

**SUPREME COURT OF INDIA**

Arvinder Singh Bains

Vs

State of Punjab and Others

Civil Appeal No. 6373 of 2001

(Dr. Ar. Lakshmanan and L. S. Panta, JJ)

24.05.2006

**JUDGMENT**

**DR. AR. LAKSHMANAN, J.**

Respondent Nos. 6 and 7 - Khushi Ram and Gurpal Singh Bhatti are impleaded as parties in I.A.No. 3 as per order dated 18.05.2006.

2. The appellant - Arvinder Singh Bains filed the above appeal against the final judgment and order dated 12.12.2000 passed by the High Court for the States of Punjab and Haryana at Chandigarh in LPA No. 1705/2000 whereby the High Court has dismissed the LPA filed by him.

**BACKGROUND FACTS: ADVERTISEMENT OF THE YEAR 1976**

3. State Government issued an advertisement in the year 1976 for 10 vacancies in the cadre of PCS Officers. The 1976-Rules were enforced w.e.f. 02.12.1976. As per the case of the State Government itself requisition for 10 posts meant for direct recruits (Register-B) were sent to Punjab Public Service Commission.

**ADVERTISEMENT OF THE YEAR 1980;**

4. State Government issued an advertisement in the year 1980 for direct recruitment to the PCS. With respect to the said advertisement, State Government had issued a corrigendum, inter alia, relaxing the age of recruitment to PCS. With regard to the 1980 advertisement, competitive examinations were held for direct recruitment. Selection was to be made by the Punjab Public Service Commission.

5. A list of candidates selected by the Commission by way of direct recruitment was notified. This included the name of the petitioner and respondent No.3 Dipinder Singh. Promotees from other Registers (other than Register-B) were appointed as PCS in 1984-85. The appellant had applied pursuant to the above-mentioned advertisement of 1980-82. The appellant and others were selected by the Punjab Public Service Commission joined as PCS Officers on the basis of competitive examination.

6. It is to be noticed that these vacancies had occurred in the interregnum 1978 to 1982. These vacancies were filled up only in the year 1986. According to the appellant, had these vacancies been filled up timely, direct recruits coming in through Register-B would have found higher places in the impugned seniority list.

7. During the interregnum 1978 to 1986 appointment to the service took place from other Registers. In the meantime, the promotee candidates were brought in as PCS officers. According to the appellant, delay on the part of the Government to appoint direct candidates could not result in appellant losing seniority to these promotee candidates. On 24.08.1988, tentative seniority list of candidates who had been selected and appointed by direct recruitment (via Register-B) was prepared and circulated. The appellant represented against the above tentative seniority list and submitted that Rule 21 has to be read with Rule 18 of the 1976-Rules and thereby seniority is governed by the order of vacancies mentioned in Rule 18 of the 1976-Rules. On 01.07.1994, a final seniority list of Register-B candidates was prepared without assigning their places in the consolidated seniority of the cadre. The final seniority list of Register-B candidates was also circulated.

#### **PROCEEDINGS BEFORE THE HIGH COURT:**

8. The appellant and respondent No.3 - Dipinder Singh filed writ petition No. 16516 of 1995 before the High Court.

#### **SUBMISSION IN THE WRIT PETITION:**

9. The appellant contended that Rule 21 which governs seniority refers to Rule 18 and Rule 18 provided for the filling up of the slab of 100 vacancies. Rule 21 reads thus:

"21. Seniority of the members of the Service.- The seniority of officers appointed to the Service

shall be determined in accordance with the order of their appointment to the Service; provided that –

(a) if the order of appointment of any candidate is cancelled under the provisions of rule 20 and such candidate is subsequently appointed to the Service, the order of appointment for the purpose of this rule shall be determined by the date of such subsequent appointment;

(b) if any officer appointed to the Service fails to qualify himself for substantive permanent appointment within the prescribed period of probation, the Government may determine whether the date of his appointment for purpose of this rule shall be postponed by a period not exceeding the period by which such officer's substantive permanent appointment is delayed beyond the prescribed period of probation;

(c) the persons appointed as a result of earlier selection from a Register shall be senior to those appointed as a result of subsequent selection from the same Register."

10. It was submitted that seniority list be governed by order of their appointment and order of their appointment was provided for in Rule 18 of the 1976-Rules. It was thus contended that seniority would be governed by the serial number of the vacancy and not the date of appointment. Rule 18 reads as follows:-

"18. Appointment of accepted candidates to the service. The Government shall make appointments to the Service in pursuance of rule 7 from amongst the candidates entered on the various Registers in a slab of 100 vacancies as follows:-

(i) the first vacancy and thereafter every alternative vacancy shall be filled from amongst candidates borne on Register'B'.

(ii) the 2nd, 8th, 14th, 20\ 26lh, 32nd, 38lh, 44th, 50th, 56lh, 62nd, 68th, 74l\ 80\ 86\ 92nd, 96th and 100lh vacancy shall be filled from amongst the candidates borne on Register A-I;

(iii) the 4lh, 10lh, 16lh, 22nd, 28lh, 34lh, 40th, 46th, 52nd, 58l\ 64th, 70\ 76lh, 82nd, 88th and 98th vacancy shall be filled from amongst candidates borne on Register A-II.

(iv) The 12th, 30lh, 42nd, 54, 66lh, 78th and 90lh vacancy shall be filled from amongst the Excise and Taxation Officers accepted as candidates on Register A-III;

(v) The 18l\ 36lh, 60lh and 84th vacancy shall be filled from amongst the District Development and Panchayat Officers or Block Development and Panchayat Officers accepted as candidates on Register A-III; and

(vi) The 6th, 24th, 48th, 72nd and 94th vacancy shall be filled from amongst the candidates on Register 'C':"

11. The State Government and respondent Nos. 1 and 2 filed written statement to the above statement.

#### **STAND OF THE STATE:**

12. A perusal of rule 18 makes it abundantly clear that the rotation system provided in this rule is in fact meant for recruitment to the Service from various sources and to ensure prescribed representation of candidates drawn from various sources. The words "vacancy" and "filled" occurring in this rule are important and therefore, worth noticing.

13. A perusal of various rules of the 1976 Rules reveals that these rules do not, implicitly or explicitly, permit application of rota system provided in Rule 18 thereof, for the purpose of determining seniority which is governed by rule 21 alone. If seniority of the members of service is determined in accordance with Rule 18, Rule 20 and 21 will become redundant."

14. It was submitted that Rule 20 of 1976-Rules had operated in a completely different filed and that Rule 20 of the 1976-Rules was concerned with the case of a candidate whose appointment had been cancelled and so subsequently appointed. It is only in such an eventuality that the date of such subsequent appointment has been made relevant. It was also contended that Rules 18 specifically refers to appointment to Service and Rule 21 cannot be interpreted by ignoring Rule 7 and Rule 18.

15. In another written statement filed before the High Court with regard to the other Registers, the date of such appointments were 19.11.1994 and 20.11.1994. These were appointments from 2 different Registers made on given as 19.11.1994 and 20.11.1994. To explain the seniority positions allocated to these candidates, it was stated that:

"Therefore, it is clear that even for this appointment, seniority has been determined as per Rule 21. Inter-jection was only a via-media adopted by the State Government in view of the fact that the rules are totally silent as to what would happen if persons from two registers are issued orders of appointment on the same date."

16. Khushi Ram and Gural Singh Bhatti who were respondent Nos. 3 & 4 in the writ petition and now respondent Nos. 6 & 7 in this appeal filed written statement before the High Court. They contended that the appellants and their batch mates will have to remain junior to respondent Nos. 6 & 7, they having been appointed 2 years after the appointment of the answering respondents and, therefore, they would remain junior to them for the purpose of seniority and selection/ promotion to the post of IAS cadre.

## **JUDGMENT OF THE HIGH COURT (SINGLE JUDGE):**

17. The learned single Judge on 08.12.1999 dismissed the writ petition filed by the appellant. The High Court was of the opinion that there was nothing in the Rules from which it could be inferred that candidates from the various services were required to be selected simultaneously. In this respect, the learned Single Judge of the High Court recorded that:

"In this context, it is important to bear in mind that Rule 18 earmarks the vacancies to be filled from among the candidates entered in the various Registers, but there is nothing in the language of the said rule or the scheme of Rules 7, 8, 9 to 11, 12 to 14 and 15 from which it can be inferred that selection for entering the names of the accepted candidates in the various Registers should be made simultaneously." and Moreover, as the scheme of the 1976 Rules does not envisage simultaneous selection of the candidates for entering their names in different Registers."

18. It is submitted that a joint reading of Rules 7, 12, 18 and 21 of the 1976-Rules leads to the conclusion that the 1976-Rules contemplate simultaneous appointment. All Officers from various sources i.e. (from various Registers) whose name had been entered in the said Registers as accepted candidates were to be considered for appointment simultaneously/ contemporaneous.

19. The other finding of the learned Single Judge was that seniority could not be linked to the year of the vacancy. In this respect, it was recorded that:-

"The plain language of Rule 21 speaks of, determination of seniority of members of the service in accordance with the order of their appointment and not as per the roster points enumerated in Rule 18. The expression in accordance with the order of their appointment to the Service refers to the point of time when the officers are appointed and not the slots allotted to them under Rule 18. In other words, those appointed earlier in point of time will rank senior to the others who are appointed subsequently irrespective of the Register from which they are appointed."

20. Aggrieved by the order passed by the learned Single Judge the appellant preferred LPA No. 1705 of 2000 before the Division Bench.

## **DECISION OF THE DIVISION BENCH:**

21. The Division Bench dismissed the LPA filed by the appellant by observing:-

"Heard.

In our view there is no provision made for determination of seniority in accordance with order or

appointment on rotation of vacancies based upon quota of reservation for direct recruitment and promotion under the Punjab Civil Services (Executive Branch) (Class I) Rules, 1976. Rule 18 provides for appointment to the Service on availability of vacancies in a slab of 100 vacancies. Rotation of vacancies, it is pertinent of note, is not based on any quota of reservation for direct recruitment and promotion respectively fixed in the rules. This read with Rule 21 for determination of seniority cannot be construed as rota-quota rule.

We concur with the judgment of the learned Single Judge and find no reason to interfere with it.

Dismissed in limine."

22. Aggrieved by the order of dismissal in LPA, the appellant preferred the above special leave petition. The delay was condoned. Leave was granted on 03.09.2001. This Court made it clear that any action taken will be subject to the outcome of the appeal.

23. We have heard Mr. L.N. Rao, learned senior counsel assisted by Mr. Prem Malhotra for appellants and Mrs. Kawaljit Kochar, learned counsel and Ms. Kanchan Kaur Dhodi for respondent No.3 and Mr. M.N.Krishnamani for respondent No.5 and Mr. Ashok Panda for respondent Nos. 6 and 7.

24. Mr. L.N.Rao, learned senior counsel, made the following submissions:-

(a) That the Division Bench which dismissed the LPA filed by the appellant has not even addressed itself to the real controversy which is evident upon a reading of the order passed by the Division Bench. The submission of the appellant was that seniority under Rule 21 is to be governed by the 'order of appointment' to the service as provided for in Rule 18 of the 1976-Rules which further refers to Rule 7. This point has not been addressed to by the Bench;

b) Learned Single Judge held that it was not incumbent upon the Government to hold simultaneous selection with regard to the various sources i.e. from the various registers. It is submitted that reading of Rules 7, 8, 12, 14, 18 & 21 demonstrates that the 1976-Rules clearly envisage simultaneous/contemporaneous appointment from the various sources, namely, the various registers;

c) That simultaneous/ contemporaneous appointment from various sources is contemplated by the Rules to give adequate representation to the various categories of employees. So also, to grant appropriate seniority to the various categories of officers.

d) The Government has not explained the reasons for delay in recruitment. On account of delay by the Government in making selection of direct recruits from Register-B, such direct recruits could not lose their seniority.

e) That Rule 21 of the 1976-Rules was the Rule governing seniority which contemplated seniority in 'order of their appointment' and this order of appointment was as stipulated in Rule 18;

f) Learned single Judge rejected the contention of the appellant on the reasoning that acceptance of the contention of the appellant would result in Rule 20 being rendered redundant. Rule 20 of the 1976- Rules reads thus:

"20. If a candidate on appointment to a particular post, is unable, for any reason other than the orders of the Government, to join his appointment within one month from the date of receipt of the orders of appointment, the Government may remove his name from the Register or may cancel the orders of appointment, and if he is subsequently appointed, may assign to him seniority in accordance with the date of the revised orders of appointment."

g) that the scope and ambit of Rule 20 is completely different and was in no way rendered redundant and is meant for another eventuality which may arise.

h) The State Government in their written statement had admitted that from two other sources, orders of appointment had been issued on 19.11.1994 and 20.11.1994 and thereafter, the stand of the State Government was:-

"Therefore, it is clear that even for this appointment, seniority has been determined as per Rule 21. Interjection was only a via-media adopted by the State Government in view of the fact that the rules are totally silent as to what would happen if persons from two registers are issued orders of appointment on the same date."

i) that the State Government had itself done interjection in the matter of assignment of seniority. The stand of the State Government itself was that interjection had been done as a via-media. The State Government had not assigned seniority purely on the basis of the date of appointment. Thus, the stand of the State Government was conflicting at various places.

j) That Rule 24(5) of the 1976-Rules reads thus:

"(5) The year of allotment of an officer appointed to the Service from Register B shall be the year in which he is appointed and the year of allotment of an officer appointed from other Registers shall be the same as that of the officers appointed to the Service from Register B against their corresponding quota of vacancies."

The above Rule clearly contemplates simultaneous appointment of PCS Officers from various Registers. Moreover, the reference point is the direct recruitment from Register-B. Others appointed from other Registers are given year of allotment as Officers appointed in service from Register-B

against their corresponding vacancy. Mr. Rao submitted that the above Rule also demonstrates linkage between year of allotment and the vacancies.

k) That the Government at times may not make selection from a particular source on account of unexplained reasons. For such inaction of the Government in making selection from a particular source, appellant from Register-B could not be made to suffer loss of seniority vis-a-vis other sources from which recruitment had been made.

l) that PCS is a feeder cadre for appointment to IAS. Seniority in PCS would govern entry into IAS service. On account of delay of the Government in making selection of direct recruit candidates, their seniority has been permanently depressed vis-a-vis other sources of recruitment in PCS service. If this is allowed to continue, direct recruit candidates would invariably face disadvantage.

m) As is well known selection by direct recruitment takes longer time to finalise than promotion and direct recruitment involves a process of detailed selection through PCS. It is, therefore, contended that in fact the process of selection of direct recruit candidates should start earlier in point of time than the process of selection of candidates from other sources. Therefore, it is submitted that this is the mode to ensure obedience to the letter and spirit of the 1976-Rules which Rules contemplates simultaneous/ contemporaneous appointment from the various sources, namely, the various registers. So much so Rule 24(5) of 1976-Rules contemplates allocation of year of allotment to a direct recruit as a reference point for grant of year of allocation to candidates recruited from other sources. Under these circumstances, Mr. Rao prayed that the final judgment and order dated 12.12.2000 passed by the High Court in LPANo. 1705 of 2000 be set aside and relief prayed for by the appellant is granted.

25. Respondent Nos. 1 & 2 - State of Punjab filed counter affidavit in this appeal. It is submitted that after the disposal of the LPA Nos. 851/1982, 843/1982 by the High Court, the seniority of Maninder Singh and H.S. Bains and 4 other affected persons figuring in between them was re-determined by the Government vide its order dated 15.11.1986 and that the seniority of all other PCS officers appointed to the service through various registers which stood duly determined under the 1930 Rules i.e. in accordance with Rule 20 read with Rule 17 was kept in tact without effecting any change thereto. It is further stated in para 6 of the counter affidavit that in the light of the above noted factual position as also the legal advise obtained by the legal remembrancer on the 09.12.1982 and reiterated thereafter, the State Government decided to deviate from the long established practice and switched over to the determination of seniority in accordance with the date of appointment/ orders of appointment/act of actual appointment in terms of the provisions of Rule 21 alone of the 1976 rules. It is also stated in para (d) of 5 of the counter that the post of direct recruitment to be filled up on the basis of PCS (Executive Branch) and other allied services examination were duly advertised by the Commission vide advertisement dated 01.05.1982 and that the competitive examination was held by the Commission March, 1984 and after taking viva-voce, the Commission made its recommendation in June, 1985 whereafter appointment of candidates of Register-B were made in March, 1986. Learned senior counsel for the State of Punjab reiterated the contentions raised in the counter affidavit at the time of arguments.

26. Separate counter affidavits were filed on behalf of respondent Nos. 3 & 4 -Mr. R.L. Mehta and Mr. G.R.Bansal. Ms. KaurDhodi, learned counsel reiterated the submission made in their counter affidavit at the time of hearing. It is submitted that the relief as prayed for i.e. fixation of seniority according to the roaster prescribed under Rule 18 could not have been claimed by the appellant as the statutory rules Rule 21 specifically provided for determination of seniority in accordance with the order of their appointment to service. According to them, there was no challenge to Rule 21 and as such in the absence of any challenge the relief as sought for by the appellant with regard to the determination of seniority other than as provided under Rule 21 could not be granted to the appellant. It is further submitted that the appellant had been appointed to the PCS (Executive Branch) by way of direct recruitment on 26.04.1986 and that the writ petition was filed in the year 1995 questioning the delayed direct recruitment and seeking seniority on the basis of the roaster provided under Rule 18. The appellant having accepted his date of appointment thus was estopped by his act and conduct to allege that the appellant is entitled to be treated as a member of PCS with reference to a fictional/deemed date i.e. the date of accrual of vacancy and not from the date of actual appointment against the said vacancy.

27. Mr. M.N.Krishnamani appeared on behalf of respondent No.5 - Dipinder Singh. He has adopted the argument of Mr. L.N.Rao. He placed strong reliance on two judgments of this Court reported in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others and Gonal Bihimappa v. State of Karnataka and others 8.

28. Mr. Ashok Panda, learned senior counsel appeared on behalf of Shri Khushi Ram and Shir B.S. Bhatti respondent Nos. 6 & 7. He invited our attention to the written statement filed on their behalf as respondent Nos. 3 & 4 in writ petition No. 16516/1995 in the High Court. He reiterated the averments made in the written statement and also cited Ajit Kumar Rath v. State of Orissa and others at 602 paras 13 & 14], Dr. Chandra Prakash and others v. State of U.P. and another 1 at 726 paras 41 & 42.] and Suraj Parkash Gupta and others v. State of J&K and others 8 at 59 degree para 4].

29. Mr. Panda invited our attention to the relevant rules and submitted that no legal right has accrued to the appellants to invoking extraordinary writ jurisdiction of the High Court, and, therefore, the writ petition is liable to be dismissed.

30. He denied that the appellants are entitled to be given seniority on the basis of alleged roaster system and against the vacancies of 1978 for the years 1978 and 1979. They were not the members of service. According to Mr. Panda that the direct recruits gets seniority from the date they were actually appointed although the vacancies existed in the earlier years and the promotees got seniority from the date when they were fitted within their quota. It is the case of Mr. Panda that the answering respondents and other members of service appointed from Registers A1, A2, A3 and Register-C cannot be considered to have been promoted in the strict sense of definition for promotion as their method of appointment is not in the nature of promotion but his appointment by way of nomination on the basis of their outstanding merits in their respective cadres of service and the answering respondents and other members of service appointed from Registers A1, A2, A3 and Register-C have been appointed against their own quota of vacancies and, therefore, their seniority cannot be

shifted back in the garb of alleged roaster theory. It is further contended that so far as the question of existence of vacancies in the earlier years is concerned, the vacancies in the case of other registers also were available in the years of 1978, 1979, 1980, 1981 and 1982 and, therefore, the position regarding existence of vacancies in different years is the same as is in the case of candidates of Register-B. Therefore, it is submitted the appellant is not entitled to be given seniority from the date prior to their date/year of appointment in the garb of availability of vacancies in the earlier years as the respondents and the members of service appointed from other registers have been appointed against the vacancies of their respective quota and, therefore, their seniority cannot be shifted back. Concluding his arguments, Mr. Panda submitted and in view of the position explained the appellants and their batch mates will have to remain junior to the answering respondents, they having been appointed 2 years after the appointment of the answering respondents and, therefore, they would remain junior to the answering respondent for the purpose of seniority and selection/promotion to the post of IAS cadre. Concluding his arguments Mr. Panda submitted that the prayer in the writ petition and in this appeal is not legally tenable and, therefore, this appeal is liable to be dismissed. We have carefully and thoughtfully considered the rival submissions made by the respective parties through their learned counsel. We have also perused the entire pleadings, counter affidavits filed before the High Court and also of this Court and the judgments rendered by the learned single Judge and of the Division Bench.

31. The following questions of law arise for consideration by this Court:-

(i) Whether a reading of Rules 7, 8, 12, 14, 18, 21 of the Punjab Civil Services (Executive Branch) (Class I) Rules, 1976, does not lead to the conclusion that simultaneous/contemporaneous appointment is envisaged by the 1976 Rule from the various sources i.e. from the various Registers?

(ii) Whether the Division Bench of the High Court could have dismissed the LPA of the Petitioner without addressing itself to the real controversy at hand?

(iii) Whether the Division Bench of the High Court was correct in concluding that there was no provision for determining seniority on the basis of rotation of vacancies?

(iv) Whether the Division Bench of the High Court was correct in considering quota when rota alone (and not quota) is provided for in the 1976-Rules?

(v) Whether the mere reading of Rules 7, 18 and 21 was not sufficient to conclude that seniority was on rotation of vacancy and not post?

(vi) Whether on account of delay on the part of the State Government in making appointment of the Petitioner from Register-B, Petitioner could have been denied seniority?

32. The issue in this case relates to the inter-relation between Rules 18 and 21 of the PCS (EB) (Class I) Rules, 1976.

32.1. Rule 7 lays down that appointment to the service shall be made from amongst Accepted Candidates whose names have been duly entered in the registers of the Accepted Candidates. Rule 8 details the various registers of Accepted Candidates.

A-I:- Teshildars \\\

A-II:- Ministerial Employees of the State Government

(Class II&III)

A-III:- ETOs/BODs/DDPOs B:- Direct Recruits C:- Other Govt Servants

32.2. Rules 9, 10, 11 & 15 lay down the procedure for selection of in-service candidates.

32.3. Rules 12, 13 & 14 lay down the procedure for selection of direct recruits (Competitive Exam).

32.4. Rule 18 clearly lays down the rotation (on a 100 point roster) on the basis of which the various Accepted Candidates from different registers (as laid down in Rule 7 Supra) are to be appointed to the service.

32.5. Rule 21 which relates to seniority mandates that seniority of officers shall be determined in accordance with the order of their appointment.

33. The appellants are direct recruits (1986 batch) to the PCS and the dispute is regarding their seniority vis-a-vis recruits from other sources (1984 batch). Both these batches arose out of posts of 1978 to 1982 as per requisitions sent by the Government to PPSC. In the said requisitions, it was mentioned by the Government that 50% of posts are meant for Direct Recruits (Register-B) and remaining 50% are meant for promotees/in service candidates (Registers A-1, A-II, A-III and C). (Vide communication dated 24.9.1982 the Punjab Government made a specific request to the Punjab Public Service Commission to make its recommendations against total number of vacancies intimated to it). The PPSC made consolidated recommendations in respect of 40 (For in-service/nominated candidates +40 (Direct recruits) on two different dates to the Government. Accordingly, the candidates of Registers A- 1, A-II, A-III and C were appointed in November and December, 1984 whereas the candidates of Register-B were appointed in March, 1986. This was admitted in the counter affidavit of the Government.

34. The appellant is not seeking any ante dated promotion. The case of the appellant is that the inter se seniority of 80 officers (40 Direct Recruits +40 Promotees) should be fixed by applying roster provided for in Rule 18 of PCS (EB) Rules, 1976 by reading Rules 18 and 21 together.

35. Joint reading of Rules 7 and 18 envisages that appointments are to be made when the names have been entered in all the Registers.

36. Actual appointment is by virtue of Rule 18 only which says that first and thereafter every alternative vacancy shall be filled up by Register-B candidates. In other words, the first officer to be appointed has to be from Register-B. This position is also fortified by Rule 24(5)-(Un-amended), the plain reading of which reveals that reference point is once again candidate from Register-B. In para 5(1) of counter affidavit, Government has also admitted that direct recruits have precedence over others. Such precedence has to be reflected in the matter of seniority also. Even otherwise the direct recruits can never be senior to promotees if date of appointment is made the sole criterion in determining the seniority as their process of selection is always lengthier than the promotees. It is in view of this, and to rule out any discrimination/arbitrariness that the Roster under Rule 18 has been prescribed which has to be read with Rule 21 in determining the seniority. Making date of joining as the basis of determining seniority would have led to discretion in the hands of the Government and there would have been a possibility of misuse. It is to avoid this that a Roster has been prescribed in the Rules for fixing seniority. This Court held that it is mandatory to apply Rota and Quota in determining seniority where the same is provided for under the rules as held by this Court in *Mervyn Coutindo ad others v. Collector of Customs. Bombay and others*[. 1966 (3) SCR 600 at page 604 and 605 (5 Judges), ],

"This brings us back to the circular of 1959, and the main question in that connection is the meaning to be assigned to the words "seniority determined accordingly", in the explanation to principle 6 relating to relative seniority of direct recruits and promotees. As we read these words, their plain meaning is that seniority as between direct recruits and promotees should be determined in accordance with the roster, which has also been specified, namely, one promotee followed by one direct recruit and so on. Where therefore recruitment to a cadre is from two sources, namely, direct recruits and promotees and rotational system is in force, seniority has to be fixed as provided in the explanation by alternately fixing a promotee and a direct recruit in the seniority list. We do not see any violation of the principle of equality of opportunity enshrined in Art. 16(1) by following the rotational system of fixing seniority in a cadre half of which consists of direct recruits and the other half of promotees, and the rotational system by itself working in this way cannot be said to deny equality of opportunity in government service"

*M. Subba Reddy and another v. A. P. State Road Transport Corporation and other* at 741 (3 Judges).] "Regulation 34 applies to posts reserved only to be filled by direct recruits. Reading Item 3 of Annexure 'A' (Section B) with Regulation 34, it is clear that filling up of the posts reserved for direct recruits by departmental promotees has to be on temporary basis under Regulation 30 and as soon as eligible candidates from direct recruits' quota become available, they are to replace the temporary promotees.

In the present case, the appellant promotees were promoted to the posts of ATMs/AMEs temporarily under Regulation 30 as there were no direct recruits available. They were promoted subject to being reverted to substantive posts on approved candidates becoming available. Regulation 34(6) states that the revertees shall subsequently be considered for repromotion against the quota of vacancies

reserved for promotees. Therefore, one has to read Regulation 3 of the Service Regulations with Regulations 30 and 34 of the Recruitment Regulations. It is only when such reverts are repromoted as per Regulation 34, they can be deemed to have been appointed to the posts of ATM or AME. Therefore, when the appellants were tentatively appointed to the post of ATMs/AMEs originally for want of direct recruits and to the posts reserved for direct recruits, it cannot be said that they were first appointed to that category within the meaning of Regulation 3 of the Service Regulations. Therefore, seniority had to be fixed between the direct recruits and the promotees strictly in accordance with the quota provided for in Item 3 of Annexure 'A' (Section B).

The appellants were promoted temporarily under Regulation 30 which provides for ad hoc promotions while Regulation 34 ensures induction of qualified direct recruits. But for Regulation 34, candidates from feeder posts would be temporarily promoted to the slots reserved for direct recruits and on their regularisation, the quota prescribed for direct recruits will be defeated. Regulation 34 has been enacted to protect quota prescribed for direct recruits.

On reading Regulation 3 of the Service Regulations with Regulations 30 and 34 of the Recruitment Regulations, it becomes clear that neither the date of promotion nor the date of selection is the criterion for fixation of seniority. The fixation of seniority under the said regulations depends upon the number of vacancies falling in a particular category. Therefore, rota rule is inbuilt in the quota prescribed for direct recruits and for promotees in terms of Item 3 of Annexure 'A' (Section B) to the Recruitment Regulations. In the present case, the said regulations prescribe a quota of 1:1, which leads to rota for confirmation. In the circumstances, there is no merit in the appellants' argument that Item 3(1) of Annexure 'A' (Section B) prescribes only quota and not rota and that the said item was not for determination of seniority."

*Prafulla Kumar Das and others v. State of Orissa and others* at 626 (5 Judges).],

"The submission that the principle of year of allotment must be regarded as unworkable is quite apart, of course, from the argument that the principle of year of allotment is in and of itself unreasonable and, therefore, bad in law. Ordinarily, and as a matter of course, we are of the considered opinion, in line with *Roshan Lai Tandon v. Union of India*, and other decisions of this Court, that it is the length of actual service that must be the determining factor in matters of promotion and consequential seniority. However, this Court has subsequently carved out a distinct exception to this general rule by virtue of its decision in *Direct Recruit Class II Eng. Officers 'Assn. case* by stating that where the seniority and the vested rights of the many have through years of accustomed practice become dependent upon the existence of a rule, this rule, if injurious to the rights of a few, would not be trifled with, unless it is unworkable or manifestly arbitrary or egregious. "

37. It has been admitted in the preliminary submissions made in the counter affidavit by the State Government that there is no material difference between 1930 and 1976, Punjab Civil Service (E.B.) rules and that so long as the 1930 rules remained in force the seniority of members was determined by applying ROTA rule i.e. expression "order of appointment" was always read and interpreted as rotation/ order/sequence of slots enumerated for various registers. This could be seen from the Preliminary Submission No.3 in the counter affidavit filed on behalf of respondent Nos. 1

& 2 (pages 136-137)

38. That as a result of a decision by Punjab and Haryana High Court which was applicable only to the concerned parties it was decided by the Government to fix seniority of only the concerned parties keeping in view the date of appointment. However, the seniority of other officers was determined only by applying ROTA rule.

39. It has also been mentioned/admitted that in view of the above position and in view of legal advice by the Legal Remembrancer in Dec. 1982 the Government decided to deviate from the long established practice of applying ROTA rule and started determining seniority from the date of appointment and that there was no other specific reason to follow the new procedure for the determination of seniority of officers in the Service in the face of provisions of the 1930 and 1976 Rules being identical. It has been held by this Court that it is not justified for the Government to deviate from the long established practice without any specific reason. In this context, we may usefully refer to the decisions of this Court in *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others* (supra) This Court held as under:

"23. Mr. Tarkunde is right that the rules fixing the quota of the appointees from two sources are meant to be followed. But if it becomes impracticable to act upon it, it is no use insisting that the authorities must continue to give effect to it. There is no sense in asking the performance of something which has become impossible. Of course, the Government, before departing from the rule, must make every effort to respect it, and only when it ceases to be feasible to enforce it, that it has to be ignored. Mr. Tarkunde is right when he says that in such a situation the rule should be appropriately amended, so that the scope for unnecessary controversy is eliminated. But, merely for the reason that this step is not taken promptly, the quota rule, the performance of which has been rendered impossible, cannot be treated to continue as operative and binding. The unavoidable situation brings about its natural demise, and there is no meaning in pretending that it is still vibrant with life. In such a situation if appointments from one source are made in excess of the quota, but in a regular manner and after following the prescribed procedure, there is no reason to push down the appointees below the recruits from the other source who are inducted in the Service subsequently. The later appointees may have been young students still prosecuting their studies when the appointments from the other source takes place - and it is claimed on behalf of the respondents that this is the position with respect to many of the direct recruits in the present case - and, it will be highly inequitable and arbitrary to treat them as senior. Further, in cases where the rules themselves permit the Government to relax the provisions fixing the ratio, the position for the appointees is still better; and a mere deviation there from would raise a presumption in favour of the exercise of the power of relaxation. There would be still a third consideration relevant in this context: namely, what is the conclusion to be drawn from deliberate continuous refusal to follow an executive instruction fixing the quota. The inference would be that the executive instruction has ceased to remain operative. In all these cases, the matter would however be subject to the scrutiny of the Court on the ground of mala fide exercise of power. All the three circumstances mentioned above which are capable of neutralising the rigours of the quota rule are present in the cases before us, and the principle of seniority being dependent on continuous officiation cannot be held to have been defeated by reason of the ratio fixed by the 1960 Rules."

47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

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

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

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

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

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

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

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

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

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not

in the interest of Service to unsettle a settled position".

Prafulla Kumar Das and others v. State of Orissa and others, (supra) (already referred to in paragraphs supra).

40. In reply to para 5 (B&C), the Government has admitted that recruitment to the Service cannot be made from one particular Register/source in isolation by ignoring other Registers. On the same analogy, the seniority of officers from one Register cannot be finalized by ignoring other Registers. Even Rule 21 envisage a joint/composite seniority list of all the Registers. However, in the present case this has not been done. Composite seniority list of officers appointed in 1984 and those appointed in 1986 was never issued in spite of the fact that the officers were appointed as a result of requisitions sent by the Government in the year 1982 for the vacancies of years 1978, 1979, 1980, 1981 and 1982 as mentioned in para 1 above. The seniority of promotee officers was finalized vide order dated 18.03.1993 (issued on 19.03.1993) and that of Direct Recruits vide order dated 1.7.1994 (issued on 16.08.1994). These facts were admitted by the Government in para 9 of the written statement filed in CWP No. 16516 of 1995 (page 74 of the Paper Book). Surprisingly in the seniority list of Direct Recruits there is no mention of name of any of the promotee officers in spite of the fact that a joint requisition of promotees and Direct Recruits was sent in the year 1982, the breakup of which has been shown in para 5(D) of the counter-affidavit of the Government (Pages 140-141 of the Paper Book) and as such a Joint/composite seniority in respect of Direct Recruits and Promotees was required to be issued. Only a small note has been given at the bottom of the seniority list dated 1.7.1994 in respect of Direct Recruits which reads as under:-

"The above officers will rank junior to one Shri Bhagwant Singh, PCS whose name figures at Sr. No. 73 in the Quarterly Gradation and Distribution List of the officers PCS (Executive Branch) corrected up to 1st July, 1994.

(Copy of Seniority list is annexed herewith)."

Neither any explanation was given as to how name of Shri Bhagwant Singh find mention at Sr. No. 73 of the Gradation List nor the Direct Recruits were given any opportunity to file any objection in respect of final seniority list of promotees as there was no mention of seniority list dated 18.03.1993 in respect of promotees. The only reference that was given was with regard to Sr.No.73 of the Gradation List of 1st July, 1994 thus giving an indication that Gradation List in fact is Seniority List.

41. It is submitted in this appeal that the ambit of Rule 20 is completely different and is in no way rendered redundant. This interpretation has not been contested or denied by the Government in the written statement.

42. It may be pertinent to say that legislature has used the term "date" where there was clear intention to refer to "date". Had there been an intention of the legislature to say that the seniority

shall be determined from the date of appointment/ order they would have used the term "date" in Rule 21 as has been done in Rule 20. Even in Rule 21 proviso (a) the term 'date' has been used in an eventuality where the legislature has an intention to make the 'date' relevant.

43. Had the date of appointment been the sole criterion for fixing seniority there would have been no need for proviso (a) to Rule 21 as any appointment after cancellation of original appointment will always be treated as original/first appointment.

44. If the term "in accordance with the order of their appointment" in Rule 21 actually means "in accordance with the date of their appointment" there is no need for proviso (a) to Rule 21.

45. It has also been admitted by the Government in reply to para 5 (G) in the written statement that if officers from different Registers happen to be appointed on the same date there is no escape from the situation that for determining seniority the ROTA as prescribed under Rule 18 is to be applied. It has been said by the State Government in the written statement that the Rules are silent about the seniority of the officers appointed on the same day. If 'order of appointment' mentioned in Rule 21 means 'the date of appointment' and is the sole criterion for fixing seniority then why the said Rule does not provide for the determination of seniority of those appointed from different Registers on the same date. The legislature could not have left it to the discretion of the Government to use Rule 18 by default for determination of seniority i.e. to use Rule for fixing seniority in those cases when the orders of appointments of officers from different Registers are issued on the same date.

46. There is once again deviation by the Government from its stand that date of appointment is the basis for determining the seniority. The perusal of Sr. Nos. 186, 187 and 188 on page 57 of the Gradation List of 1st January, 2006, reveals that Government has once again reverted to applying Roster in the determination of seniority. Officer at Sr. No. 188 with appointment date of 9th June, 2004 has been shown junior to ones at Sr. Nos. 186 and 187 whose appointment dates are 23rd June, 2004 and 1st July, 2004 respectively. Similar situation can be seen at Sr. Nos. 189 and 191 on page 58 and at Sr. Nos. 203 and 204 on page 59.

47. That by getting appointment orders ahead of Direct Recruits the promotees had already enjoyed more perks than the Direct Recruits by way of pay etc. This became possible because the selection process of promotees was shorter as compared with that of Direct Recruits. The injustice to Direct Recruits cannot be compounded by relegating them in matter of seniority also by placing the promotees enblock above the Direct Recruits especially when both of them (promotees and Direct Recruits) were selected against same requisition sent by the Government to the Punjab Public Service Commission.

48. It is also pertinent to notice that Mr. Khushi Ram who has been impleaded as respondent in the present case had himself filed a Civil Writ Petition No. 8957 of 1993 in the Punjab and Haryana High Court in which he had himself made the following prayer:-

"(i) issue a writ mandamus directing respondent no. 1 to fix the seniority of PCS Executive Branch Officers as per Rota quota system as laid down in Rule 18 read with Rule 21 of the Rules and also to fix the seniority of respondent Nos. 4 and 5 below the name of the petitioner in view of Rule 21-C of the Rules."

49. While granting leave on 03.09.2001 this Court passed the following order:-

"Learned counsel has brought to our notice Rule 24(5) and submitted that this Rule clearly indicated that there was a quota and therefore principle of rota and quota should have applied.

Leave granted.

Any action taken will be subject to the outcome of the appeal."

50. In *Gonal Bihimappa v. State of Karnataka and others (supra)* this Court held as under:

8. It is a well settled position in law that where recruitment is from two sources to a service, a quota rule can be applied fixing the limits of recruitment from the two sources. (*H.C. Sharma v. MCD*,

10. *Badami* case referred to several authorities of the court and clearly drew out the judicial consensus on the point in issue by concluding that the quota rule had to be strictly enforced and it was not open to the authorities to meddle with it on the ground of administrative exigencies.

11. The scheme in force relating to the services for fixing inter se seniority takes into account the filling up of the vacancies in the service from the two sources on the basis of the quota and, therefore, fixation of inter se seniority in the Gradation List has to be worked out on the basis of quota.

19. In a precedent-bound judicial system binding authorities have got to be respected and the procedure for developing the law has to be one of evolution. It is not necessary for disposal of these matters before us to go into that aspect except noticing the existence of distortion in the field. The rationalisation of the view in a way known to law is perhaps to be attempted some day in future. In the present batch of cases the law being clear and particularly the mandate in the rule being that when recruitment takes place the promotee has to make room for the direct recruit, every promotee in such a situation would not be entitled to claim any further benefit than the advantage of being in a promotional post not due to him but yet filled by him the absence of a direct recruit. One aspect which we consider relevant to bear in mind is that the promoted officer has got the advantage of having been promoted before it became his due and is not being made to lose his promotional position. The dispute is confined to one of seniority only. The advantage received by the promotee before his chance opened should be balanced against his forfeiture of claim to seniority. If the matter is looked at from that angle there would be no scope for heart-burning or at any rate

dissatisfaction is expected to be reduced so far as the promotees are concerned."

51. This Court in *Devendra Prasad Sharma v. State of Mizoram and others*'[ 0 (2 Judges).] Held as under:

"In the matter of fixation of the inter se seniority under Rule 25(iii), the relative seniority of direct recruits and of promotees has to be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion under Rule 5. The Division Bench has pointed out in the impugned order the position as under:

"Clause (ii) of Rule 25 quoted above clearly stipulated that the seniority of the Service appointed at the initial constitution of the Service shall be determined by the Administrator in consultation with the Board. Since all the respondents have been appointed as members of the Service at the initial constitution of Service their seniority has to be determined by the Administrator in accordance with the said rules."

52. We shall now scan the three judgments cited by Mr. Ashok Panda.

1. *Ajit Kumar Rath v. State of Orissa and others* (supra).

"It was also contended on behalf of the respondents before the Tribunal, and is also reiterated here, that the respondents are entitled to reckon their seniority from 1970 to 1971 as they were appointed against the vacancies of those years. It is pointed out that the advertisement in 1970-71 for direct recruitment on the posts of Assistant Engineer was issued by the Public Service Commission on 6-12-1971 and the result was thereafter published which indicated that all the respondents had been selected. They were also directed to appear before the Medical Board. The order of appointment was, however, passed on 3-1 -1972. The respondents, therefore, claim seniority with effect from 1970 and 1971 on the ground that they were appointed against the vacancies of 1970 and 1971. They claim that their seniority may be antedated.

This plea is wholly unfounded and is liable to be rejected as without substance and merit. The law on this question has already been explained by this Court in *Jagdish Ch. Patnaik v. State of Orissa* and it was categorically held that the appointment does not relate back to the date of vacancy."

2. *Surqj Parkash Gupta and others v. State of J&K and others* (supra).

"Point 4 Direct recruits cannot claim appointment from date of vacancy in quota before their selection."

### 3. Dr. Chandra Prakash and others v. State of U.P. and another (Supra)

"As far as the question of seniority is concerned, Rule 18 of the 1945 Rules reads as follows:

"Seniority.- Seniority in the service shall be determined by the date of the order of appointment in a substantive vacancy provided that if two or more candidates are appointed on the same date their seniority shall be determined according to the order in which their names are mentioned in the order of appointment."

Thus even under the Medical Services Rules, 1945, the determination of seniority under those Rules was from the date of appointment against a substantive vacancy. It is clear that in accordance with the Rules, and as held by the High Court in Mathur case appointment could be temporary or permanent. But where the appointment is against a substantive vacancy, the year of appointment was determinative in fixing, seniority under the Rules. On this basis, calculations of the writ petitioners' seniority from the date of their initial appointment cannot be said to be incorrect. Furthermore, it has not been disputed that the writ petitioners have been continuing to serve and had till 1983 enjoyed all the benefits of regular service since their initial appointments like the writ petitioners in Mathur case. As held in Rudra Kumar Sain v. Union of India, 7 at p.45, para 20:

"20. In 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 an appointment cannot be held to be 'stopgap or fortuitous or purely ad hoc'

These judgments, in our opinion, are not only distinguishable on facts but also on law. In the above cases, issues with regard to year of vacancy and seniority in accordance with the date of appointment was in question. The argument advanced by counsel for the contesting respondents has no merits and substance. The action of the authorities is based on the misinterpretation of the provisions of Rule 21 of 1976-Rules and is, therefore, liable to be set aside. The action of the authorities is also contrary to the Register prescribed for purpose of appointment to the PCS. The mandate of the roster is that unless his appointment is in the order prescribed under Rule 18, the appointment is invalid. Consequently, the order of appointment must be deemed to be the order prescribed in Rule 18 of the 1976-Rules. The action of the respondents in determining the seniority list without reference to the order consequence of appointment is wholly unsustainable in law and is liable to be set aside. This apart, the term order of appointment is also being mis-interpreted by the authorities and is being confined to individual order of appointments issued to individual members of service whereas the term of appointment refers only to the order/consequence prescribed under Rule 18. Further, from a perusal of Rule 21 it would be manifestly clear that if it is to be interpreted in the manner in which it is presently being done, namely, to determine the seniority on the basis of the order of appointment i.e. the date on which the order of appointment is issued, the same must necessarily relate to inter se seniority of individual sources of recruitment. This procedure was adopted in preparing the seniority list confined to Register-B. Action of the authorities in determining seniority of all the members of the PCS (EB) with reference to their date of appointment and not with reference to the order by which they were required to be appointed under

Rule 18 is misinterpretation of Rule 21 of 1976-Rules and is liable to be set aside.

53. We have also referred to the decisions rendered by this Court. This Court said rota and quota must necessarily be reflected in the seniority list and any seniority list prepared in violation of rota and quota is bound to be negated. The action of the respondents in determining the seniority is clearly in total dis-regard of rota-quota prescribed in Rule 18 of the 1976-Rules. The action is, therefore, clearly contrary to the law laid down by this Court. Thus, we hold:

1. that the action of the State is contrary to the 1976-Rules;
2. the seniority under the 1976-Rules must be based on a collective interpretation of Rule 18 and Rule 21 of the 1976-Rules;
3. the action of the authorities is negation of Rule 18 of the 1976- Rules in determining the seniority by the impugned order. Since the action is contrary to law laid down by this Court, we have no hesitation in allowing the appeal and grant the relief as prayed for by the appellant.

54. We, therefore, issue a writ of mandamus directing the respondents to prepare the seniority list of the appellants who belong to the PCS (EB) in accordance with Rule 18 and read with Rule 21 of the 1976-Rules by fixing seniority according to the roster prescribed under Rule 18 of the 1976- Rules. Fresh seniority list should be drawn within three months.

55. We further direct the respondents to grant all the consequential benefits in the nature of scale of pay, promotion etc. to the IAS, arrears of salary etc. which they remained deprived due to negligence of the respondent State.

56. In the result, the Civil Appeal No. 6373 of 2001 is allowed. However, we order no costs.

J