

Dr. S. P. Kapoor

Vs

State of Himachal Pradesh and Others

Civil Appeals Nos. 2104

(Syed M. Fazal Ali, A. Varadarajan JJ)

02.11.1981

JUDGMENT

VARADARAJAN, J. –

1. These appeals by special leave are against the common judgment of a Division Bench of the Himachal Pradesh High Court rendered in Writ Petitions Nos. 2 of 1980 and 288 of 1979. They were heard together by us in view of this Court's Order dated November 6, 1980. Writ Petition No. 288 of 1979 was filed by Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur against the State of Himachal Pradesh, Dr. S.P. Kapoor, Dr. R.M. Bali and Dr. K. Pandeya. Writ Petition No. 2 of 1980 was filed by Dr. R.M. Bali against the State of Himachal Pradesh and eight others including Dr. Jiwan Lal, Dr. (Mrs.) Damyanti Kapur, Dr. S.P. Kapoor and Dr. K. Pandeya, who were respondents 8, 9, 6 and 7 respectively in the writ petition. Dr. S.P. Kapoor, the appellant in C.A. No. 2104 of 1980 was the 2nd respondent in Writ Petition No. 288 of 1979 and 8th respondent in W.P. No. 2 of 1980. Dr. Jiwan Lal, the appellant in C.A. No. 2384 of 1980 was the 1st petitioner in W.P. No. 288 of 1979 and 8th respondent in W.P. No. 2 of 1980.

2. Writ Petition No. 288 of 1979 challenged the reversion of Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur, the petitioners therein, from the post of Deputy Directors of Health Services, as illegal and violative of the conditions of service as also the provision of the Constitution of India. In Writ Petition No. 2 of 1980 Dr. R.M. Bali prayed for quashing the seniority of specialists indicated in the Office Memorandum dated November 2, 1979 and Annexure PX-I containing the list and for assignment of serial No. 1 in the seniority list to him. Dr. R.M. Bali prayed for certain other reliefs also including declaration of the appointment of Dr. S.P. Kapoor as Director of Health Services as null and void and for his case being considered for appointment to that post on the basis of the seniority prayed for in his Writ Petition.

3. The case of Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur, the writ petitioners in W.P. No. 288 of 1979, was that they were appointed as Deputy Directors of Health Services on a regular basis. The post of Deputy Director, Health Services was held by Dr. Jiwan Lal for 4 1/2 years and by Dr. (Mrs.) Damyanti Kapur for about 3 1/2 years. The appointment of Dr. S.P. Kapoor, the appellant in C.A. No. 2104 of 1980 and Dr. R.M. Bali and Dr. K. Pandeya (respondents 2 and 4 in W.P. No. 288 of 1979) as Deputy Directors of Health Services, is contrary to the provisions of the Himachal Pradesh Health Services Rules, 1974 (hereinafter referred to as the 'Rules'). They were appointed in disregard of the rights of Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur. The Departmental Promotion Committee constituted for making the appointment was not properly constituted as one of the members of the Committee, namely, the Principle Secretary to the then Chief Minister was unauthorisedly inducted into the Committee in the place of the Secretary to Government, Health and

Family Welfare Department, Himachal Pradesh. Therefore, the proceedings of the Committee are vitiated. The annual confidential reports of the petitioners Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur were initiated by an officer who was not only junior to them but also an aspirant for promotion to the higher post along with them. Therefore, those confidential reports should not have been taken into consideration for further promotion by the Departmental Promotion Committee. The appointment of Dr. S.P. Kapoor, the appellant in C.A. No. 2104 of 1980, Dr. R.M. Bali and Dr. K. Pandeya, respondents 2 and 4 in that writ petition was made in haste on November 3, 1979 immediately after the final seniority list was issued on November 2, 1979. The appointment of Dr. S.P. Kapoor, the 2nd respondent in W.P. No. 288 of 1979 and appellant in C.A. No. 2104 of 1980 as Director of Health Services on the same day is illegal as he did not satisfy the conditions prescribed in the Rules and he did not have even the requisite qualifying service. Further the post of Director of Health Services must have been filled up from amongst the Health Services Grade I Officers and not from amongst Specialists. The reversion of Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur from the posts of Deputy Directors is illegal and violative of the conditions of their service as also the provisions of the Constitution of India.

4. The case of Dr. R.M. Bali, the petitioner in W.P. No. 2 of 1980 was that he was appointed as T.B. Officer, T.B. Sanatorium, Mandodhar, a Gazetted Class II post, with effect from April 9, 1955 and he continued to work as such till May 28, 1962. He was, thereafter, appointed as Superintendent in that Sanatorium, a Class I post, and after joining the post he was selected for appointment on a regular basis through the Public Service Commission and he was confirmed in that post, categorized as Category 'D' post and Class I post in the Central Health Services, in 1966. The Medical and Health Department of Himachal Pradesh Government appointed him as Director of Health (T.B.), a Category 'D' post, by a Notification dated July 1, 1963. He was inducted into the Central Health Services with effect from September 9, 1966 and included in the initial constitution of that Service and confirmed in that Service on September 9, 1968. But Dr. Grover, who has since retired, and Dr. S.P. Kapoor, who were respondents 5 and 6 respectively in Writ Petition No. 2 of 1980, were appointed merely on a temporary basis to the Central Health Services with effect from November 1, 1966. The inter se seniority of Dr. R.M. Bali, the petitioner in W.P. No. 2 of 1980 and Dr. Grover and Dr. S.P. Kapoor in the Central Health Services (Specialists' Grade) had to be preserved and could not be disturbed at the time of absorption in the Himachal Pradesh Health Services having regard to the Punjab Reorganisation Act and the protection given to the members of the Punjab Service. In these circumstances, Dr. R.M. Bali prayed for quashing of the seniority list of the cadre of Specialists indicated in the Office Memorandum dated November 2, 1979 (Annexure PX-I containing the list) and assigning to him serial No. 1 in the seniority list. He also prayed for other reliefs including declaration of the appointment of Dr. S.P. Kapoor as Director of Health Services as null and void and for his appointment to that post on the basis of the revised seniority claimed by him.

5. The contention of the Himachal Pradesh Government, the 1st respondent in W.P. No. 288 of 1979 was that Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur were appointed as Deputy Directors of Health Services on ad hoc basis. The Deputy Director's post is a selection post which cannot be claimed as of right by persons appointed on ad hoc basis by way of stop-gap arrangement. The incumbent to the post of Secretary to Government, Health and Family Welfare was on leave from November 3 to 9, 1979 and the Principal Secretary to the then Chief Minister was appointed to function in his place as Secretary to Government in the Departmental Promotion Committee by Order dated November 3, 1979. The Constitution of the Departmental Promotion Committee was, therefore, perfectly valid. The annual confidential reports written by Dr. Grover, who was working on ad hoc basis, were not the only reports taken into account by the Departmental Promotion

Committee. That Committee did not take into account the reports of Dr. J.C. Sharma about the work and conduct of Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur. The post of Director of Health Services was manned on an ad hoc basis since the retirement of Dr. Krishan Swarup in December 1973. The posts of Deputy Director also were manned on an ad hoc basis. These ad hoc appointments were necessitated by the absence of the final seniority list which was prepared only on November 2, 1979 and since that impediment was over on November 2, 1979, the Departmental Promotion Committee met on November 3, 1979 and orders of appointment to those selected by that Committee on that date were issued on the same day. The promptness in making the regular appointments was necessitated by the intention to make the regular appointment as quickly as possible after the preparation of the final seniority list on November 2, 1979. Specialists are necessarily officers possessing post-graduate qualifications while G.D.Os (Class I) are, as a rule, only graduates. Therefore, the rule-making authority divided the higher posts equally amongst the officers of the two categories taking all factors into consideration. The appointment of Dr. S.P. Kapoor, the 2nd respondent in W.P. No. 288 of 1979 as Director of Health Services is valid. Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur were not Deputy Directors of Health Services on the date of selection of Dr. S.P. Kapoor as Director of Health Services and, therefore, their claim for being considered for promotion to that post is wholly untenable having regard to Rule 9(3) of the Rules, according to which only Deputy Directors could be considered for promotion to the post of Director of Health Services.

6. The contention of the Himachal Pradesh Government, the 1st respondent in W.P. No 2 of 1980 was that the post of Superintendent, T.B. Sanatorium held by Dr. R M. Bali, the petitioner in that petition, was a junior Class I post until he was appointed to the specialists' grade of the Central Health Services with effect from September 9, 1966. Dr. Grover and Dr. S.P. Kapoor, respondents 5 and 6 respectively in W.P. No. 2 of 1980 were appointed to the specialists' grade in the Central Health Services with effect from November 1, 1966 though the Central Government kept the question of seniority open. Dr. R.M. Bali exercised his option to join the Himachal Pradesh Health Service after a copy of the Rules was supplied to him. The final seniority of Dr. R.M. Bali and others was fixed under the provisions of the Rules issued on January 10, 1974. Seniority assigned to Dr. R.M. Bali is strictly in accordance with the provisions of Rule 10(a)(iii) of the Rules. The words "whichever is earlier" which occurred in the original Rule 10(a)(i) and 10(a)(iii) were deleted by the Amendment Rules, 1966. The claim of Dr. R.M. Bali for seniority on the basis of his ad hoc appointment is not tenable.

7. The Central Government and Dr. S.P. Kapoor, respondents 2 and 6 in W.P. No. 2 of 1980 has also filed counter-affidavits opposing the writ petition. In the Central Government's counter-affidavit it is stated that Dr. R.M. Bali has been in the specialists' grade only from September 9, 1966 and that Dr. Grover and Dr. S.P. Kapoor were appointed to the specialists' grade on November 1, 1966 leaving the question of seniority open. In the counter-affidavit of Dr. S.P. Kapoor reference is made to Government of India's letter dated July 9, 1979 which deals with the fixation of seniority of Medical Officers of the Punjab Government absorbed in the Central Health Service in the Himachal Pradesh Union Territory and states as follows :

The Central Health Service was constituted with effect from September 9, 1966 and seniority of the Medical Officers appointed to the Service with effect from that date has been determined in accordance with the principles laid down in this Ministry's letter dated July 27, 1967. In accordance with sub-para 1 of this Memorandum Officers appointed to a grade of the Central Health Service Under Rule 7-A of the Central Health Service Rules, as amended by the Central Health Service

(Amendment) Rules, 1966, will rank en bloc senior in that grade to those who may be appointed to that grade under Rule 8 of the Central Health Service Rules, 1963.

The Officers of the Punjab Government were appointed to the Central Health Service with effect from November 1, 1966 under Rule 8-A of the Central Health Service Rules, 1963. Those Officers have come to the Central Health Service only after the initial constitution of that Service was over. In accordance with the principles laid down for the Central Health Service, it is not permissible to assign them seniority in the Central Health Service over the Officers appointed to the Central Health Service at the initial constitution of the Service.

However, as the Government of Himachal Pradesh have proposed to formulate their own Health Service and the Medical Officers who opt from the Central Health Service are to be included in that Service, those Officers may be asked to exercise their option. In case they choose to remain as members of the Central Health Service their seniority will be reckoned only at the maintenance stage of the Central Health Service and they cannot get seniority in the Central Health Service on the basis of their prior service under the Punjab Government. Those Officers who opt to join the proposed Himachal Pradesh Health Service may, however, be given the benefit of their past continuous service while fixing their seniority in the Himachal Pradesh Health Service. At the time of formation of that Service these persons can be considered for inclusion in the initial constitution of that Service and their seniority fixed bearing in mind the principles mentioned in Shri A.D. Pande's D.O. letter No. 22/5/67-SR(S) dated February 14, 1967.

8. The learned Judges of the Himachal Pradesh High Court who heard these two writ petitions and other writ petitions jointly found that Dr. Jiwan Lal, Dr. S.P. Kapoor and Dr. (Mrs.) Damyanti Kapur were appointed as Deputy Directors of Health Services on ad hoc basis in July 1975 and January 1976 respectively after the Rules came into force on January 19, 1974, that it has not been contended by them that they had been appointed in accordance with the Rules or after relaxation of the Rules that Dr. Jiwan Lal, Dr. (Mrs.) Damyanti Kapur and Dr. S.P. Kapoor were specifically appointed on ad hoc basis and that, therefore, Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur cannot claim right to the post of Deputy Directors of Health Services or to seniority on the basis of their ad hoc appointments though they can add the period of such appointment in the matter of experience for promotion and confirmation in view of the addition of notes to Rules 9 of the Rules.

9. Regarding the attack on the constitution of the Departmental Promotion Committee, the learned Judges found that when the regular Secretary to the Government, Health and Family Welfare Department, was on leave, the Principal Secretary to the then Chief Minister was appointed to function additionally as Secretary to Government, Health and Family Welfare Department, as per Office Order dated November 2, 1979 and, therefore, the Departmental Promotion Committee has been properly constituted. Regarding the question whether seniority in the Himachal Pradesh Health Service is to be determined with reference to the date of joining the Central Service or with reference to the date of joining the Punjab Civil Medical Service Grade I [in short PCMS(I)] with post-graduate qualifications on the date of appointment as Deputy Medical Superintendent/Resident Medical Officer/Surgical Specialists, Ripon Hospital from the date on which they were given the PCMS scale, the learned Judges of the High Court found that the Central Health Service was constituted by the Central Government and the Health Service Rules, hereinafter referred to as the Central Rules, framed by the President of India, in exercise of the powers conferred by Article 309 of the Constitution of India, came into force with effect from May 15, 1963 and that the Central Rules were amended by the Central Health Service (Amendment) Rules, 1966. Before the Punjab Reorganisation Act came into force the State of Punjab had its own Health Service known as the

PCMS with two grades, Grade I and Grade II. After the Punjab Reorganisation Act came into force, and the Central Health Service was formed, some persons belonging to the PCMS and some persons working as Medical Officers in hospitals run by local bodies were inducted into that Service after they had exercised their option to the inducted therein. The writ petitioners and contesting employees-respondents had been inducted into that Service after they had exercised their option. When the Himachal Pradesh Union Territory was in existence, its Health Department was manned by Officers of the Central Health Service. But after Himachal Pradesh became a full-fledged State, the Himachal Pradesh Health Service was constituted on January 24, 1974 under the Himachal Pradesh Health Service Rules, which came into force on January 19, 1974 and the members of the Central Health Service serving in the erstwhile Himachal Pradesh Union Territory were asked to exercise their option to continue in the new Himachal Pradesh Health Service. The writ petitioners and the contesting employees-respondents exercised their option to continue in the Himachal Pradesh Service. The question for consideration was the basis on which seniority in the Himachal Pradesh Health Service is to be determined, namely, whether it is with reference to the date of entry into the Central Health Service or into the PCMS(I) with postgraduate qualifications or the date of appointment as Deputy Medical Officer/Surgical Specialists, Ripon Hospital from the date on which they were given PCMS scales. According to Rule 4 of the Himachal Pradesh Health Service Rules, which related to classification, categories and scales of pay, there are two wings in the Himachal Pradesh Health Service, namely, the General Wing and the Teaching Wing, which are independent and not interchangeable except in regard to certain posts. The writ petitions had nothing to do with any of the Officers in the Teaching Wing. The General Wing has six categories, each having grades as specified in the Table annexed to the Rules. We are concerned in these appeals with Specialists and Grade I Officers. The Officers who were concerned with the writ petitions were Specialists on the one hand and Himachal Pradesh Health Service Grade I Officers on the other in respect of whom seniority is to be fixed on a separate basis. Under the Himachal Pradesh Health Service Rule 10 relating to fixation of seniority, inter se seniority of departmental candidates absorbed under Rules 7 and 8 shall be determined under Rule 10(a)(ii) as regards (i) Himachal Pradesh Health Service Grade I Officers from the date of regular appointment having been duly selected by the Union Public Service Commission, Punjab Public Service Commission and Himachal Pradesh Public Service Commission and/or by a regular Departmental Promotion Committee in the grades of (i) PCMS(I) and (ii) G.D.O. (Grade I), and under Rule 10(a)(iii) as regards (ii) Specialists from the date of regular appointment having been selected by the Union Public Service Commission, Punjab Public Service Commission and Himachal Pradesh Public Service Commission and/or by a regular Departmental Promotion Committee in the following grades, namely, (i) Specialists (Central Health Service), (ii) PCMS(I) with postgraduate qualifications and (iii) Deputy Medical Superintendent/Resident Medical Officer/Surgical Specialists, Ripon Hospital from the date on which the scale of PCMS(I) was given to them. It was admitted that as alleged in W.P. No. 2 of 1980, Dr. R.M. Bali was inducted into the Central Health Service on a regular basis only on September 9, 1966 and Dr. Grover and Dr. S.P. Kapoor, respondents 5 and 6 in that writ petition, were inducted into the Central Health Service only with effect from November 1, 1966 and, therefore, Dr. R.M. Bali was senior to Dr. Grover and Dr. S.P. Kapoor in the Central Health Service. Dr. R.M. Bali and Dr. S.P. Kapoor were both Specialists. Dr. S.P. Kapoor contended before the High Court that he had been selected by the Punjab Public Service Commission on January 29, 1965 and had postgraduate qualifications when he was inducted into the Central Health Service. But Dr. R.M. Bali contended that he was entitled to seniority from June 1, 1962 when he was appointed as T.B. Specialist at Mandodhar on an ad hoc basis or at least from March 31, 1964 when he was regularly appointed after selection by the Union Public Service Commission. In Rule 10(a)(iii) the words "whichever is earlier" which were originally found have been deleted retrospectively by an

amendment as stated earlier. The learned Judges of the High Court held that seniority has to be determined on the basis of the date of induction into the Central Health Service and not on the basis of the earlier service, if any, in the PCMS though they have observed that the words "whichever is earlier" which occurred in the Himachal Pradesh Health Service Rule 10(a)(iii) were omitted retrospectively in order to do justice in the matter of seniority to those doctors who came into the Himachal Pradesh Health Service from any local authority or PCMS and not from the Central Health Service. They have fixed the seniority of Dr. R.M. Bali above Dr. S.P. Kapoor on the basis that the former was inducted on September 9, 1966 and the latter was inducted on November 1, 1966 into the Central Health Service and held that Dr. D.S. Chauhan's seniority is rightly reflected in the specialists' grade, and they directed modification of the seniority of Doctors in the specialists' grade in accordance with their decision, namely, on the basis of date of induction into the Central Health Service.

10. Regarding writing of the annual confidential reports by Dr. Grover and Dr. J.C. Sharma, the contention of the Himachal Pradesh Government in W.P. No. 2 of 1980 was that Dr. Sharma's reports were not taken into consideration, that Dr. Grover's reports were revised, sometimes with additional remarks in favour or against the incumbents, by the higher authorities and that his reports were not the only reports which were taken into consideration by the Departmental Promotion Committee in November 1979. The learned Judges of the High Court accepted that contention of the first respondent and held that no prejudice has been caused to the writ petitioners while the annual confidential reports were considered by the Departmental Promotion Committee on November 3, 1979. They quashed the seniority list of Specialists prepared on November 2, 1979 as well as the Notification dated November 3, 1979 appointing Dr. S.P. Kapoor, the appellant in C.A. No. 2104 of 1980, Dr. K. Pandeya and Dr. R.M. Bali as Deputy Directors (supertime Grade I - General) and directed the State Government to make the appointments to these posts on the basis of the modified seniority list to be prepared in accordance with the directions given in their judgment. They disposed of Writ Petitions Nos. 288 of 1979 and 2 of 1980 as indicated above and directed the parties to bear their respective costs.

11. The Himachal Pradesh Union Territory was constituted on November 1, 1966. On and from the appointed day, which in the present case is November 1, 1966, Simla, Kangra, Kulu and Lahul and Spiti districts and certain other areas in the original State of Punjab became parts of that Union Territory under Section 5 of the Punjab Reorganisation Act (Central Act), 1966. The Central Rules, 1963 came into force on the appointed day and were later amended by the Central Health Service (Amendment) Rules, 1966. These Rules, as amended, are found on pages 336 to 346 of the Paperbook in C.A. No. 2104 of 1980. The Central Health Service was constituted only with effect from September 9, 1966. This is clear from the letter dated July 9, 1971 from the Ministry of Health and Family Planning (Department of Health), Government of India, addressed to the Secretary to Government (Medical and Health Department), Himachal Pradesh to which detailed reference will be made later in the course of this judgment. Dr. R.M. Bali was regularly appointed in the specialists' grade of the Central Health Service on probation with effect from September 9, 1966 along with certain others, pursuant to the power conferred by Rule 7-A(1) of the Central Rules, as amended in 1966, by the President's Order No. 1-3/67-CHS II dated June 8, 1967. At that time Dr. R.M. Bali was working as a Specialist in the T.B. Sanatorium, Mandodhar, Himachal Pradesh Union Territory, a Category 'D' post, having been appointed on the recommendation of the Union Public Service Commission. According to the counter-affidavit filed on behalf of the Himachal Pradesh Government in W.P. No. 2 of 1980, the post of Superintendent, T.B. Sanatorium, Mandodhar was a junior Class I post at that time. It has been upgraded subsequently. Dr. Jiwan Lal was appointed substantively on December 21, 1946 as Assistant Surgeon (Grade I) and had been promoted as the

Chief Medical Officer in the Civil Surgeon's grade on July 1, 1958. According to Paragraph 3 of the counter-affidavit filed by Dr. Jiwan Lal in S.L.P. (Civil) No. 6574 of 1980, he was appointed under Rule 7-A(1)(b) of the Central Rules, as amended in 1966, to a post in the category of G.D.O. (Grade I) on September 9, 1966 before the constitution of Himachal Pradesh Union Territory and was confirmed in that post on September 9, 1968 after the constitution of that State. Dr. R.M. Bali and Dr. Jiwan Lal were allotted to Himachal Pradesh Union Territory on its constitution. On the recommendation of the Punjab Public Service Commission, Dr. S.P. Kapoor was appointed by the Governor of Punjab as officiating Senior Medical Officer against the upgraded post of PCMS (Grade I) by Memo No. 177-4-HBI-65 dated January 7, 1965 with direction to join the new assignment within a fortnight, which he did on January 29, 1965, and he was put on probation for a period of two years with effect from the date of taking charge of the post. After joining the post as per that Order, Dr. S.P. Kapoor was serving at a station which was in the territory of the former Punjab State prior to the date of its reorganisation, which later became part of the Himachal Pradesh Union Territory under Section 5 of the Punjab Reorganisation Act, 1966 as mentioned above. During the period of his probation he had to come into the Central Health Service on the constitution of Himachal Pradesh Union Territory on November 1, 1966 as he was allotted to that state and had been selected by the Union Public Service Commission in the same manner as Dr. R.M. Bali had been selected. Thus, all the three individuals, Dr. R.M. Bali, Dr. Jiwan Lal and Dr. S.P. Kapoor came to be in the Central Health Service on the constitution of Himachal Pradesh Union Territory on November 1, 1966. Dr. S.P. Kapoor was appointed to the specialists' grade in the Central Health Service along with Dr. Grover and two others under Rule 8-A of the Central Rules as amended in 1966 by the President's Order No. F. 32/48/65-CHS-II (V. II) dated August 26, 1970 with effect from November 1, 1966. Dr. R.M. Bali was appointed along with another to the specialists' grade in the Central Health Service with effect from September 9, 1968 by the President's Order No. F. 32-1(6)/70-CHS III dated January 27, 1971.

12. The full-fledged Himachal Pradesh State was formed under Section 3 of the State of Himachal Pradesh Act 53 of 1970, a Central enactment, on and from the appointed day, January 25, 1971, and it comprised the Himachal Pradesh Union Territory. The Rules (Himachal Pradesh Health Service Rules) came into force on January 19, 1974. Consequent on the exercise of option for being absorbed in the Himachal Pradesh Health Service on the terms and conditions stipulated in the Rules and keeping in view the recommendations of the Screening Committee appointed under Rule 7 of those Rules, the Governor of Himachal Pradesh appointed Dr. Grover, Dr. S.P. Kapoor, Dr. R.M. Bali and Dr. D.S. Chauhan as Specialists on the General side and Dr. K. Pandeya, Dr. Jiwan Lal, Dr. Jyoti Prasad and Dr. (Mrs.) Damyanti Kapur as Himachal Pradesh Grade I Officers with effect from January 24, 1974 by this Order No. 1-15/75-H&FP dated June 9, 1975 in the categories to which they had been appointed prior to the commencement of the Rules as amended. In that Order relating to seven Specialists and four Himachal Pradesh Health Service Grade I Officers, Dr. Grover, Dr. S.P. Kapoor, Dr. R.M. Bali and Dr. D.S. Chauhan are ranked as nos. 2, 3, 6 and 7 respectively among Specialists while Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur are ranked later as nos. 2 and 4 respectively amongst Himachal Pradesh Health Service Grade I Officers. This was after the Governor of Himachal Pradesh, in view of the Central Government's concurrence to the transfer of the Officers of the Central health cadre to the Himachal Pradesh Health Service and on the recommendations of the Screening Committee constituted under Rule 7 of the Rules, appointed nine Doctors as Professors on the Teaching Wing, 19 Doctors as Specialists in the Teaching Wing, 10 Doctors including Dr. S.P. Kapoor and Dr. R.M. Bali as Specialists on the General side and Dr. K. Pandeya and Dr. Jiwan Lal as Himachal Pradesh Health Service Grade I Officers by his Order No. 1/15/75-H&FP dated June 9, 1975. As stated earlier, we are not concerned in these appeals with any

of the Doctors on the Teaching Wing. In that Order dated June 9, 1975 also Dr. Grover, Dr. S.P. Kapoor and Dr. R.M. Bali are ranked as Nos. 2, 3 and 6 respectively amongst the General side Specialists while Dr. Jiwan Lal is ranked later as no. 2 and below Dr. Pandeya amongst the Himachal Pradesh Health Service Grade I Officers. Thus it is seen that Dr. S.P. Kapoor and Dr. R.M. Bali are Specialists on the General side and that Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur are Himachal Pradesh Health Service Grade I Officers.

13. The Himachal Pradesh Government, by Order No. HFW/B(9)-7/78 dated August 19, 1978 confirmed Dr. Grover and Dr. S.P. Kapoor, who originally belonged to the Punjab Civil Medical Service, with effect from April 27, 1954 and January 29, 1965 respectively and Dr. R.M. Bali who came originally from the Central Health Service with effect from September 9, 1966 and certain others with effect from January 24, 1974, leaving the question of seniority open.

14. Prior to November 2, 1979, Dr. S.P. Kapoor, Dr. K. Pandeya, Dr. R.M. Bali, Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur were working as Deputy Directors, Health Services in the Himachal Pradesh Health Service on ad hoc basis and Dr. Grover was working as Director of Health Services on ad hoc basis during 1975 to 1977. Dr. K. Pandeya replaced Dr. Grover as Director of Health Services on ad hoc basis in June 1978 by the Government's Order No. 1-15/76-HP (Apptt.) dated June 8, 1978. This fact, mentioned by Mr. Mehta, learned counsel appearing for Dr. S.P. Kapoor in the course of his arguments, was not disputed by Mr. V.M. Tarkunde, learned counsel appearing for Dr. R.M. Bali and Mr. G.L. Sanghi, learned counsel appearing for Dr. Jiwan Lal. On November 2, 1979 the final seniority lists of Specialists and Grade I Officers in the Himachal Pradesh Health Service as on January 1, 1979 were published by the Himachal Pradesh Government's Order No. HPW-B(9)-2/77 dated November 2, 1979. In the list relating to eight Specialist, Dr. Grover, Dr. S.P. Kapoor, Dr. R.M. Bali and Dr. D.S. Chauhan are ranked as nos. 1, 2, 3 and 5 respectively while in the list relating to 79 Grade I Officers, Dr. K. Pandeya, Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur are ranked as nos. 1, 2 and 3 respectively. Now, Dr. Grover and Dr. K. Pandeya are stated to have retired. On November 3, 1979, the Departmental Promotion Committee constituted under Rule 2(g) of the Rules, the constitution of which is attacked by Mr. Mehta, Mr. Tarkunde and Mr. Sanghi, recommended on the basis of the said final seniority lists, the appointment of Dr. S.P. Kapoor, Dr. K. Pandeya and Dr. R.M. Bali as Deputy Directors of Health Services and Dr. S.P. Kapoor as Director of Health Services in the place of Dr. K. Pandeya. On the same day, they were appointed as such by the Government's Order No. Health-Kb(9)4/79 dated November 3, 1979. On the same day Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur were reverted with immediate effect to the Himachal Pradesh Grade I posts by the Governor's Order No. Health-B(9)4/79 and Dr. S.P. Kapoor was promoted as Director of Health Services by the Government's Notification No. 171002 and put on probation for a period of two years. It is stated in that Notification that Orders of posting of Dr. K. Pandeya, presently officiating as Director of Health Services purely on a temporary basis, will be issued by the Secretary (Health and Family Welfare) to the Government of Himachal Pradesh separately. The correctness of these seniority lists and Orders of appointments were challenged in the writ petitions. The writing of the annual confidential reports by Dr. Grover and Dr. J.C. Sharma, the constitution of the Departmental Promotion Committee, and the rotation of Specialists in preference to Himachal Pradesh Grade I Officers for appointment as Director of Health Services on the admitted 50 : 50 basis were also questioned in the writ petitions. There is no dispute that the basis for selection of the Specialists and Grade I Officers as Director of Health Services is 50 : 50.

15. The learned Judges of the High Court held that seniority has to be determined on the basis of the date of induction into the Central Health Service and not on the basis of the earlier induction into the Punjab Civil Medical Service though they have observed that the words "whichever is earlier"

which occurred originally in Rule 10(a)(iii) of the Rules were omitted retrospectively in order to do justice in the matter of seniority to these Doctors who came into the Himachal Pradesh Health Service from any local authority or the Punjab Civil Medical Service and not from the Central Health Service. On that basis they have fixed the seniority of Dr. R.M. Bali above Dr. S.P. Kapoor on the ground that the former was inducted on September 9, 1966 and the latter was inducted on November 1, 1966 into the Central Health Service and found that the seniority of Dr. D.S. Chauhan is rightly reflected in the specialists' grade. They have directed modification of the seniority of Doctors in the specialists' grade in accordance with their judgment, namely, on the basis of the date of induction into the Central Health Service. Regarding writing of the annual confidential reports by Dr. Grover and Dr. J.C. Sharma, the learned Judges of the High Court accepted the contention put forward by the Himachal Pradesh Government in the counter-affidavit filed in W.P. No. 2 of 1980 that Dr. Sharma's reports were not taken into consideration that Dr. Grove's report were revised, sometimes with additional remarks, in favour or against the incumbents by the higher authorities and that his reports were not the only reports that were taken into consideration by the Departmental Promotion Committee in November 1979 and held that no prejudice has been caused to the writ petitioners while the annual confidential reports were considered by the Departmental Promotion Committee. The learned Judges have not expressed any view regarding the attack on the Departmental Promotion Committee. On the question of rotation and selection of the Specialist as Director of Health Services in preference to Grade I Officers, the learned Judges of the High Court held that the Rules are silent on the question as to which category should be chosen first and they accepted the contention of the Himachal Pradesh Government that the Government had power under Rule 21 of the Rules to supplement the same by providing for starting the roster with category of Specialist on the ground that the seniormost of the Specialists had on the date of meeting of the Departmental Promotion Committee, namely, November 3, 1979, put in greater length of qualifying service than the seniormost officer of the Himachal Pradesh Health Service Grade I Officers and that the Government, therefore, started the roster rightly with the category of Specialist keeping in view the length of qualifying service in each of the grades, namely, Specialists and Himachal Pradesh Service Grade I Officers.

16. Mr. Mehta, appearing for Dr. S.P. Kapoor, contended that having regard to Rule 10(a)(iii) of the Rules and the fact that Dr. S.P. Kapoor had been appointed as PCMS (Grade I) Officer by the Punjab Government on January 29, 1965, long before Dr. R.M. Bali and Dr. Jiwan Lal came into Central Health Service on September 9, 1966 and that Dr. S.P. Kapoor had been appointed as a Specialist in the Central Health Service with effect from November 1, 1966 while Dr. R.M. Bali had been appointed in the specialists' grade only with effect from September 9, 1968, Dr. S.P. Kapoor is senior to both Dr. R.M. Bali and Dr. Jiwan Lal in the Himachal Pradesh Health Service though he would undoubtedly be junior to Dr. R.M. Bali and Dr. Jiwan Lal in the Central Health Service as he had come to that Service only on November 1, 1966 while those two individuals had come into that Service on September 9, 1966. But Mr. Tarkunde, appearing for Dr. R.M. Bali and Mr. Sanghi, appearing for Dr. Jiwan Lal, contended that the basis of seniority has been rightly determined by the learned Judges of the High Court, and Mr. Sanghi submitted that in the list Dr. Jiwan Lal will come first and that if Dr. R.M. Bali is held to be senior, Dr. Jiwan Lal would rank next to him.

17. Mr. Pande, the then Joint Secretary, Home Affairs, Government of India had stated in his D.O. letter No. 22/5/67-SR(S) dated February 14, 1967 addressed to the Chief Secretary, Himachal Pradesh Government (Union Territory), that the Central Government has already informed the Chief Secretary by letter dated November 17, 1966 that the allocation of the government servants among the States of Punjab, Haryana and Himachal Pradesh and Chandigarh, which had already been made provisionally under Section 82(b) of the Punjab Reorganisation Act, are to be finalized by the end

of February 1967. He had requested the Chief Secretary for action for integration of the service being initiated soon after the finalisation of the allocation and had stated that it involves two steps, namely (1) determination of the equivalent posts and (2) determination of the relative seniority of persons holding equivalent posts but drawn from different integrating units. It is also stated in that letter that while determining the relative seniority as mentioned above, it may also be borne in mind that inter se seniority of officers drawn from the same integrated unit should, as far as possible, be maintained. He had further stated in that letter that as the Chief Secretary is aware that Section 82(4) of the Punjab Reorganisation Act casts responsibility on the Central Government for ensuring fair and equitable treatment to all the officers affected by the provisions of that Act.

18. The Ministry of Health and Family Planning (Department of Health), Government of India wrote the letter dated July 9, 1971 to the Secretary to the Government, Medical and Health Department, Himachal Pradesh regarding fixing of seniority of the Medical Officers of the Punjab Government absorbed in the Central Health Service in Himachal Pradesh as in the case of Dr. S.P. Kapoor. Unfortunately, the learned Judges of the High Court have not referred to this letter, which is strongly relied upon by Mr. Mehta, in their judgment. Mr. Tarkunde submitted that this letter was not relied upon before the High Court. That letter cannot be ignored. It is stated in that letter thus :

The Central Health Service was constituted with effect from September 9, 1966 and the seniority of the Medical Officers appointed to this Service with effect from that date, has been determined in accordance with the principles laid down in this Ministry's O.M. No. 5(II)-2/67-CHSI dated July 22, 1967. In accordance with sub-para 1 of this Memorandum, Officers appointed to a grade of the Central Health Service under Rule 7-A of the Central Health Service Rules, 1963 as amended by the Central Health Service (Amendment) Rules, 1966, will rank en bloc senior in that grade to those who may be appointed to that grade under Rule 8-A of the Central Health Service Rules, 1963.

The Officers of the Punjab Government were appointed to the Central Health Service with effect from November 1, 1966 under Rule 8-A of the Central Health Service Rules, 1963. As these Officers have come into the Central Health Service only after the initial constitution of that Service was over, in accordance with the principles laid down for the Central Health Service, it is not permissible to assign them seniority in the Central Health Service over the Officers appointed to the Central Health Service at the initial constitution of the Service.

However, as the Government of Himachal Pradesh have proposed to form their own Health Service and the Medical Officers who are to opt from the Central health Service are to be included in that Service, these Officers may be asked to exercise the option first. In case they choose to remain as members of the Central Health Service, their seniority will be ranked only at the maintenance stage of the Central Health Service and they cannot get seniority in the Central Health Service on the basis of their prior service under the Punjab Government. Those Officers who opt to join the proposed Himachal Pradesh Health Service may, however, be given the benefit of their past continuous service while fixing their seniority in the Himachal Pradesh Health Service. At the time of formation of that Service these persons can be considered for inclusion in the initial constitution of that Service and their seniority fixed bearing in mind the principles mentioned in Shri A.D. Pande's D.O. letter No. 22/5/67-SR(S) dated February 14, 1967.

19. We think that this stand of the Central Government in regard to seniority of Officers who came into the Central Health Service at the initial constitution of that Service vis-a-vis those who came

into that Service after initial constitution of that Service is correct and the only stand that could be reasonably taken in the circumstance of the case. It would not be proper for anyone who came into that Service after it had been constituted, to ask for seniority over those who were in that Service on the date of its initial constitution on the basis of their earlier appointment before they came into the Central Health Service after its initial constitution.

20. Before the Rules were framed there was a meeting of officials on January 24, 1972 to consider the question as to how seniority of Officers who were already in the Central Health Service, having been appointed to that Service under Rule 7-A of the Central Health Service Rules at the initial constitution of that Service and of Officers of the erstwhile Punjab Government who were appointed in the Central Health Service with effect from November 1, 1966 should be fixed. The minutes of that meeting are found at pages 285 to 287 of the Paperbook relating to C.A. No. 2104 of 1980. It is seen from those minutes that in that meeting Mr. T.V. Menon of the Ministry of Law, Central Government, evidently on the basis of the aforesaid letter dated July 9, 1971 of the Ministry of Home affairs, Health and Family Planning addressed to Secretary to Government, Himachal Pradesh, stated that :

As the Government of Himachal Pradesh proposes to form a separate Himachal Pradesh Health Service, it is well within the right of the Himachal Pradesh Government to frame Rules and Regulations to govern the service conditions of Officers who might be appointed to that Service including their seniority. The only safeguard that should be taken is that these rules and principles of seniority should be circulated among all the Officers and their option obtained in writing either to join the Himachal Pradesh Health Service or to remain in the Central Health Service. The Government of Himachal Pradesh need not be bound by the Rules and Regulations governing the Central Health Service Scheme in respect of the provisions that might be made in the Himachal Pradesh Health Service. The Government of Himachal Pradesh may lay down any principles that may be acceptable to the officers concerned keeping in view the principles of equity and justice.

21. Rule 4 of the Rules relates to classification, categories and scales of pay and reads as follows :

4. Classification, categories and scales of pay. - (1) The Himachal Pradesh Health Service Cadre will consist of two wings namely the General Wing and the Teaching Wing. These two wings of the service shall be independent of each other and the posts will not be interchangeable at any stage, except the posts which carry a scale of Rs. 400-1100 or a pay scale lower than that which are included in the service. There shall be six categories in Health Wing (General); and four categories in Health Wing (Teaching). Each category shall consist of the grades specified in column 2 of the Table below.

(2) The scales of pay and classification of such grades shall be specified in corresponding entries in columns 3 and 4 of the said Table :

#-----	-----General Sl. Categories Scales of pay	-----
ClassificationWing no.	-----	1 2 3 4 5-----
-----	1. Supertime Grade I	2250-125-2500 Class I
-----	2. Supertime Grade II	1800-100-2000 Class I including NPA
-----	3. Specialists	900-50-1150/50-1300 Class I
-----	4. Himachal Pradesh Health Service	900-50-1150/50-1300 Class I
-----	5. Health Service Grade I	5.

Himachal Pradesh 400-30-700/40-1100 Class II Health Service Grade II Amendment 6. Dental Surgeons 400-30-700/40-1100 Class II Eight - II Note I. - Two Selection Grade posts one each for Himachal Pradesh Health Service Grade I and Specialists shall be in the pay scale of Rs. 1800-100-2000 (inclusive of NPA). Note II. - See Amendment sixth, and eight - (III). Teaching 1. Principal/Professors 1300-30-1600-100-1800 Class I Wing 2. Specialists' Grade Associate Professor | Assistant Professor | 900-50-1150/50-1300 Class I 3. Assistant Professor 900-50-1150/50-1350 Class I (Dental) Amendment 4. Assistant Surgeon 450-30-660-EB-40-1100-50-1250 Eighth - VI (Dental) Class I The special pay attached to various posts is as under : 1. Principal (Medical College) Rs. 100 p.m. 2. Assistant Professor Rs. 100 p.m. 3. Officers appointed as Chief Rs. 100 p.m. Medical Officers-----##

22. Rule 10(a) mentions about how seniority of departmental candidates absorbed under Rules 7 and 8 shall be determined and reads as follows :

10. Fixation of seniority. - (a) The inter se seniority of departmental candidates absorbed under Rules 7 and 8 shall be determined as follows :

* *

(ii) Himachal Pradesh Health Service Grade I from the date of regular appointment having been duly selected by the Union Public Service Commission, Punjab Public Service Commission and Himachal Pradesh Public Service Commission and/or by a regular Departmental Promotion Committee (whichever is earlier) in the following grades :

P.C.M.S. (I)

G.D.O. (Gr. I)

(iii) Specialist. - From the date of regular appointment having been duly selected by Union Public Service Commission, Punjab Public Service Commission and Himachal Pradesh Public Service Commission and/or by a regular Departmental Promotion Committee (whichever is earlier) in the following grades :

1. Specialists (C.H.S.)

2. P.C.M.S. (I) (with postgraduate qualifications)

3. Deputy Medical Superintendent/Resident Medical Officer/Surgical Specialists, Ripon Hospital from the date the scale of P.C.M.S. (I) was given.

23. It would appear from Rule 10(a)(ii) that so far as Himachal Pradesh Health Service Grade I Officers are concerned, seniority will have to be reckoned from the date of regular appointment having been duly selected by the Union Public Service Commission and Himachal Pradesh Public Service Commission and/or by a regular Departmental Promotion Committee in the following grades, namely, PCMS (Grade I) and G.D.O. (Grade I) and that so far as Specialists are concerned, their seniority will count from the date of regular appointment having been duly selected by the Union Public Service Commission, Punjab Public Service Commission, Himachal Pradesh Public Service Commission and/or by a regular Departmental Promotion Committee in the following grades namely, (1) Specialists (C.H.S.); (2) PCMS(I) (with postgraduate qualifications) and (3)

Deputy Medical Superintendent/Resident Medical Officer/Surgical Specialists, Ripon Hospital from the date on which the scale of PCMS(I) was given to them. It has been seen above that Dr. S.P. Kapoor had been appointed to the PCMS (Grade I) post on January 29, 1965 and he was inducted into the specialists' grade in the Central Health Service with effect from November 1, 1966 while Dr. R.M. Bali and Dr. Jiwan Lal, who were in the Central Health Service on the date of its constitution on September 9, 1966 had been taken in the specialists' grade and G.D.O. (Grade I) respectively under the Central Health Service with effect only from September 9, 1968. Therefore, under Rule 10(a)(iii) of the Rules, Dr. S.P. Kapoor has to rank senior to Dr. R.M. Bali as well as Dr. Jiwan Lal who admittedly has to rank after Dr. R.M. Bali.

24. Mr. Tarkunde submitted that a letter like the one dated July 9, 1971 mentioned above could have been addressed by the Central Government under Section 84 of the Punjab Reorganisation Act to the Administrator of the Himachal Pradesh Union Territory and that the letter dated July 9, 1971 referred to above could not have been written under that Section as Himachal Pradesh Union Territory ceased to be in existence when the full-fledged Himachal Pradesh State came into existence on January 25, 1971 itself. Section 84 of the Punjab Reorganisation Act says that the "Central Government may give such directions to the State Government of Punjab and Haryana and to the Administrators of the Union Territories of Himachal Pradesh and Chandigarh as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this part and the State Governments and the Administrator shall comply with such directions".

25. Mr. Tarkunde relied in this connection upon the decision of this Court in *Roshal Lal Tandon v. Union of India* [(1968) 1 SCR 185 : AIR 1967 SC 1889 : (1968) 1 LLJ 576] and submitted that having come into the Central Health Service on November 1, 1966 it is not open to Dr. S.P. Kapoor who came into that Service subsequent to the date on which Dr. R.M. Bali joined that Service on the date of its initial constitution to contend that his seniority must be fixed with reference to the date of his appointment to the Punjab Civil Medical Service Grade I. In that decision we find the following passage at SCR page 192 :

At the time when the petitioner and the direct recruits were appointed to Grade 'D', there was one class in Grade 'D' formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade 'D' were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade 'C'. To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade 'C'. In the present case, it is not disputed on behalf of the first respondent that before the impugned notification was issued there was only one rule of promotion for both the departmental promotees and the direct recruits and that rule was seniority-cum-suitability, and there was no rule of promotion separately made for application to the direct recruits. As a consequence of the impugned notification a discriminatory treatment is made in favour of the existing Apprentice Train Examiners who have already been absorbed in Grade 'D' by March 31, 1966, because the notification provides that this group of Apprentice Train Examiners should first be accommodated en bloc in Grade 'C' up to 80 per cent of vacancies reserved for them without undergoing any selection. As regards the 20 per cent of the vacancies made available for the category of Train Examiners to which the petitioners belong the basis of recruitment was selection on merit and the previous test of seniority-cum-suitability was abandoned. In our opinion, the present

case falls within the principle of the recent decision of this Court in *Mervyn Coutinho v. Collector of Customs* [(1966) 3 SCR 600 : AIR 1967 SC 52 : (1967) 1 LLJ 749].

26. We are of the opinion that the ratio of this decision will not apply to the facts of the present case.

27. On the other hand, Mr. Mehta invited our attention to two decisions of this Court in *N. Subba Rao v. Union of India* [(1973) 1 SCR 945 : (1972) 2 SCC 862 : 1973 SCC (L&S) 38] and *C.P. Damodaran Nayar and P.S. Menon v. State of Kerala* [(1974) 2 SCR 867 : (1974) 4 SCC 325 : 1974 SCC (L&S) 280]. The decision in *N. Subba Rao v. Union of India* [(1973) 1 SCR 945 : (1972) 2 SCC 862 : 1973 SCC (L&S) 38] related to the inter se seniority of Officers of two regions of different States which came to form a single State on November 1, 1956. On November 1, 1956 the State of Andhra Pradesh came into existence under the States Reorganisation Act, 1956. That State formed out of the former State of Andhra Pradesh and the Telengana area of the former Hyderabad State. The appellants in that case were Engineers in the employment of Andhra Pradesh. On the formation of Andhra Pradesh, the appellants under the States Reorganisation Act, 1956 continued to serve the State of Andhra Pradesh. The respondents who were Telengana Officers in the employment of the Hyderabad State continued to serve the State of Andhra Pradesh. The Central Government directed the State Government in September 1956 to draw up provisional common gradation list keeping in view the general principles agreed to at the Conference of the Chief Secretaries held in April and May 1966. The State Government prepared a provisional common gradation list of Gazetted Officers in November 1961. The Telengana Engineers challenged the common gradation list by filing writ petition in the Andhra Pradesh High Court. This Court observed in the Judgment thus : (SCC p. 871, paras 35 & 36)

Under the States Reorganisation Act power is conferred on the Central Government to bring about the integration of the service in the State of Andhra Pradesh by ensuring fair and equitable treatment to all persons effected by the provisions of Section 115 of the Act. The Government of Andhra Pradesh is under a duty to bring all relevant facts to the notice of the Central Government.

Under the States Reorganisation Act, the Central Government is entrusted with the power of the division and integration of the services and the ensuring of fair and equitable treatment to all persons effected by the provisions of Section 115 of the Act in regard to allotment of officers from an existing State to a successor State.

28. In the case of *C.P. Damodaran Nayar and P.S. Menon v. State of Kerala* [(1974) 2 SCR 867 : (1974) 4 SCC 325 : 1974 SCC (L&S) 280], the State of Kerala came into being on November 1, 1956 and the appellant had been selected by the Madras Public Service Commission as a District Munsiff and was posted as such on May 26, 1951 and he was in continuous service since then. The service of the appellant was regularised as from October 6, 1961. The appellant was allotted to Kerala State with effect from October 24, 1956. On March 26, 1966 the Kerala State published the final integrated list of the Travancore-Cochin and Madras Judicial Officers in the integrated State of Kerala as on November 1, 1956, showing respondents 6 and 7, whose dates of commencement of continuous service were July 20, 1951 and October 1, 1951 respectively as senior to the appellant on the basis that he commenced his continuous service on October 6, 1951. The appellant questioned the final seniority list contending that the date of commencement of his continuous service is May 26, 1951. This Court observed thus : (SCC p. 331, para 3)

Under Section 117 of the Act (States Reorganisation Act, 1956), "the Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions".

29. In accordance with the provisions of that Act, a meeting of the Chief Secretaries of the various States that were to be affected by the reorganisation, was held at the invitation of the Central Government. In that meeting it was agreed that in determining the relative seniority as between two persons holding posts declared equivalent to each other and drawn from different States, inter alia the length of continuous service, whether temporary or permanent, excluding periods in which an appointment is held in a purely stop-gap or fortuitous arrangement, should be taken into account. This Court held that the appellant in that case should be given the benefit of this seniority reckoning his continuous appointment and assigning the date May 26, 1951 and substituting the same in the final list for October 6, 1951, and observed : (SCC p. 333, para 7)

It is common ground that the appellant has been appointed in a regular manner through the Public Service Commission and his appointment cannot by any stretch of imagination be made to fill a "purely stop-gap or fortuitous" vacuum. As noticed earlier, the Government of India has accepted the position that an allotted employee should not suffer any disadvantage if he would not have been subjected to a like handicap in his parent State. It is clear from the position taken by the Madras Government that the appellant would have got the benefit of his continuous appointment in Madras w.e.f. May 26, 1951 (vide Ex. P-34). That being the position, the submissions of the learned counsel for the respondents are of no avail.

We are of the opinion that the ratio of these two decisions relied upon by Mr. Mehta would apply to the facts of the present case. Section 45 of the State of Himachal Pradesh Act, 1970 lays down that "the Central Government may give such directions to the Government of the State of Himachal Pradesh as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and also the provisions of Part 9 of the Punjab Reorganisation Act, 1966 and the State Government shall comply with such directions".

30. We agree with Mr. Mehta that the aforesaid letter dated July 9, 1971 from the Ministry of Health, Family Planning, Department of Health, Government of India, addressed to the Government of Himachal Pradesh, was written under the provisions of Section 45 of the State of Himachal Pradesh Act, 1970. Mr. Tarkunde submitted that even if that letter dated July 9, 1971 had been written under the provisions of Section 45 of the State of Himachal Pradesh Act, 1970, equivalent posts must be determined and that nobody has fixed the equivalent posts and it is for the Government of India to decide. We are of the opinion that this submission is not well-founded as the equivalent grades have already been fixed by placing Dr. S.P. Kapoor and Dr. R.M. Bali in the category of Specialists and Dr. Jiwan Lal in the category of Himachal Pradesh Health Service Grade I Officers, as mentioned above, by the Himachal Pradesh Government's Notification No. 1-15/75-H&FP dated June 9, 1975 referred to above. The Central Government was under an obligation to see that in fairness and equity the seniority of Officers drafted into the newly formed State from the integrating States is properly fixed and that obligation has been discharged by the Central Government : (1) by Mr. Pande's D.O. letter dated February 14, 1967, (2) the stand taken by Mr. T.V. Menon, Deputy Legal Adviser, Central Government in the meeting of Officers held on January 24, 1972 and (3) the letter dated July 9, 1971 written by the Ministry of Health and Family Planning

Welfare, Government of India to the Secretary to the Government of Himachal Pradesh. In these circumstances we are of the opinion that the learned Judges of the High Court have erred in holding that the inter se seniority has to be determined only on the basis of the date of induction into the Central Health Service and not with reference to Rule 10(a)(iii) of the Rules which had, however, been noticed by the learned Judges without a correct appreciation of its impact on what the Government of Himachal Pradesh should do in the matter of fixing the relative seniority of the Officers drawn from the integrating States. We are of the opinion that inter se seniority has to be determined only in accordance with Rule 10(a)(iii) of the Rules and that Dr. S.P. Kapoor would be senior to Dr. R.M. Bali, who in turn would rank senior to Dr. Jiwan Lal.

31. The annual confidential reports relating to Dr. S.P. Kapoor, Dr. Jiwan Lal and others had to be looked into by the Departmental Promotion Committee on November 3, 1979. The contention of Dr. Jiwan Lal was that the annual confidential reports of Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur were initiated by an Officer not only junior to them but also an aspirant for promotion to a higher post along with them, and, therefore, these confidential reports should not have been taken into consideration for further promotion. The contention of the Himachal Pradesh Government was that the confidential reports made by Dr. J.C. Sharma were not taken into account and that Dr. Grover's reports were revised, sometimes with additional remarks for or against the individuals by higher authorities and they were not the only reports which were taken into consideration by the Departmental Promotion Committee. It is clear from this contention of the Himachal Pradesh Government that Dr. Grover's reports were taken into consideration by the Departmental Promotion Committee though it is stated that they had been earlier revised by the higher authorities. Dr. Grover was in the field competing with Dr. S.P. Kapoor, Dr. R.M. Bali and Dr. (Mrs.) Damyanti Kapur at the relevant time for promotion to the higher post. Therefore, it would not have been fair for the Departmental Promotion Committee to take into account the annual confidential reports made by Dr. Grover though they might have been revised by the higher authorities.

32. Section 2(g) of the Rules defines a Departmental Promotion Committee as "a Committee constituted from time to time by the Government for the purpose of making recommendation for promotion or confirmation in any category".

33. Dr. Jiwan Lal has stated in his special leave petition that under the Rules the Departmental Promotion Committee of Himachal Pradesh in respect of the Health Services consisted of the Chief Secretary, Financial Commissioner and Secretary, Health and Family Welfare, of the Himachal Pradesh Government. There is no dispute about this fact. But the Departmental Promotion Committee which met on November 3, 1979 to consider the question of appointment of Deputy Directors and Director of Health Services, consisted of the Chief Secretary, Financial Commissioner and Principal Secretary to the Chief Minister of Himachal Pradesh, who was appointed additionally as Secretary of Health and Family Welfare in the absence on leave of the regular Secretary, Health and Family Welfare from November 3 to 8, 1979. It is seen from the counter-affidavit of the Himachal Pradesh Government that the Director of Health Services and Deputy Director of Health Services were holding the posts on ad hoc basis from the year 1973. The final seniority list was prepared only on November 2, 1979 and the Departmental Promotion Committee was constituted on November 3, 1979. The Joint Secretary, Personnel Department, Himachal Pradesh Government had written the letter No. Per (A-1)B-79 dated November 3, 1979 requesting Mr. R.C. Gupta, Secretary (Health) Himachal Pradesh Government to attend the Departmental Promotion Committee meeting to be held at 3 p.m. on that day for considering the names of Officers for the post of Director, Health Services. It is seen from what has been stated above and it is also admitted by the Himachal Pradesh Government that the selection of the Deputy Directors and the Director of Health Services

from amongst the Deputy Directors had been made by the Departmental Promotion Committee on November 3, 1979 itself and that even the orders of appointment had been issued on the same day with the approval of the Governor of Himachal Pradesh. Though before the High Court it does not appear that Dr. Jiwan Lal had alleged any mala fides to anybody he has alleged in the special leave petition that the constitution of the Departmental Promotion Committee and the process of selection and appointment were obviously mala fide and that they were appointed on the date on which Mr. Yadav, the regular Secretary, Health and Family Welfare Department, was on leave and that this haste suggests that he would not have agreed to carry out the political wish of the then Chief Minister in making the appointments in the post-haste manner. Though it is not possible to accept the belated contention that there was any mala fides on the part of the then Chief Minister in the matter of constitution of the Departmental Promotion Committee with his Principal Secretary as one of its members in the place of the regular Secretary, Health and Family Welfare, we are of the opinion that there is room for suspecting the reason why the whole thing was completed in haste on November 3, 1979 after the preparation of the final seniority list on November 2, 1979, in the light of the admitted position that the Deputy Directors and Director of Health Services, Himachal Pradesh were holding ad hoc appointments from 1973. The matter was not such as could not have been put off by a few days. Such rush is not usual in any State Government. The post-haste manner in which these things have been done on November 3, 1979 suggests that some higher-up was interested in pushing through the matter hastily when the regular Secretary, Health and Family Welfare was on leave. Therefore, we are of the opinion that the matter requires to be considered afresh.

34. In regard to the question of rotation, Rule 9(4) of the Rules lays down : (1) supertime Grade II (General) posts shall be filled by promotion of (i) HPHS (Grade I) Officers with not less than seven years of service in the Category or (ii) Specialists' Grade Officers with not less than five years' service in that Category. The selection will have to be on the recommendation of a Departmental Promotion Committee on the basis of merit-cum-seniority of the Officers concerned at (i) and (ii) above on 50 : 50 basis keeping in view the nature of the duties of the post. (2) Supertime Grade I (General) posts shall be filled by promotion on the recommendations of the Departmental Promotion Committee on the basis of merit with due regard to seniority of Officers holding the posts of Deputy Directors with not less than five years' service in that Category. The contention of Dr. Jiwan Lal was that the Departmental Promotion Committee should not have started the rotation to the post of Director of Health Services with a Specialist. On the other hand, the contention of the Himachal Pradesh Government before the High Court was that Rule 9 was silent on the question as to the category with which the roster should be started and, therefore, the State Government decided to supplement the Rule by starting the roster with the category of Specialists having regard to the fact that the seniormost Specialist Officer available on the date of the Departmental Promotion Committee meeting on November 3, 1979 had put in greater length of qualifying service than the seniormost HPHS (Grade I) Officer. Rule 21 of the Rules provides that if any difficulty is felt in giving effect to provisions of these Rules the Government may in consultation with the Public Service Commission give such directions not inconsistent with the provisions of those Rules, as appear to be necessary or expedient for the removal of the difficulty. In view of the fact that Rule 9(4) does not provide the category with which the roster may be started, whether with HPHS (Grade I) Officers or Specialists, difficulty appears to have arisen in starting the roster. Therefore, the Government stepped in and supplemented the Rule by directing that the roster may be started with the category of Specialists keeping in view the length of qualifying service in each of the two grades, namely, Specialists and HPHS (Grade I) Officers. The learned Judges of the High Court have expressed the view that the Specialists had an advantage for their category starting the roster

by the seniormost of the Specialists having put in more number of years of qualifying service than the HPHS (Grade I) Officers. We are of the opinion that the learned Judges were perfectly justified in taking this view and that the Government was right in getting the roster started with Specialists instead of HPHS (Grade I) Officers.

35. For the reasons stated above Civil Appeal No. 2104 of 1980 is allowed and Civil Appeal No. 2384 of 1980 is dismissed. The principle on which relative seniority should be fixed having been settled in this Judgment, it shall be fixed accordingly and the matter of selection of Deputy Directors and Director of Health Services, Himachal Pradesh shall be decided afresh according to the Rules and in the light of this Judgment. Under the circumstances of the case, we make no order as to costs.

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