from time to time.

In cases not covered by the above provisions, seniority shall be determined by the Government in consultation with the Union Public Service Commission."

11. The rules were amended on Rules 6-9-1991. Rule 29 was re-numbered as Rule 28, which read as follows:

"28. Seniority: The Central Government shall prepare a list of members of the service appointed in order of seniority as determined in the manner specified below:-

(1) Members of the service appointed at the initial Constitution under Rule 17 shall be ranked inter-se in the order of their relative seniority in the Delhi, Andaman and Nicobar Islands Police Service:

Provided that if the seniority of any such officer not been specifically determined before the commencement of these rules, it shall be as determined by the Central Government.

(2) The seniority of persons recruited after initial Constitution of the service shall be determined in accordance with general instructions issued by the Central Government from time to time.

12. The discussion by CAT reveals that the 1988 amendment was nowhere discussed by it, even though the petitioners brought it to notice of that Tribunal –first in a miscellaneous application (MA 2917/2002), and later, in the review petition. The CAT dealt with the matter only from the angle of applicability of the 1991 amendments. The review petition had relied on the 1988 amendments as well as the instructions of the Central Government of 22-12-1959 and 3-7-1986 vis-à-vis *inter se* seniority of promotees and direct recruits. The general instructions dated 3.7.1986, 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."

13. The above office memorandum as well as a subsequent clarificatory memorandum was the subject matter of the judgment reported as *Union of India v N.R. Parmar* 2012 (13) SCC 340, where the Court held as follows:

"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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14. The above discussion reveals that rotation between direct recruits and promotees as per their quota for the purpose of determining seniority would take place only to the extent of available direct recruits and promotees in any particular year. It further provides that to the extent direct recruits are not available, the promotees would be bunched together at the bottom of seniority list and vice versa. The effect of these instructions is that as on 16.11.1988 there had to be interpolation in the ratio of 1:1 among the existing direct recruits and promotees and after the said exercise - be it the

direct recruits or promotees, whoever were in excess, they should have been placed at the bottom of the said list. Whosoever came into the service in the next recruitment year, should have been ranked below them and remain junior to them. This court also agrees with the petitioners that there is no challenge to the 1988 amendment to the Rules which - had to be, and were given effect to, by the Central Government to the extent they applied for all those years that there was a shortfall in recruitments to either category of vacancies, (resulting in bunching up of officers at the end of the seniority list, for that particular year). The petitioners are entitled to seniority in terms of the same as their seniority stood determined and fixed on 16.11.1988, in terms of the rules amended as on that date. The subsequent amendment dated 6.9.1991 of the rules did not alter that position. The seniority list dated 14.5.2002 tested with reference to the above discussion, is fully in conformity with the rules as applicable during the relevant time. The Central Government was duty bound to give effect to the directions contained in *H.C. Bhatia (supra)*, as well as the subsequent orders of the CAT, which had become final. The submissions of the direct recruits with regard to period of officiating service having been rejected by those orders, it was not open for them to reiterate it; the basis of the impugned order, i.e. rigid adherence to the quota rule in Rule 5 for interspersing direct recruits and promotees regardless of their dates of entry, was clearly contrary to the rules.

15. For the above reasons, the Petitions deserve to be allowed. Consequently, the seniority list quashed by the Tribunal stands restored. Having regard to these circumstances and the fact that the promotees superannuated during pendency of these proceedings, the Union of India and official respondents are directed to grant to them whatever benefits they

would have ordinarily have been granted, including notional promotions wherever the consideration for promotion is not selection based, as if the seniority list would have been operative all these years - such as grant of selection grade from the concerned dates and consequential fitment in the higher payscales etc; further benefits such as revision of pay scales, payment of the differential amounts and revision of pension, etc. and rank in accordance with rules shall also be undertaken. This entire exercise shall be completed within six months from today and individual orders communicated directly to the petitioners.

16. The writ petitions are allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

VIPIN SANGHI
(JUDGE)

JULY 28, 2014

B.S. Rohella /ajk