

SUPREME COURT OF INDIA

Dhole Govind Sahebrao

Vs.

Union of India

C.A.Nos.2485-2490 of 2010
(Jagdish Singh Khehar and S.A.Bobde JJ.)

26.03.2015

JUDGMENT

JAGDISH SINGH KHEHAR, J.

1. The present controversy is yet another seniority dispute amongst employees of the Customs and Central Excise Department. The controversy herein has emerged on account of a reconstitution of cadres. In the first instance, a separate cadre was constituted, out of the existing ministerial cadre, for discharging electronic data processing responsibilities. This was necessitated by the decision of the department to introduce computerization, in its functioning. The instant computerization project, which commenced in 1991-92, seems to have been fully implemented in or around 2002-03. Consequent upon achievement of the above objective, the separate cadre so created, was sought to be re-amalgamated with the existing ministerial cadre. The above noticed bifurcation and re- amalgamation, resulted in a co-incidental career advancement, for those who had accepted to break away from the original ministerial cadre. Some of those who were originally placed at inferior positions in the seniority list of the original ministerial cadre, acquired superiority over their counterparts (in the original ministerial cadre), consequent upon their promotion within the cadre of data entry operators, which resulted in their acquiring a higher position in seniority, over and above those who were senior to them in the original ministerial cadre. Before embarking upon the niceties of the seniority dispute, it is imperative to delve upon the reasons of the afore-stated bifurcation, and re-amalgamation of cadres. The instant aspect of the matter is accordingly being dealt with, in the following paragraphs.

2. The ministerial cadre as it originally existed, comprised of posts of Deputy Office Superintendents (Levels 1 and 2), Upper Division Clerks, Lower Division Clerks, Stenographers (Senior Grade and Ordinary Grade), Draftsmen etc. Conditions of service of members of the original ministerial cadre, were regulated

by the Central Excise and Land Customs Department Group 'C' Posts Recruitment Rules, 1979 (hereinafter referred to as, the 1979 Rules). Members of the original ministerial cadre regulated by the provisions of the 1979 Rules were eligible for promotion to the post of Inspector (Ordinary Scale) - an executive cadre post. And thereupon, even further promotion, in the executive cadre.

3. Consequent upon the recommendations made by the Fourth Central Pay Commission in paragraph 11.45 of its report, the Government of India took upon itself the responsibility to examine the rationalization of pay scales for posts responsible for discharging work relating to data entry. The task sought to be undertaken was to prescribe uniform pay scales and designations for electronic data processing posts, in consultation with the Department of Personnel. Consequent upon the suggestions made by a committee set up by the Department of Electronics in November, 1986, the Government of India decided to introduce the following uniform pattern for Electronic Data Processing Posts:-

S.No.	Designation of post	Pay Scale	
	Data Entry Operators		
1.	Data Entry Operator Grade 'A'	Rs.1150-1500	This will be entry grade for higher secondary with knowledge of data entry work
2.	Data Entry Operator Grade 'B'	Rs.1350-2200	This will be entry grade for graduation with knowledge of data entry work or promotional grade for Data Entry Operator Grade 'A'
3.	Data Entry Operator Grade 'C'	Rs.1400-2300	Promotional Grade
4.	Data Entry Operator Grade 'D'	Rs.1600-2660	Promotional Grade
5.	Data Entry Operator Grade 'E'	Rs.2000-3500	Promotional Grade
	Data Processing/Programming Staff		
1.	Data Processing Assistant Grade 'A'	Rs.1600-2660	Entry grade for graduates with Diploma/Certificate in Computer

			Application	
2.	Data Processing Assistant	Rs.2000-3200	Promotional Grade	
	Grade 'B'			
3.	Programmer	Rs.2375-3500	Direct entry for	
			holders of degree in	
			Engineering or	
			post-graduation in	
			Science/Maths etc.,	
			or post-graduation in	
			Computer Application	
			Or	
			By promotion from	
			Data Processing	
			Assistant Grade 'B'	
4.	Senior Programmer	Rs.3000-4500	Promotional Grade	

In continuation of the aforesaid office memorandum dated 11.9.1989, the Government of India issued a further memorandum dated 8.1.1990, suggesting job descriptions for various levels of data entry operators and programming staff, which could be adopted by different ministries/departments of the Government of India, with suitable modifications to meet their individual requirements. The suggestions incorporated in the annexures appended to the office memorandum dated 8.1.1990, revealed five categories of data entry operators, differentiated and distinguished as under:-

"1. Data Entry Operator-A: 1150-25-1500 All types of data preparation and validation including alpha-numeric data entry, graphic data entry, voice-entry, optical entry etc., and associated verification, and pre-programmed validation, text processing etc., on any type of machines/equipment/instrument endowed with facilities for data entry and/or preparation for data entry and/or pre-programmed validation of entered data including key punching machine, key to magnetic media machine, key to optical media machine, any type of computer/EDP equipment, any computer based equipment/computer based instrument/computer based online or real time systems/computer network based systems.

2. Data Entry Operator-B: 1350-30-1440-40-2200 In addition to those jobs mentioned for Data Entry Operator-A, Pooling, Counting, Collating, Coding, Console Operation, assisting in the preparation of Statistics, billing,

input/output handling etc., on any type of machine/equipment/instrument endowed with facilities for data entry or preparation for data entry and/or validation of entered data as specified under the description for Data Entry Operator-A.

3. Data Entry Operator-C:

In addition to those jobs and machine equipment instrument mentioned for Data Entry Operator-B, training of operators, scheduling of jobs and more skill-based validation of alpha-numeric or graphic data as determined by the needs of the organization.

4. Data Entry Operator-D:

In addition to those jobs mentioned for Data Entry Operator-C, programming relating to data preparation and/or validation, and for a few staff who are considered to have the required aptitude and depending upon the need, supervision of the work of Data Entry Operator-A, B and C.

5. Data Entry Operator-E:

Supervision of the work of data preparation, scheduling and distribution of jobs among other Data Entry Operators, planning, scheduling, coordination and implementation of interrelated and integrated data preparation jobs, programming relating to data preparation and/or validation traction and if necessary to do supporting job of data entry, verification, validation etc. depending on exigencies of work."

4. In order to implement the recommendations made by the Fourth Central Pay Commission, the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, framed the Electronic Data Processing Posts (Group 'C' Technical Posts) Recruitment Rules, 1992 (hereinafter referred to as, the 1992 Rules). The aforesaid rules were framed by the President of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Rule 5 of the 1992 Rules provided, that all persons holding the ministerial posts of Key Punch Operators, Terminal Operators and Lower Division Clerks, who were performing the duties of Terminal Operators prior to the commencement of the 1992 Rules, would be deemed to be appointed as Data Entry Operators Grade 'A'. Rule 5 of the 1992 Rules further postulated, that all Data Entry Operators Grade 'A' appointed at the time of the commencement of the 1992 Rules, would rank en-block senior to those appointed after the commencement of the Rules.

5. Rule 7 of the 1992 Rules authorized, the Central Government to relax any other provision of the rules with respect to any class or category of persons. On 2.2.1993, in exercise of the powers conferred on the Central Government, the Central Excise Department permitted its erstwhile employees, to apply for posts of Data Entry Operator Grade 'A', subject to the condition, that they had completed 3 years' regular service and satisfied the conditions of eligibility stipulated in the 1992 Rules. On 9.9.1993, the Customs Department, issued a circular informing the employees who had exercised their option for appointment to the post of Data Entry Operator Grade 'A', that their option was final and could not be revoked. A number of employees holding ministerial cadre posts in the Customs and Central Excise Department, accordingly came to be appointed as Data Entry Operators Grade 'A'.

6. Under the mandate of the 1992 Rules, the post of Data Entry Operator Grade 'A' was assigned the pay scale of Rs.1150-25-1500. It was the lowest post under the 1992 Rules. The Schedule appended to the 1992 Rules provided, that to be eligible for appointment to the post of Data Entry Operator Grade 'A', an individual should have qualified the 12th standard or equivalent examination. Additionally, he/she should possess a speed of not less than 8000 key depressions per hour, for data entry work. The onward promotion from the post of Data Entry Operator Grade 'A' was to the post of Data Entry Operator Grade 'B'. The said promotional post was in the pay scale of Rs.1350-30-1440-40-1800-EB-50-2200. To be eligible for promotion to the post of Data Entry Operator Grade 'B', the schedule stipulated 6 years' regular service as Data Entry Operator Grade 'A'. The post of Data Entry Operator Grade 'B' was liable to be filled exclusively by promotion, failing which, on transfer by deputation. Onward promotion from the post of Data Entry Operator Grade 'B', was to the post of Data Entry Operator Grade 'C'. The said promotional post, was in the pay scale of Rs.1400-40-1800-EB-50-2300. Data Entry Operators Grade 'B' with 3 years' regular service in the grade, were considered eligible for promotion to the post of Data Entry Operator Grade 'C'. The schedule appended to the 1992 Rules provided, that the post of Data Entry Operator Grade 'C' would be filled up exclusively by promotion, failing which, on transfer by deputation. The highest post under the 1992 Rules, was the post of Data Entry Operator Grade 'D'. The said post was to be filled up by promotion from amongst Data Entry Operators Grade 'C', with 4 years' regular service in the grade. The post of Data Entry Operator Grade 'D', was earmarked the pay scale of Rs.1600-50-2300-EB-60-2660. Just as in other cases referred to hereinabove, promotion to the post of Data Entry Operator Grade 'D' was to be made exclusively by promotion, failing which, on transfer by deputation.

7. A perusal of the cadre of posts evolved under the 1992 Rules would reveal, that the Customs and Central Excise Department created a four-level cadre of Data Entry Operators, i.e. Grades 'A', 'B', 'C' and 'D'. This was in contradistinction to the five-level cadre of Data Entry Operators suggested in the deliberations carried out by the Government of India (as already noticed above). A perusal of the 1992 Rules further reveals, that the cadre of Data Entry Operators, was separate from the original ministerial cadre. Persons from the original ministerial cadre were not eligible for promotion to the different levels of posts created under the 1992 Rules. Likewise, members of different levels in the cadre of Data Entry Operators, were no longer eligible for onward promotion to any post of ministerial cadre. Most significantly, an incumbent holding a cadre post under the 1992 Rules was no longer eligible for promotion to the post of Inspector (Ordinary Scale) in the executive cadre. And therefore, not eligible for any onward promotion in the executive cadre. Accordingly it is inevitable to conclude, that after the promulgation of the 1992 Rules, the Customs and Central Excise Department comprised of a separate and distinct ministerial cadre, as also, a separate and distinct cadre of Data Entry Operators.

8. The factual position depicted in the pleadings filed before this Court reveals, that throughout India only 211, 52 and 17 employees got promoted to the posts of Data Entry Operator Grade 'B', Grade 'C' and Grade 'D' respectively, under the 1992 Rules. The remaining individuals inducted into the cadre of Data Entry Operators from the original ministerial cadre, have continued to occupy the post of Data Entry Operator Grade 'A', even after having rendered services for more than 10-15 years i.e., without obtaining a single promotion. As against the aforesaid career progression under the 1992 Rules, the administration found that the ministerial cadre employees holding the posts of Lower Division Clerk, Upper Division Clerk, and erstwhile Tax Assistant etc. were promoted (during the same period of service) to the post of Inspector (Ordinary Scale), and even further up to the post of Commissioner on the executive side, and up to the post of Chief Accounts Officer on the ministerial side, on account of better promotion avenues available to the ministerial cadre. In order to resolve the distinction in the two cadres of employees, the Central Board of Excise & Customs invited suggestions from all the Commissionerates for the re-merger of cadres. The matter was examined also in the light of the fact that the purpose for which the cadre of Data Entry Operators was created, had been achieved. The deliberations lead to restructure/re-amalgamation, by abolishing the cadre of Data Entry Operators. To give effect to the executive determination the President of India, in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution of India, framed two sets of rules for the Customs and Excise Department, namely, the Central Excise and Customs

Department Tax Assistant (Group 'C' Post) Recruitment Rules, 2003 (hereinafter referred to as, the TA Rules, 2003) and the Central Excise and Customs Department Senior Tax Assistant (Group 'C' Post) Recruitment Rules, 2003 (hereinafter referred to as, the STA Rules, 2003). In order to understand the re-merger/re-amalgamation of the cadres in the Customs and Excise Department, it is imperative for us to delve upon the effect of the TA Rules, 2003, as also, the STA Rules, 2003. We shall examine the aforementioned two sets of rules, in the following paragraphs.

9. The TA Rules, 2003 provided for the initial constitution of the cadre of Tax Assistants, through Rule 4 thereof. Rule 4 of the TA Rules, 2003 is being extracted hereunder:-

"4. Initial Constitution.- (1) The person appointed on regular basis and holding the post of Upper Division Clerk and Data Entry Operator Grade A on the commencement of these rules shall deemed to have been appointed as Tax Assistant under these rules and the service rendered by such persons in the respective posts before commencement of these rules shall be taken into account as regular service rendered on the post of Tax Assistant for the purpose of promotion etc. (2) The person holding the post of Data Entry Operator Grade-A appointed under these rules as Tax Assistant shall, within two years from the date of such appointment as Tax Assistant, pass the Departmental Examination as conducted by the competent authority, failing which he shall not be entitled to get any further increment.

(3) Any person, who holds a post of Lower Division Clerk on regular basis and falls within the seniority list as determined by the appointing authority at the commencement of these rules shall, on passing the Departmental Computer Proficiency examination conducted by the appointing authority, be deemed to have been promoted with effect from the date of passing such examination on the post of Tax Assistant.

(4) The Upper Division Clerks and Data Entry Operators Grade-A shall be placed en-block senior and, their inter se placement shall be fixed in accordance with the date of regular appointment to the respective grade subject to the condition that their inter se placement in respective grade shall not be disturbed.

(5) Lower Division Clerks shall be placed below Upper Division Clerks and Data Entry Operator Grade-A."

A perusal of Rule 4 of the TA Rules, 2003 reveals, that persons holding the posts of Upper Division Clerk and Data Entry Operator Grade 'A' would be re-designated as Tax Assistants. The service rendered by them as Upper Division Clerk and Data Entry Operator Grade 'A' respectively, would be taken into consideration as regular service rendered on the post of Tax Assistant (for purposes of promotion etc.). In addition to the above, Lower Division Clerks falling within the seniority list, as determined by the appointing authority at the commencement of the TA Rules, 2003, on passing the departmental computer proficiency examination, would be deemed to be promoted as Tax Assistants (from the date of passing such examination). Rule 4 of the TA Rules, 2003 expressly postulates, that Upper Division Clerks and Data Entry Operators Grade 'A', would be placed en-block senior to others appointed as Tax Assistants, and further, that their inter-se seniority would be determined from the date of their regular appointment to the respective grade. For their inter-se placement, Rule 4 of the TA Rules, 2003 further postulated, that Lower Division Clerks would be placed below the Upper Division Clerks and Data Entry Operators Grade 'A'. A perusal of Rule 4 of the TA Rules, 2003 reveals an amalgamation of three posts, namely, Upper Division Clerk, Data Entry Operator Grade 'A' and Lower Division Clerk. All these posts were amalgamated into a freshly created cadre of Tax Assistants under the TA Rules, 2003.

10. While deliberating on the TA Rules, 2003, it is also imperative to notice, that Rule 5 of the TA Rules, 2003 provided for the methods of recruitment, age limits and other qualifications, for appointment to the post of Tax Assistant. The details of the aforesaid particulars are found in the schedule appended to the TA Rules, 2003. A perusal of the above schedule reveals, that 90% of the appointments made to the post of Tax Assistant were to be by direct recruitment, and 10% by way of promotion. For promotion, the following conditions of eligibility were stipulated in column 12 of the schedule appended to the TA Rules, 2003:- "From amongst the Lower Division Clerks and Head Havaldars who have rendered seven years of service in the Grade on regular basis and possess the following qualifications, namely:-

(a) Matriculation or equivalent qualification from a recognized institution, and

(b) Data Entry Speed of 5000 key depression per hour and passed the Departmental examination with knowledge of typing in Hindi or English at a speed of 25 wpm and 30 wpm respectively."

It is apparent from the perusal of Rule 5, coupled with the schedule appended to TA Rules, 2003, that the initial merger of the ministerial cadre and the cadre of Data Entry Operators was made, against the post of Tax Assistants. In sum and substance, therefore, irrespective of the post (in ministerial or Data Entry Operators' cadre) occupied, the lowest level of amalgamation was, against the post of Tax Assistant.

11. Insofar as the STA Rules, 2003 are concerned, the initial constitution therein was postulated in Rule 5 thereof. Rule 5 aforementioned is being extracted hereunder:-

"5. Initial Constitution.- (i) All the persons appointed on the regular basis at the time of commencement of these rules to the Grade of Assistant, Tax Assistant, Upper Division Clerk (Special Pay), Data Entry Operator Grade 'B' and 'C' shall be deemed to have been appointed as Senior Tax Assistants under these rules. The service rendered by them before commencement of these rules shall be taken into account for deciding the eligibility for promotion to the next higher grade.

(ii) Assistants (Rs.5000-8000) and Data Entry Operator Grade 'C' (Rs.5000-8000) are being redesignated as Senior Tax Assistants in the same scale of pay. Therefore, the Assistants and Data Entry Operator Grade 'C' shall be placed enblock senior to the other categories. However their inter-se placement shall be done according to the date from which they had actually been appointed to these grades on regular basis subject to the condition that their inter-se placement in their respective category shall not be altered.

(iii) The Data Entry Operator Grade 'B' (4500-7000) and Tax Assistants (4500-7000) have been placed in their higher scale of 5000-8000 and they shall be placed below the Assistant and Data Entry Operator Grade 'C' and their inter-se placement shall be fixed in accordance with the date of regular appointment to the respective grade subject to the condition that their inter-se placement in respective category shall not be disturbed.

(iv) Upper Division Clerk with special pay shall be placed below Assistant; Data Entry Operator Grade 'C', Data Entry Operator Grade 'B', Tax Assistants.

(v) The present employees would be required to pass the required or suitable departmental examination, as specified by the Competent Authority, from

time to time, in Computer application and relevant procedures within two years failing which they would not be eligible for further increments."

A perusal of Rule 5 of the STA Rules, 2003 reveals, that at the initial constitution of the cadre the posts of Assistant, Tax Assistant, Upper Division Clerk (Special Pay) and Data Entry Operator Grades 'B' and 'C' were merged as Senior Tax Assistants. The aforesaid merger contemplated the merger of posts belonging to the ministerial cadre, and posts belonging to the cadre of Data Entry Operator. Rule 5 of the STA Rules, 2003 also expressly provided for the manner in which the above merged posts would be ranked in the integrated cadre of Senior Tax Assistants. The inter-se ranking was provided for as under:-

(i) Assistants and Data Entry Operators Grade 'C' were placed above all other posts which constituted the cadre of Senior Tax Assistants, on the promulgation of the STA Rules, 2003. This was purportedly sought to be done, as is evident from Rule 5(ii) of the STA Rules, 2003, because the posts of Assistant and Data Entry Operator Grade 'C' were in the pay scale of Rs.5000-8000, and thereby, were enjoying the highest scale amongst the posts merged, to constitute the cadre of Senior Tax Assistants. In order to regulate the inter-se seniority between the merged posts of Assistants and Data Entry Operators Grade 'C', Rule 5(ii) of the STA Rules, 2003 further provided, that the inter-se placement of persons holding such posts, would be based on the date on which such persons had been actually appointed in the pay scale of Rs.5000-8000, on regular basis.

(ii) In the same fashion as Assistants and Data Entry Operators Grade 'C', Rule 5(iii) of the STA Rules, 2003 provided, that Data Entry Operators Grade 'B' and Tax Assistants, who were earlier placed in the pay scale of Rs.4500-7000, and thereafter placed in the higher scale of Rs.5000-8000, would be placed en-block below Assistants and Data Entry Operators Grade 'C'. In other words, the posts of Data Entry Operators Grade 'B' and Tax Assistants which had an inferior position adjudged on the basis of pay scales, vis--vis Data Entry Operators Grade 'C' and Assistants, prior to the promulgation of the STA Rules, 2003, were placed en-masse below Data Entry Operators Grade 'C' and Assistants, so as to preserve the said inferior position in the cadre of Senior Tax Assistants. Insofar as the inter-se placement between the Data Entry Operators Grade 'B' and Tax Assistants is concerned, Rule 5(iii) of the STA Rules, 2003 provided, that the date of their regular appointment in their respective grades, would determine their inter-se seniority in the cadre of Senior Tax Assistants.

(iii) For exactly the same reasons as have been indicated in (i) and (ii) above, namely, the pay scale in which the respective posts were placed prior to the creation of the cadre of Senior Tax Assistants under the STA Rules, 2003, the posts of Upper Division Clerk were placed at the bottom of the cadre of Senior Tax Assistants, at the initial constitution of the said cadre, under the mandate of Rule 5(iv) of the STA Rules, 2003.

12. It is imperative to point out here, that the erstwhile ministerial cadre was primarily engaged in discharging duties of a procedural nature, whereas those engaged in the cadre of Data Entry Operators were considered to be primarily engaged in discharging duties in the field of computer applications. It is, therefore, that Rule 5(v) of the STA Rules, 2003 provided, that all employees appointed as Senior Tax Assistants, at the initial constitution of the aforesaid cadre, under the STA Rules, 2003, would be required to pass departmental examinations, so as to achieve the proficiency required in discharging duties relating to the application of relevant procedures, as also, with reference to computer applications.

13. It is in the background of the aforesaid factual and legal position, that we would venture to adjudicate upon the controversy raised in these connected civil appeals.

14. It is relevant to mention, that in the first instance, a challenge to the rules referred to hereinabove, was raised at the hands of the erstwhile members of the ministerial cadre, namely, those members of the original ministerial cadre, who had not opted for appointment/absorption into the cadre of Data Entry Operators. In their challenge raised before the Central Administrative Tribunal, Madras Bench, Chennai (hereinafter referred to as, the Administrative Tribunal), a common order dated 30.12.2003 was passed, while disposing of Original Application nos. 558, 538 and 909 of 2003, and a common order dated 30.4.2004 was passed while disposing of Original Application nos. 462 and 639 of 2003. Another order dated 24.6.2004 was passed, while disposing of Original Application no. 1025 of 2003. And likewise, an order dated 2.8.2004 was passed, while disposing of Original Application no. 1150 of 2003. And finally, an order dated 14.10.2004 was passed while disposing of Original Application no. 71 of 2004. It would be relevant to mention, that the solitary contention raised at the hands of the erstwhile members of the ministerial cadre (who had not opted for the appointment/absorption into the cadre of Data Entry Operators) was, that the process of bifurcation of cadres followed by the re-amalgamation thereof, had adversely affected their seniority. Accordingly, the erstwhile members of the ministerial cadre, claimed restoration of the position of their seniority as it originally existed, with reference to such other members of the ministerial cadre

who had opted for absorption into cadre of Data Entry Operators, and who had thereafter, as a matter of re-amalgamation (under the provisions of the TA Rules, 2003 and the STA Rules, 2003) been appointed as Tax Assistants and Senior Tax Assistants respectively. The instant claim raised by the erstwhile members of the ministerial cadre, came to be accepted by the Administrative Tribunal vide orders dated 30.12.2003, 30.4.2004, 26.4.2004, 2.8.2004 and 14.10.2004, on the basis of the law laid down by this Court in *Om Prakash Sharma v. Union of India*, 1985 (Supp.) SCC 218.

15. The orders passed by the Administrative Tribunal referred to in the foregoing paragraph were assailed through Writ Petition Nos. 8361, 8388, 17208, 17257, 21692 to 21694, 29468, 34708, 38622 of 2004 and Writ Petition Nos. 2723, 3302 and 8606 of 2005. They were also assailed through Writ Petition MP Nos. 9866, 20444, 20497, 26220, 26221, 35789, 35791, 41879, 46155 of 2004; 12236 and 9286 of 2005; 17258 and 17508 of 2006; and WPMP No. 864 of 2004. The instant challenge was raised at the hands of the Union of India, as also, the members of the cadre of Data Entry Operators, who were merged into the cadre of Tax Assistants and Senior Tax Assistants, consequent upon the promulgation of the TA Rules, 2003 and STA Rules, 2003. All the above mentioned writ petitions were disposed of by the High Court of Judicature at Madras (hereinafter referred to as, the High Court) by a common judgment and order dated 13.4.2007. While adjudicating upon the aforesaid controversy, the High Court, in paragraph 24 of the impugned judgment and order dated 13.4.2007, framed the questions arising for determination. Paragraph 24 is being extracted hereunder:- "24. The contesting respondents have not challenged the entire rules relating to the restructure of the cadres and the merger/integration of ministerial cadre and technical cadre before the Tribunal. It is only the rules relating to the fixation of inter se placement of the erstwhile ministerial cadre staff and the erstwhile technical cadre staff in the restructured cadre which are challenged before the Tribunal. The contesting respondents, who are presently working as Preventive Officers on ad hoc basis, claim that for determining the inter se placement of the ministerial cadre staff and the technical cadre staff in the restructured cadre, the date of initial appointment in the services of the Central Excise and Customs Departments should be taken into consideration. On the other hand, the writ petitioners claim that the fixation of inter se seniority should be on the basis of the date of regular appointment in the respective grades, but subject to the condition that inter-se placement in the respective category, is legal and reasonable."

It is, therefore apparent, that the issue agitated before the High Court was the same as had been agitated before the Administrative Tribunal. While adjudicating upon the propositions canvassed before it, the

High Court in paragraph 35 of the impugned judgment and order, observed as under:-

"35. We have no quarrel with the proposition of law enunciated by the Apex Court. But, in the cases on hand, all the parties emerge from the same cadre of LDC and only by virtue of option, some parties have opted to the post of Data Entry Operators and by virtue of the impugned Rules they were afforded fortuitous advantage that too without any stringent conditions like passing the Departmental Tests like the case of a LDC who is required to pass the same to seek promotion to the next category of UDC, while the rest of the LDCs. who have not opted for the post of Data Entry Operators and were stick on to the much higher responsible position, were put in a most disadvantageous position. The inter se seniority has been fixed by the impugned Rules only based on the pay and giving a go-bye to all the norms prescribed by the Apex Court. Since the impugned legislation suffers from the vice of discrimination and unreasonableness, we hold that the impugned Rules are arbitrary and violative of Articles 14 and 16 of the Constitution, since they give unreasonable advantage and a steep forward for an otherwise low category persons like Data Entry Operators as against the LDCs/UDCs/Tax Assistants, who perform highly responsible and complex duties unlike mere entering a data by the Data Entry Operators."

Thereupon, the High Court considered the controversy in the following perspective:-

"38. It was shown, by instances, by the learned senior counsel for the respondents that while in a short span of time, that too, without any condition like passing out any Departmental Test, the Data Entry Operators moved from one Grade to other with higher pay structure, the LDCs, who have not opted for the post of Data Entry Operator, have remained and stagnated as LDCs. itself and because of the impugned Rules, the position has further worsened, since it blocked their further promotional avenues, by placing persons like Data Entry Operators, who have already enjoyed the fruits of promotion more than once, over and above LDCs/UDCs/Tax Assistants in the inter se seniority list. It is to be mentioned that promotion is an incidence of service.

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43. A forcible argument was advanced on the part of the respondents demonstrating how by virtue of the impugned Rules, the LDCs, who have not opted to be posted as Data Entry Operators were severely prejudiced and how the restructured cadres have paved way for the junior DEOs to have a march over the other senior employees of the erstwhile ministerial cadre and get fortuitous advantage. It has also been demonstrated by materials how the impugned Rules are working hard against the senior eligible candidates without any promotional avenue, since being blocked by the far junior Data Entry Operators. Though, as held by the Apex Court, seniority is not a fundamental right, the State should have created promotional avenues for the respondents having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India.

44. Therefore, the official respondents would not be justified in blocking the promotional avenues of the respondents/UDCs or Tax Assistants, as the case may be, without framing proper rules and framing faulty and arbitrary Rules like the ones in dispute. Promotion, as held by the Apex Court is a condition and incidence of service and as held by the Apex Court in the above Judgement, even there is an obligation on the part of the State under Articles 14 and 16 of the Constitution to create promotional avenues for the employees and any Rule or procedure, which goes against the above dictum, could well be termed as an arbitrary exercise of power and violative of Articles 14 and 16 of the Constitution.

45. The impugned Rules put LDCs/UDCs/Special Pay UDCs/Tax Assistants in a most disadvantageous position than their far juniors of Data Entry Operators, even though the nature of duties and powers exercised by them while holding the post of LDCs/UDCs/Special Pay UDCs/Tax Assistants not only carry a complex nature of duties but also high responsibilities, which would increase manifold by promotion from LDC to UDC/Special Pay UDC and from UDC/Special Pay UDC to Tax Assistant. Therefore, we have no hesitation to hold that the impugned Rules are violative of Articles 14 and 16 of the Constitution and are liable to be quashed."

The above consideration reveals, that the co-incidental prejudice suffered by the erstwhile members of the ministerial cadre, consequent upon the merger of cadres constituted the foundational basis, of the determination. Their lost chances of promotion, and the

prejudice suffered by them on the subject of seniority, on account of deprivation of the chances of promotion, remained uppermost in the mind of the High Court, while recording its final conclusion in paragraph 46 as under:- "46. We have given our anxious consideration to all the aspects of the case put forth by both sides and found that the Tribunal has analyzed the case in a proper perspective and having regard to the guidelines issued by the Apex Court regarding fixation of inter se seniority in such cases and has arrived at an unerring conclusion to hold that the seniority principle stipulated in the impugned notifications is unfair to the ministerial cadre of the Department and considering any other date than the date of initial appointment is discriminatory and arbitrary. We are unable to find any illegality or irregularity or perversity in approach in the well considered and merited decision arrived at by the Tribunal. Therefore, we see no merit in the contentions raised by the petitioners/Data Entry Operators and the same deserve to be rejected."

16. The challenge to the impugned orders passed by the Administrative Tribunal, and affirmed by the High Court, will need an evaluation at our hands, in the background of the consideration applied in the adjudication of the controversy. We shall, at the first instance, venture to determine whether the propositions applied for the determination of the controversy by the Administrative Tribunal and by the High Court, were in consonance with the law declared by this Court.

17. It would be relevant to mention, that the disputed issue of seniority, came to be determined in the impugned orders, by placing reliance on Om Prakash Sharma's case (supra). To understand the controversy settled by this Court in the aforementioned judgment, it is essential to extract the conclusions drawn therein. The same are accordingly being extracted hereunder:-

"2. Department styled as workshop mentioned at Serial No. 2 above was merged with the department office of the Chief Electrical Engineer, Bombay. This merger continued till July 31, 1979. Effective from August 1, 1979, all the three original departments trifurcated on August 31, 1956 were re- amalgamated in the matter of staff and a common seniority list was introduced in respect of all the four cadres which were prior to September 1956 on a common seniority list. Pursuant to the amalgamation common seniority list (Annexure 6) was drawn up. It purports to be the combined seniority list of the Railway Administration, Electrical Department, Central Railway, Jhansi. Validity of the seniority list is impugned in this appeal. In this seniority list Appellant 1 is at Serial No. 3, Appellant 2 is at Serial No.

4, and Appellant 3 is at Serial No. 10. The department has assigned seniority to Respondents 3-6, in the same seniority list at Serial Nos. 2, 5, 6 and 9 respectively in the cadre of head clerks. The appellants contend that when the three departments had a common seniority list, the appellants were senior to Respondents 3 to 6, but after trifurcation and re- amalgamation Respondents 3 to 6 who belonged to erstwhile workshop staff and who were amalgamated with the staff of the Chief Electrical Engineer, Bombay, obtained accelerated promotion because of easy availability of vacancies. Consequently, when re-amalgamation was introduced from August 1, 1979 when Respondents 3 to 6 reverted to the common seniority list with appellants and other similarly situated persons, they scored a march over the appellants because of a fortuitous event. The contention in terms is that where staff employed in different units under the administrative control of one higher officer are borne on a common seniority list, when because of trifurcation re-amalgamation all are brought back on the common seniority list, their position ante must be reflected in the seniority list. Original seniority it is said must prevail otherwise any other view would be denial of equality of opportunity in the matter of public employment guaranteed under Article 16 of the Constitution. Accordingly the appellants challenged the seniority list in Writ Petition 1415 of 1983 in the High Court of Judicature at Allahabad. A Division Bench of the High Court by a short cryptic order rejected the writ petition observing that the Court did not find any merit in the writ petition. Hence this appeal by special leave.

3. The appellants have an iron-clad case. The facts, not disputed, [pic]to summarise briefly are that under the Divisional Electrical Engineer there were three separate departments under his administrative control. Members of the staff of the three departments were borne on a common seniority list. In other words they were deemed to belong to one office in the matter of seniority and promotion. This is not only not disputed but the averment to that effect in para 6 of the petition has been admitted in the counter-affidavit filed on behalf of the Railway Administration. It is again admitted that the three appellants since their entry into service were senior to Respondents 3 to 6. For the administrative convenience the Railway Administration trifurcated the cadres. In other words, three units were separated from each other which resulted in each unit having its own seniority list and the common seniority list became irrelevant from the date of the trifurcation. The Unit No. 2 called the workshop was amalgamated with the office of the Chief Electrical Engineer, Bombay. That is not controverted. Respondents 3 to 6 belonged to the administrative staff in the department styled as the

workshop. The result of the trifurcation and amalgamation of the workshop with the Bombay office was that the workshop staff including Respondents 3 to 6 were taken over on the seniority list maintained by the Bombay office. It is admitted that on account of availability of vacancies in the Bombay office Respondents 3 to 6 got some accelerated promotions in the cadre of head clerks. Surprisingly after a span of 23 years, Railway Administration reconsidered its earlier decision and detached the workshop staff from the office of the Chief Electrical Engineer, Bombay and brought it back to Jhansi and three former departments under Divisional Electrical Engineer were amalgamated. In other words situation ante as on August 31, 1956 was restored, and members of the staff were brought on common seniority list cadre-wise. This factual averment is unambiguously admitted. Consequent upon amalgamation in 1979 a fresh common seniority list was drawn up in which cadre-wise Respondent 3 was shown senior to Appellants 1 and 2 and Respondents 5, 6 and 9 were shown senior to Appellant 3. Obviously when the amalgamation took place, Respondents 3 to 6 could not score a march over erstwhile seniors on any valid principle of seniority. This would unquestionably be denial of equality under Article 16 of the Constitution. It may be that they might have enjoyed some accelerated promotion when workshop staff was amalgamated with the Bombay office. But when they were repatriated and re-amalgamated with original two offices and brought back on the common seniority list, they must find their original place qua the appellants. This is not a case where appellants were passed over at the time of selection or denied promotion on the ground of unsuitability. In such a situation status quo ante has to be restored. Obviously Respondents 3 to 6 will be below the appellants and any other view to the contrary would be violative [pic]of Article 16 as it would constitute denial of equality in the matter of promotion. Therefore, the seniority list drawn up on a principle contrary to what is discussed herein would be bad in law and deserves to be quashed."

A perusal of the above judgment reveals, that there were three independent divisions, under a singular control, namely, (1) Divisional Electrical Engineers, Jhansi, (2) Office of the Assistant Electrical Engineers (Workshop), Jhansi, and (3) Office of the Assistant Electrical Engineer, Jabalpur. These three divisions had separate offices. The clerical staff of the said departments, namely, clerks, senior clerks, head clerks and chief clerks, were borne on a common seniority list till 31.8.1956. From 1.9.1956 onwards, these three divisions/departments, earlier under the singular control of the Divisional Electrical Engineer, Jhansi, were separated from each other

(consequent upon the introduction of divisionalization, in the railways). These three divisions, therefore, became three independent departments. The clerical staff of the three separated departments, came to be placed in independent seniority lists. The aforesaid process came to be reversed, and the earlier trifurcation, was undone by re-amalgamation, which resulted in the restoration of status quo ante, as it prevailed up to 31.8.1956. In the background of the foundational facts narrated hereinabove, this Court concluded that the process of trifurcation, followed by the process of re-amalgamation, restoring the status quo ante, could not result in some of the members of the erstwhile common cadre in scoring a march with reference to seniority, over others who were earlier senior to them. We shall first endeavour to determine whether the legal position declared by this Court in Om Prakash Sharma's case (supra) could have been applied to the present controversy.

18. The factual position in Om Prakash Sharma's case (supra) reveals, that the employees whose inter-se seniority dispute arose for consideration, were holding the position of clerks, senior clerks, head clerks and chief clerks in three divisions under the control of the Divisional Electrical Engineer, Jhansi. The said three divisions were made independent departments, and the employees working in each of the departments whilst continuing as clerks, senior clerks, head clerks and chief clerks, were placed in different seniority lists. All the above posts in the three departments were re-amalgamated. Consequent upon re- amalgamation, a common seniority list came to be framed for clerks, senior clerks, head clerks and chief clerks. It is in the above circumstances, that this Court concluded, that the process of trifurcation, and subsequent re-amalgamation, would result in denial of equality, if persons who were junior prior to 31.8.1956, were assigned positions of seniority above to those who were senior to them prior to the trifurcation. And that, such an action would result in denial of equality, provided for under Article 16 of the Constitution of India. It was, therefore concluded, that consequent upon the re-amalgamation, resulting in the employees being brought back in the common seniority list, they must be arrayed in the seniority list, in the same manner as they were positioned prior to the trifurcation.

19. Insofar as the present controversy is concerned, it is apparent from the factual narration recorded hereinabove, that the ministerial cadre as it originally existed, comprised of posts of Deputy Office Superintendent (Levels 1 and 2), Upper Division Clerk, Lower Division Clerk, Stenographer (Senior Grade and Ordinary Grade), Draftsman etc. Consequent upon promulgation of the Electronic Data Processing Posts (Group 'C' Technical Posts) Recruitment Rules, 1992, a separate cadre of Data Entry Operators came to be created. Appointment thereto, at the time

of initial constitution of the cadre of Data Entry Operators, was made out of the original ministerial cadre. The posts under the 1992 Rules, had a different nomenclature, vis--vis the posts in the ministerial cadre. Their duties and responsibilities were separate and distinct, from that of the ministerial cadre. So were their avenues of promotion. The lowest post in the cadre of Data Entry Operators was designated as Data Entry Operator Grade 'A'. Onward promotion was to the post of Data Entry Operator Grade 'B', and thereafter, to Data Entry Operator Grade 'C', and finally, to Data Entry Operator Grade 'D'. In the above view of the matter, it is not possible for us to accept, that the creation of the cadre of Data Entry Operators, can be described as a mere bifurcation of the original cadre. A bifurcation simpliciter would envisage a division of the same posts, as they originally existed, in two separate units. The controversy adjudicated upon in Om Prakash Sharma's case (supra) is illustrative of a simpliciter bifurcation (actually trifurcation), where the cadre posts remained the same, but there was a vertical division, whereby the said posts were re-constituted as two (actually three) separate cadres. Thereafter, the cadres were re-amalgamated, so as to restore the earlier position. In the present controversy, it is not possible to conclude, that the original position was ever restored. Consequent upon the promulgation of the TA Rules, 2003 and the STA Rules, 2003, the amalgamation resulted in appointments to the cadres of Tax Assistants and Senior Tax Assistants. Neither of the parties concerned, held either of these posts prior to the promulgation of the abovementioned rules. It is, therefore, that we must conclude, that the judgment rendered in Om Prakash Sharma's case (supra) was incorrectly applied, while adjudicating upon the present controversy.

20. It is also not possible for us to accept, that the promulgation of the TA Rules, 2003 and the STA Rules, 2003 can be termed as a process of re- amalgamation of the erstwhile cadre. Consequent upon the promulgation of the above rules, posts from the ministerial cadre (regulated by the Central Excise and Land Customs Department Group 'C' Posts Recruitment Rules, 1979), and the posts under the cadre of Data Entry Operators (regulated by the Electronic Data Processing Posts (Group 'C' Technical Posts) Recruitment Rules, 1992), came to be merged into independent cadres of Tax Assistants and Senior Tax Assistants. What was contemplated under the TA rules, 2003 and the STA Rules, 2003, was an amalgamation of posts from two separate cadres. This certainly did not result in restoration of the status quo ante, as it existed prior to the promulgation of the 1992 Rules. The position here is of amalgamation, and not re-amalgamation as is in Om Prakash Sharma's case (supra). Members of the two separate cadres, which were sought to be amalgamated, were required at the time of initial constitution of the cadres, to qualify the departmental examination, and alternatively the departmental

computer proficiency examination, under Rules 4(2) and 4(3) of the TA Rules, 2003 and under Rule 5(v) of the STA Rules, 2003. The above departmental examinations would render them suitable to discharge the duties of the posts of Tax Assistants and Senior Tax Assistants respectively. It is therefore apparent, that on the amalgamation of the pre-existing cadres, they would be required to discharge additional duties of a different nature, for which their proficiency was being ensured through the prescribed departmental examinations. It is, therefore, not possible for us to conclude, that the TA Rules, 2003 and the STA Rules, 2003 had the effect of re-amalgamation of the ministerial cadre and the cadre of Data Entry Operators, so as to restore the position which existed, before the creation of the cadre of Date Entry Operators.

21. At the cost of repetition we wish to reiterate, that the factual scenario which emerges for determination in the present controversy, is not akin to that which had arisen for consideration before this Court in Om Prakash Sharma's case (supra). Therein, the original cadre which comprised of the posts of clerks, senior clerks, head clerks and chief clerk, was trifurcated and then re-amalgamated. The re-amalgamated cadre also comprised of posts of clerks, senior clerks, head clerks and chief clerks. The conclusions drawn in the above judgment, therefore, cannot be applicable to the facts and circumstances of the present case. We are satisfied in concluding, that the Courts below clearly erred in disposing of/determining the controversy in hand by applying the law declared by this Court in Om Prakash Sharma's case (supra).

22. We shall now venture to deal with another aspect of the matter, emerging out of the impugned order passed by the High Court. The conclusions drawn by the High Court, as have been recorded in paragraph 46 of the impugned judgment and order dated 13.4.2007, emerged out of a consideration which was noticed in paragraphs 38 to 45. Paragraphs 38 and 43 to 46 of the impugned judgment and order, have already been extracted hereinabove. A perusal of the above consideration reveals, that the High Court was swayed by the co-incidental prejudice suffered by the erstwhile members of the ministerial cadre, resulting in lost chances of promotion. The aforesaid consideration could have been justified only if chances of promotion are treated as conditions of service. Insofar as the instant aspect of the matter is concerned, this Court has repeatedly examined the issue whether chances of promotion constitute conditions of service. In this behalf, reference may be made to a few judgments rendered by this Court:

(i) First of all, we may advert to the decision rendered by this Court in State of Maharashtra & Anr. v. Chandrakant Anant Kulkarni & Ors., (1981) 4 SCC 130, wherein a three Judge Bench of this Court held as under:- "16.

Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not. Under the Departmental Examination Rules for STOs, 1954, framed by the former State Government of Madhya Pradesh, as amended on January 20, 1960, mere passing of the departmental examination conferred no right on the STIs of Bombay, to promotion. By passing the examination, they merely became eligible for promotion. They had to be brought on to a select list not merely on the length of service, but on the basis of merit-cum-seniority principle. It was, therefore, nothing but a mere chance of promotion. In consequence of the impugned orders of reversion, all that happened is that some of the STIs, who had wrongly been promoted as STOs Grade III had to be reverted and thereby lost a few places. In contrast, the conditions of service of ASTOs from Madhya Pradesh and Hyderabad, at least so far as one stage of promotion above the one held by them before the reorganisation of States, could not be altered without the previous sanction of the Central Government as laid down in the Proviso to sub-section (7) of Section 115 of the Act."

(ii) Reference may also be made to the decision of this Court in *Palaru Ramkrishnaiah & Ors. v. Union of India & Anr.*, (1989) 2 SCC 541, wherein a three Judge Bench of this Court held as under:-

"12. In the case of *Ramchandra Shankar Deodhar*, (1974) 1 SCC 317, the petitioners and other allocated Tahsildars from ex-Hyderabad State had under the notification of the Raj Pramukh dated September 15, 1955 all the vacancies in the posts of Deputy Collector in the ex-Hyderabad State available to them for promotion but under subsequent rules of July 30, 1959, 50 per cent of the vacancies were to be filled by direct recruitment and only the remaining 50 per cent were available for promotion and that too on divisional basis. The effect of this change obviously was that now only 50 per cent vacancies in the post of Deputy Collector being available in place of all the vacancies it was to take almost double the time for many other allocated Tahsildars to get promoted as Deputy Collectors. In other words it resulted in delayed chance of promotion. It was, inter alia, urged on behalf of the petitioners that the situation brought about by the rules of July 30, 1959 constituted variation to their prejudice in the conditions of service applicable to them immediately prior to the reorganisation of the State and the rules were consequently invalid. While repelling this submission the Constitution Bench held: (SCC p. 329, para 15) "All that happened as a

result of making promotions to the posts of Deputy Collectors divisionwise and limiting such promotions to 50 per cent of the total number of vacancies in the posts of Deputy Collector was to reduce the chances of promotion available to the petitioners. It is now well settled by the decision of this Court in *State of Mysore v. G. B. Purohit*, 1967 SLR 753, that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affect chances of promotion cannot be regarded as varying a condition of service. In *Purohit* case (supra), the districtwise seniority of sanitary inspectors was changed to Statewise seniority, and as a result of this change the respondents went down in seniority and became very junior. This, it was urged, affected their chances of promotion which were protected under the proviso to Section 115, sub-section (7). This contention was negatived and *Wanchoo, J.*, (as he then was), speaking on behalf of this Court observed: 'It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service.' It is, therefore, clear that neither the Rules of 30-7-1959, nor the procedure for making promotions to the posts of Deputy Collector divisionwise varies the conditions of service of the petitioners to their disadvantage."

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15. It cannot be disputed that the Director General of Ordnance Factories who had issued the Circular dated November 6, 1962 had the power to issue the subsequent Circular dated January 20, 1966 also. In view of the legal position pointed out above the aforesaid circular could not be treated to be one affecting adversely any condition of service of the Supervisors 'A'. Its only effect was that the chance of promotion which had been accelerated by the Circular November 6, 1962 was deferred and made dependent on selection according to the Rules. Apparently, after the coming into force of the order dated December 28, 1965 and the Circular dated January 20, 1966 promotions could not be made just on completion of two years' satisfactory service under the earlier Circular dated November 6, 1962 the same having been superseded by the later circular. It is further obvious that in this view of the matter Supervisors 'A' who had been promoted before the coming into force of the order dated December 28, 1965 and the Circular dated January 20, 1966 stood in a class separate from those whose promotions were to be made thereafter. The fact that some Supervisors 'A' had been promoted before the coming into force of the order dated December 28, 1965 and the

Circular dated January 20, 1966 could not, therefore, constitute the basis for an argument that those Supervisors 'A' whose cases came up for consideration for promotion thereafter and who were promoted in due course in accordance with the rules were discriminated against. They apparently did not fall in the same category."

(iii) This Court had also declared the position of law, on the above aspect of the matter, in *Syed Khalid Rizvi & Ors. v. Union of India & Ors.*, 1993 Supp. (3) SCC 575, wherein a three Judge Bench observed as under:- "30. The next question is whether the seniority is a condition of service or a part of rules of recruitment? In *State of M.P. v. Shardul Singh*, (1970) 1 SCC 108, this Court held that the term conditions of service means all those conditions which regulate the holding of a post by a person right from the time of his appointment (emphasis supplied) to his retirement and even beyond, in matters like pensions etc. In *I.N. Subba Reddy v. Andhra University*, (1977) 1 SCC 554, the same view was reiterated. In *Mohd. Shujat Ali v. Union of India*, (1975) 3 SCC 76, a Constitution Bench held that the rule which confers a right to actual promotion or a right to be considered for promotion is a rule prescribing a condition of the service. In *Mohd. Bhakar v. Krishna Reddy*, 1970 SLR 768, another Constitution Bench held that any rule which affects the promotion of a person relates to his condition of service. In *State of Mysore v. G.B. Purohit*, 1967 SLR 753, this Court held that a rule which merely affects chances of promotion cannot be regarded as varying a condition of service. Chances of promotion are not conditions of service. The same view was reiterated in another Constitution Bench judgment in *Ramchandra Shankar Deodhar v. State of Maharashtra*, (1974) 1 SCC 317. No doubt conditions of service may be classified as salary, confirmation, promotion, seniority, tenure or termination of service etc. as held in *State of Punjab v. Kailash Nath*, (1989) 1 SCC 321, by a Bench of two Judges but the context in which the law therein was laid must be noted. The question therein was whether non-prosecution for a grave offence after expiry of four years is a condition of service? While negating the contention that non-prosecution after expiry of 4 years is not a condition of service, this Court elaborated the subject and the above view was taken. The ratio therein does not have any bearing on the point in issue. Perhaps the question may bear relevance, if an employee was initially recruited into the service according to the rules and promotion was regulated in the same rules to higher echelons of service. In that arena promotion may be considered to be a condition of service. In *A.K. Bhatnagar v. Union of India*, (1991) 1 SCC 544, this Court held that seniority is an incidence of service and where

the service rules prescribe the method of its computation it is squarely governed by such rules. In their absence ordinarily the length of service is taken into account. In that case the direct recruits were made senior to the recruits by regularisation although the appellants were appointed earlier in point of time and uninterruptedly remained in service as temporary appointees along with the appellants but later on when recruited by direct recruitment, they were held senior to the promotees.

31. No employee has a right to promotion but he has only the right to be considered for promotion according to rules. Chances of promotion are not conditions of service and are defeasible. Take an illustration that the Promotion Regulations envisage maintaining integrity and good record by Dy. S.P. of State Police Service as eligibility condition for inclusion in the select-list for recruitment by promotion to Indian Police Service. Inclusion and approval of the name in the select-list by the UPSC, after considering the objections if any by the Central Government is also a condition precedent. Suppose if 'B' is far junior to 'A' in State Services and 'B' was found more meritorious and suitable and was put in a select- list of 1980 and accordingly 'B' was appointed to the Indian Police Service after following the procedure. 'A' was thereby superseded by 'B'. Two years later 'A' was found fit and suitable in 1984 and was accordingly appointed according to rules. Can 'A' thereafter say that 'B' being far junior to him in State Service, 'A' should become senior to 'B' in the Indian Police Service. The answer is obviously no because 'B' had stolen a march over 'A' and became senior to 'A'. Here maintaining integrity and good record are conditions of recruitment and seniority is an incidence of service. Take another illustration that the State Service provides - rule of reservation to the scheduled castes and scheduled tribes. 'A' is a general candidate holding No. 1 rank according to the roster as he was most meritorious in the State service among general candidates. 'B' scheduled castes candidate holds No. 3 point in the roster and 'C', scheduled tribe holds No. 5 in the roster. Suppose Indian Police Service Recruitment Rules also provide reservation to the Scheduled Castes and Scheduled Tribes as well. By operation of the equality of opportunity by Articles 14, 16(1), 16(4) and 335, 'B' and 'C' were recruited by promotion from State Services to Central Services and were appointed earlier to 'A' in 1980. 'A' thereafter in the next year was found suitable as a general candidate and was [pic]appointed to the Indian Police Service. Can 'A' thereafter contend that since 'B' and 'C' were appointed by virtue of reservation, though were less meritorious and junior to him in the State service and gradation list would not become senior to him in the cadre as

IPS officer. Undoubtedly 'B' and 'C', by rule of reservation, had stolen a march over 'A' from the State Service. By operation of rule of reservation 'B' and 'C' became senior and 'A' became junior in the Central Services. Reservation and roster were conditions of recruitment and seniority was only an incidence of service. The eligibility for recruitment to the Indian Police Service, thus, is a condition of recruitment and not a condition of service. Accordingly we hold that seniority, though, normally an incidence of service, Seniority Rules, Recruitment Rules and Promotion Regulations form part of the conditions of recruitment to the Indian Police Service by promotion, which should be strictly complied with before becoming eligible for consideration for promotion and are not relaxable."

(iv) More recent in time, is the judgment rendered by another three Judge Division Bench in *S.S. Bola & Ors. v. B.D. Sardana & Ors.*, (1997) 8 SCC 522. The majority opinion in the above judgment was rendered by Justice K. Ramaswamy. In the process of consideration, he observed as under:- "145. It is true that the Rules made under the proviso to Article 309 of the Constitution can be issued by amending or altering the Rules with retrospectivity as consistently held by this Court in a catena of decisions, viz., *B.S. Vadera v. Union of India*, AIR 1969 SC 118; *Raj Kumar v. Union of India*, (1975) 4 SCC 13; *K. Nagaraj v. State of A.P.*, (1985) 1 SCC 523; *T.R. Kapur v. State of Haryana*, 1986 Supp. SCC 584, and a host of other decisions. But the question is whether the Rules can be amended taking away the vested right. As regards the right to seniority, this Court elaborately considered the incidence of the right to seniority and amendment of the Act in the latest decision in *Ashok Kumar Gupta v. State of U.P.*, (1977) 5 SCC 201, relieving the need to reiterate all of them once over. Suffice it to state that it is settled law that a distinction between right and interest has always been maintained. Seniority is a facet of interest. The rules prescribe the method of selection/recruitment. Seniority is governed by the existing rules and is required to be worked out accordingly. No one has a vested right to promotion or seniority but an officer has an interest to seniority acquired by working out the Rules. It would be taken away only by operation of valid law. Right to be considered for promotion is a rule prescribed by conditions of service. A rule which affects the promotion of a person relates to conditions of service. The rule merely affecting the chances of promotion cannot be regarded as varying the conditions of service. Chances of promotion are not conditions of service. A rule which merely affects the chances of promotion does not amount to change in the conditions of service."

Consequent upon the above detailed consideration, Justice K. Ramaswamy recorded his conclusion in paragraph 153. On the issue in hand, sub-paragraph AB of paragraph 153 is relevant and is being extracted hereunder:-

"AB. A distinction between right to be considered for promotion and an interest to be considered for promotion has always been maintained. Seniority is a facet of interest. The rules prescribe the method of recruitment/selection. Seniority is governed by the rules existing as on the date of consideration for promotion. Seniority is required to be worked out according to the existing rules. No one has a vested right to promotion or seniority. But an officer has an interest to seniority acquired by working out the rules. The seniority should be taken away only by operation of valid law. Right to be considered for promotion is a rule prescribed by conditions of service. A rule which affects chances of promotion of a person relates to conditions of service. The rule/provision in an Act merely affecting the chances of promotion would not be regarded as varying the conditions of service. The chances of promotion are not conditions of service. A rule which merely affects the chances of promotion does not amount to change in the conditions of service. However, once a declaration of law, on the basis of existing rules, is made by a constitutional court and a mandamus is issued or direction given for its enforcement by preparing the seniority list, operation of the declaration of law and the mandamus and directions issued by the Court is the result of the declaration of law but not the operation of the rules per se."

Justice S. Saghir Ahmad concurred with the view expressed by Justice K. Ramaswamy. A dissenting view was recorded by Justice G.B. Pattanaik. On the subject in hand, however, there was no dissent. The conclusions recorded by Justice G.B. Pattanaik were to the following effect:- "199. To the said effect the judgment of this Court in the case of State of Punjab v. Kishan Das, (1971) 1 SCC 319, wherein this Court observed an order forfeiting the [pic]past service which has earned a government servant increments in the post or rank he holds, howsoever adverse it is to him, affecting his seniority within the rank to which he belongs or his future chances of promotion, does not attract Article 311(2) of the Constitution since it is not covered by the expression reduction in rank.

200. Thus to have a particular position in the seniority list within a cadre can neither be said to be accrued or vested right of a government servant and losing some places in the seniority list within the cadre does not amount to

reduction in rank even though the future chances of promotion get delayed thereby. It was urged by Mr Sachar and Mr Mahabir Singh appearing for the direct recruits that the effect of redetermination of the seniority in accordance with the provisions of the Act is not only that the direct recruits lose a few places of seniority in the rank of Executive Engineer but their future chances of promotion are greatly jeopardised and that right having been taken away the Act must be held to be invalid. It is difficult to accept this contention since chances of promotion of a government servant are not a condition of service. In the case of State of Maharashtra v. Chandrakant Anant Kulkarni, (1981) 4 SCC 130, this Court held: (SCC p. 141, para 16) "16. Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not."

201. To the said effect a judgment of this Court in the case of K. Jagadeesan v. Union of India, (1990) 2 SCC 228, wherein this Court held: (SCC pp. 230-31, para 7) "The only effect is that his chances of promotion or his right to be considered for promotion to the higher post is adversely affected. This cannot be regarded as retrospective effect being given to the amendment of the rules carried out by the impugned notification and the challenge to the said notification on that ground must fail."

202. Again in the case of Union of India v. S.L. Dutta, (1991) 1 SCC 505, this Court held: (SCC p. 512, para 17) "In our opinion, what was affected by the change of policy were merely the chances of promotion of the Air Vice-Marshals in the Navigation Stream. As far as the posts of Air Marshals open to the Air Vice-Marshals in the said stream were concerned, their right or eligibility to be considered for promotion still remained and hence, there was no change in their conditions of service."

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212. So far as the rules dealing with Irrigation Branch are concerned, the said rules namely the Punjab Service of Engineers (Irrigation Branch) Class I Service Rules, 1964 have not been considered earlier by this Court at any point of time. One Shri M.L. Gupta was appointed to the post of Assistant Executive Engineer as a direct recruit on 27-8-1971, pursuant to the result of a competitive examination held by the Haryana Public Service Commission in December 1970. The said Shri Gupta was promoted to the post of Executive Engineer on 17-9-1976. He made a representation to the State

Government to fix up his seniority in accordance with the service rules but as the said representation was not disposed of for more than three years he approached the High Court of Punjab and Haryana by filing CWP No. 4335 of 1984. That petition was disposed of by the High Court on the undertaking given by the State that the seniority will be fixed up soon. The said undertaking not having been complied with, the said Shri Gupta approached the High Court in January 1986 by filing a contempt petition. In September 1986 the State Government fixed the inter se seniority of the said Shri Gupta and other members of the Service and Gupta was shown at Serial No. 72. Two promotees had been shown at Serial Nos. 74 and 75. Those two promotees filed a writ petition challenging the fixation of inter se seniority between the direct recruits and promotees and the High Court of Punjab and Haryana by its judgment passed in May 1987 quashed the order dated 29-9-1986 whereunder the seniority of the direct recruits and promotees has been fixed and called upon the State Government to pass a speaking order assigning position in the gradation list. The State Government issued a fresh notification on 24-7-1987 giving detailed reasons reaffirming the earlier seniority which had been notified on 29-9-1986. Prior to the aforesaid notification of the State Government Shri Gupta had filed a writ petition in the Punjab and Haryana High Court which had been registered as CWP No. [pic]6012 of 1986 claiming his seniority at No. 22 instead of 72 which had been given to him under the notification dated 29-9-1986. The promotees also filed a writ petition challenging the government order dated 24-7-1987 which was registered as CWP No. 5780 of 1987. Both the writ petitions, one filed by the direct recruit, Shri Gupta, (CWP No. 6012 of 1986) and the other filed by the promotees (CWP No. 5780 of 1987) were disposed of by the learned Single Judge by judgments dated 24-1-1992 and 4-3-1992, respectively, whereunder the learned Single Judge accepted the stand of the promotees and Shri Gupta was placed below one Shri O.P. Gagneja. The said Shri Gupta filed two appeals to the Division Bench against the judgment of the learned Single Judge, which was registered as Letters Patent Appeals Nos. 367 and 411 of 1992. The aforesaid letters patent appeals were allowed by judgment dated 27-8-1992. This judgment of the Division Bench of the Punjab and Haryana High Court was challenged by the State of Haryana in the Supreme Court which has been registered as CAs Nos. 1448-49 of 1993. This Court granted leave and stayed the operation of the judgment in the matter of fixation of seniority. The promotees also challenged the said judgment of the Division Bench in this Court which has been registered as CAs Nos. 1452-1453 of 1993. During the pendency of these appeals in this Court, an Ordinance was promulgated on 13-5-1985 as

Ordinance No. 6 of 1995 and the said Ordinance was replaced by the impugned Act 20 of 1995 by the Haryana Legislature. The validity of the Act was challenged by the said Shri Gupta and pursuant to the order of this Court the said writ petition having been transferred to this Court has been registered as TC No. 40 of 1996. So far as the validity of the Act is concerned, the question of any usurpation of judicial power by the legislature does not arise in relation to the Irrigation Branch inasmuch as the Recruitment Rules of 1964 framed by the Governor of Punjab in exercise of power under proviso to Article 309 of the Constitution which has been adapted by the State of Haryana on and from the date Haryana was made a separate State had not been considered by this Court nor has any direction been issued by this Court. The legislative competence of the State Legislature to enact the Act had also not been assailed and in our view rightly since the State Legislature has the powers under Entry 41 of List II of the Seventh Schedule to frame law governing the conditions of service of the employees of the State Government. That apart Article 309 itself stipulates that the appropriate legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State subject to the provisions of the Constitution. Proviso to Article 309 confers power on the President in connection with the affairs of the Union and on the Governor in connection with the affairs of the State to make rules regulating the recruitment and the conditions of service until provision in that behalf is made by or under an Act of the appropriate legislature under Article 309 main part. In this view of the matter, the legislative competence of the State Legislature to enact the legislation in question is beyond doubt. The only question which, therefore, arises for consideration and which is contended in [pic] assailing the validity of the Act is that under the Act the direct recruits would lose several positions in the gradation list and thereby their accrued and vested rights would get jeopardised and their future chances of promotion also would be seriously hampered and such violation tantamounts to violation of rights under Part III of the Constitution. For the reasons already given while dealing with the aforesaid contention in connection with the Public Health Branch and the Buildings and Roads Branch the contention raised in the transfer case cannot be sustained and, therefore, the transfer case would stand dismissed. The Act in question dealing with the service conditions of the engineers belonging to the Irrigation Branch must be held to be a valid piece of legislation passed by the competent legislature and by giving it retrospective effect no constitutional provision has been violated nor has any

right of the employee under Part III of the Constitution been infringed requiring interference by this Court."

(v) Finally, reference may be made to a decision rendered by this Court in Union of India & Ors. v. Colonel G.S. Grewal, (2014) 7 SCC 303, wherein this Court observed as under:-

"28. As pointed out above, the Tribunal has partly allowed the OA of the respondent primarily on the ground that the decision contained in the Government Order dated 23-4-2010 amends the promotion policy retrospectively thereby taking away the rights already accrued to the respondent in terms of the earlier policy. It is also mentioned that the revised policy fundamentally changes the applicant's prospects of promotion. What is ignored is that the promotions already granted to the respondent have not been taken away. Insofar as future chances of promotions are concerned, no vested right accrues as chance of promotion is not a condition of service. Therefore, in the first instance, the Tribunal will have to spell out as to what was the vested right which had already accrued to the respondent and that is taken away by the Policy decision dated 23-4-2010. In this process, other thing which becomes relevant is to consider that once the respondent is permanently seconded in DGQA and he is allowed to remain there, can there be a change in his service conditions vis--vis others who are his counterparts in DGQA, but whose permanent secondment is not in cloud? To put it otherwise, the sole reason for issuing Government Policy dated 23-4-2010 was to take care of those cases where permanent secondment to DGQA was wrongly given. As per the appellants, since the respondent had suffered final supersession, he was not entitled to be seconded permanently to DGQA. This is disputed by the respondent. That aspect will have to be decided first. That apart, even if it be so, as contended by the appellants, the appellants have not recalled the permanent secondment order. They have allowed the respondent to stay in DGQA maintaining his promotion as Colonel as well, which was given pursuant to this secondment. The question, in such circumstances, that would arise is whether the respondent can be treated differently even if he is allowed to remain in DGQA viz. whether not allowing him to take further promotions, which benefit is still available to others whose permanent secondment is not in dispute, would amount to discrimination or arbitrariness thereby offending Articles 14 and 16 of the Constitution of India. In our opinion, these, and other related issues, will have to be argued and thrashed out for coming to a proper conclusion."

23. It is apparent from a collective perusal of the conclusions recorded in the judgments extracted in the foregoing paragraph, that chances of promotion do not constitute a condition of service. In that view of the matter, it is inevitable to hold, that the High Court erred in recording its eventual determination on the basis of the fact that the promulgation of the TA Rules, 2003 and the STA Rules, 2003 was discriminatory and arbitrary with regard to the fixation of the inter se seniority, since the same seriously prejudiced the chances of promotion of the erstwhile members of the ministerial cadre, namely, those members of the original ministerial cadre, who had not opted for appointment/absorption into the cadre of Data Entry Operators, with reference to and in comparison with, those members of the original ministerial cadre who had opted for appointment/absorption into the cadre of Data Entry Operators.

24. As a proposition of law it is imperative for us to record, that chances of promotion do not constitute conditions of service, and as such, mere alteration of chances of promotion, would not per se call for judicial interference. The above general proposition would not be applicable, in case the chances of promotion are altered arbitrarily, or on the basis of considerations which are shown to be perverse or mala fide.

25. In the background of the factual and legal position debated and concluded hereinabove, only one submission survives for our consideration, namely, whether the inter se seniority determined at the initial constitution of the cadres of Tax Assistants and Senior Tax Assistants under Rule 4 of the TA Rules, 2003 and Rule 5 of the STA Rules, 2003, respectively, is acceptable in law. It is not the case of the appellants, that any perversity or malafides are involved in the above determination, it is however the pointed submission of the appellants, that the same is arbitrary and discriminatory. And therefore, violative of the provisions of Articles 14 and 16 of the Constitution of India. In this behalf, the submission advanced on their behalf was two-fold. Firstly, that dissimilar posts had been equated. And secondly, that the equation of posts determined merely on the pay-scales attached to them, would not be acceptable in law.

26. Insofar as the former of the said two contentions is concerned, the submission was again two-fold. Firstly, reliance had been placed on Rule 4 of the TA Rules, 2003. Under Rule 4(1) thereof, Upper Division Clerks and Data Entry Operators Grade 'A' had been equated with one another, and members belonging to the aforesaid two cadres had been given the highest position in the seniority list (at the stage of the initial constitution). The inter se seniority amongst the Upper Division Clerks and Data Entry Operators, is mandated to be determined, for purposes of further promotion, with effect from the date on which the concerned incumbent

was appointed on regular basis as such. The submission advanced by the learned counsel was, that sub-rule (2) of Rule 4 of the TA Rules, 2003, required a Data Entry Operator Grade 'A', who had come to be appointed as Tax Assistant, at the initial constitution under the TA Rules, 2003, to pass a departmental examination within two years of such appointment, failing which such Data Entry Operator Grade 'A', would not be entitled to any further increment. Accordingly, the submission advanced at the hands of learned counsel was, that the aforesaid mandate clearly demonstrated, that a Data Entry Operator Grade 'A', had per se been found to be deficit, for discharging duties against the post of Tax Assistant. The aforesaid deficiency was sought to be satisfied and fulfilled, according to learned counsel, by requiring the Data Entry Operator Grade 'A', to qualify a departmental examination, within a period of two years. That being the acknowledged position emerging from the statutory rules, the contention advanced was, that the post of Data Entry Operator Grade 'A', could not have been treated as equal to the post of Upper Division Clerk, and as such, the determination of inter se seniority for onward promotion regulated by Rule 4(1) of the TA Rules, 2003, must be deemed to be both arbitrary and discriminatory, and as such, violative of Articles 14 and 16 of the Constitution of India.

27. In order to counter the submission advanced at the hands of the learned counsel, as has been narrated in the foregoing paragraph, it was the contention of learned counsel representing the erstwhile Data Entry Operators Grade 'A', who came to be appointed as Tax Assistants, at the initial constitution of the aforesaid cadre, under the mandate of Rule 4 of the TA Rules, 2003, that the erstwhile members of the ministerial cadre, on the above analogy, must also be likewise considered to be deficit in effectively discharging the duties assigned to the post of Tax Assistant, inasmuch as, sub-rule (3) of Rule 4 of the TA Rules, 2003 likewise mandates, that a member of the ministerial cadre holding the post of Lower Division Clerk on regular basis, and falling within the seniority list determined by the appointing authority, would have to pass the departmental computer proficiency examination. It was further submitted, that only from the date of passing the above examination, the person concerned would be deemed to have been promoted as Tax Assistant. It was the pointed contention of learned counsel, that whilst the deficiency in Data Entry Operators Grade 'A', was with reference to lack of knowledge of relevant procedures, the deficiency in members of the ministerial cadre was on account of lack of knowledge relating to computer applications.

28. Learned senior counsel representing the Union of India painstakingly pointed out, that the ministerial cadre as it was originally constituted, handled all procedures manually. Consequent upon a policy decision having been taken, it was

decided to computerize the functioning of the Customs and Central Excise Department. This resulted in the promulgation of the Electronic Data Processing Posts (Group 'C' Technical Posts) Recruitment Rules, 1992. The creation of the cadre of Data Entry Operators was considered to be imperative, to give effect to the aforesaid administrative determination, to computerize the functioning of the Customs and Central Excise Department. According to the learned senior counsel, on completion of the process of computerization it was felt, that for an effective functioning of the Customs and Central Excise Department, the existing persons who were proficient in matters of relevant procedures, needed working experience with reference to computer applications. Likewise, Data Entry Operators, it was felt, needed proficiency with reference to relevant procedures. Therefore, it was pointed out, that neither the erstwhile members of the ministerial cadre, nor the members of the cadre of Data Entry Operators, were fully qualified to handle the duties and responsibilities in the Customs and Central Excise Department, after its computerization. Therefore, while merger of above two cadres was given effect to, the deficiencies in the two cadres were sought to be removed by requiring them to qualify the prescribed departmental examination.

29. A similar contention was advanced by learned counsel representing the private respondents, on the basis of Rule 5 of the STA Rules, 2003. We have already analysed hereinabove the effect of merger contemplated under Rule 5 of the STA Rules, 2003. Despite our analysis of the aforesaid provision, to which learned counsel for the rival parties have expressed their approval, the contention advanced by the learned counsel was based on clause (v) of Rule 5 of the STA Rules, 2003. Yet again, the contention was, that Data Entry Operators Grade 'C' could not be equated with Assistants, and likewise Data Entry Operators Grade 'B' could not be equated with Tax Assistants. The pointed submission in this behalf was, that Data Entry Operators were required by the mandate of clause (v) of Rule 5 of the STA Rules, 2003, to qualify a departmental examination for achieving proficiency in the relevant procedures, within two years, failing which they would not be eligible for any further increment. The instant submission is akin to the one advanced at the hands of learned counsel on the basis of sub-rules (3) and (4) of Rule 4 of the TA Rules, 2003. The response at the hands of the learned senior counsel representing the Union of India, and the members of the cadre of Data Entry Operators was, that the deficiency highlighted by the learned counsel with reference to Data Entry Operators need to be examined closely, inasmuch as, a similar deficiency was likewise highlighted in clause (v) of Rule 5 of the STA Rules, 2003, even with reference to erstwhile members of the ministerial cadre. The erstwhile members of the ministerial cadre, it was pointed out, were required to qualify a departmental

examination on the subject of computer applications, within two years, failing which they too would not be eligible for any further increment.

30. Learned senior counsel representing the Union of India, reiterated the factual and legal position, as he had highlighted with reference to Rule 4 of the TA Rules, 2003, whilst interpreting Rule 5 of the STA Rules, 2003. Yet again it was pointed out, that on the completion of the computerization process, there were deficiencies in ministerial cadre, as also, in the cadre of Data Entry Operators, and therefore, at the initial constitution of the cadre of Senior Tax Assistants, the deficiencies in both the cadres were sought to be satisfied, by providing for different departmental examinations for them. It was the contention of the learned senior counsel representing the Union of India, that the submission of learned counsel, pointing out deficiency in only one of the cadres, namely, the cadre of Data Entry Operators, was wholly unjustified and unacceptable.

31. Having given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the rival parties, on the basis of Rule 4 of the TA Rules, 2003, and Rule 5 of the STA Rules, 2003, it is not possible for us to conclude, that members of either of the two cadres (the erstwhile ministerial cadre, and the cadre of Data Entry Operators) can be treated to be superior to one or the other, on account of the pointed deficiency, highlighted by the learned counsel. It clearly emerges from the provisions relied upon, that consequent upon the completion of the process of computerization, in the Customs and Central Excise Department, the erstwhile members of the ministerial cadre needed to be trained in computer applications, and the erstwhile members of the cadre of Data Entry Operators required to be instructed in relevant procedures. Thus viewed, it is not possible for us to accept the contention of learned counsel, that either of the two cadres ought to be treated as superior to the other. The first contention, premised on Rule 4 of the TA Rules, 2003 and Rule 5 of the STA Rules, 2003, respectively, is devoid of any merit, and is accordingly hereby rejected.

32. We shall now deal with the second submission advanced before us during the course of hearing, namely, the second contention noticed in paragraph 26 above. The pointed submission advanced before us was, that the equation of posts under Rule 4 of the TA Rules, 2003, and under Rule 5 of the STA Rules, 2003, was based exclusively on the pay-scales attached to them. The resultant inter se seniority between the posts at the initial constitution of the cadres under reference, was also based exclusively on the pay-scales of the posts sought to be merged. The aforesaid determination, under Rules 4 and 5 referred to hereinabove, according to learned counsel, is wholly impermissible in law.

33. In order to canvass the proposition noticed in the foregoing paragraph, learned counsel placed reliance on the decision rendered by this Court in Chandrakant Anant Kulkarni's case (supra). The controversy in the judgment cited for our consideration, was aimed at determining, whether there was denial of fair and equitable treatment, within the meaning of sub-section (5) of Section 115 of the States Reorganization Act, 1956. The aforesaid fair and equitable treatment was, with reference to the posts of Assistant Sales Tax Officers (from the former States of Madhya Pradesh and Hyderabad) and Sales Tax Inspectors (from the former State of Bombay), who were allocated to the new State of Bombay. The question which arose for consideration, also had a bearing on the right to promotion to the next higher post of Sales Tax Officer. This Court while determining the above controversy, held as under:-

"9. Prior to the reorganisation of the States, a conference of the Chief Secretaries of the States that were to be affected by the reorganisation was held at Delhi on May 18 and 19, 1956 for the purpose of the formulation of the principles upon which integration of services was to be effected. The Government of India by their letter dated April 3, 1957 informed the State Government that the work of integration of services should be dealt with by them in the light of the general principles already settled at the Chief Secretaries Conference. This has been construed to be a valid delegation of powers to prepare the preliminary and final gradation lists under the direction and with the sanction of the Central Government. The Government of India by its circular dated May 11, 1957 to all the State Governments stated inter alia that it agreed with the views expressed on behalf of the States' representatives that it would not be appropriate to provide any protection in the matter of departmental promotion. This circular has been interpreted as a prior approval of the Central Government in terms of the proviso to sub-section (7) of Section 115 of the Act in the matter of change in the conditions of service relating to departmental promotions.

10. The following principles had been formulated for being observed as far as may be, in the integration of government servants allotted to the services of the new States:

"In the matter of equation of posts:

(i) Where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis; but

(ii) Where, however, there were no such similar cadres the following factors will be taken into consideration in determining the equation of posts-

(a) nature and duties of a post;

(b) powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged;

(c) the minimum qualifications, if any, prescribed for recruitment to the post, and

(d) the salary of the post."

It is well settled that these principles have a statutory force.

11. There is a long line of decisions of this Court starting from the *Union of India v. P.K. Roy*, (1968) 2 SCR 186, laying down that the Central Government has been constituted to be the final authority in the matter of integration of services under sub-section (5) of Section 115 of the Act. The matter of equation of posts is purely an administrative function. It has been left entirely to the Central Government as to how it has to deal with these questions. The Central Government had established an Advisory Committee for the purpose of assisting in the proper consideration of the representations made to it. There is nothing in Sections 115 to 117 of the Act prohibiting the Central Government in any way from taking the aid and assistance of the State Government in the matter of effecting the integration of services. As observed by this Court in *Roy* case the usual procedure followed by the Central Government in the matter of integration of services generally, is in order. It is not open to the court to consider whether the equation of posts made by the Central Government is right or wrong. This was a matter exclusively within the province of the Central Government. Perhaps, the only question the court can enquire into is whether the four principles agreed upon at the Chief Secretaries Conference had been properly taken into account. This is the narrow and limited field within which the supervisory jurisdiction of the Court can operate. But where, as here, in the matter of equation

of posts, the Central Government had properly taken into account all the four principles decided upon at the Chief Secretaries Conference, the decision cannot be assailed at all. In the present case, not only the Central Government had laid down the principles for integration, but also considered the representations and passed the final orders and the provisional gradation lists were prepared and published by the State Government under the direction and with the sanction of the Central Government.

12. In accordance with the principles settled at the Chief Secretaries Conference, the Government of India, in consultation with the Central Advisory Committee, directed that the posts of ASTOs in the former States of Madhya Pradesh and Hyderabad should be continued in an isolated category, there being no corresponding post in the successor State of Bombay with which they could be equated. There were 19 ASTOs in the pay scale of Rs 150-10-200-EB-15-250 from Madhya Pradesh and 23 ASTOs in the pay scale of Rs 170-8-225-EB-13-320 from Hyderabad allocated to the new State of Bombay. In the former State of Bombay there was no similarly constituted cadre of ASTOs, but there were posts of STIs in the pay scale of Rs 120-8-144-EB-8-200-10/2-250. It would have been inequitable and unfair to equate ASTOs from Madhya Pradesh and Hyderabad with STIs from Bombay, looking to the nature of their posts, the powers and responsibilities and the pay scales attached to the same. The ASTOs from Madhya Pradesh and Hyderabad were, in the first instance, superior to STIs in their respective States and the post of ASTO in those States was a promotion post. In addition, ASTOs in those States were Assessing Authorities and they enjoyed statutory powers of their own to assess tax and levy penalties, whereas the STIs in Bombay had no such powers to assess tax or levy penalty but had merely to scrutinise returns and generally act in a subordinate capacity to STOs. Evidently, the State Government was wrong in directing by its Resolution dated November 16, 1957 that the seniority of ASTOs from Madhya Pradesh and Hyderabad and STIs from Bombay be fixed in the cadre of STIs in the reorganised State of Bombay on the basis of continuous service including that in the lower grade. The principle adopted by the State Government for determining their relative inter se seniority was obviously wrong, being contrary to the principles settled at the Chief Secretaries Conference. As already stated, the Government of India, on representation by the affected

ASTOs from Madhya Pradesh and Hyderabad, in consultation with the Central Advisory Committee, directed that the inter se seniority should be fixed taking into account continuous service in the equated grade only subject to the inter se seniority of the officers coming from the several integrating regions. Upon that basis, the State Government by its Resolution dated September 10, 1960, rightly modified Notes 3 and 6 of its 1957 Resolution and directed that the seniority as on November 1, 1956 of ASTOs from Madhya Pradesh and Hyderabad be fixed above the persons in the cadre of STIs and that the inter se seniority of ASTOs from Madhya Pradesh and Hyderabad be fixed on the basis of their continuous service as ASTOs in their respective States."

Having dealt with the controversy on the parameters recorded through the aforesaid observations, this Court concluded as under:- "19. Be that as it may, the fact remains that the condition regarding the passing of the departmental examination became incapable of compliance in the case of ASTOs from Madhya Pradesh and Hyderabad who had been [pic]promoted as STOs Grade III. They were entitled to such promotion without passing such examination. Under the relevant rules which regulated their conditions of service, there was only a possibility of reversion in the eventuality of their not passing the examination within the stipulated time. Since no examinations admittedly have been held, there is no question of their reversion as ASTOs. If the decision of the High Court were to be upheld, it would imply that many of the ASTOs from Madhya Pradesh and Hyderabad who had been promoted as STOs Grade III and during the past 20 years have reached the higher echelons of service, would now have to be put back as ASTOs, for no fault of their own. Many of them either have retired or are on the verge of retirement.

20. There was thus no alternative for the State Government but to suspend the operation of the amendment made on January 20, 1961 to Rule 1 (b)(ii) of the Recruitment Rules, by its order dated October 1, 1965, which made the passing of the STO examination a condition precedent for promotion of STIs to STO Grade III. There can be no doubt that the State Government's Resolution dated June 13, 1964 and its memorandum of November 21, 1964, clarifying that the ASTOs from Madhya Pradesh and Hyderabad were entitled for promotion to the post of STO Grade III without passing the departmental examination, placed STIs from Bombay at a disadvantage. To ensure

'fair and equitable treatment', the State Government rightly dispensed with the requirement of passing the departmental examination in the case of STIs from the former State of Bombay.

21. In the end, reverting back to the main question. On an overall view of things, we are satisfied that the State Government acted with the best of intentions. It endeavoured to strike a balance between the competing claims to relative seniority. When sub-section (5) of Section 115 of the Act speaks of "fair and equitable treatment", obviously it envisages a decision which is fair and equitable to all."

34. Reliance was also placed on the decision of this Court in *S.P. Shivprasad Pipal v. Union of India & Ors.*, (1998) 4 SCC 598. In the said judgment, this Court considered the validity of the notification dated 3.2.1987, which had resulted in the constitution of a Central Labour Service, by a merger of three existing cadres. According to the appellant before this Court, the three cadres which were sought to be amalgamated, had different statutory functions, different qualifications and different duties and powers. By merging the three cadres, according to the appellant before this Court, unequals had been treated as equals. The pointed contention on behalf of the appellant, who belonged to one of the three cadres was, that he had been placed in a condition, worse than the position he occupied in the original cadre. The claim of the appellant was, that his chances of promotion had been substantially diminished. One of the grounds for raising the challenge was, that the merger of the three cadres was in violation of Articles 14 and 16 of the Constitution of India. This Court having taken into consideration the decision in the Chandrakant Anant Kulkarni's case (*supra*), concluded as under:-

"14. The Cadre Review Committee after examining the kinds of duties discharged by these officers decided that since they all worked in the area of labour welfare, it would be desirable that they could widen their experience. This would be possible if the cadres were integrated and the posts were made interchangeable so that the members of the cadre could get a more varied experience in different areas of labour welfare, thus making for a better-equipped cadre. Therefore, although the exact nature of work done by the three cadres was different, it would be difficult to say that one cadre was superior or inferior to the other cadre or service.

15. A decision to merge such cadres is essentially a matter of policy. Since the three cadres carried the same pay scale at the relevant time, merging of the three cadres cannot be said to have caused any

prejudice to the members of any of the cadres. The total number of posts were also increased proportionately when the merger took place so that the percentage of posts available on promotion was not in any manner adversely affected by the merger of the cadres.

16. The appellant, however, contends that as a result of the merger his promotional chances have been very adversely affected because his position [pic]in the seniority list has gone down. Rule 9 of the Central Labour Service Rules, 1987 under which the merger is effected, lays down the rules of seniority. It provides that the inter se seniority of the officers appointed to the various grades mentioned in Schedule I at the initial constitutional stage of the service shall be determined according to the length of regular continuous service in the grade subject to maintenance in the respective grade of inter se seniority of officers recruited in their respective original cadres. The proviso to this Rule prescribes that although Assistant Labour Commissioner (Central), Labour Officer and Assistant Welfare Commissioner shall be equated, all Assistant Labour Commissioners (Central) holding such posts on or before 31-12-1972 shall be en bloc senior to Labour Officers and (2) Senior Labour Officers and Regional Labour Commissioners shall be equated. But all Regional Labour Commissioners holding such posts on or before 2-3-1980 shall be en bloc senior to the Senior Labour Officers.

17. Explaining the proviso the respondents have said that before 31-12-1972 Assistant Labour Commissioners were in a higher pay scale than Labour Officers. The parity between their pay scales came about only from January 1973. That is why to preserve their inter se position, Assistant Labour Commissioners appointed prior to 31-12-1972 have been placed above Labour Officers. Similarly, Regional Labour Commissioners drew a higher pay scale than Senior Labour Officers prior to 1980. The parity has come about in 1980 and hence Regional Labour Commissioners holding such posts on or before 2-3-1980 have been placed above Senior Labour Officers.

18. The seniority rules have thus been carefully framed taking all relevant factors into consideration. The respondents have also pointed out that as a matter of fact, by reason of the merger, the appellant has not, in fact, suffered any prejudice and he has also received promotions.

19. However, it is possible that by reason of such a merger, the chance of promotion of some of the employees may be adversely affected, or some others may benefit in consequence. But this cannot be a ground for setting aside the merger which is essentially a policy decision. This Court in *Union of India v. S.L. Dutta*, (1991) 1 SCC 505, examined this contention. In *S.L. Dutta* case a change in the promotional policy was challenged on the ground that as a result, service conditions of the respondent were adversely affected since his chances of promotion were reduced. Relying upon the decision in the *State of Maharashtra v. Chandrakant Anant Kulkarni*, (1981) 4 SCC 130, this Court held that a mere chance of promotion was not a condition of service and the fact that there was a reduction in the chance of promotion would not amount to a change in the conditions of service."

35. It is in the background of the aforesaid submission advanced at the hands of learned counsel, that we would consider the validity of the merger of cadres contemplated by Rule 4 of the TA Rules, 2003 and Rule 5 of the STA Rules, 2003. The position in the present controversy is not comparable to the position examined by this Court in the judgments referred to hereinabove. It needs to be understood, that the cadre of Data Entry Operators, was created out of the original ministerial cadre. It is, therefore apparent, that the members of the two cadres were originally discharging similar duties. It is only as a consequence of the administrative decision to computerize the functioning of the Customs and Central Excise Department, that a separate cadre of Data Entry Operators came to be created. The newly created cadre, exclusively functioned towards giving effect to the decision to computerize the functioning of the department. There was thereafter a division of duties discharged by the original members of the ministerial cadre. One cadre of employees exclusively thereafter discharged procedural duties of the department, whereas, the other cadre of employees exclusively thereafter discharged duties aimed at computerization of the functioning of the department. Even though, it is apparent, that the Data Entry Operators exclusively functioned towards the process of computerization of the functioning of the Customs and Central Excise Department, yet that could not be possible without their existing experience in the erstwhile ministerial cadre. Consequent upon the merger of posts, consequent, upon the promulgation of the TA Rules, 2003, and the STA Rules, 2003, the nature and duties of the two cadres were combined. Consequent upon their appointment as Tax Assistants and Senior Tax Assistants, members of the erstwhile ministerial cadre, and members of the cadre of Data Entry Operators, were required to perform both procedural duties and duties relating to computer applications. The

deficiencies in the two cadres sought to be merged, were sought to be overcome, by subjecting the members of the two cadres to different examinations, whereby, the two cadres were trained for discharging their duties efficiently, on merger, whilst holding the posts of Tax Assistants/Senior Tax Assistants. It is, therefore, not possible for us to accept, that there was any serious difference between the two merged cadres, either on the issue of nature of duties, or on the subject of powers exercised by the officers holding the post, or the extent of territorial or other charge held, or responsibilities discharged by them, or for that matter, the qualifications prescribed for the posts. On account of the aforesaid, by and large similarity, we are satisfied, that the merger of the cadres, and the determination of the inter se seniority on merger, were justifiably determined, on the basis of the different pay-scales of the cadres merged, under the TA Rules, 2003 and the STA Rules, 2003. By the mandate of the above Rules, all posts in equivalent pay-scales were placed at the same level. Posts in the higher scale of pay, were given superiority on the subject of inter se seniority, with reference to posts in the lower scale of pay. In our considered view, the above determination, at the hands of the rule framing authority, on the issue canvassed before us, cannot be termed either arbitrary or discriminatory. We are, therefore satisfied in concluding, that the provisions of Rule 4 of the TA Rules, 2003 and Rule 5 of the STA Rules, 2003, cannot be faulted on the touchstone of Articles 14 and 16 of the Constitution of India.

36. For all the reasons recorded hereinabove, we are satisfied, that the different orders passed by the Administrative Tribunal, and the common order dated 13.4.2007 passed by the High Court, are liable to be set aside. The same are accordingly hereby set aside. The appeals filed by those who moved to the cadre of Data Entry Operators from the ministerial cadre, and were thereupon amalgamated in the cadre of Tax Assistants/Senior Tax Assistants, are allowed. The connected appeals preferred by the Union of India, are also allowed. In the above view of the matter, the authorities shall give effect to Rules 4 and 5 of the TA Rules, 2003 and the STA Rules, 2003, respectively, without any further delay.