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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3806 OF 2004

1. Hemant Atmaram Shinde
2. Smt. Sushma S. Sawant
3. P.R. Purandare
4. M.S. Dingankar
5. Smt. A.V. Jagtap
6. Smt. Prachiti P. Berde
7. Smt. Rashmi R. Dhawade
8. D.S. Patkar
9. Gopinath Waman Tare,
all working as Superintendent of
Customs (Preventive) under the
Commissioner of Customs (G),
New Customs House, Ballard
Estate, Mumbai

...Petitioners

Vs.

1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi 110 011.

2. The Chairman,
Central Board of Central Excise
and Customs, North Block,
New Delhi 110 011.

3. Commissioner of Customs (General)
Mumbai, New Customs House, Ballard
Estate, Mumbai 400 030.

4. Deputy Commissioner of Customs
(P and V), New Customs House, Ballard
Estate, Mumbai 400 030.

5. Shri C.V. Hanumanthrao,
D/o. Directorate of Revenue and
Intelligence, Construction House,
Ballard Estate, Mumbai 400 038.

...Respondents

WITH
CIVIL APPLICATION NO. 1633 OF 2006
IN
WRIT PETITION NO. 3806 OF 2004

1. Hemant Atmaram Shinde
2. Smt. Sushma S. Sawant
3. P.R. Purandare
4. M.S. Dingankar
5. Smt. A.V. Jagtap
6. Smt. Prachiti P. Berde
7. Smt. Rashmi R. Dhawade
8. D.S. Patkar
all working as Superintendent and
Preventive Officers as per New Seniority
List dated 27.8.2003 which is challenged
in the Writ Petition.
Customs (Preventive) under the
Commissioner of Customs (G),
New Customs House, Ballard
Estate, Mumbai

...Applicants

Vs.

1. Union of India
through Secretary,
Ministry of Finance,

Department of Revenue,
North Block, New Delhi 110 011.

2. The Chairman,
Central Board of Central Excise
and Customs, North Block,
New Delhi 110 011.

3. Commissioner of Customs (General)
Mumbai, New Customs House, Ballard
Estate, Mumbai 400 030.

4. Deputy Commissioner of Customs
(P and V), New Customs House, Ballard
Estate, Mumbai 400 030.

5. Shri C.V. Hanumanthrao,
D/o. Directorate of Revenue and
Intelligence, Construction House,
Ballard Estate, Mumbai 400 038.

...Respondents

WITH
CIVIL APPLICATION NO. 2316 OF 2011
IN
WRIT PETITION NO. 3806 OF 2004

1. Hemant Atmaram Shinde
2. Smt. Sushma S. Sawant
3. P.R. Purandare
4. M.S. Dingankar
5. Smt. A.V. Jagtap
6. Smt. Prachiti P. Berde
7. Smt. Rashmi R. Dhawade
8. D.S. Patkar
9. Gopinath Waman Tare,
all working at New Customs
House, Ballard Estate, Mumbai

...Applicants

Vs.

1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi 110 011.

2. The Chairman,
Central Board of Central Excise
and Customs, North Block,
New Delhi 110 011.

3. Commissioner of Customs (General)
Mumbai, New Customs House, Ballard
Estate, Mumbai 400 030.

4. Deputy Commissioner of Customs
(P and V), New Customs House, Ballard
Estate, Mumbai 400 030.

5. Shri C.V. Hanumanthrao,
O/o. Directorate of Revenue and
Intelligence, Construction House,
Ballard Estate, Mumbai 400 038.

...Respondents

WITH

WRIT PETITION NO. 5890 OF 2003

Krishnakumar Sitaram Dhuri
is working as Suptd. Of Customs
(Preventive) and having their office
at O/o. Commissioner of Customs (G),
New Custom House, Ballard Estate,
Mumbai

...Petitioner

Vs.

1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.

2. The Chairman,
Central Board of Central Excise
and Customs, North Block,
New Delhi.

3. Commissioner of Customs (General)
Mumbai, New Customs House, Ballard
Estate, Mumbai.

4. Deputy Commissioner of Customs
(P and V), New Customs House, Ballard
Estate, Mumbai.

...Respondents

WITH

WRIT PETITION NO. 6350 OF 2003

1. Mr. M.A. Menon
residing at 203, Sahakar,
Shimpoli Road, Borivli (W),
Mumbai 400 092.

2. Mr. S.M. Chalke
residing at Mayur Pankh CHS,
B-307, Station Road,
Kalwa – 400 605.

3. Mr. D.A. Maskari
residing at 2/21, Seema Society,
4 Bungalow, Andheri (W),
Mumbai 400 053.

4. Mr. N.R. Sunny
residing at Sunrise Apartment,
Room No. 101, Sector 11,
Vijay Marg, New Panvel.

5. Mr. A.S. Pamnani
residing at Barrack No.442,
Room No.11, Milan Apartment,
2nd floor, Ulhasnagar II, Dist. Thane.

6. Mr. M.A. Dhale
residing at Dhale House,
Iind Rabodi, Near Ideal High School,
Thane.

7. Mr. R.N. Gawde
Residing at C/2, Mohan Nagar,
Hill Road, Chunabhatti (Sion),
Mumbai 400 022.

...Petitioners

Vs.

1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi 110 011.

2. The Chairman,
Central Board of Central Excise
and Customs, North Block,
New Delhi 110 001.

3. Commissioner of Customs (General)
New Customs House, Ballard Estate,
Mumbai 400 030

...Respondents

WITH
WRIT PETITION NO. 6354 OF 2003

1. Hemant Atmaram Shinde
2. Smt. Sushma S. Sawant
3. P.R. Purandare
4. M.S. Dingankar
5. Smt. A.V. Jagtap
6. Smt. P. P. Berde
7. Smt. R. R. Dhawade
8. D.S. Patkar
9. Gopinath Waman Tare,

(All the Petitioners are working as
Suptd. Of Customs (Preventive)
And having their office at
O/o Commissioner of Customs (G),
New Custom House, Ballard Estate,
Mumbai

...Petitioners

Vs.

1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi
2. The Chairman,
Central Board of Central Excise
and Customs, North Block,
New Delhi
3. Commissioner of Customs (General)
Mumbai New Customs House, Ballard
Estate, Mumbai

4. Dy. Commissioner of Customs
(P & V), New Customs House, Ballard
Estate, Mumbai

...Respondents

WITH

WRIT PETITION NO. 6355 OF 2003

Ashok Arjun Salkar
Petitioner is working as
Suptd. of Customs (Preventive)
and having their office at
O/o Commissioner of Customs (G),
New Custom House, Ballard Estate,
Mumbai.

...Petitioner

Vs.

1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi

2. The Chairman,
Central Board of Central Excise
and Customs, North Block,
New Delhi

3. Commissioner of Customs (General)
Mumbai New Customs House, Ballard
Estate, Mumbai

4. Dy. Commissioner of Customs
(P & V), New Customs House, Ballard
Estate, Mumbai

...Respondents

**WITH
WRIT PETITION NO. 7381 OF 2003**

1. Shri C.H. Satam
R/at Flat No.C-201, Customs Colony,
Military Road Marol, Mumbai 400 059.

2. Shri S.G. Patwardhan
R/at 17-B, Shubecha,
Bhaskar Colony,
Naupada, Thane 400 602.

3. Shri V.S. Nevrekar
R/at 19/306, Adarsh Nagar,
Worli, Mumbai – 400 025.

4. Shri C.J. Dudhane,
R/at. A-13, Nutam Shriram,
Plot No.20, Sector 9A,
Vashi, Navi Mumbai 400 703.

5. Shri D.G. Shinde
R/at 15, Shree Krishna Govind Prasad,
S.V. Road, Bhaskar Colony,
Thane (W) – 400 602.

All the Petitioners are working as
Preventive Officer,
Under the Commissioner of Customs (G),
New Custom House, Ballard Estate,
Mumbai.

...Petitioners

Vs.

1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi 110 011.

2. The Chairman,
Central Board of Central Excise
and Customs, North Block,
New Delhi 110 001.

3. Commissioner of Customs (General)
New Customs House, Ballard Estate,
Mumbai 400 030

...Respondents

**WITH
WRIT PETITION NO. 7501 OF 2003**

1. Shri A.S. Mahajan
Aged 49 years, residing at
128.4536, Tribhuvan Society,
Tilak Nagar, Mumbai 400 089.

2. Shri S.B. Bhalekar
Aged 49 years,
Residing at 4/437, Vahatuk Society,
Andheri (E), Mumbai 400 058.

3. Smt. S.s. Godambe,
Aged 49 years,
Residing at Nilam Nagar, Phase II,
R.No.501, Gokhale Road,
Mulund (E), Mumbai 400 081.

4. Shri K.S. Bait
Aged 52 years,
Residing at 556, Kamal Sagar CHS,
Bhandup (E), Mumbai 400 042.

5. Shri A.K. Pahuja
Aged 47 years,
Residing at 301, Sharda Castle,
A-Bldg., Ulhasnagar – 421004.

6. Shri A.J. Sakpal
Aged 50 years,
Residing at Jarimari Nagar HSG.,
4, P.K. Atre Road, Worli,
Mumbai – 400 018.

7. Shri Y.S. Ganu
Aged 47 years,
Residing at 16/126, Dashpuja
Unnat Nagar No.2, Goregaon (W),
Mumbai – 400 062.

8. Shri A.B. Dalvi,
Aged 45 years,
Residing at C/4, Gulmohar,
D.G. Mahajan Road,
Sewri, Mumbai – 400 005.

9. Smt. Leela Radhakrishnan
Aged 45 years,
Residing at Bldg. No.C-20,
Flat No.9, J.B. Nagar,
Borivli (W), Mumbai 400 103.

10. Shri A.V. Bhagwat
Aged 46 years,
Residing at C-802, Ashok Nagar,
Off Military Road, Mumbai 400 072.

11. Shri S.L. Nagwekar,
Aged 49 years,
Residing at C-802, Sita Vihar,
Naupada, Thane 400 602.

12. Shri H.G. Padwal
Aged 55 years,
Residing at B-4, Bhagirath,
Pahadi School Road No.2,

Goregaon (E), Mumbai 400 063.
All the Petitioners working as
Superintendent of Customs (Preventive)
Under the Commissioner of Customs (G),
New Custom House, Ballard Estate,
Mumbai.

...Petitioners

Vs.

1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi 110 011.

2. The Chairman,
Central Board of Central Excise
and Customs, North Block,
New Delhi 110 001.

3. The Commissioner of Customs (General)
New Customs House, Ballard Estate,
Mumbai 400 030

...Respondents

**WITH
WRIT PETITION NO. 8404 OF 2004**

1. Shri Y.S. Ganu, aged 49 years,
residing at 16/126, Dashpuja,
Unnatnagar No.2, Goregaon (West),
Mumbai – 400 062.

2. Smt.Leela Radhakrishnan
aged 45 years, residing at
Building No.C-20, Flat No.9,
J.B. Nagar, Borivali (West),
Mumbai – 400 103.

3. Shri M.A. Dhale
aged 51 years, residing at
Dhale House, Near Ideal High School,
Second Rabodi, Thane (West),
Pin – 400 601.

All working as Superintendent
of Customs (Preventive) under the
Commissioner of Customs (G),
New Customs House,
Ballard Estate, Mumbai.

...Petitioners
(Org.Applicant Nos.1, 2 & 4
in O.A.No.716 of 2003)

Vs.

1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi 110 011.

2. The Chairman,
Central Board of Central Excise
and Customs, North Block,
New Delhi 110 011.

3. Commissioner of Customs (General)
Mumbai, New Customs House, Ballard
Estate, Mumbai 400 030.

4. Deputy Commissioner of Customs
(P and V), New Customs House, Ballard
Estate, Mumbai 400 030.

5. Smt. R.A. Chogle,
aged 51 years, R/a.7C-41,
Sonawala Building, Slater Road,
Tardeo, Mumbai 400 007.

...Respondents
(Rept.Nos.1 to 4 Org. Opp.Nos.1 to
4 and Respt. No.5 Orig Applicant
No.3 in O.A.No. 716/2003.)

**WITH
CIVIL APPLICATION NO. 226 OF 2005
IN
WRIT PETITION NO. 8404 OF 2004**

Shri Y.S. Ganu & ors.

...Applicants

Vs.

Union of India & ors.

...Respondents

**WITH
NOT ON BOARD – TAKEN ON BOARD
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1706 OF 2002**

1. Mr. Anil Kumar Pundir
Preventive Officer,
New Customs House,
Ballard Estate,
Mumbai 400 001.

2. Mr. Saudan Singh
Preventive Officer,
New Customs House,
Ballard Estate,
Mumbai 400 001.

3. Mr. Narendra Singh
Preventive Officer,
New Customs House,

Ballard Estate,
Mumbai 400 001.

4. Mr. Ajoy Kumar
Preventive Officer,
New Customs House,
Ballard Estate,
Mumbai 400 001.

...Petitioners

Vs.

1. Union of India
through the Secretary,
Ministry of Finance,
Government of India,
Department of Revenue,
New Delhi 110 011.

2. The Chief Commissioner of
Customs, New Customs House,
Ballard Estate, Mumbai 400 001.

3. Commissioner of Customs
Mumbai Commissionerate
New Customs House,
Ballard Estate, Mumbai 400 001.

4. Additional Commissioner of Customs,
(P & V), New Customs House,
Ballard Estate, Mumbai 400 001.

5. Central Administrative Tribunal
Mumbai Bench, Mumbai.

6. Mr. M.A. Masand
New Customs House,
Ballard Estate, Mumbai 400 001.

...Respondents.

WITH

(Reconstruction order given in Writ Petition No.2555/1998
on 17/1/2018)

**ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2555 OF 1998**

Mr. Anilkumar Pundir & ors. ...Petitioners

Vs.

Union of India & ors. ...Respondents

.....

Mr. R.S. Apte, Senior Advocate i/by Mr. Mandar Limaye,
Advocate for the petitioners in all the petitions.

Mr. S.V. Marne, Advocate for respondent No.5 in Civil Writ
Petition No. 3806 of 2004.

Mr. Vinod Joshi along with Mr. Y.S. Bhate, Mr. N.R. Prajapati &
Upendra Lokegaonkar, Advocate for the respondents / UOI.

Mr. K.P. Anilkumar, Advocate for the petitioners in
O.S.W.p.No.1706 of 2002 & O.S.W.P. No.2555 of 1998.

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**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

RESERVED ON : 17th JANUARY, 2018.

PRONOUNCED ON : 6th FEBRUARY, 2018.

JUDGMENT (PER M.S.KARNIK, J.) :-

The dispute in the present petitions is over seniority in service between direct recruits and promotees to the post of Preventive Officer of the Customs Department. Various original applications were filed before the Tribunal challenging the seniority list published by the Union of India from time to time. Some of the petitions are by promotees challenging the orders of the Tribunal in different OAs and some petitions are by direct recruits. There have been several rounds of litigations before the Tribunal and these petitions arise out of the challenge raised to the various orders passed by the Tribunal.

2. Learned Counsel for the parties in all fairness agreed that the decision in Writ Petition No.6354 of 2003 arising out of judgment and order passed by the Tribunal in O.A.No.917 of 2002, 932 of 2002, 933 of 2002 and 936 of 2002 would cover the controversy arising in all these petitions.

3. Learned Counsel referred to the material facts pleaded in W.P. No.3806 of 2004. W.P. No.3806 of 2004 is filed

by the promotees challenging the judgment and order dated 6/1/2004 passed by the Central Administrative Tribunal, Mumbai (hereinafter referred as 'the Tribunal' for short) in O.A.No.700 of 2003. Writ Petition No.3806 of 2004 came to be amended and the petitioner - promotees also prayed for quashing and setting aside the order dated 20/5/2005 whereby the promotees who were then working as Superintendent of Customs with effect from 21/9/2002 were reverted to the grade of Inspector (Preventive Officers) with immediate effect.

4. The facts of Writ Petition No. 3806 of 04 in brief are thus :-

The petitioners were promoted as 'Preventive Officers' on various dates from 28/7/1988 and 28/12/1988. The petitioners, however, were promoted on regular basis with effect from 17/5/1991. The petitioners are hereinafter referred to as "the promotees". The case of the promotees is that they were regularly selected for promotion and having worked continuously from the date they were promoted on 'Ad-hoc'

basis, the respondents were not justified in denying the promotees the benefit of seniority from the date of their initial promotion. It is the case of promotees that they are entitled to seniority from date of their initial promotion.

5. O.A.No.386 of 1997 was filed by some of the promotees (the petitioners were not party to this O.A.) seeking relief that their seniority has to be counted from the date of their initial promotion in the cadre of the Preventive Officers based on OM of 1986.

6. The Tribunal was pleased to allow O.A.No. 386 of 1998 and other O.As. on 10/12/1998. The said O.A. No. 386 of 1998 was filed by Shri P.K.G. Kurup and others (hereinafter referred to as "Kurup's case"). The Tribunal held that promotees therein are entitled to get their seniority in the cadre of the Preventive Officers from the date of their initial 'ad-hoc' promotion. It was further directed that as promotees therein had put in the qualifying service, they were entitled to be considered for promotion of Superintendent of Customs on basis of their

seniority.

7. It is pertinent to mention here that amongst the promotees who had approached the Tribunal and which O.As came to be decided along with Kurup's case, only Shri Ashok Arjun Salkar (applicant in O.A.No. 531 of 1998) and Shri Krishnakumar Sitaram Dhuri (applicant in O.A.No.532 of 1998) have approached this Court challenging the subsequent orders passed by the Tribunal which we shall make a reference to later.

8. Pursuant to the decision of the Tribunal in Kurup's case, the respondent – Ministry of Finance, by communication dated 15th February 1998, instructed the Commissioner of Customs, Mumbai, to implement the judgment of the Tribunal in Kurup's case. One of the direct recruits Shri Anil Kumar Pundir filed W.P. No.2555 of 1998 in this Court challenging the decision in Kurup's case. It is pointed out by the learned Counsel for the petitioners that Shri Anil Kumar Pundir was not a party in any of the O.As. before the Tribunal (Kurup's case).

9. Based on the decision in Kurup's case seniority list dated 8/3/1999 was published. According to promotees, the judgment in Kurup's case was implemented. Learned Counsel for the petitioners submits that as respondents – Customs Department accepted and implemented the judgment in Kurup's case, the same became final and conclusive and binding on all parties. Based on seniority list dated 8/3/1999 as many as 50 Preventive Officers came to be promoted as Superintendents.

10. Learned Counsel for petitioners further pointed out that without any justification and without giving any opportunity to the promotees, provisional seniority lists dated 25/10/2000 and 28/1/2001 were prepared by the respondents – Customs Department in most hasty and arbitrary manner. This virtually resulted in nullifying the decision in Kurup's case as promotees were denied the benefit of ad hoc service rendered by them for counting seniority.

11. Learned Counsel submits that at that point of time

they were not aware of the letter dated 15/2/1999 regarding decision taken to implement the order in Kurup's case.

12. The promotees filed O.A.No. 297 of 2001 before the Tribunal challenging the seniority list dated 25/10/2000 and 28/1/2001. They prayed that the seniority list dated 8/3/1999 prepared in accordance with Kurup's case may be retained. O.A.No.527 of 2001 was allowed by the Tribunal on 21/2/2001. It would be material to set out the operative part of the Tribunal's order which reads thus :-

“30. In view of the discussions above, we see justification in allowing all the OAs. All five OAs bearing Nos. 29/2001, 299/2001, 4/4/2001, 521/2001 and 336/2001 are hereby allowed in that the respondents are hereby directed not to operate the impugned seniority list issued vide circulars dated 28.1.2001 or seniority list issued vide order dated 25.01.2000. In case respondents are of the view that the seniority lists finalised prior to these dates need to be changed. This should be done in consonance by following proper procedure and law. No order as to costs.”

(emphasis supplied by us)

13. The decision of the Tribunal in O.A.No. 297 of 2001

was challenged by Shri Anil Kumar Pundir – direct recruits in this Court by way of W.P.No. 1706 of 2002 which is tagged along with the present petitions in which no interim relief was granted.

14. The promotees were promoted as Superintendent of Customs in the light of seniority list dated 8/3/1999. The said promotions were made subject to the outcome of W.P. No.2555 of 1998 filed by Shir A.K. Pundir – direct recruit. Learned Counsel for the petitioner - promotees contends that a conscious decision was taken by the Customs Department to implement the senior list dated 8/3/1999 which was prepared in accordance with the directions of the Tribunal in Kurup's case.

15. The order dated 23/9/2002 promoting the promotees was challenged by Shri C.B. Nair and others – direct recruits by filing O.A.No.878/2002. Learned Counsel for the promotees pointed out that promotees were not made parties to O.A. No. 878/2002 and only one Promotee Officer Shri M.A.

Masand was impleaded as a party who did not contest the O.A. seriously. In the submission of the learned Counsel for the promotees, O.A.No.878/2002 was liable to be dismissed on the ground of non-joinder of parties i.e. petitioner-promotees and others affected were not made parties.

16. The respondents – Customs Department published a draft seniority list dated 17/10/2002. This was within 25 days of the promotees being promoted as Superintendent on 23/9/2002. This draft seniority list dated 17/10/2002 resulted in pushing down the promotees by 200 to 400 places. In the submission of the promotees, this was in violation of the OM No.1986 dated 3/7/1986 and 7/2/1986 and this has resulted in giving seniority to Direct Recruits of 92 in the year 1986 and Ex-servicemen of 1992 as 1986 when they were in service of Defence and drawing salary of Defence service.

17. The promotees filed a representation against publication of draft seniority list dated 17/10/2002. Thereafter,

the promotees filed O.A.No.933 of 2002 challenging the draft seniority list. On 11/12/2002, O.A.No.933 of 2002 was admitted and stay was granted by the Tribunal. The representation of the promotees to the draft seniority list was rejected on 10/2/2003. O.A.No.933 of 2002 and other O.As. filed by promotees came to be dismissed by the Tribunal on 9/8/2003.

18. O.A.No.878 of 2002 filed by Shri C.B. Nair – direct recruit challenging the order dated 23/9/2002 promoting the promotees to the post of Superintendent was allowed.

19. As a consequence of dismissal of O.A. No.933/2002, Customs Department issued a final seniority list dated 9/8/2003. On behalf of promotees it is submitted that direct recruits were placed on top and cut off date was the date of vacancy instead of date of joining. This in the submission of learned Counsel for the promotees is contrary to law as this results in grant of seniority to direct recruits even prior to the date of joining which is impermissible.

20. The promotees challenged the order of the Tribunal dated 9/8/2003 in O.A.No.933 of 2002 by filing W.P. No.6354 of 2003. In W.P. No. 6354 of 2003 no interim relief is granted in view of the fact that the final seniority list dated 27/8/2003 was not a subject matter of order passed in O.A.No.933 of 2002. It was, however, clarified that all actions of the Customs Department would be subject to the final decision of this petition.

21. The promotees filed O.A.No.700 of 2003 challenging the final seniority list dated 27/8/2003, after it came to their notice the letter/circular dated 15/2/1999 issued by the Ministry of Finance. O.A.No.700 of 2003 was dismissed by the Tribunal on 6/1/2004. The said O.A. was dismissed mainly on the ground that pursuant to the decision in Kurup's case, the Tribunal in O.A.No. 297 of 2001 permitted the respondents to make changes to the seniority list already finalized in accordance with law. The Tribunal held that on the basis of the

decision of the Tribunal in O.A.No. 297 of 2001 the Custom Department published a provisional seniority list dated 17/10/2002, O.A. against which was dismissed on 19/8/2003 whereupon the final seniority list was published on 27/8/2003.

22. Thus, W.P. No.3806 of 2004 is filed by the promotees challenging the Tribunal's order dated 6/1/2004 in O.A. No.700 of 2003 (for challenging the final seniority list dated 27/8/2003). W.P. No. 3806 of 2004 was filed by the promotees sometime in March, 2004. There is no interim relief operating during the pendency of the petition. Based on the seniority position of the promotees in the fresh seniority list dated 27/8/2003, the petitioners were reverted as Preventive Officers by an order dated 20/5/2005.

23. **SUBMISSION OF SENIOR COUNSEL SHRI APTE AND SHRI LIMAYE FOR PETITIONERS :-**

(a) Learned Counsel for promotees mainly contends that the decision of the Tribunal in Kurup's case has attained finality

and already acted upon. According to him, by the letter/order/circular dated 15/2/1999 of the Government of India, Ministry of Finance, specific directions are issued to the Customs Department to implement the decision in Kurup's case. Based on Kurup's case the seniority list dated 8/3/1999 was published which is acceptable to the promotees. This seniority list indicates the correct position. The respondents – Customs Department has not challenged the decision of the Tribunal in Kurup's case. In his submission, even W.P. No. 2555 of 1998 is filed in this Court challenging the decision of the Tribunal in Kurup's case by one Shri A.K. Pundir – a direct recruit who was not party respondent in Kurup's case. There is no interim relief granted in W.P.No.2555 of 1998.

(b) It is urged that once the decision in Kurup's case has been implemented and acted upon, there was no reason or occasion for the respondents to have issued a fresh seniority list which is not in consonance with the directions in Kurup's case.

(c) In the submission of the learned Counsel for the petitioners, once the controversy was concluded by Kurup's case and the petitioners – promotees were given the seniority there was no occasion for the respondents to have published fresh seniority lists on 25/10/2000 and 28/1/2001 thereby virtually nullifying the judgment and order in Kurup's case. Furthermore learned Counsel would contend that even though they succeeded in their challenge before Tribunal in O.A. No. 297 of 2001 and the seniority list dated 25/10/2000 and 28/1/2001 was struck down, taking advantage of the observations of the Tribunal allowing changes in the seniority list already finalised, the respondents published a draft seniority list on 17/10/2002. In the submission of the learned Counsel, the same was contrary to the decision in Kurup's case and the petitioners were pushed down by 200 to 400 places. Learned Counsel for the petitioners submits that the seniority was illegally given to Direct Recruits of 1992 in the year 1986 and Ex-servicemen of 1992 to 1986. This in the submission of the learned Counsel is impermissible.

(d) Learned Counsel submits that even final seniority list dated 27/8/2003 was issued in hasty manner in which direct recruits were placed on top and the cut off date was the date of vacancy instead of date of joining. Learned Counsel submits that the Tribunal virtually assigned no reasons while dismissing their OAs and therefore, also the order of the Tribunal is illegal. In his submission, the seniority list of 8/3/1999 published in consonance with the directions of the Tribunal in Kurup's case reflects the correct position which ought not to have been disturbed by the respondents. The arbitrary manner in which the respondents – Customs Department published the subsequent seniority list has the effect of pushing down the seniority of the promotees. Learned Counsel submits that on the basis of the seniority list dated 8/3/1999 they were promoted as Superintendent but as a result of the seniority list illegally published on 27/8/2003 they came to be reverted as Preventive Officers.

(e) Learned Counsel for the petitioners relied upon the decision of the Apex Court in the case of **Union of India Vs.**

Dharam Pal and others – (2009) 4 SCC 170 and **Secretary, Minor Irrigation Department and Rds Vs. Narendra Kumar Tripathi – (2015) 11 SCC 80** in support of his submission that as the promotees were promoted as against the existing vacancies after due selection, the services rendered by them from the date of their promotion has to be considered for the purpose of seniority. Learned Counsel therefore submits that as the promotions were made according to rules, seniority has to be counted from the date of initial appointment as rightly held in Kurup's case.

(f) Shri Limaye also relied upon the decision of the Apex Court in the case of **Secretary, Minor Irrigation Department & Rds v/s. Narendra Kumar Tripathi** reported in **(2015) 11 SCC 80** to support his contention that even the services rendered on ad hoc basis can in certain circumstances be considered. He also relied upon the decision of the Apex Court in the case of **Rudra Kumar Sain & ors. Vs. Union of India & ors.** reported in **(2000) 8 SCC 25** to support his contention that the length of

service rendered by promotees should have been material consideration in determining the seniority between direct recruits and promotees.

(g) Shri Limaye also relied upon the decision of the Apex Court in the case of **Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra & ors.** reported in (1990) 2 SCC 715 to contend that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. He invited our attention to para 13 where the Apex Court laid down the principle that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority ; and seniority cannot be determined on the sole 'test of confirmation. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16.

24. SUBMISSIONS OF LEARNED COUNSEL FOR
DIRECT RECRUITS AND COUNSEL FOR CUSTOMS
DEPARTMENT :-

Learned Counsel invited our attention to the findings recorded by the Tribunal in O.A.No. 917 of 2002 which was filed by the promotees who were aggrieved by order dated 17/10/2002 fixing interse seniority of the Preventive Officers and order refixing their regular date of promotion. Learned Counsel submits :-

(a) On 25/5/1979 the Customs Department (Group C) Recruitment Rules 1979 came into effect which covers the post of Preventive Officer. The ratio between the direct recruits and promotees for promotion to the post of Preventive Officer is fixed as 75:25. The direct recruits are directly recruited to the post of Preventive Officer through Staff Selection Committee, whereas the promotees are promoted from the post of LDC to UDC and then to Preventive Officer. In addition to the regular sanctioned posts of Preventive Officer, certain other posts also existed which were sanctioned on Cost Recovery basis for a

temporary and limited purpose. Such posts remained operative as long as the user party continues to deposit the costs and ceased to exist from the date the party fails to deposit the cost. Cost Recovery posts are not a part of regular cadre strength of Preventive Officer.

(b) It is further pointed out that the Ministry issued a letter to the effect that since the Cost Recovery Posts do not form part of the cadre, such posts are to be filled in on purely ad-hoc basis by promotions of Preventive Officers and the question of making any regular recruitment against these posts does not arise.

(c) It is pointed out that the petitioner Nos.1 and 2 in W.P.No.5890 of 2003 (Shri Dhuri and Shri Salkar) were promoted as Preventive Officers on ad-hoc basis on 19/2/1985. The other promotees were promoted as Preventive officers on ad-hoc basis and some of the promotions of the promotees were against cost recovery posts and the other promotions were in

excess of promotee quota. That in the seniority list published in 1986-1987 names of the petitioner – promotees were not included and no objection was raised for non inclusion of their names. Ad-hoc promotions of the petitioner – promotees were regularized with effect from 17/5/1991.

(d) That 20 promotees who were initially promoted on ad-hoc basis in the year 1997-1998 filed various O.As. in CAT for seniority from the date of initial ad-hoc appointment. Out of the promotees who are before this Court only Shri Salkar and Shri Dhuri had filed O.As. along with Shri Kurup and others.

(e) Though O.A. in Kurup's case was allowed holding that the promotees therein would get the seniority from the dates of their initial ad-hoc promotions, the Tribunal in para 14 of the judgment has clearly observed that “no material was produced to show that promotions of the applicants therein were in excess of quota of promotees.” In the submission of the learned Counsel, it is on account of lack of materials produced

that the Tribunal came to the conclusion that the promotions are not in excess of quota and granted seniority to promotees in Kurup's case from the date of their initial ad-hoc appointments.

(f) By issuing seniority list dated 8/3/1999, the respondent – Customs Department following the directions in Kurup's case, seniority was given to the promotees from the dates of their initial appointment. The Customs Department issued a fresh seniority list dated 28/1/2001 of Preventive Officers after following the ratio of the judgment of the Apex Court in the case of **Suraj Prakash Gupta & ors. Vs. State of J & K & ors.** reported in **(2000) 7 SCC 561**. It is the submission that the Apex Court has laid down the principle :

“excess promotees occupying direct recruitment post have to be pushed down and adjusted in later vacancies within their quota”.

It is therefore that the promotees who are promoted on ad-hoc basis in excess of their quota were pushed down and were given seniority with effect from the date on which a regular vacancy arose for them.”

(g) Various O.As. were filed in the Tribunal challenging the seniority list dated 28/1/2001. If the seniority list was not as per the directions in Kurup's case, the promotees could have filed contempt petition for violation of the order passed by the Tribunal. By filing a fresh O.A. in the year 2001 challenging seniority list dated 28/1/2001 the promotees took a calculated chance of reopening the entire issue of seniority again.

(h) Learned Counsel would contend that while allowing O.A. filed by promotees viz. O.A.No. 297 of 2001 the Tribunal though dismissed O.A. has granted liberty to the respondents – Customs Department to make changes in the seniority list already finalized in consonance with law and after following proper procedure. In this view of the matter the respondents – Customs Department issued a draft seniority of Preventive Officers on 17/10/2002 while relying on the operative portion of the decision of the Tribunal in O.A.No. 297 of 2001.

(i) The Department conducted a detailed study of all

vacancies and decided to revise the earlier seniority list dated 8/3/1999. It was noticed by the department that recruitment was made against cost recovery posts and such cost recovery posts were taken into account while drawing the earlier seniority list. It was noticed that 31 excess regular promotions and 50 excess direct recruitments were effected upto 1982 and that despite this 22 regular vacancies in promotee quota for the year 1983 were considered during regularisation DPC of 1991 and equal number of promotees were regularised against these vacancies. It was further noticed that cost recovery posts were considered as regular promotee quota during regularization DPC of 1991 and promotees were regularized against 38 posts sanctioned on cost recovery basis. Furthermore, 45 regular posts sanctioned by the Ministry by letter dated 1/8/1983 were counted twice, once for calculating DR and promotee quota and again as regular promotee quota. Thus, in all 105 regular promotions were ordered in the promotee quota in excess of regular vacancies. In the submission of the learned Counsel, the respondents – Customs Department, therefore followed the

principle that only those promotees appointed as per their entitlement quota specified in Recruitment Rules are eligible to count their seniority from the date of their appointment. Those who are promoted in excess of quota were not granted seniority from that year. Excess promotees occupying direct recruitment posts were pushed down and adjusted against vacancies in their quota. It is further pointed out that the representatives from promotee officers as well as direct recruits participated in the entire process of revision of seniority.

(j) That amongst petitioner – promotees who filed various O.As. challenging the draft seniority list dated 17/10/2002, from out of 20 promotees who succeeded in Kurup's case, only two promotees viz. Shri Salkar and Shri Dhuri filed O.A. against seniority list dated 17/10/2002. Other 18 promotees, who were party to Kurup's case chose not to challenge the seniority list dated 17/10/2002. A large majority of promotees accepted the seniority granted to them vide seniority list dated 17/10/2002.

(k) Shri Marne relied upon the decision of the Apex Court in the case of **Direct Recruits** (supra) in support of his contentions. Shri Marne also relied upon upon the decision of the Apex Court in the case of **Uttaranchal Forest Rangers' Assn. (Direct Recruit) & others Vs. State of U.P. & others** reported in (2006)10 SCC 346.

(l) Learned Counsel for the respondents – Customs Department submitted that the contentions advanced by Shri Marne, Counsel for direct recruits are in consonance with the stand taken by the respondents – Customs Department before the Tribunal. He adopted the arguments advanced on behalf of direct recruits. He further submits that all the promotees were promoted as Superintendents but from a later date and have since retired. He submitted that entire exercise has been carried out by the department in consonance with the provisions of law.

25. We have heard learned Counsel at length. We have gone through the decisions of the Tribunal. At the cost of

repetition we may briefly summarise the facts which we have set out in detail in the earlier part of our judgment. Between 1983-1990 the promotees were promoted as Preventive Officers on ad hoc basis. The promotions of the petitioners and others were regularized in 1991. In 1997, seniority list was issued by the Customs Department showing date of promotion from the date of regularization. Pursuant to the decision dated 10/12/1998 of the Tribunal (in Kurup's case) granting seniority from the date of ad hoc promotion, the department in compliance with the decision in Kurup's case issued a seniority list dated 8/3/1999. On 25/10/2000 the department issued a provisional seniority list rectifying the errors in seniority list dated 8/3/1999 and on 28/1/2001 the department issued a revised seniority list. Seniority list dated 28/1/2001 was challenged before the Tribunal by the promotees in O.A.No.299 of 2001 wherein directions came to be issued by the Tribunal that the seniority list dated 28/1/2001 should not be operated but in case the department is of the view that the seniority list finalized prior to this date needs to be changed, the same should be done by

following proper procedure and law. Accordingly the Customs Department carried out a detailed exercise and the seniority list came to be revised on 17/2/2002 by identifying the vacancies with effect from 21/2/1978. The promotees approached the Tribunal challenging the seniority list dated 17/10/2002 by filing O.A.No. 917/2002, O.A.No.932/2002 and O.A.No.933/2002 which came to be dismissed by the Tribunal on 9th August, 2002 by passing a detailed order. This order dated 9th August, 2003 passed by the Tribunal is the subject matter of challenge in W.P. No.6354 of 2003. As indicated by us in para 2 of this judgment the decision in W.P. No.6354 of 2003 will cover the issues involved in all connected petitions.

26. The Tribunal while allowing O.A. in Kurup's case had held that the promotees are entitled to get their seniority in the cadre of Preventive officers Gr.I (G) from the date of their initial ad-hoc promotions. While deciding Kurup's case the Tribunal noted that there is no break down of rota quota rule. It was the specific contention of the department that the promotees were

appointed far in excess of their quota and they have occupied slots meant for direct recruits. The Tribunal held that though the argument is attractive but it is not based on any material on record. The Tribunal further observed that the department and the interveners did not place any material to show that the promotion of the promotees was in excess of the quota of promotees. No doubt, the Tribunal has observed in para 15 of Kurup's case that the DPC proceedings placed before the Tribunal which belies any such thing of the promotees being in excess of their quota. In these circumstances, the Tribunal in Kurup's case granted relief to seniority to the promotees from the date of their initial ad-hoc promotions.

27. In compliance with the decision in Kurup's case the department issued the seniority list on 8/3/1999 which was acceptable to the promotees and against which the promotees have no grievance. The promotees were aggrieved by the seniority list dated 28/1/2001 issued by the department which in their submission is completely contrary to the decision of the

Tribunal in Kurup's case. The promotees, therefore, approached the Tribunal by filing O.A.No.299 /2001 and other O.As. It is in this O.A. that the Tribunal issued directions that if seniority list already finalized needs changes, the same may be done by following proper procedure. It is material to mention here that there is no challenge to these directions by the promotees. The arguments of the promotees is that taking undue advantage to these directions the department issued a revised seniority list on 17/10/2002 thereby completely nullifying the effect of the decision rendered in Kurup's case.

28. We find that in the challenge to the revised seniority list dated 17/10/2002, the Tribunal took into consideration the detailed exercise carried out by the department by identifying vacancies with effect from 21/2/1978. The Tribunal by order dated 9th August 2003 passed in O.A.No.917/2002 based on the materials on record placed by the department arrived at a finding that the promotions have been made on ad hoc basis against the Cost Recovery posts. The Cost Recovery posts are

paid by trade. They are not part of the cadre. The Tribunal, therefore held that the appointments which are made to the Cost Recovery posts which are not part of the cadre, the service of such posts cannot be counted for seniority. The Tribunal held that the Cost Recovery posts are not part of the cadre can be filled up only on ad hoc basis. When the Tribunal decided Kurup' case the circular of 1982 regarding the nature of Cost Recovery posts was not on record.

29. Learned Counsel for the promotees was at pains to point out that certain direct recruits were given seniority from the date of the vacancy. It is his submission that the seniority has been granted to direct recruits even before their date of appointment. The Tribunal took into consideration that the cadre / strength vacancies have been computed and thereafter DOPT Circular of February 1986 regarding rotation for assignment of seniority has been followed. The exercise has been done from the date of coming into force of Recruitment Rules, 1979. It would be material to reproduce para 59 of the

finding of the Tribunal which reads thus :-

“ 59. We have taken note of the fact that Mumbai is the commercial capital of India and that the major part of Tax Revenue of the Central Government is accounted for by this region. The matter of inter se seniority in the Customs Department has to be seen in this context. The entire dispute between promotees and direct recruits has centered around either appointment on Cost Recover post, which are not part of the cadre or promotion in excess of quota. The Customs department has done a detailed exercise commencing from 1979 regarding the Cadre strength, identification of vacancies and of fixing seniority of promotees and direct recruits as per the principles enunciated in the February, 1986 letter of DOPT. The only ground of challenge has been that the continuous officiation of promotees or any type of position i.e. whether on Cost Recovery basis or post meant for direct recruitment should confer seniority. It is clear in view of the Apex Court decision that such services cannot count for seniority. It was also asserted that the earlier decision operates as res judicata / constructive res judicata. Considering the fact that a Writ Petition has been filed by a direct recruit against the decisions, the said decisions have not become final and cannot accordingly operate as res judicata / constructive res judicata. We have also taken note of the fact that certain key information had not been placed in the written statement in the first round of OAs and the non-furnishing of the same has led to repeated litigations. We have also noted that prior to the first round of litigation, the question of seniority /

regularisation had not been agitated for 10/5 years. The two ground of attack on the ground of fact / improper application of fact have also been found to without substance”.

30. Learned Counsel for promotees as well as direct recruits relied upon the decision of the Apex Court in the case of Direct Recruits (supra). A profitable reference can be made to the principles laid down by the Apex Court in para 47.

“ 47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.”

31. A useful reference can also be made to the decision of the Apex Court in the case of **Keshav Chandra Joshi & ors. Vs. Union of India & ors.** reported in **1992 Supp (1) SCC 272.** It would be material to reproduce the relevant portion of para 24.

“When promotion is out side the quota, the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota any work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1).”

It would also be material to reproduce para 27, 28 and 34 which reads thus :-

“27. Realising that applicability of Proposition 'B' to the facts would run into rough weather the counsel for the

promotees attempted to anchor it by reiterating that as on date the Public Service Commission found the promotees eligible for confirmation as per rules, the entire length of service would be counted for their seniority. We express our inability to accede to the contention. It is seen that appointment of the promotees as Assistant Conservators of Forest was not in accordance with Rule 5 (b) read with Appendix 'B' of the Rules. Admittedly the promotions were on ad hoc basis pending direct recruitment and are in excess of the quota prescribed under Rule 6. By no strength of imagination it could be said that the promotions were made to a substantive post in accordance with the Rules. Therefore, the promotees do not hold the post in substantive capacity.

28. Undoubtedly when there was dearth of direct recruits the promotees discharged the duties ranging between 5 to 12 years prior to filing of the writ petitions. The promotees generally may get one or two chances of promotion to cadre posts in higher echelons of the Indian Forest Service. Reckoning continuous officiation of ad hoc promotion would enable the less privileged to excel their latent capabilities in the cadre post.

34. Accordingly we have no hesitation to hold that the promotees have admittedly been appointed on ad hoc basis as a stop gap arrangement, though in substantive posts, and till the regular recruits are appointed in accordance with the rules. Their appointments are de hors the rules and until

they are appointed by the Governor according to rules, they do not become the members of the service in a substantive capacity. Continuous length of ad hoc service from the date of initial appointment cannot be counted towards seniority. The Governor shall have to make recruitment by promotion to substantive vacancies in the posts of Assistant Conservator of Forest, if not already made, in accordance with Rule 5 (b) read with Appendix 'B' and Rule 6. Their seniority shall be counted only from the respective dates of appointment to the substantive posts in their quota under Rule 6 as per the rules. The direct recruits having been appointed in accordance with Rule 5 (a) read with Appendix 'A', their seniority shall be counted from the date of their discharging the duties of the post of Assistant Conservator of Forest and the seniority of the direct recruits also shall accordingly be fixed.”

32. Further, the Apex Court in the case of **Uttaranchal Forest Rangers** (supra) in para 30 and 37 has held that

“30. We feel that the impugned judgment dated 26.11.2001 of the High Court has correctly appreciated that vacancies arose in the year 1987-88, but have failed to appreciate that these vacancies were filled by regularizing 124 persons who were carrying on as Forest Rangers on an ad hoc basis. We also are of the view that, if the orders of the High Court are to be given effect to, then 356 Deputy Forest Rangers would

become entitled to promotion in excess of the quota. It is well settled that promotion in excess of quota makes an employee an ad hoc employee and seniority cannot be given to such employees on the basis of ad hoc promotion. This was observed by this court in a series of cases. In [Keshav Chandra Joshi & Ors v. Union of India & Ors](#), this Court observed that,

"24. It is notorious that confirmation of an employee in a substantive post would take place long years after the retirement. An employee is entitled to be considered for promotion on regular basis to a higher post if he/she is an approved probationer in the substantive lower post. An officer appointed by promotion in accordance with Rules and within quota and on declaration of probation is entitled to reckon his seniority from the date of promotion and the entire length of service, though initially temporary, shall be counted for seniority. Ad-hoc or fortuitous appointments on a temporary or stop gap basis cannot be taken into account for the purpose of seniority, even if the appointee was subsequently qualified to hold the post on a regular basis. To give benefit of such service would be contrary to equality enshrined in [Article 14](#) read with [Article 16\(1\)](#) of the Constitution as unequals would be treated as equals. When promotion is out side the quota, the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or sub-sequence confirmation. In order to do justice to the promotees it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one it must be strictly implemented and it is impermissible for the

authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1). Therefore, the rules must be carefully applied in such a manner as not to violate the rules or equality assured under [Article 14](#) of the Constitution. This Court interpreted that equity is an integral part of [Article 14](#). So every attempt would be made to minimise, as far as possible, inequity. Disparity is inherent in the system of working out integration of the employees drawn from different sources, who have legitimate aspiration to reach higher echelons of service. A feeling of hardship to one, or heart burning to either would be avoided. At the same time equality is accorded to all the employees."

37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to be adversely appointed validly in the meantime, as decided by this court in the case of *Keshav Chandra Joshi v. Union of India* held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees, it would not be proper to do injustice to the direct recruits. The rule of quota being a

statutory one, it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship, but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1) of the Constitution.”

33. Thus, the Apex Court has clearly held that the rule of quota being a statutory one, it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship, but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1) of the Constitution.

34. Based on the materials on record the Tribunal has found that the promotees were appointed in excess of their

quota. The Tribunal in Kurup's case has observed that there has been no break down of rota quota rule. The decision in Kurup's case was rendered in the fact situation where the department failed to produce materials on record to indicate that the promotees were appointed far in excess of their quota. When the seniority list published on 28/1/2001 came to be challenged before the Tribunal, the Tribunal by order dated 21/2/2002 permitted the department to change the seniority list already finalized in accordance with law. The department thereafter carried out detailed procedure and then published the seniority list dated 17/10/2002 by identifying vacancies with effect from 21/2/1978.

35. The Apex Court in the case of **Uttaranchal Forest Rangers** (supra) has laid down that the promotion in excess of quota makes an employee an ad hoc employee and seniority cannot be given to such employees on the basis of ad hoc promotion.

36. Having regard to what is stated herein above we find no merit in the submission advanced by learned Counsel for the promotees that publishing the seniority list on 17/10/2002 by following rota quota rule would amount to violating or nullifying the decision of the Tribunal in Kurup's case. We find in the draft seniority list published in 1986-87 the names of the promotees herein do not find place. The promotees were regularized from 17/5/1991. The seniority lists issued prior to the decision in Kurup's case were not challenged by the promotees till 1996. It is only on the basis of the decision of the Tribunal in Kurup's case the department issued a seniority list dated 8th March, 1999. On objection raised by direct recruits the seniority was recast. In these circumstances, upon consideration of the entire materials and upon carrying out a detailed exercise the revised seniority list was published on 17/10/2002. No error can be said to have been committed by the Customs Department in finalising the seniority list which in our opinion is in consonance with the provisions of law. Once the Tribunal in Kurup's case came to the conclusion that there is no break down

of rota quota rule, in our opinion, the result of pushing down the promotees appointed in excess of the quota may work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1) of the Constitution of India. No doubt, the department in compliance with the decision in Kurup's case granted seniority to the promotees from the date of initial ad hoc promotion but later on in the light of the principles laid down by the Apex Court in the **Direct Recruits** case and the circular in force the Customs Department carried out a detailed exercise and the seniority list came to be revised on 17/2/2002 by identifying the vacancies with effect from 21/2/1978. We do not find this exercise to be illegal or contrary to law as the previous promotion would be regular only from the date of vacancy within the quota and not from the date of earlier promotion.

37. During the pendency of these petitions the promotees have retired. There is no dispute that after publication of seniority list dated 17/10/2002 they were in fact

promoted but from a later date. We also find that except for the promotees Shri Dhuri and Shri Salkar, who were parties to Kurup's case, none of the promotees who were parties to Kurup's case have challenged the seniority list subsequently issued. The Apex Court in the case of **Direct Recruits** (supra) has clearly laid down the principle that the decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

38. We, therefore, do not find any infirmity in the order passed by the Tribunal. Consequently, W.P.No. 6354 of 2003 is dismissed. As a result of dismissal of W.P.No.6354 of 2003, all connected Writ Petitions are dismissed. In view of the dismissal of the Writ Petitions, all Civil Applications stand disposed of.

39. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)