

Rudra Kumar Sain and others etc.

Vs

Union of India and others

Writ Petition (C) No. 490 of 1987 etc.

(G.B. Pattanaik, S. Rajendra Babu, D.P. Mohapatra, Doraiswamy Raju and Shivaraj V. Patil, JJ.)

22.08.2000

JUDGMENT

G.B. Pattanaik, J.:— These writ petitions filed under Article 32 of the Constitution by the officers of Delhi Higher Judicial Service, some by the promotees and others by direct recruits, in-fact, raise the question as to whether in determining inter-se seniority between the promotees and the direct recruits, the guidelines and directions given by this Court in the case of **O.P. Singla & Anr. etc. vs. Union of India & Ors.** reported in 1985(1) SCR 351, have been duly followed or not? It is rather unfortunate that on an erroneous impression that the judgment in Singla's case is under consideration before a Constitution Bench, these writ petitions were directed to be placed before a Constitution Bench, resulting thereby inordinate delay in disposal of the matters, which in turn, must have adversely affected the career of several persons. At the beginning of the hearing of these writ petitions, on being asked, the counsel appearing for all the parties, could not indicate any decision where the correctness of judgment of this Court in Singla's case was under consideration, though in one of these writ petitions filed by a direct recruit, namely Writ Petition No. 1252/90, Mr. Gopal Subramaniam, the learned senior counsel for the petitioner, challenged the correctness of decision of this Court in Singla's case to which, we will advert at the appropriate time. Suffice it to say for the present that OP. Singla, who was also a promotee to the Delhi High Judicial Service, filed the writ petition, claiming that since they have been working as Additional District and Session Judges, against temporary posts created by the Delhi Administration in the cadre of Additional District & Sessions Judge, they should be treated as "Members of Delhi Higher Judicial Service" and the seniority should be decided on the basis of continuous length of service. The three-Judge Bench, which heard the case delivered two judgments, Chief Justice Y.V. Chandrachud, as he then was, speaking for himself & on behalf of Justice R.S. Pathak and Justice Sabyasachi Mukharji, giving a separate judgment. Chief Justice Chandrachud in the majority judgment also indicated that the conclusion which the majority has arrived at, is not different from the one, reached by Justice Mukharji, but because of the general importance of the case and because of disagreement on the interpretation of one of the provisions of the Recruitment Rules, it was thought fit that the separate judgment should be written. The disagreement between the two judgments was on the question as to whether the Recruitment Rules, provided for any quota in the Delhi Higher Judicial Service and whether the principle of 'quota and rota' was required to be followed for determining the inter-se seniority. Interpreting the proviso to Rule 7 of the Rules, Justice Mukharji came to the conclusion that Rule 7 only provides for ceiling of direct recruits by providing that in case, there were recruitment from the Bar as well as by promotion, in such a case, Bar recruits would not be more than one third of the substantive posts in the service and there is no quota as such. Justice Mukharji was of the view that Rule 8(2) proceeds on the mis-conception that there is quota fixed for direct recruits, which Rule 7 does not and Rule 8(2) cannot on plain literal meaning also be construed or

interpreted to mean that it was deemed by the legislature and the rule-making body to engraft any quota. Chief Justice Chandrachud, on the other hand, speaking for himself as well as on behalf of Justice Pathak, on a construction of Rule 7 and Rule 8(2), came to hold that the proviso to Rule 7 has to be read along with Rule 8(2), since the two provisions are inter-related and their combined reading yields but one result, that the proviso prescribed a quota of one third for direct recruits. It was also held that Rule 8(2) cannot be held to be unconstitutional, merely because it reserves one third of the vacancies in the service for direct recruits and provides that the first available vacancy in the service will be filled in by a direct recruit, the next two by promotees and so on. In the majority judgment, Their Lordships also came to the conclusion that though the proviso to Rule 7 prescribes a quota of one third for direct recruits and provides for rotation of vacancies between them and the promotees, who are appointed to the service, that rule must inevitably break down when appointments to promotees are made to the Service under Rules 16 and 17. Having interpreted the provisions of Rules 7 & 8 of the Recruitment Rules, as aforesaid, their Lordships examined the different provisions of the Recruitment Rules and recorded their findings, which would be appropriate for us to enumerate for resolving the controversy in these writ petitions. On going through the detailed charts, which were filed by the promotees in Singla's case, the Court came to the conclusion.

"These charts show, indisputably, that promotees who have been functioning as temporary Additional District and Sessions Judges for an unbroken period between 8 to 12 years are regarded as juniors to the direct recruits who have been appointed as Additional District and Sessions Judges much later."

The Court further held:

"The process of reading the Rules as parts of a connected whole does not end with Rules 7 and 8. Rules 16 and 17 are also relevant for the present purpose and have, indeed, an important bearing on the question of reservation of vacancies for direct recruits to the extent of one-third of the substantive posts in the service".

Adverting to Rules 16 and 17 it was held:

"The position which emerges from the provisions contained in Rules 16 and 17 is that it is permissible to create temporary posts in the Service and, even substantive vacancies in the Service can be filled by making temporary appointments."

Interpreting Rules 2(b) and 2(d), it was held that according to the scheme of the Rules in this case, 'service' is a narrower body than the 'cadre'. In interpreting Rules 2(b) and 2(d), Their Lordships held that by the definition contained in Rule 2(d), membership of the Service is limited to persons, who are appointed in a substantive capacity to the Service, but by reading the second part of Rule 2(b) in an extended sense, every temporary post which carries the same designation as that of any of the posts specified in the Schedule is a Cadre Post, whether such post is comprised in the Service or not. Such posts and the posts specified in the Schedule will together constitute the Cadre under Rule 2(b), if an extended meaning is given to the second part of the rule. Having given such meaning to the provisions of Rules 2(b), 2(d), 7, 8, 16 and 17, the Court proceeds to determine the question of seniority between direct recruits and promotees. It was then observed:

"Care has, therefore, to be taken to apply the provisions of Rule 8(2) in such a manner as not to lead to the violation of the guarantee of equality and equal opportunity contained in Articles 14 and 16 of

the Constitution, For that purpose, it is necessary to ascertain as to which of the promotees can be regarded as belonging to the same class as the direct recruits".

In its pursuit to ascertain as to which of the promotees can be regarded as belonging to the same class as direct recruits, the Court observed:

"that in the matter of seniority, it is difficult to appreciate, how any distinction can be made between direct recruits who are appointed to substantive vacancies in the Service on the recommendation of the High Court under Rule 5(2) and the promotees, who are appointed in consultation with the High Court to posts in the Service under Rules 16 and 17".

While coming to the aforesaid conclusion, it was also indicated that the persons belonging to the Delhi Judicial Service, who are appointed to temporary posts of Additional District And Sessions Judges on an ad hoc basis or for fortuitous reasons or by way of a stop-gap arrangement, constitute a class which is separate and distinct from those who are appointed to posts in the Service in strict conformity with the rules of recruitment. The Court, then noted a representative order of appointment under Rule 16 and held that such appointments were neither ad hoc, nor fortuitous, nor in the nature of a stop-gap arrangement and persons promoted under such orders have been factually officiating continuously without a break as Additional District and Sessions Judges for a long number of years. Their Lordships noticed the difficulties in evolving a rule, which will cause no hardship of any kind to any member of the Service and yet attempted to minimise the same as far as possible, so that inequities and disparities which are inherent in a system which provides for recruitment to the Service from more than one source. It would be appropriate to extract the following observations made by Their Lordships in the majority judgment:

"It may bear emphasis that promotees appointed under Rules 16 and 17 to the High Judicial Service can rank for seniority along with direct recruits only if they are appointed in consultation with the High Court as required by those Rules and if they satisfy the requirement laid down in Rule 7 (a) that they must have completed not less than years of service in the Delhi Judicial Service".

The best solution to the situation that confronted the Court in Singla's case was to adopt the rule enunciated in **S.B. Patwardhan vs. State of Maharashtra, 1977 (3) SCR 775.**, to have continuous officiation in a non-fortuitous vacancy ought to receive due recognition in fixing seniority between persons who are recruited from different sources, so long as they being to the same cadre, discharge similar functions and bear the same responsibilities. It was also held that since rule of 'quota and rota' ceases to apply when appointments are made under Rules 16 and 17, the seniority of direct recruits and promotees appointed under those Rules must be determined according to the dates on which direct recruits were appointed to their respective posts and the dates from which the promotees have been officiating continuously either in temporary posts created in the Service or in substantive vacancies to which they were appointed in a temporary capacity. Justice Mukharji in the separate judgment also came to the same conclusion for determining the inter-se seniority between the promotees and direct recruits. It may be noticed that the Court ultimately quashed the seniority list which had been prepared by the High Court and observed that a new seniority list be prepared on the basis of the view taken in the judgment and the said new seniority list would include the direct recruits and promotees appointed under Rules 16 and 17. While quashing the seniority list, the seniority of Shri G.S. Dakha was protected, since he had been appointed as Additional and Sessions Judge in a vacancy reserved for the members of Scheduled Caste.

Subsequent to the judgment of this Court in Singla, the High Court of Delhi redrew up a seniority

list on 26th of March, 1985 and in drawing up the said list, the principle that was evolved is the subject matter of challenge in the writ petitions filed by the promotees. It may be stated that a fresh look was also given to the earlier seniority list that had been prepared on 26th of March, 1985 and a Committee of Judges submitted the report on 5th of March, 1986, which was approved by the Full Court in its Meeting on 25th of October, 1986 and the final seniority list thus emanated on 11th of November, 1986. According to the promotee officers, while preparing the final seniority list, the High Court of Delhi has not followed the directions given by this Court in Singla's case and erroneously did not take into consideration the continuous appointment of the officers as Additional District and Sessions Judge, notwithstanding the fact that the appointments had been made after due consultation with the High Court and the appointees fulfilled the requirements of Rule 7(1) of the Recruitment Rules, on an erroneous conclusion that the appointment was ad hoc or fortuitous or stop-gap. A representation appears to have been filed by the promotees in 1987 and then the present writ petition was filed which was registered as Writ Petition No. 490/87.

At the outset, it may be stated that the Delhi Higher Judicial Service Rules 1970 were amended in the year 1987 by Notification dated 17th of March, 1987, subsequent to and pursuant to the observations made by this Court in Singla's case and by virtue of explanation added to Rules 16 and 17, Rules 5 and 7 to 11 became applicable to such appointments also. We are not concerned in this batch of cases with the effect of such amended provisions or the inter-se seniority to be determined subsequent to the year 1987, though we are told that a fresh seniority list has been prepared in March, 1995 and the Full Court of Delhi High Court has taken a decision thereof in the year 1998. For the present, we are only concerned with the question whether in preparing the seniority list of the officers recruited to the Higher Judicial Service from both the sources viz. as direct recruits as well as by promotion, prior to the amendment of 1987, the directions and conclusions of this Court in Singla's case has been duly given effect to.

Mr. Kapil Sibal, the learned senior counsel, appearing for the petitioners in Writ Petition No. 490/87, who are the promotees, contended that even though the recruitment to the Higher Judicial Service of these petitioners have been made either under Rule 16 or under Rule 17 of the Recruitment Rules after due consultation and/or approval of the High Court and the incumbents were duly qualified for being promoted under Rule 7 of the Recruitment Rules and had continuously held the posts of Additional and Sessions Judge, yet the High Court erroneously was of the opinion that they are ad hoc or fortuitous or stop-gap appointees and, therefore they were made junior to the direct recruits and the continuous length of service was not taken into account for the purpose of determination of the inter-se seniority. According to Mr. Sibal, there was no ambiguity in the judgment of this Court in Singla's case, but since the Court had not indicated as to when an appointment can be said to be ad hoc or fortuitous or stop-gap arrangement the High Court went on examining the number of posts that were available on 22.4.1980, the date on which Smt. Usha Mehra was directly appointed and then after giving her the 30th position in the seniority list, the promotees' seniority were adjusted and all other promotees who even though have been recruited under Rules 16 or 17 after due consultation with the High Court and also satisfied the qualification with the High Court and also satisfied the qualification required under Rule 7 and had continuously held the post of Additional District and Sessions Judge, much prior to Smt. Usha Mehta, yet such appointments of the promotees was held to be ad hoc or fortuitous and by adopting such procedure, the High Court acted contrary to the judgment and directions of this Court in Singla's case. According to Mr. Sibal, it is only when an appointment is made to the Higher Judicial Service of a person, belonging to the Delhi Judicial Service without the consultation or approval of the High Court or when such appointee did not have the prescribed qualification under Rule 7 for being promoted or any short term appointment is made in exigency of any particular situation, requiring

immediate recruitment or an appointment is made purely by way of stop-gap arrangement, which can obviously be for a very short period, then only the appointment can be held to be on ad hoc basis or for fortuitous reasons or by way of a stop-gap arrangement and in such a contingency, the Services rendered by an appointee cannot be counted for the purpose of seniority in the High Court Judicial Service. But when the appointment is made by the Administrator either under Rule 16 or Rule 17, after due consultation with or getting the approval of the High Court and the appointee satisfies the qualification required under Rule 7 and continuously holds the post of Additional District and Sessions Judge for a fairly long period, as in the case in hand, it is difficult to import the concept of ad hoc or fortuitous or stop-gap, which is well known in the Service Jurisprudence to such appointments. In this view of the matter, the High Court committed serious error in coming to the conclusion that the appointment of the petitioners was ad hoc/fortuitous/stop-gap and consequently, the seniority list thus prepared is contrary to the directions given by this Court in Singla's case. The second Committee, which examined the objections filed to the provisional list, approved by the Full Court of Delhi High Court in its Meeting held on 15th of May, 1985 also committed the same mistake as the earlier Committee and went on examining the question of lien under the fundamental rules, and as to how many of the incumbents of the Delhi Higher Judicial Service were on deputation to different posts for the purpose of finding out as to whether the appointments made in that chain would be ad hoc or fortuitous or stop-gap. According to Mr. Sibal, the second Committee, even went to the extent of holding that if a quota post meant for direct recruit according to the quota, remains unfilled, then the promotee occupying the last post must be taken to be holding the post on ad hoc basis or for fortuitous reasons or by way of stop-gap arrangement and the promotee holding the last post must be made to surrender it, and applying this theory one Shri Sagar Chand Jain, who had worked for about four years as Additional District & Sessions Judge was made junior to Smt. Usha Mehra but according to the Committee that was the best solution, and, therefore, the provisional seniority list already approved by the Full Court was recommended to be accepted as the final list. From the final seniority list, it transpires that Shri Sagar Chand Jain had been appointed as Additional District and Sessions Judge on 27.7.76, whereas Smt. Usha Mehra was appointed as Additional District and Sessions Judge as a direct recruit on 22.4.1980, but yet she was shown senior to Shri Jain. Mr. Sibal also pointed out that even the officers who had been appointed in December, 1980 and had been continuing as Additional District & Sessions Judge, yet their appointments were held to be fortuitous as three posts for direct recruitment had been advertised. According to Mr. Sibal, the High Court of Delhi had failed to implement the positive mandate of this Court in Singla's case and the spirit of the same in drawing up the seniority list and gross injustice has been meted out to the promotee officers. The learned counsel points out that Shri M.A. Khan, Shri Ravi Kumar, Shri O.P. Dwivedi, Shri R.C. Jain and Shri J.D. Kapoor though had been duly appointed in the year 1980 under Rules 16 and 177 and had continuously held the post of Additional District and Sessions Judge, they were shown junior to Shri B.S. Chaudhery, a direct recruit, who was appointed on 10.11.1982. Similarly, Shri B.N. Chaturvedi and Shri R.C. Chopra, though had been appointed as Additional District and Sessions Judge in August, 1984 under Rule 16, after due consultation with the High Court of Delhi and also were duly qualified under Rule 7 and continuously held the post of Additional District and Sessions Judge, yet they were made junior to the direct recruits of the year 1985 namely Ms. Sharda Aggarwal, Shri H.R. Malhotra and Shri J.P. Singh. This determination of inter-se seniority, according to Mr. Sibal is in contravention of the principles evolved by this Court in Singla's case and, therefore, such seniority list cannot be sustained. Mr. Sibal also pointed out that even though, this Court in O.P. Singla's case categorically held that the controversy regarding the fixation of the seniority list between the promotees and direct recruits cannot be resolved following the earlier decision in the case of Joginder Nath, yet the High Court while drawing up the seniority list, followed the principle

of Joginder Nath. According to Mr. Sibal, there cannot be a more blatant contravention of the directions given by this Court in Singla's case than the one committed by the High Court in the case in hand.

Mr. Dipankar Gupta, the learned senior counsel, appearing for the petitioners in Writ Petition No. 1250/90, on the other hand contended with force that since there cannot be any appointment more than the number of posts available in the Service and this Court having indicated that stop-gap/fortuitous/ad hoc appointments will not enure to the benefit of such appointees for the purpose of their seniority, it was incumbent on the High Court to identify the posts available in the Service for being regularly filled up and any appointments made in excess of the posts available must be held to be either stop-gap or fortuitous or ad hoc and, consequently, the High Court did not commit any illegality in drawing up the seniority list. Mr. Gupta also contended that the "Member of the Service" having been defined in Rule 2(d) to mean a person, appointed in a substantive capacity to the Service under the provisions of the Rules, and Rule 16 having provided for creation of temporary posts in the Service by the Administrator and filling up of the same, such appointments cannot be held to be appointments in the Service in substantive capacity and such appointees cannot be held to be "Members of the Service" within the meaning of Rule 2(d) and on this ground, the Judgment in Singla's case requires re-consideration.

Mr. Gopal Subramaniam, the learned senior counsel, appearing for the direct recruits, seriously contended that the judgment of this Court in Singla's case is contrary to the law laid down by this Court in **Chandramouleshwar Prasad vs. Patna High Court & Ors., 1970(2) S.C.R. 666**, and, therefore, the said judgment must be reconsidered. He also contended that the statutory rules having provided for a quota for the direct recruits, as apparent from a combined reading of Rules 7 and 8, if no such quota is fixed for the direct recruits in case of appointments made under Rules 16 and 17, then the rule will be grossly discriminatory and would be liable to be struck down and, therefore, until such quota is provided in respect of appointments made under Rules 16 and 17, it would only be meet and proper to hold that the seniority must be determined in accordance with Rule 8(2), which would necessarily mean that the appointees under Rules 16 and 17 cannot claim parity with regular appointees under Rule 7 and, therefore, cannot claim seniority in the Cadre. The learned counsel also contended that the decision in **Joginder Nath's** case being one, in relation to the very Service, the principles evolved therein must be made applicable and, High Court, therefore, rightly relied upon the same in determining the inter-se seniority. According to Mr. Subramaniam, only the genuine appointees under Rules 16 and 17 may, at best get the benefit of the decision of this Court in Singla's case and appointment made against temporary post, because the temporary appointee has gone elsewhere, cannot be held to be an appointment under Rule 16, even though, he might have been nomenclatured as such.

Mr. Govind Das, the learned senior counsel, appearing for the respondents in Writ Petition No. 490/87, fairly stated that this Court having not indicated the true import and meaning of the expression "stop-gap/fortuitous/ad hoc", the High Court had to give meaning to the same and in so doing, the High Court has taken into account the number of posts available in the Service and has tried to implement the directions given by this Court in **Singla's** case. According to Mr. Das, this Court should now indicate or clarify the meaning of the expression "stop-gap/fortuitous/ad/hoc" in which event, there will not be any further controversy in implementing the directions of this Court for drawing up the seniority list.

Mr. Rakesh Kumar also appearing for respondent No. 8 in Writ Petition No. 490/87, who happens to be a direct recruit, contended that in **Singla's** case, this Court has tried to work out the equity and

for working out equity, it will not be appropriate to take into account the Services rendered by an appointee against a temporary post when the original appointee against the said temporary post is on deputation to some other Service. According to Mr. Rakesh Kumar, by not following the quota, meant for direct recruits, gross inequity has already been met out to such direct recruits and over and above that, if the continuous service of such an appointee under Rule 16, as stated above is taken into account for determination of their seniority, then the aspiration with which a Member of the Bar joins the post in the Higher Judicial Service will be marred and it will work out gross inequity, so far as the direct recruit is concerned.

Shri J.P. Singh, respondent no. 9 in Writ Petition No. 490/87, who is also a direct recruit, argued in person and reiterated the stand taken by Mr. Dipankar Gupta, appearing for some of the direct recruits and Mr. R.P. Rao, appearing for the High Court. Mr. R.C. Chopra, a promotee, also appeared in-person and adopted the stand taken by Mr. Sibal.

Mr. P.P. Rao, the learned senior counsel, appearing for the Delhi High Court, on the other hand contended that prior to the judgment in **Singla's** case, the High Court's understanding of the rule was that appointments made under Rules 16 and 17 will not count for the purpose of seniority and inter-se seniority has to be determined only between direct recruits and promotees made under Rule 7, following the principle engrafted in Rule 8(2). But after the judgment in **Singla's** case, when the Court was confronted with a situation that there has been more number of appointment than the posts available and even in **Singla's** case, this Court had indicated that the fortuitous, ad hoc and stop-gap appointees, cannot claim their seniority, the Full Court of Delhi High Court took the decision that all appointment made beyond the number of posts available, must assume the character of fortuitous, ad hoc or stop-gap, and, therefore, cannot claim seniority in the Cadre. According to Mr. Rao, though in **Singla's** case, the Court has not indicated the meaning of the expression "ad hoc, fortuitous or stop-gap" but those expressions have been given due meaning in **Parshotam Lal Dhingra vs. Union of India, 1958, SCR, 828**, and, therefore, those meanings should be imported and given effect to. According to Mr. Rao, even though, the appointment letters might have indicated the appointments to be one under Rules 16 or 17, but that by itself will not create any right in favour of the appointees on the basis of the **Singla's** judgment inasmuch as a wrong leveling will not create a right as such. In support of this contention Mr. Rao, relied upon decisions of this Court in the case of **Afzal Uliah vs. The State of Uttar Pradesh, 1964(4) SCR 991**, and **N.B. Sanjana, Assistant Collector of Central Excise, Bombay & Ors. vs. Elphinstone Spinning & Weaving Mills Co. Ltd., 1971(3) SCR, 506**. Mr. Rao with reference to the seniority list, which had been drawn up, contended that when the appointments have been shown to be 'out of turn' such appointment must be held to be fortuitous within the meaning of the said expression used in **Singla's** case and, therefore, such appointees cannot claim a parity or equality with the regular appointees under Rule 7 and, therefore, cannot claim their seniority on the basis of mere continuous length of Service, as contended by Mr. Sibal, appearing for the promotees.

Having examined the rival submissions at the Bar and having scrutinized the two seniority lists drawn up by the Delhi High Court, the provisional as well as the final, the provisional made on 26th of March, 1985 and the final list which was approved by the Full Court on 25th of October, 1986, we find sufficient force in the contentions made by Mr. Sibal, appearing for the promotees. We are also of the considered opinion that the High Court of Delhi, in drawing up the seniority list, though proceeded to allocate seniority according to the length of continuous officiation, regardless of whether an appointee held a temporary post or a permanent post or whether he was a promotee or a direct recruit, as directed by this Court in **Singla's** case, but committed error by excluding the persons, on the ground that they held posts on ad hoc basis or for fortuitous reasons or by way of

stop-gap arrangement, even though appointments had been made under Rules 16 and 17 after due consultation with and or approval of the High Court and the appointees satisfied the qualification required under Rule 7 of the Rules. It is on this score, the ultimate seniority list, drawn up, stands vitiated. When the report of the first Committee, on the basis of which ultimately provisional seniority list was drawn up is examined, it would appear that the Committee went on examining the question of a lien against a post and then, recorded a finding that anyone who comes to hold one of those posts, which is subject to a lien, must be held to be holding as an ad hoc arrangement or for fortuitous reasons or as a stop-gap arrangement. The Committee also recorded a further finding that if the position of the person, whose seniority is under consideration is beyond the total number of posts in the Service, then also his appointment must necessarily fall within the description of 'ad hoc/fortuitous/stop-gap' and having said so, the Committee assigned Ms. Usha Mehra, the 30th post and then adjusted the seniority accordingly. The conclusion of the Committee that a person, promoted to the Higher Judicial Service under Rules 16 or 17 of the Rules to a post against which some other person has a lien, would ipso facto make such appointment ad hoc/fortuitous/stop-gap, is contrary to conclusion of this Court in **Singla's** case. Then again, this Court having categorically directed in **Singla's** case, that appointments made under Rule 16 or 17, after due consultation and/or approval of the High Court, and the appointee did qualify to hold the promotional post, as required under Rule 7 of the Recruitment Rules, then such appointment of the appointee will not be ignored for the purpose of determining the inter-se seniority in the cadre and on the other hand, continuous length of Service should be the basis, though Rule 8(2) of the Rules provides otherwise. Yet the High Court took shelter under the expression 'ad hoc/fortuitous stop-gap' and ignored the continuous length of Service of such appointees, while determining the inter-se seniority. In fact, in **Singla's** case, the Court on being confronted with a peculiar situation, had given the direction as to in what way, it will be equitable for all concerned to determine the inter-se seniority, but notwithstanding the same, the High Court appears to have stuck to the idea of the principles engrafted in Rule 8(2) of the Rules and then decided the question of seniority on the basis of number of posts, available in the Service. While doing so, the High Court obviously missed the findings of this Court that under the scheme of the Rules, 'Service' is a narrower body than the cadre and every temporary post, which carries the same designation as that of any of the posts in the schedule is a cadre post, whether such post is comprised in the 'Service' or not. It is also apparent from the report that the High Court followed **Joginder Nath's** case in drawing up the seniority, on the ground that the judgment (in Singla's case) does not indicate whether the earlier decision of the High Court in **Joginder Nath's** case is still to be followed in preparing the seniority list or not, but obviously, the High Court has failed to appreciate, what was stated in the concurrent judgment of Mukharji, J, in **Singla's** case, wherein in no uncertain terms, it was stated that so far as, controversy regarding the fixation of the seniority list between the promotees and direct recruits, the same will not be guided by **Joginder Nath's** case inasmuch as in **Joginder Nath's** case, the Court construed the Delhi Judicial Services Rules, 1970 in the context of seniority and confirmation and not in the context of inter-se seniority between the promotees and direct recruits. The entire reasoning given by the High Court in the first report, on the basis of which, provisional seniority list has been drawn up, cannot, but be held to be contrary to the directions given by this Court in **Singla's** case, and accordingly, must be held to be erroneous. The reasoning of the High Court, in fact, nullifies the ratio on **Singla's** case, wherein Chandrachud CJ, and observed after noticing a representative order of appointment under Rule 16:—

"The appointments were neither ad hoc, nor fortuitous, nor in the nature of a stop-gap arrangement. Indeed, no further orders have even been passed recalling the four promotees and, other similarly situated, to their original posts in the subordinate Delhi Judicial Service. Promotees who were under

Rule 16 have been officiating continuously, without a break, as Additional District and Sessions Judges for a long number of years. It is both unrealistic and unjust to treat them as aliens to the Service merely because the authorities did not take up to the necessity of converting the temporary posts into permanent ones, even after some of the promotees had worked in those posts from five to twelve years".

Yet, the High Court in drawing up the seniority list, have treated such promotees, who are appointed under Rule 16 as aliens to the Service and thus, the High Court was wholly in error in preparing the provisional seniority list, as already stated. If we examine the second Committee report, which had considered the objections filed by the promotees and ultimately, on the basis of which the final seniority list was approved by the Full Court in its Meeting on 25th of October, 1986 and the list was prepared on 11th of November, 1986, we also find, the High Court committed similar error in accepting the provisional seniority list as final. In the second Report, the Committee, again was of the view that if a post meant for a direct recruit, according to the quota, remains unfilled, then the promotee occupying the last post, must be taken to be holding that post "on ad hoc basis or for fortuitous reasons or by way of a stop-gap arrangement". This indicates that the Committee was still obsessed with the provisions of Rule 8(2) of the Recruitment Rules, even though in **Singla's** case, it has been categorically held by this Court that 'quota' principle has broken down and as such, seniority cannot be determined by taking recourse to the 'quota and rota' provided under Rule 8(2) but on the basis of continuous length of Service, provided the promotees have been promoted after due consultation with and/or approval of the High Court under Rule 16 or 17 and they did possess the requisite qualification for promotion, as provided under Rule 7. At this stage, it would be appropriate to notice the letter of appointment, of Shri M.A. Khan, Shri O.P. Dwivedi, Shri R.C. Jain and Shri J.D. Kapoor by the order of the Administrator dated 19th of December, 1980, which is identical with the representative order, this Court had taken note of, in **Singla's** case. It is not the case of the High Court or any of the direct recruits-respondents that these promotees, on being promoted on 19th of December, 1980, have at any point of time, reverted to their substantive post before Shri B.S. Chaudhary was appointed as a direct recruit on 10.11.1982. In this view of the matter, these promotees who are appointed under Rule 16(2) of the Recruitment Rules on 19.12.1980 and continuously held the said post and further, such appointments have been made in consultation with the High Court of Delhi and they had the 'requisite qualifications under Rule 7 of the Recruitment Rules, their appointments cannot be held to be either ad hoc or fortuitous or stop-gap, and necessarily, therefore, they must be held to be senior to Shri B.S. Chaudhary, a direct recruit of the year 1982, on the basis of continuous length of Service, in accordance with the directions given by this Court in **Singla's** case. Similarly, the two other promotees namely Shri B.N. Chaturvedi and Shri R.C. Chopra, who had been appointed since August, 1984 and also continuously held the post of Additional District and Sessions Judge for all these years, must be held to be senior to the direct recruits namely Ms. Sharda Aggarwal, who was directly recruited on 07.6.1985 and Shri H.R. Malhotra and Shri J.P. Singh, who were directly recruited on 26.11.1985.

It would be worthwhile to notice that the promotee officers, in their rejoinder affidavit, have indicated that in course of arguments in **Singla's** case, the Supreme Court had directed the Delhi High Court to submit a chart, indicating under which rule, the promotees had been appointed and pursuant to the said directions, the High Court had submitted a chart and all the petitioner (the promotees) were shown to have been appointed either under Rule 16 or Rule 17. A chart, also purported to have been filed in the earlier case, has been enclosed to the rejoinder affidavit, which clearly indicates the factual matrix, which were there before this Court in **Singla's** case. Even, the High Court in its counter affidavit in the present proceedings, has submitted that all the petitioners herein were appointed under Rule 16 or 17 of the Rules and the respective dates of appointments are

matters of record.

So far as the argument of Mr. Dipankar Gupta, the learned senior counsel, appearing for the direct recruits, to the effect that in view of the definition of 'Service' in Rule 2(d), the appointees under Rule 16 cannot be held to be "Members of the Service", it may be stated that the said question was duly considered in **Singla's** case and on an analysis of the scheme of the Rules, this Court came to the conclusion that the Rule is peculiar in nature and 'Cadre' is a larger concept than 'Service' under the Recruitment Rules. The Court recorded a finding that all persons recruited under Rule 17 to the posts having the same designation, as per the post in the schedule, must be held to be 'Members of the Cadre' and, therefore, while determining the inter se seniority in the 'Cadre', they cannot be ignored from consideration nor can they be held to be alien to the Cadre. The said contention of Mr. Gupta, accordingly, cannot be sustained.

So far as the contention of Mr. Gopal Subramaniam, the learned senior counsel, appearing for the direct recruits, is concerned, in praying for re-consideration of the judgment of this Court in **Singla's** case, the same also cannot be sustained inasmuch as the Court in **Singla's** case did consider the earlier decision of this Court in **Chandramouleshwar's** case, and recorded a finding that in that case, it was only a matter of adjustment of seniority between the promotees inter-se and not between the promotees and direct recruits and, therefore, the ratio therein is of no application. Further, Justice Mukharji, in his concurring judgment did consider **Joginder Nath's** case and held that the principle evolved therein cannot be applied to the case in hand, where inter-se seniority between the promotees and direct recruits are going to be decided on equitable consideration. We are also unable to accept the contention of Mr. Subramaniam that until the principle of 'quota' provided in Rule 8 is made applicable to appointments under Rules 16 and 17, such appointees, under Rules 16 and 17 cannot claim continuous length of service for their seniority. Such a contention appears to have been considered and negated in **Singla's** case. The Judgment of this Court in **Singla's** case is obviously intended to evolve some equitable principle for determination of inter-se seniority of a group of officers, when the rule of seniority contained in rule 8(2) has been held to be not operative because of breaking down of 'quota and rota' rule. To meet the peculiar situation, the Court evolved the principle that continuous length of service should be the criteria for inter-se seniority between the direct recruits and the promotees, provided, the promotees did possess the required qualification as per Rule 7 and the appointments had been made under Rules 16 and 17, after due consultation and/or approval of the High Court, which in our view also is the most appropriate basis, evolved in the fact situation. This being the position, we see no justification for re-considering the decision of this Court in **Singla's** case. That apart, the Recruitment Rules have been amended in the year 1987 and the aforesaid principle, which had been evolved in **Singla's** case, would apply for determining the inter-se seniority between the promotees and direct recruits, all of whom had been appointed to the Higher Judicial Service, prior to the amendment of the Rules in question, which was made in the year 1987. We have also considered the arguments advanced by Mr. P.P. Rao, the learned senior counsel, appearing for Delhi High Court and we are unable to persuade ourselves to accept the same inasmuch as it is not a mere question of leveling, as urged by Mr. Rao, but, it is a question which was directly considered by this Court in **Singla's** case and, after examining the representative order, the Court positively recorded a conclusion that the appointments made under Rule 16 or 17 cannot be held to be alien to the Cadre. In fact the Court was persuaded to come to the aforesaid conclusion, as it was found that the persons appointed under Rules 16 and 17 having all the necessary qualifications and having been appointed after due consultation with the High Court, though they had served for more than five to seven years, but yet have been shown junior to the direct recruits, who had come to the Service much later than them. It is, therefore, not possible for us to accept Mr. Rao's contention and permit any further scrutiny into such appointments made

either under Rule 16 or under Rule 17 of the Recruitment Rules. It is in fact, interesting to notice that the schedule to the Recruitment Rules, which came into existence in 1971, was amended for the first time only in the year 1991, 20 years after and if a strict construction to the different provisions of the Rules would be given, then all the temporary appointees under Rule 16, who might have rendered 5 to 10 years of Service would be denied of their right for the purpose of seniority. It is this impasse, created on account of inaction of the authorities and on account of non-adherence to the provisions of the Rules strictly, which persuaded the Court in **Singla's** case to evolve the principles for working out equities and that principle has to be followed by the High Court in drawing up the seniority list. It is not necessary to deal with the contention, raised by Mr. Rakesh Kumar, appearing for the direct recruits and Shri J.P. Singh, appearing in person, who is a direct recruit also, as well as Mr. R.C. Chopra, appearing in person, who is a promotee, as essentially, they adopted the arguments of either Mr. Dipankar Gupta or Mr. Gopal Subramaniam and Mr. Kapil Sibal.

So far as the terminology used in **Singla's** case, namely 'ad hoc', 'fortuitous' and 'stop-gap', the same is quite familiar in the Service Jurisprudence. Mr. Rao, appearing for the High Court of Delhi, however contended before us that the said terminology should be given the same meaning, as was given in **Parshotam Lal Dhingra vs. Union of India, 1958 S.C.R. Page 328**. In **Dhingra's** case, the Court was examining whether removal of an employee can be held to be a penal and whether Article 311(2) of the Constitution can at all be attracted and the Court also observed that certain amount of confusion arises because of the indiscriminate use of the words "provisional", "officiating" and "on probation". We do not think that the concept or meaning given to those terminology in **Dhingra's** case will have any application to the case in hand, where the Court is trying to work-out an equitable remedy in a manner which will not disentitle an appointee, the benefit of his fairly long period of Service for the purpose of seniority even though he possesses the requisite qualification and even though his appointment has been made after due consultation and/or approval of the High Court.

The three terms 'ad hoc', 'stop gap' and 'fortuitous' are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is "accident or fortuitous casualty". This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to "fortuitous". In Black's Law dictionary, the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly unfortuate". It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression "ad hoc" in Black's Law Dictionary, means "something which is formed for a particular purpose". The expression "stop-gap" as per Oxford Dictionary, means "a temporary way of dealing with a problem or satisfying a need".

In Oxford Dictionary, the word 'ad hoc' means for a particular purpose; specially. In the same Dictionary, the word 'fortuitous' means happening by accident or chance rather than design.

In P. Ramanatha Aiyer's Law Lexicon (2nd Edition) the word 'ad hoc' is described as "for particular purpose, Made, established, acting or concerned with a particular and or purpose'. The meaning of

word 'fortuitous event is given as 'an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with Act of God'.

The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter-se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in order, then the appointment to such a post can be aptly described as 'ad hoc' or 'stop-gap'. If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as 'fortuitous' in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a 'stop-gap' arrangement and appointment in the post as 'ad hoc' appointment. It is not possible to lay down any straight-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stop-gap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter se seniority of officers in the cadre.

In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be "stop-gap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be 'fortuitous/ad hoc/stop-gap' are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.

In view of our conclusions, as aforesaid, we quash the seniority list both provisional and final, so far as, it relates to the appointees either by direct recruitment or by promotion in the Delhi High Judicial Service, prior to the amendment of the Recruitment Rules in the year 1987, and their inter-se seniority must be re-determined on the basis of continuous length of service in the Cadre, as indicated in **Singla's** case and explained by us in this judgment. Since the future of these officers to a great extent depends upon seniority and many of these officers may be on the verge of superannuation, the High Court would do well in finalising the seniority within a period of six weeks from the date of receipt of this judgment.

Writ Petition No. 490/87 is accordingly allowed.

Writ Petition Nos. 1252/90 and 14114/84 are accordingly dismissed.

Writ Petition Nos. 707/88, 856/88 and 764/88 stand disposed of in terms of the directions given herein-above.

Application for impleadment filed by Mr. R.C. Chopra in Writ Petition (Civil) No. 490/87 is allowed.

Application for impleadment filed by one Ms. Rekha Sharma, in Writ Petition (Civil) No. 1252 of 1990, stands rejected, since in this batch of cases, we are concerned with the inter-se seniority between the direct recruits and the promotees, who are appointed prior to the amendment of the Rules in 1987 and the applicant Ms. Rekha Sharma was appointed in January, 1988.

The application for impleadment by Shri J.B. Goel in Writ Petition (Civil) No. 14114 of 1984 stands allowed.