“REPORTABLE”

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 7514-7515 OF 2005

Union of India & Ors. …. Appellants

Versus

N.R. Parmar & Ors. …. Respondents

WITH

CIVIL APPEAL Nos. 3876-3880 of 2007

Mukund Lal & Anr. …. Appellants

Versus

Pritpal Singh & Ors. …. Respondents

WITH

CIVIL APPEAL No. 7516 OF 2005

Virendra Kumar & Ors. …. Appellants

Versus

Union of India & Ors. …. Respondents

WITH

T.C. (C) No. 91 OF 2006

Pritpal Singh & Ors. …. Petitioners

Versus

Union of India & Ors. …. Respondents

WITH

TRANSFER CASE No......2012

(Arising out of T.P. (C) No. 681 OF 2006

Union of India & Ors. …. Petitioners

Versus

R.K. Bothra & Ors. …. Respondents

J U D G M E N T

JAGDISH SINGH KHEHAR, J.

1. The present controversy is a dispute of inter se seniority between

Income Tax Inspectors of the Income Tax Department. Direct recruits and

promotees are pitted on opposite sides.

2. One of the matters in hand came to be considered by the Central

Administrative Tribunal, Ahmedabad Bench, Ahmedabad (hereinafter referred

to as “the CAT, Ahmedabad”) in R.C. Yadav & Ors. vs. Union of India & Ors.

(OA no.92 of 2003). The said Original Application had been filed by direct

recruits. Another Original Application, on the same subject matter, being

OA no.123 of 2003 (N.R. Parmar & Ors. vs. Union of India & Ors.) was filed

by promotees. Both the OA no.92 of 2003 and OA no.123 of 2003 were decided

by a common order dated 12.1.2004. In its determination the CAT, Ahmedabad

held, that seniority of direct recruits would have to be determined with

reference to the date of their actual appointment. The implicit effect of

the aforesaid determination was, that the date of arising of the direct

recruit vacancies, or the date of initiation of the process of recruitment,

or the date when the Staff Selection Commission had made recommendations

for the filling up direct recruit vacancies, were inconsequential for

determination of seniority of direct recruits.

3. The decision rendered by the CAT, Ahmedabad dated 12.1.2004 was

assailed before the High Court of Gujarat at Ahmedabad (hereinafter

referred to as “the Gujarat High Court”), in Union of India & Ors. vs. N.R.

Parma & Ors. (Special Civil Appeal no.3574 of 2004). Direct recruits

separately filed Special Civil Application no.1512 of 2004 (Virender Kumar

& Ors. vs. Union of India & Ors.). The Gujarat High Court by its order

dated 17.8.2004, upheld the order of the CAT, Ahmedabad, dated 12.1.2004.

4. The Union of India assailed the order passed by the Gujarat High

Court dated 17.8.2004 before this Court, through Civil Appeal nos.7514-7515

of 2005 (Union of India & Ors. vs. N.R. Parmar & Ors.). Direct recruits

have also separately raised a challenge to the order passed by the Gujarat

High Court dated 17.8.2004, by filing Civil Appeal No.7516 of 2005

(Virender Kumar & Ors. vs. Union of India & Ors.).

5. On the same subject, an identical controversy was raised before the

Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter

referred to as “the CAT, Principal Bench”). After a series of legal

battles between the rivals, i.e., promotee Income Tax Inspectors and direct

recruit Income Tax Inspectors (details whereof are being narrated at a

later juncture), the CAT, Principal Bench passed an order dated 22.9.2004.

The aforesaid order of the CAT, Principal Bench was assailed by direct

recruit Income Tax Inspectors by filing Writ Petition (C) nos.3446-49 of

2005 before the Delhi High Court.

6. In Writ Petition (C) nos.3446-49 of 2005 a Division Bench of the

Delhi High Court on 2.3.2005, while issuing notice, had stayed the impugned

order passed by the CAT, Principal Bench dated 22.9.2004. Mukund Lal (one

of the applicants in OA no.2107 of 2003, Mahender Pratap & Ors. vs. Union

of India & Ors.), respondent no.9 in Writ Petition (C) nos.3446-49 of 2005,

filed an application for vacation of the interim order passed by the Delhi

High Court dated 2.3.2005 (whereby the order of the CAT, Principal Bench

dated 22.9.2004 had been stayed). Since the application was not disposed

of by the Delhi High Court within the time frame expressed in Article

226(3) of the Constitution of India, Mukund Lal aforesaid, approached this

Court to assail the order dated 2.3.2005 by filing Civil Appeal nos.3876-

3880 of 2007. Since the subject matter of the controversy in the aforesaid

writ petitions was identical to the one raised in Civil Appeal nos.7514-

7515 of 2005 (Union of India & Ors. vs. N.R. Parma & Ors.) and Civil Appeal

no.7516 of 2005 (Virender Kumar & Ors. vs. Union of India & Ors.), the said

writ petitions were transferred to be heard with the Civil Appeals referred

to hereinabove. On transfer to this Court, the aforesaid writ petitions

were re-numbered as Transferred Case (C) No.91 of 2006 (Pritpal Singh &

Ors. vs. Union of India & Ors.).

7. OA no.270 of 2002 (R.K. Bothra & Ors. vs. Union of India & Ors.), OA

no.271 of 2002 (G.R. Chalana & Ors. vs. Union of India & Ors.), OA no.275

of 2002 (Bhanwar Lal Soni & Ors. vs. Union of India & Ors.), OA no.293 of

2002 (Ranjeet Singh Rathore & Ors. vs. Union of India & Ors.), were filed

by promotee Income Tax Inspectors before the Central Administrative

Tribunal, Jodhpur Bench, Jodhpur (hereinafter referred to as “the CAT,

Jodhpur”), to assail the seniority-list wherein direct recruit Income Tax

Inspectors, though appointed later, were placed higher in the seniority-

list, i.e., above promotee Income Tax Inspectors, merely because they

occupied vacancies of earlier years. The CAT, Jodhpur allowed the claim of

the promotee Income Tax Inspectors by a common order dated 8.9.2003. The

order passed by the CAT, Jodhpur dated 8.9.2003 was assailed before the

High Court of Judicature for Rajasthan at Jodhpur (hereinafter referred to

as “the Rajasthan High Court”) by filing four writ petitions (DBC WP

no.785 of 2004, Union of India & Ors. vs. R.K. Bothra & Ors.; DBC WP no.786

of 2004, Union of India & Ors. vs. Banwari Lal Soni & Ors; DBC WP no.787 of

2004, Union of India & Ors. vs. Giriraj Prasad Sharma & Ors; DBC WP no.788

of 2004, Union of India & Ors. vs. G.R. Chalana & Ors.). The petitioners

in the aforesaid writ petitions before the Rajasthan High Court (i.e.,

Union of India) filed Transfer Petition (C) no.681 of 2006 under Article

139A(1) of the Constitution of India, seeking the transfer of the aforesaid

writ petitions to this Court by asserting that the controversy raised

therein was identical to the one pending adjudication before this Court in

the Civil Appeals already mentioned above. Accordingly Transfer Petition

(C) no.681 of 2006 was ordered to be tagged with Civil Appeal nos.7514-7515

of 2005 (and other connected matters).

8. Learned counsel for the rival parties are agreed, that the legal

issue involved in all the matters, referred to hereinabove which are tagged

together for disposal, is the same. During the course of hearing

submissions came to be advanced first of all in Transferred Case no.91 of

2006. As such, the facts recorded in the said case have been adverted to

while passing the instant judgment.

9. Appointment to the cadre of Income Tax Inspectors in the Income-Tax

Department is made by way of promotion, as also, by direct recruitment in

the ratio of 2:1 respectively, i.e., 66-2/3 by promotion and 33-1/3 by

direct recruitment. The controversy in TC (C) no.91 of 2006 pertains to

vacancies for the year 1993-94. The vacancies for the year 1993-94 which

were identified to be filled up by way of promotion were referred to the

Departmental Promotion Committee (hereinafter referred to as “the DPC”),

whereas, those identified to be filled up by direct recruitment, were

simultaneously referred to the Staff Selection Commission (hereinafter

referred to as “the SSC”).

10. Based on the recommendations made by the DPC, the Income-tax

Department promoted five persons from the feeder cadre(s) (respondents 5,

7, 8, 10 and 11) as Income Tax Inspectors on 30.8.1993. A day later, on

1.9.1993, one more person (respondent no.6) was similarly promoted as

Income Tax Inspector. Thereafter on 14.12.1993 yet another promotion (of

respondent no.9) was ordered, in the same manner. Likewise, respondent

no.12 was promoted as Income Tax Inspector on 8.9.1995. It is essential to

emphasize, that all these promotions were ordered against promotee

vacancies, identified for the year 1993-94.

11. On the receipt of a requisition pertaining to the post of Income Tax

Inspectors from the Income Tax Department, the SSC issued advertisements in

May/June, 1993, inviting applications for appointment by way of direct

recruitment, against vacancies of Income Tax Inspectors of the year 1993-

94. To fill up these vacancies, the SSC held the Inspectors of Central

Excise and Income Tax Examination, 1993. All the petitioners in TC (C)

no.91 of 2006 responded to the aforesaid advertisement. The said

petitioners, were in the first instance, subjected to a written test

conducted by the SSC in December, 1993. Thereafter, those who qualified

the written examination, were invited for an interview/viva-voce. All the

petitioners appeared for the viva-voce test conducted in October 1994. On

21/28.1.1995 the SSC declared the result of the Inspectors of Central

Excise and Income-Tax Examination, 1993. The names of the petitioners in

TC (C) no.91 of 2006, figured in the list of successful candidates. After

verification of their character and antecedents, and after they were

subjected to a medical fitness examination, the petitioners in TC (C) no.91

of 2006 were issued offers of appointment as Income Tax Inspectors in the

Department of Income Tax. All the petitioners joined the cadre of Income

Tax Inspectors between March and May, 1995.

12. In the interregnum, some promotee Income Tax Inspectors were promoted

to the next higher post of Income Tax Officer. Certain direct recruits who

considered themselves senior to the promoted Income Tax Officers,

approached the CAT, Principal Bench, seeking consideration for promotion to

the cadre of Income Tax Officers, from the date their juniors were promoted

as such. Reference in this behalf may be made to two Original Applications

being K.C. Arora & Ors. vs. Union of India & Ors (OA no.1478 of 1995) and

J.S. Tanwar & Ors. vs. Union of India & Ors. (OA no.1899 of 1995). In the

pleadings of the aforesaid two original applications, it was acknowledged

by the official-respondents, that the impugned promotions in the aforesaid

two original applications, had been made on purely adhoc basis, as the

seniority list of the cadre of Income Tax Inspectors had not by then been

finalized. It was also mentioned therein, that after the seniority-list is

finalized, the official-respondents would review the promotions already

made, and if necessary, a review DPC would also be convened. During the

pendency of the aforesaid two original applications, the Income Tax

Department issued a seniority list of the cadre of Income Tax Inspectors on

8.2.1999. The aforesaid factual-position was brought to the notice of the

CAT, Principal Bench, whereupon, the aforesaid two original applications

came to be disposed of with the following directions on 8.9.1999:

“6. In the result, both the OAs are disposed of as follows:

1. As admitted in the counter reply mentioned above and in

view of the seniority list dt.8.2.1999 the official respondents

are directed to make promotions strictly in terms of the

seniority list dt.8.2.1999. They must arrange a review DPC to

consider the claim of the applicants for promotion. In case,

the applicants are found fit and suitable for promotion by the

review DPC then on the basis of the said seniority list, the

applicants shall be granted promotion from the date their

juniors got promotion. The applicants should get seniority over

the juniors in case they are found suitable for promotion.

However, the applicants will not be entitled to any monetary

benefits. In such a case, the applicants’ pay may be fixed

notionally from the dates of their deemed retrospective

promotion. However, the applicants will not be entitled to any

actual arrears of monetary benefits till the date of actual

order of promotion. The actual monetary benefits are

prospective, only from the date of order of promotion and

consequent date of assuming charge.

2. In the circumstances of the case, the official respondents

are granted three months time from the date of receipt of copy

of this order to comply with these directions.

3. In the circumstances of the case, there will be no order

as to costs.”

On 10.9.1999 a clarificatory order was passed by the CAT, Principal Bench.

A relevant extract, of the aforesaid clarificatory order, is being

reproduced hereunder:

“2. But, on reconsideration and on second thought, we feel that

there is no necessity to allow this M.A. and to recall our order

dt.8.9.99 for the simple reason that our order will not prejudice the

case of the private respondents in any way. What we have stated in

our order dt.8.9.1999 is that the official respondents should strictly

enforce the seniority list dt.8.2.99 and then on that basis hold

review DPC and consider the claim of the applicants for promotion.

This order we have passed on the basis of the admission made by the

official respondents in their reply. Now, the private respondents are

contending that the seniority list dt.8.2.1999 has been challenged by

the applicants in OA 676/99 and other cases and there is a stay order

granted by the Delhi High Court in C.W. No.3468/99 staying the

official respondents holding a review DPC on the basis of the impugned

seniority list dt.8.2.1999.

3. We may place it on record that we have not considered the

correctness and legality of the impugned seniority list dt.8.2.1999.

We have simply directed the administration to follow the latest

seniority list as admitted by the official respondents in their reply.

We may also place it on record that we have not expressed any opinion

on the correctness or legality of the seniority list dt.8.2.1999. We

have simply directed the Administration to follow the latest seniority

list which they have issued and considers the case of the applicants

for promotion. If the seniority list itself is in dispute and its

correctness is challenged by other officials, then naturally the

department will not be able to take any decision unless the seniority

list is upheld by the Tribunal. If there is any such stay order

granted by any Tribunal or High Court, then naturally our direction in

our order dt.8.9.1999 will be subject to such directions or stay

orders passed by any Tribunal or any High Court. We also place on

record that we have not expressed any opinion whether the promotion of

private respondents was regular or ad-hoc, but only referred to the

contentions in the reply statement without giving a finding on that

point. If the private respondents feel that their promotions were

regular, then it is for them to take up the stand whenever that

occasion arises. But, we have not given any finding on that disputed

question of fact. In view of this clarifications issued by us, there

is no necessity to allow the M.A. or recall our order dt.8.9.1999.

4. In the result, the M.A. No.1938/99 is disposed of subject to

above observations. No order as to costs.”

13. Some direct recruits again approached the CAT, Principal Bench by

filing Original Application no.2307 of 1999 (Sanjeev Mahajan & Ors. vs.

Union of India & Ors.) alleging, that while drawing the seniority list

dated 8.2.1999, the Department of Income Tax had not applied the “quota”

and “rota” principle. On 23.2.2000, the CAT, Principal Bench disposed of

OA no.2307 of 1999, and other connected original applications (Krishan

Kanahiya & Ors. vs. Union of India, OA No.676 of 1999; H.P.S Kharab & Ors.

vs. Union of India & Ors., OA no.387 of 1999; Muneesh Rajani & Ors. vs.

Union of India & Ors., OA no.964 of 1999) by a common order. In paragraph

7 of its order the CAT, Principal Bench, narrated the issues which came up

for its determination as under:

“7. The short question which is posed for our consideration is as to

what is the precise date on which direct recruits can be considered

for seniority vis-à-vis the promotees. Whether it is (i) the date on

which the vacancies have arisen; (ii) the date when the same have been

notified by the department by sending requisitions to the Staff

Selection Commission; (iii) the date on which selection by the

Commission is made; (iv) the date when the selection is reported to

the department; or (v) the date on which the direct recruit actually

assumes office.”

During the course of hearing of the aforementioned original applications,

it was acknowledged by the rival parties, that the questions under

consideration had to be determined with reference to instructions contained

in two office memoranda dated 7.2.1986 and 3.7.1986, issued by the

Department of Personnel & Training (hereinafter referred to as the “DoPT”).

Based on the aforesaid office memoranda, the CAT, Principal Bench, vide

its order dated 23.2.2000 quashed the seniority-list dated 8.2.1999 by

holding as under:

“8. In our judgment, for deciding the aforesaid controversy a

reference to the office memorandum of 7.2.1986 may usefully be made.

In the earlier O.M. it has inter alia been provided as under:

…..the relative seniority of direct recruits and promotees

shall be determined according to rotation of vacancies between

the direct recruits and the promotees, which will be based on

the quota of vacancies reserved for direct recruitment and

promotion respectively in the Recruitment Rules……

……….the present practice of keeping vacant slots for being

filled up by direct recruits of later years, thereby giving them

unintended seniority over promotees who are already in position,

would be dispensed with.

Thus, if adequate number of direct recruits do not become

available in any particular year, rotation of quotas for the

purpose of determining seniority would take place only to the

extent of the available direct recruits and the promotees. In

other words, to the extent direct recruits are not available,

the promotees will be bunched together at the bottom of the

seniority list below the last position upto which it is possible

to determine seniority, on the basis of rotation of quotas with

reference to the actual number of direct recruits who become

available. The unfilled direct recruitment quota vacancies

would, however, be carried forward and added to the

corresponding direct recruitment vacancies of the next year (and

to subsequent years where necessary) for taking action for

direct recruitment for the total number according to the usual

practice. Thereafter, in the year while seniority will be

determined between direct recruits and promotees, to the extent

of the number of vacancies for direct recruits and promotees as

determined according to the quota for the year, the additional

direct recruits selected against the carried forward vacancies

of the previous year would be placed on en bloc below the last

promotee for direct recruit (as the case may be), in the

seniority list based on the rotation of vacancies for the year.

The same principle holds good for determining seniority in the

event of carry forward, if any, of direct recruitment or

promotion quota vacancies (as the case may be) in the subsequent

years.

ILLUSTRATION:

Where the Recruitment Rules provide 50% of the vacancies

of grade to be filled by promotion and the remaining 50% by

direct recruitment, and assuming there are ten vacancies in the

grade arising in each of the years 1986 and 1987 and that two

vacancies intended for direct recruitment, remain unfilled

during 1986 and they could be filled during 1987. The seniority

position of the promotees and direct recruits of these two years

will be as under:

1986 1987

1. P1 9. P1

2. D1 10. D1

3. P2 11. P2

4. D2 12. D2

5. P3 13. P3

6. D3 14. D3

7. P4 15. P4

8. P5 16. D4

17. P5

18. D5

19. D6

20. D7

It is not necessary to make a reference to the subsequent office

memorandum of 3.7.1986 as the same is nothing but a repetition of the

instructions contained in the office memorandum dated 7.2.1986.

9. We have heard the learned counsel appearing for the contending

parties at considerable length and we are of the view that as far as

inter se seniority is concerned, the same has to be based on the

vacancies arising for a particular year. Thereafter, the seniority

has to be determined on the basis of rota quota rule which has been

illustrated in the aforesaid illustration contained in the O.M. of

7.2.1986. As far as direct recruits are concerned, the crucial date

on which they have to be considered will be the date when the Staff

Selection Commission makes the selection of direct recruits. Hence

the date of forwarding the dossier of direct recruits by the

Commission to the department, date of actual joining or taking over

charge by the direct recruit would all be irrelevant. It would be the

date on which the Staff Selection Commission makes the selection of

the direct recruits that will be the material date for fixing the

seniority. This would avoid injustice being done on account of

administrative delays, i.e., delay in matter of issue of orders of

appointment and posting and of actual taking over of charge. Similar

will be the position in regard to promotees. It will be the date on

which the promotee is selected for promotion by the departmental

promotion committee. Hence the date on which the promotee actually

assumes charge of the promotional post similarly will be relevant.

The seniority list which is impugned in the present proceedings, it

appears, has not followed the instructions which we are not issuing in

the present order.

10. In the circumstances, the said seniority list is hereby quashed

and set aside. Respondent no.3 is directed to recast the seniority

list on the basis of directions contained in this order. The present

order will also apply to seniority list of UDCs which is the subject

matter of OA No.676/1999.

11. All the OAs stand disposed of on the above lines. There shall,

however, be no order as to costs.”

14. Direct recruit Income Tax Inspectors, assailed the interpretation

placed by the CAT, Principal Bench, on the office memorandum dated 7.2.1986

(in its order dated 23.2.2000), by filing a number of writ petitions (Civil

Writ Petition No.460 of 2000, Sanjiv Mahajan & Ors. vs. Union of India &

Ors; Civil Writ Petition No.670 of 2002, Pankaj Saxena vs. Union of India &

Ors.; Civil Writ Petition No.7356 of 2000, Chief Commissioner of Income Tax

vs. Sanjiv Mahajan & Ors; Civil Writ Petition No.5549 of 2001, Kamal Khanna

& Ors. vs. Union of India & Ors.) before the Delhi High Court. The

aforesaid writ petitions were disposed of by the Delhi High Court by a

common order dated 25.9.2002, whereby, the order dated 23.2.2000 passed by

the CAT, Principal Bench, was set aside with the following observations:

“23. Having regard to the fact that the judgment of the learned

Tribunal is absolutely cryptic and no cogent or valid reason has been

assigned in support thereof, and as the contentions raised before the

Tribunal as also before us have not been considered at all, we are of

the opinion that for determination of the crucial questions where for,

it may be necessary, for the parties to adduce further evidence, the

matter may be remitted back to the learned Tribunal for consideration

of the matter afresh and the parties may bring on record such other or

further materials as may be directed by the learned Tribunal. The

impugned judgment is, therefore, set aside. However, having regard to

the facts and circumstances of the case, we would request the learned

Tribunal to consider the desirability of disposing of the matter as

expeditiously as possible.

These writ petitions are disposed of with the aforementioned

observations and directions without any order as to costs.”

15. Consequently, the matters referred to above went back to the CAT,

Principal Bench for re-adjudication. During their pendency before the CAT,

Principal Bench, an additional affidavit dated 12.3.2003 was jointly filed

by the official-respondents. In the aforesaid additional affidavit it

was, inter alia, pleaded as under:

“Para 4

(a) ….. …..

(b) The respondent has since obtained the advice of the Central

Board of Direct Taxes and the Deptt. of Personnel and Training which

is the nodal Ministry for promulgation and monitoring of the relevant

rules and regulations, issuing Office Memorandums and the

clarifications thereof. Based on the advice of the DOP&T there has

been a change in the stand taken by the respondent before this Hon’ble

Tribunal and as such, an application for amendment was made before the

Hon’ble Delhi High Court which allowed the application and has also

taken note of the same in its judgment dt.25.9.2002. In view of the

revised position, the seniority list dt.8.2.1999 was not in conformity

with the clarifications provided by the DoP&T with reference to its

O.M. Dt.7.2.1986 and 2.7.1986. Relevant extracts based on the DoP&T’s

O.M. dt.7.2.1986 and 3.7.1986 and the clarifications furnished by that

department which formed part of the application for amendment of the

writ petition which was filed before the Hon’ble Delhi High Court is

annexed (Annexure R-1).

(c) to (q) ….. …..”

The applicants before the CAT, Principal Bench were direct recruits. They

were satisfied with the latest position adopted by the official respondents

before the CAT, Principal Bench through the additional affidavit dated

12.3.2003. They therefore, chose not to press their applications any

further. The CAT, Principal Bench passed the following order on 26.4.2003:

“Learned counsel for the applicants, keeping in view the amended reply

dated 12.3.2003, does not press the present application.

Accordingly, the OA is dismissed as withdrawn.”

16. The Income Tax Department thereupon, issued another seniority list of

Income Tax Inspectors, dated 17.7.2003, by following the “quota” and “rota”

principle prescribed in the office memoranda dated 7.2.1986 and 3.7.1986.

The aforesaid seniority-list was assailed by promotee Income Tax Inspectors

before the CAT, Principal Bench, through OA no.2068 of 2003 (C.P.S. Yadav &

Anr. vs. Union of India & Ors.), OA no.2107 of 2003 (Mahender Pratap & Ors.

vs. Union of India & Ors.), OA No.124 of 2004 (S.K. Puri-II & Anr. vs.

Union of India & Ors.). The CAT, Principal Bench, by a common order dated

22.9.2004 allowed the claim preferred by the promotee Income Tax Officers,

and as such, quashed the seniority list dated 17.7.2003. The direct

recruit Income Tax Inspectors, who were respondents in the original

applications referred to above, assailed the order passed by the CAT,

Principal Bench, dated 22.9.2004, before the Delhi High Court by filing

Writ Petition (C) No.3446-49 of 2005 (Pritpal Singh & Ors. vs. Union of

India & Ors.). As already mentioned hereinabove, the aforesaid writ

petitions were transferred to this Court and assigned TC (C) no.91 of 2006.

17. During the course of hearing, learned counsel for the rival parties

agreed, that the seniority dispute between the promotee and direct recruit

Income Tax Inspectors of the Income Tax Department was liable to be

determined on the basis of office memoranda dated 7.2.1986 and 3.7.1986,

read with the clarificatory office memoranda and office notes. It is

important to notice, before embarking upon the claim of the rival parties,

that none of the parties have assailed the vires of the office memoranda

dated 7.2.1986 and 3.7.1986 (or for that matter, the clarificatory office

memoranda/office notes). It is therefore apparent, that the dispute

between the rival parties is nothing but, the true and correct

interpretation of the office memoranda dated 7.2.1986 and 3.7.1986, read

with clarificatory office memoranda and office notes. It is therefore,

that the matter in hand is being examined in the light of the aforesaid

office memoranda.

18. General principles for determining seniority in Central services are

shown to have been laid down in an annexure to an office memorandum dated

22.11.1959 issued by the Government of India, Ministry of Home Affairs

(hereinafter referred to as “the OM dated 22.11.1959”). Paragraph 6 of the

annexure, referred to above, laid down the manner of determining inter se

seniority between direct recruits and promotees. Paragraph 6 is being

extracted hereunder:

“6. Relative seniority of Direct Recruits and Promotees.

The relative seniority of direct recruits and of promotees shall be

determined according to the rotation of vacancies between direct

recruits and promotees which shall be based on the quotas of vacancies

reserved for direct recruitment and promotion respectively in the

Department Rules.”

It is apparent from the above extract of the OM dated 22.11.1959, that the

“quota” between promotees and direct recruits was to be read into the

seniority rule. The OM also provided for a definite rotation of seniority

points (“rota”) between promotees and direct recruits. The rotation

provided for was founded on the concept of rotation of quotas between

promotees and direct recruits. It is therefore apparent, that under the OM

dated 22.11.1959 inter se seniority between the promotees and direct

recruits was based on the “quota” and “rota” principle. The same has been

meaningfully described as “rotation of quotas” in some of these

instruments.

19. The aforesaid prescription of the manner of determining inter se

seniority between the direct recruits and promotees, determined through the

OM dated 22.11.1959, was modified by an office memorandum dated 7.2.1986,

issued by the Government of India, Department of Personnel and Training

(hereinafter referred to as, “the OM dated 7.2.1986”). The modification

introduced through the OM dated 7.2.1986 was to redress a situation

wherein, vacancies of one of the sources were kept (or remained) unfilled

during the process of selection, and the unfilled vacancies, had to be

filled up through “later” examinations or selections. For the

determination of seniority, in the contingency wherein the process of

recruitment resulted in filling the vacancies earmarked for the two sources

of recruitment, the manner of determining inter se seniority between

promotees and direct recruits, expressed in the OM dated 22.11.1959

remained unaltered. But where the vacancies could not be filled up, and

unfilled vacancies had to be filled up “later” through a subsequent

process of selection, the manner of determining inter se seniority between

promotees and direct recruits, was modified.

20. Since it is the case of the rival parties before us, that the OM

dated 7.2.1986 is the principal instruction, on the basis whereof the

present controversy is to be settled, the same is being extracted hereunder

in its entirety.

“The 7 February, 1986.

Office Memorandum

Subject: General Principles for determining the seniority of various

categories of persons employed in Central Services.

As the Ministry of Finance etc. are aware, the General Principles for

determination of seniority in the Central Services are contained in

the Annexure to Ministry of Home Affairs O.M. No. 9/11/55-RPS dated

22nd December 1959. According to Paragraph-6 of the said Annexure, the

relative seniority of direct recruits and promotees shall be

determined according to rotation of vacancies between the direct

recruits and the promotees, which will be based on the quota of

vacancies reserved for direct recruitment and promotion respectively

in the Recruitment Rules. In the Explanatory Memorandum to these

Principles, it has been stated that a roster is required to be

maintained based on the reservation of vacancies for direct

recruitment and promotion in the Recruitment Rules. Thus where

appointment to a grade is to be made 50% by direct recruitment and 50%

by promotion from a lower grade, the inter-se seniority of direct

recruits and promotees is determined on 1:1 basis.

2. While the above mentioned principle was working satisfactorily in

cases where direct recruitment and promotion kept pace with each other

and recruitment could also be made to the full extent of the quotas as

prescribed, in cases where there was delay in direct recruitment or

promotion, or where enough number of direct recruits or promotees did

not become available, there was difficulty in determining seniority.

In such cases, the practice followed at present is that the slots

meant for direct recruits or promotees, which could not be filled up,

were left vacant, and when direct recruits or promotees became

available through later examinations or selections, such persons

occupied the vacant slots, thereby became senior to persons who were

already working in the grade on regular basis. In some cases, where

there was short-fall in direct recruitment in two or more consecutive

years, this resulted in direct recruits of later years taking

seniority over some of the promotees with fairly long years of regular

service already to their credit. This matter had also come up for

consideration in various Court Cases both before the High Courts and

the Supreme Court and in several cases the relevant judgement had

brought out the inappropriateness of direct recruits of later years

becoming senior to promotees with long years of service.

3. This matter, which was also discussed in the National Council has

been engaging the attention of the Government for quite some time and

it has been decided that in future, while the principle of rotation of

quotas will still be followed for determining the inter-se seniority

of direct recruits and promotees, the present practice of keeping

vacant slots for being filled up by direct recruits of later years,

thereby giving them unitended seniority over promotees who are already

in position, would be dispensed with. Thus, if adequate number of

direct recruits do not become available in any particular year,

rotation of quotas for purpose of determining seniority would take

place only to the extent of the available direct recruits and the

promotees. In other words, to the extent direct recruits are not

available, the promotees will be bunched together at the bottom of the

seniority list, below the last position upto which it is possible to

determine seniority on the basis of rotation of quotas with reference

to the actual number of direct recruits who become available. The

unfilled direct recruitment quota vacancies would, however, be carried

forward and added to the corresponding direct recruitment vacancies of

the next year (and to subsequent years where necessary) for taking

action for direct recruitment for the total number according to the

usual practice. Thereafter, in that year while seniority will be

determined between direct recruits and promotees, to the extent of the

number of vacancies for direct recruits and promotees as determined

according to the quota for that year, the additional direct recruits

selected against the carried forward vacancies of the previous year

would be placed en-bloc below the last promotee (or direct recruit as

the case may be) in the seniority list based on the rotation of

vacancies for that year. The same principle holds good in determining

seniority in the event of carry forward, if any, of direct recruitment

or promotion quota vacancies (as the case may be) in the subsequent

years.

Illustration:

Where the Recruitment Rules provide 50% of the vacancies in a

grade to be filled by promotion and the remaining 50% by direct

recruitment, and assuming there are 10 vacancies in the grade

arising in each of the years 1986 and 1987 and that 2 vacancies

intended for direct recruitment remained unfilled during 1986

and they could be filled during 1987, the seniority position of

the promotees and direct recruits of these two years will be as

under:

1986 1987

1. P1 9. P1

2. D1 10. D1

3. P2 11. P2

4. D2 12. D2

5. P3 13. P3

6. D3 14. D3

7. P4 15. P4

8. P5 16. D4

17. P5

18. D5

19. D6

20. D7

4. In order to help the appointing authorities in determining the

number of vacancies to be filled during a year under each of the

methods of recruitment prescribed, a Vacancy Register giving a running

account of the vacancies arising and being filled from year to year

may be maintained in the proforma enclosed.

5. With a view to curbing any tendency of under-reporting/suppressing

the vacancies to be notified to the concerned authorities for direct

recruitment, it is clarified that promotees will be treated as regular

only to the extent to which direct recruitment vacancies are reported

to the recruiting authorities on the basis of the quotas prescribed in

the relevant recruitment rules. Excess promotees, if any, exceeding

the share falling to the promotion quota based on the corresponding

figure, notified for direct recruitment would be treated only as ad-

hoc promotees.

6. The General Principles of seniority issued on 22nd December, 1959

referred to above, may be deemed to have been modified to that extent.

7. These orders shall take effect from 1st March 1986. Seniority

already determined in accordance with the existing principles on the

date of issue of these orders will not be reopened. In respect of

vacancies for which recruitment action has already been taken, on the

date of issue of these orders either by way of direct recruitment or

promotion, seniority will continue to be determined in accordance with

the principle in force prior to the issue of this O.M.

8. Ministry of Finance etc. are requested to bring these instructions

to the notice of all the Attached/Subordinate Offices under them to

whom the General Principles of Seniority contained in O.M. dated

22.12.1959 are applicable within 2 week as these orders will be

effective from the next month.

Sd/- Joint Secretary to the Govt. of India”

(emphasis is ours)

Since the OM dated 7.2.1986 would primarily constitute the determination of

the present controversy, it is considered just and appropriate to render an

analysis thereof. The following conclusions are apparent to us, from a

close examination of the OM dated 7.2.1986:

(a) Paragraph 2 of the OM dated 7.2.1986 first records the existing

manner of determining inter se seniority between direct recruits and

promotees (i.e., as contemplated by the OM dated 22.11.1959), namely, “…the

slots meant for direct recruits or promotees, which could not be filled up,

were left vacant, and when direct recruits or promotees become available

through later examinations or selections, such persons occupied the vacant

slots, (and) thereby became senior to persons who were already working in

the grade on regular basis. In some cases, where there was shortfall in

direct recruitment in two or more consecutive years, this resulted in

direct recruits of later years taking seniority over some of the promotees

with fairly long years of regular service to their credit….”. The words,

“when direct recruits or promotees become available through later

examination or selections”, clearly connotes, that the situation

contemplated is one where, there has been an earlier examination or

selection, and is then followed by a “later” examination or selection. It

is implicit, that in the earlier examination or selection there was a

shortfall, in as much as, the available vacancies for the concerned

recruitment year could not all be filled up, whereupon, further

examination(s) or selection(s) had to be conducted to make up for the

shortfall. In the instant situation, the earlier OM dated 22.11.1959

contemplated/provided, that slots allotted to a prescribed source of

recruitment which remained vacant, would be filled up only from the source

for which the vacancy was reserved, irrespective of the fact that a

candidate from the source in question became available in the next process

of examination or selection, or even thereafter. In other words the

“rotation of quotas” principle was given effect to in letter and spirit

under the OM dated 22.11.1959, without any scope of relaxation.

(b) The position expressed in the sub-paragraph (a) above, was sought to

be modified by the OM dated 7.2.1986, by providing in paragraph 3 thereof,

that the earlier “…principle of rotation of quotas would still be followed

for determining the inter se seniority of direct recruits and promotees…”

except when the direct recruit vacancies were being “… filled up by direct

recruits of later years…”. Read in conjunction with paragraph 2 of the OM

dated 7.2.1986, the words “…direct recruits of later years…” must be

understood to mean, direct recruits who became available through “later”

examination(s) or selection(s). Essentially the “later” examination(s) or

selection(s) should be perceived as those conducted to fill up the carried

forward vacancies, i.e., vacancies which could not be filled up, when the

examination or selection for the concerned recruitment year was

originally/ first conducted. This change it was clarified, was made to

stop direct recruits of “later” years, from gaining “…unintended seniority

over promotees who are already in position…”, as High Courts and the

Supreme Court had “…brought out the inappropriateness…” thereof. It is

therefore apparent, that the OM dated 7.2.1986 partially modified the

“rotation of quotas” principle in the determination of inter se seniority

originally expressed in the OM dated 22.11.1959. The OM dated 7.2.1986,

provided that the “rota” (rotation of quotas) would be adhered to “…only to

the extent of available direct recruits and promotees…”, i.e., for promotee

and direct recruit vacancies which could be filled up through the

original/first process of examination or selection conducted for the

recruitment year in which the vacancies had arisen.

(c) For the vacancies remaining unfilled when the same were

originally/first sought to be filled up, the slots available under the

“rota” principle under the OM dated 22.11.1959, would be lost to the extent

of the shortfall. In other words, the “rotation of quotas” principle would

stop operating after, “…the last position upto which it is (was) possible

to determine seniority on the basis of rotation of quotas…”, for the

concerned recruitment year.

(d) Paragraph 3 of the OM dated 7.2.1986 provided, the manner of

assigning seniority to vacancies carried forward on account of their having

remained unfilled in the original/first examination or selection process.

The change contemplated in the OM dated 7.2.1986, referred to hereinabove,

was made absolutely unambiguous by expressing that, “The unfilled direct

quota vacancies would …be carried forwarded and added to the corresponding

direct recruitment vacancies of the next year.….”. It is therefore

apparent, that seniority of carried forward vacancies would be determined

with reference to vacancies of the recruitment year wherein their selection

was made, i.e., for which the “later” examination or selection was

conducted.

(e) The OM dated 7.2.1986 formulated the stratagem to be followed, where

adequate number of vacancies in a recruitment year could not be filled up,

through the examination or selection conducted therefor. The OM provided,

“…to the extent direct recruits are not available, the promotees will be

bunched together at the bottom of the seniority list, below the last

position upto which it is (was) possible to determine the seniority on the

basis of rotation of quotas with reference to the actual number of direct

recruits who become available...”.

(f) Paragraph 3 of the OM dated 7.2.1986 further postulated, that the

modification contemplated therein would be applied prospectively, and that,

“…the present practice of keeping vacant slots for being filled up by

direct recruits of later years, …over promotees who are (were) already in

position, would be dispensed with…”. It is therefore apparent, that the

slots assigned to a particular source of recruitment, would be relevant for

determining inter se seniority between promotees and direct recruits, to

the extent the vacancies could successfully be filled up (and the unfilled

slots would be lost) only for vacancies which arose after the OM dated

7.2.1986, came to be issued.

(g) The illustration provided in paragraph 3 of the OM dated 7.2.1986

fully substantiates the analysis of the OM dated 7.2.1986 recorded in the

foregoing sub-paragraphs. In fact, the conclusions drawn in the foregoing

sub-paragraphs have been drawn, keeping in mind the explanatory

illustration narrated in paragraph 3 of the OM dated 7.2.1986.

(h) In paragraph 6 of the OM dated 7.2.1986 it was asserted, that the

general principles for determining seniority in the OM dated 22.11.1959

were being “modified” to the extent expressed (in the OM dated 7.2.1986).

The extent of modification contemplated by the OM dated 7.2.1986 has

already been delineated in the foregoing sub-paragraphs. Para 6 therefore

leaves no room for any doubt, that the OM dated 22.11.1959 stood “amended”

by the OM dated 7.2.1986 on the issue of determination of inter se

seniority between direct recruits and promotees, to the extent mentioned in

the preceding sub-paragraphs. The said amendment was consciously carried

out by the Department of Personnel and Training, with the object of

remedying the inappropriateness of direct recruits of “later”

examination(s) or selection(s) becoming senior to promotees with long years

of service, in terms of the OM dated 22.11.1959.

21. The O.M. dated 7.2.1986, was followed by another Office Memorandum

issued by the Government of India, Department of Personnel and Training,

dated 3.7.1986 (hereinafter referred to as, “the O.M. dated 3.7.1986”).

The purpose of the instant O.M., as the subject thereof suggests, was to

“consolidate” existing governmental orders on the subject of seniority.

Paragraphs 2.4.1 to 2.4.4 of the O.M. dated 3.7.1986 dealt with the issue

of inter se seniority between the direct recruits and promotees. The same

are accordingly being reproduced hereunder:-

“2.4.1 The relative seniority of direct recruits and of promotees

shall be determined according to the rotation of vacancies

between direct recruits and promotees which shall be based on

the quota of vacancies reserved for direct recruitment and

promotion respectively in the Recruitment Rules.

2.4.2 If adequate number of direct recruits do not become available in

any particular year, rotation of quotas for the purpose of

determining seniority would take place only to the extent of the

available direct recruits and the promotees.

In other words, to the extent direct recruits are not available

the promotees will be bunched together at the bottom of the

seniority list below the last position upto which it is possible

to determine seniority, on the basis of rotation of quotas with

reference to the actual number of direct recruits who become

available. The unfilled direct recruitment quota vacancies

would, however, be carried forward and added to the

corresponding direct recruitment vacancies of the next year (and

to subsequent years where necessary) for taking action for

direct recruitment for the total number according to the usual

practice. Thereafter in that year while seniority will be

determined between direct recruits and promotees, to the extent

of the number of vacancies for direct recruits and promotees as

determined according to the quota for that year, the additional,

direct recruits selected against the carried forward vacancies

of the previous year would be placed en-bloc below the last

promotee (or direct recruit as the case may be), in the

seniority list based on the rotation of vacancies for that year.

The same principle holds good for determining seniority in the

event of carry forward, if any, of direct recruitment or

promotion quota vacancies (as the case may be) in the subsequent

year.

ILLUSTRATION: Where the Recruitment Rules provide 50% of the

vacancies of a grade to be filled by promotion and the remaining

50% by direct recruitment, and a assuming there are ten

vacancies in the grade arising in each of the year 1986 and 1987

and that two vacancies intended for direct recruitment remain

unfilled during 1986 and they could be filled during 1987, the

seniority position of the promotees and direct recruits of these

two years will be as under:

1986 1987

1. P1 9. P1

2. D1 10. D1

3. P2 11. P2

4. D2 12. D2

5. P3 13. P3

6. D3 14. D3

7. P4 15. P4

8. P5 16. D4

17. P5

18. D5

19. D6

20. D7

2.4.3 In order to help the appointing authorities in determining

the number of vacancies to be filled during a year under each of

the methods of recruitment prescribed, a Vacancy Register giving

a running account of the vacancies arising and being filled from

year to year may be maintained in the proforma enclosed.

2.4.4 With a view to curbing any tendency of under-

reporting/suppressing the vacancies to be notified to the

concerned authorities for direct recruitment, it is clarified

that promotees will be treated as regular only to the extent to

which direct recruitment vacancies are reported to the

recruiting authorities on the basis of the quotas prescribed in

the relevant recruitment rules. Excess promotees, if any,

exceeding the share failing to the promotion quota based on the

corresponding figure, notified for direct recruitment would be

treated only as ad-hoc promotees.”

(emphasis is ours)

The following conclusions have been drawn by us from the O.M. dated

3.7.1986:-

(a) If adequate number of direct recruits (or promotees) do not become

available in any particular year, “rotation of quotas” for the purpose of

determining seniority, would stop after the available direct recruits and

promotees are assigned their slots for the concerned recruitment year.

(b) To the extent direct recruits were not available for the concerned

recruitment year, the promotees would be bunched together at the bottom of

the seniority list, below the last position upto which it was possible to

determine seniority, on the basis of rotation of quotas. And vice versa.

(c) The unfilled direct recruitment quota vacancies for a recruitment

year, would be carried forward to the corresponding direct recruitment

vacancies of the next year (and to subsequent years, where necessary). And

vice versa. In this behalf, it is necessary to understand two distinct

phrases used in the OM dated 3.7.1986. Firstly, the phrase “in that year”

which connotes the recruitment year for which specific vacancies are

earmarked. And secondly, the phrase “in the subsequent year”, which

connotes carried forward vacancies, filled in addition to, vacancies

earmarked for a subsequent recruitment year.

(d) The additional direct recruits selected, against the carried forward

vacancies of the previous year, would be placed en-bloc below the last

promotee. And vice versa.

It is, therefore, apparent, that the position expressed in the O.Ms. dated

7.2.1986 and 3.7.1986, on the subject of inter se seniority between direct

recruits and promotees, was absolutely identical. This is indeed how it

was intended, because the OM dated 3.7.1986 was only meant to “consolidate”

existing governmental instructions, on the subject of seniority.

22. Chronologically, it is necessary, at the present juncture to refer to

an Office Note of the Department of Personnel and Training, Establishment

(D) Section, dated 20.12.1999 (hereinafter referred to as, “the O.N. dated

20.12.1999”). Undoubtedly, an office note has no legal sanction, and as

such, is not enforceable in law. Yet an office note is certainly relevant

for determining the logic and process of reasoning which prevailed at the

relevant point of time. These would aid in the interpretation of the

binding office memoranda, only when the language of the office memoranda is

ambiguous. Ofcourse, only where there is no conflict between the two i.e.,

the office note and the office memoranda sought to be interpreted. In the

aforesaid background, and for the aforesaid limited purpose, reference is

being made to the O.N. dated 20.12.1999. The same is being reproduced

hereunder:-

“Department of Personnel and Training

Estt.(D) Section

Ref. Preceding notes.

It is not clear whether the instructions contained in our O.M.

dated 07.02.1986 has been interpreted correctly. It is clarified that

on a perusal of our O.M. dated 22.12.1959 read with our O.M. dated

07.02.1986 it will be clear that the inter-se seniority of direct

recruits and promotees will have to be fixed by following the

principle of rotation of quotas prescribed for them in the recruitment

rules subject to the condition that the rotation as per quota will be

made only upto the actual number of DRs/Promotees available and to the

extent direct recruits/promotees do not become available in any

recruitment year the promotees or the direct recruits as the case may

be will be bunched together at the bottom of the seniority list. In

other words, only where appointing authority has not been able to fill

up the post inspite of best efforts with reference to the requisition

for the particular recruitment year in question, the instructions

contained in O.M. dated 07.02.1986 will come into operation as will

be clear from para 5 thereof. For example, if the quota in the Rrs

and DR and promotee is fifty-fifty and if the UPSC has recommended

only 2 DRs against the three vacancies of a particular recruitment

year, say 1987 for which requisition was sent to them in 1987 and even

if both the DRs had joined in 1988 the inter-se seniority of DRs and

promotees may be fixed in the ratio of 1:1 upto the number of DRs

available i.e. the first four places in the seniority list will be

assigned alternatively to DR and promotee, the 5th in the seniority

list which would have normally gone to DR will not go to the promotee

because of the non-availability of DR and the 6th will in any case go

to promotee. But for the instructions contained in our O.M. dated

07.02.1986, the 5th place would have been kept reserved for the DR as

and when it is actually filled by DR, even if it takes a few years.

However, after the issue of our O.M. dated 07.02.1986, it is no longer

kept vacant but is assigned to the promotee who is available. It is

not necessary that the DR for 1987 vacancy should join in 1987 itself.

It would suffice if action has been initiated for 1987 DR vacancies in

1987 itself. This is because, in a case of direct recruitment, if the

administrative action in filling up the post by DR takes more than a

year or so the individual cannot be held responsible for such

administrative delay and hence it would not be appropriate to deprive

him of his due seniority for delay on the part of administration in

completing his selection by direct recruitment. In fact ordinarily the

process of direct recruitment takes more than a year to be completed

and if DR is to join in the same year for getting seniority of that

year then no DR will get seniority of the same year because as already

stated the DR process takes more than a year. Hence, as already stated

initiation of action for recruitment in sufficient.

It is not clear whether our O.M. of 07.02.1986 has been

interpreted correctly on the above line by the Deptt. of Revenue.

Hence the above position may be suitably incorporated in the para-wise

comments prepared by them and it may be modified accordingly. Subject

to this, the parawise comments appear to be generally in order. It is

however for the Department of Revenue to ensure the correctness of the

factual position mentioned therein.

Deptt. of Revenue may please see.

Sd/-

(K. Muthu Kumar)

Under Secretary

3357/DIR E 1/99

20/12

Dir (E-1)

The clarification given above needs to be adhered to as we have been

consistently advising on the aforesaid lines. Any other

interpretation of the relevant instructions would be illogical.

Sd/-

DIR (E-1)

21.12.99”

(emphasis is ours)

The logic and the process of reasoning, emerging from the O.N. dated

20.12.1999, as they appear to us, are analysed below:-

(a) Only where the appointing authority has not been able to fill up the

vacancies earmarked for direct recruits/promotees, with reference to the

requisition for a particular recruitment year, inspite of its best efforts,

the instructions contained in O.M. dated 7.2.1986 will come into operation.

(b) It is not necessary, that the direct recruits for vacancies of a

particular recruitment year, should join within the recruitment year

(during which the vacancies had arisen) itself. As such, the date of

joining would not be a relevant factor for determining seniority of direct

recruits. It would suffice if action has been initiated for direct recruit

vacancies, within the recruitment year in which the vacancies had become

available. This is so, because delay in administrative action, it was

felt, could not deprive an individual of his due seniority. As such,

initiation of action for recruitment within the recruitment year would be

sufficient to assign seniority to the concerned appointees in terms of the

“rotation of quotas” principle, so as to arrange them with other appointees

(from the alternative source), for vacancies of the same recruitment year.

23. Following the ON dated 20.12.1999, the Department of Personnel and

Training, Establishment (D) Section, examined the issue in yet another

Office Note dated 2.2.2000 (hereinafter referred to as “the ON dated

2.2.2000”). Just like the earlier ON dated 20.12.1999, the instant ON

dated 2.2.2000 also has no legal sanction, and as such, is not enforceable

in law. But just like the earlier office note, the instant ON dated

2.2.2000 would also be relevant in determining the logic and process of

reasoning which prevailed at the relevant point of time. This would aid in

the interpretation of binding office memoranda, only where the language is

ambiguous, and only if there is no conflict between the two (the office

note and the office memoranda, sought to be interpreted). In the aforesaid

background, and for the aforesaid limited purpose, reference is also being

made to the ON dated 2.2.2000. The same is being extracted hereunder:

“ Department of Personnel & Training

Estt. (D) Section

Notes from p.17/ante may please be seen with reference to our

earlier note on Pp.9-10 ante.

With reference to ‘X’ on p.18 and ‘Y’ on p.19/ante, it will be

clear from our note on Pp.9-10/ante that if action for the Recruitment

Year 1986-1987 has been initiated at any time during that Recruitment

Year even if the exam is held in 1988 and the results are declared in

1989 and the candidate join only in 1990, since the action for

recruitment was initiated in 1986-1987 itself merely because the

process of recruitment took so long for which the candidates cannot be

blamed and since the responsibility for the delay in completing the

process of recruitment squarely lies with the administration, it would

not be appropriate to deprive the candidates of their due seniority of

1986-87. Consequently, if action was initiated during the Recruitment

Year 1986-1987 even if it culminates in the joining by the selected

candidates only in 1990, they will get seniority of 1986-1987. This

applies equally to DRs as well as promotees. In other words, if such

DRs of 1986-1987 ultimately join in 1990 yet they will be rotated with

promotees of 1986-87.

As regards point (1) on page 19/N, it is clarified that

“initiation of action for recruitment/initiation of recruitment

process” would refer to the date of sending the requisition to the

recruiting authority for a particular Recruitment Year in question.

Points (2) & (3) are the concern of Estt.(B).

As regards point (4), it is clarified that as already stated the

concept of initiation of action for recruitment is applicable equally

to direct recruits and promotees.

As regards point (5), it may be stated that even if DOPT is also

one of the respondents, it is for the Administrative

Ministry/Department who are concerned with the persons involved in the

CAT court case to take necessary action on behalf of DOPT also. In

any case, our comments are already contained in our earlier note as

well as this note. It is for the Administrative Ministry/Department

to incorporate them suitably in the counter reply. Hence, the counter

reply on Pp.159-175/Cor. May be suitably modified in the light of our

advice on Pp.9-10/ante as already advised at ‘X’ on p.10/ante and this

note.

In future, the Department of Revenue, if they want our advice,

refer such cases well in time (instead of making such reference at the

eleventh hour) to enable us to consider the matter in its proper

perspective without any time constraint.

Estt.(B) may please see for comments on points (2) and (3) on

Pp.19-20/ante before the file is returned to Department of Revenue.

Sd/-

(Under secretary)

2.2.2000.”

The logic and process of reasoning emerging from the ON dated 2.2.2000, as

is apparent to us, is being analysed below:

(a) If the process of recruitment has been initiated during the

recruitment year (in which the vacancies have arisen) itself, even if the

examination for the said recruitment is held in a subsequent year, and the

result is declared in a year later (than the one in which the examination

was held), and the selected candidates joined in a further later year (than

the one in which the result was declared), the selected candidates will be

entitled to be assigned seniority, with reference to the recruitment year

(in which the requisition of vacancies was made). The logic and reasoning

for the aforesaid conclusion (expressed in the ON dated 2.2.2000) is, if

the process of direct recruitment is initiated in the recruitment year

itself, the selected candidate(s) cannot be blamed for the administrative

delay, in completing the process of selection.

(b) The words “initiation of action for recruitment”, and the words

“initiation of recruitment process”, were explained to mean, the date of

sending the requisition to the recruiting authority.

24. Having examined the matter thus far, it is necessary to refer to the

Ministry of Finance, Department of Revenue’s, letter dated 11.5.2004

(hereinafter referred to as, “the letter dated 11.5.2004”). The aforesaid

letter is being reproduced below:

“ New Delhi, the 11th May, 2004

To,

The Chief Commissioner of Income Tax (CCA),

CHANDIGARH

Subject: Fixation of inter-se seniority of DR and Promotee Income

Tax Inspectors in view of clarification given by DOP&T in

r/o OM dated 3.7.87

Sir,

I am directed to refer to your letter F.No.CC/CHD/2003-04/935

dated 4.12.2003 on the above subject and to say that the matter has

been examined in consultation with DOP&T and necessary clarification

in the matter is given as under:

|Point/querry raised |Clarification |

|Whether direct recruit |‘It is clarified by DOP&T |

|inspectors should be given |that Direct Recruits’ |

|seniority of the year in |seniority vis-à-vis the |

|which selection process |promotees is reckoned from |

|initiated or vacancy |the year in which they are |

|occurred orotherwise |actually recruited. DRs |

| |cannot claim seniority of the|

| |year in which the vacancies |

| |had arisen. The question of |

| |grant of seniority to DRs of |

| |the period when they were not|

| |even in service does not |

| |arise.’ |

3. The representations may please be disposed off accordingly.

Yours faithfully,

Sd/-

Under Secretary to the Government of India”

A perusal of the letter dated 11.5.2004 reveals, that it adopts a position

in clear conflict with the one expressed in the OMs dated 7.2.1986 and

3.7.1986, as well as, in the ONs dated 20.12.1999 and 2.2.2000. In the

aforesaid letter dated 11.5.2004 it was sought to be “clarified”, that the

seniority of direct recruits vis-à-vis promotees, would be determined with

reference to the year in which the direct recruits are appointed. And

further, that direct recruits cannot claim seniority with reference to the

year in which the vacancies against which they are appointed had arisen.

In our considered view reliance on the letter dated 11.5.2004, for the

determination of the present controversy, is liable to outright rejection.

This is so because, the letter dated 11.5.2004 has been styled as a

“clarification” (see heading in right hand column). One of the essential

ingredients of a clarification is, that it “clarifies” an unclear,

doubtful, inexplicit or ambiguous aspect of an instrument. A

“clarification” cannot be in conflict with the instrument sought to be

clarified. The letter dated 11.5.2004 breaches both the essential

ingredients of a “clarification” referred to above. That apart, the letter

dated 11.5.2004 is liable to be ignored in view of two subsequent letters

of the Ministry of Finance, Department of Revenue dated 27.7.2004 and

8.9.2004. The letter dated 27.7.2004 is reproduced hereunder:

“ New Delhi, the 27th July, 2004

To

Chief Commissioner of Income Tax (CCA)

CHANDIGARH

Subject: Fixation of inter-se seniority of DR and Promotee Income

tax Inspectors in view of clarification given by DOP&T in

r/o OM dated 3.7.86.

Sir,

I am directed to refer to Board’s letter of even number dated

11.5.2004 on the above subject and to request that the application of

this clarification may be kept in abeyance till further orders.

Yours faithfully,

Sd/-

Under Secretary to the Government of India”

A perusal of the letter dated 27.7.2004 reveals, that the allegedly

clarificatory letter dated 11.5.2004, had been kept in abeyance. The

second letter dated 8.9.2004 (referred to above) is also being reproduced

below:

“ New Delhi, the 8th September, 2004

To

Al CCITs(CCA)

Sub: Fixation of inter se seniority between Direct Recruits (DR) and

Promotee (PR) Inspectors of Income tax in various charges of the

Income tax Department – regarding.

Sir,

I am directed to say that a number of OAs/WPs are pending/under

adjudication in the various benches of CAT and High Courts on the

above subject. The Board has been taking a consistent stand in all

those cases that the policy as laid down in Sanjeev Mahajan’s case

(pertaining to CCIT, Delhi Charge), which was finalized in

consultation with DOP&T and the Ministry of Law would prevail and that

seniority of DRs would be reckoned with reference to date of

initiation of recruitment process in their case.

2. Subsequently on a query raised by CCIT, Chandigarh on an issue

relating to the treatment to be given to the promotee Inspectors, who

would face reversion on account of refixation of seniority as per

DOP&T/Ministry of Law’s advice, the Board issued a clarification vide

letter of even number, dated 11.5.2004, which created an adverse

situation before the Gujarat High Court in a related case. As such

this clarification was held in abeyance vide letter dated 27.07.2004

till further orders.

3. The matter has been reexamined and it has been decided that the

stand taken/finalized by the Board in the case of Sanjeev Mahajan

would hold good in future also and all the cases on the issue would be

handled/defended in the light of clarification submitted in that case.

4. All CCITs(CCA) are accordingly requested to take necessary

action in the matter of fixation of seniority of DRs & Promotee

Inspectors accordingly.

Yours faithfully,

Sd/-

Under Secretary (V&L)”

A perusal of the letter dated 8.9.2004 reveals, that the clarification

given in the letter dated 11.5.2004, would be ignored in favour of the

position adopted in Sanjeev Mahajan’s case, in consultation with the

Department of Personnel and Training. It would be relevant to notice, that

the position adopted in Sanjeev Mahajan’s case, referred to in the letter

dated 8.9.2004 was, that seniority of direct recruits would be reckoned

with reference to the date of initiation of the process of recruitment in

their case. In the aforesaid view of the matter, the letter dated

11.5.2004 is bound to be disregarded and excluded from consideration not

only because it does not satisfy the legal parameters of a “clarification”,

but also because, it is deemed to have been superseded by the subsequent

letters dated 27.7.2004 and 8.9.2004.

25. Reference necessarily needs to be made to yet another office

memorandum issued by the Government of India, Department of Personnel and

Training, dated 3.3.2008 (hereafter referred to as, “the OM dated

3.3.2008”). In view of the emphatic reliance on the OM dated 3.3.2008,

during the course of hearing, the same is reproduced hereunder, in its

entirety:

“ New Delhi, dated the 3rd March, 2008

OFFICE MEMORANDUM

Subject: Consolidated instructions on seniority contained in DOP&T

O.M. No.22011/7/1986-Estt.(D) dated 3.7.1986 –

Clarification regarding

The undersigned is directed to refer to this Department’s

consolidated instructions contained in O.M. No.22011/7/1986-Estt.(D)

dated 3.7.1986 laying down the principles on determination of

seniority of persons appointed to services/posts under the Central

Government.

2. Para 2.4.1 and 2.4.2 of the O.M. dated 3.7.1986 contains the

following provisions:

2.4.1 The relative seniority of direct recruits and of promotees shall

be determined according to the rotation of vacancies between

direct recruits and promotees, which shall be based on the quota

of vacancies reserved for direct recruitment and promotion

respectively in the Recruitment Rules.

2.4.2 If adequate number of direct recruits does not become available

in any particular year, rotation of quotas for the purpose of

determining seniority would take place only to the extent of

available direct recruits and the promotees.

3. Some references have been received seeking clarifications

regarding the term ‘available’ used in the preceding para of the OM

dated 3.7.1986. It is hereby clarified that while the inter-se

seniority of direct recruits and promotees is to be fixed on the basis

of the rotation of quota of vacancies, the year of availability, both

in the case of direct recruits as well as the promotees, for the

purpose of rotation and fixation of seniority, shall be the actual

year of appointment after declaration of results/selection and

completion of pre-appointment formalities as prescribed. It is

further clarified that when appointments against unfilled vacancies

are made in subsequent year or years, either by direct recruitment or

promotion, the persons so appointed shall not get seniority of any

earlier year (viz. year of vacancy/panel or year in which recruitment

process is initiated) but should get the seniority of the year in

which they are appointed on substantive basis. The year of

availability will be the vacancy year in which a candidate of the

particular batch of selected direct recruits or an officer of the

particular batch of promotees joins the post/service.

4. Cases of seniority already decided with reference to any other

interpretation of the term ‘available’ as contained in O.M. dated

3.7.1986 need not be reopened.

5. Hindi version will follow.

Sd/-

Director (Estt.I)”

(emphasis is ours)

The following conclusions, in our view, can be drawn from the OM dated

3.3.2008:

(a) The OM dated 3.3.2008 is in the nature of a “clarification”, to the

earlier consolidated instructions on seniority, contained in the OM dated

3.7.1986 (referred to and analysed, in paragraph 21 above).

(b) The term “available” used in para 2.4.2 in the OM dated 3.7.1986 has

been “clarified” to mean, both in case of direct recruits as well as

promotees, for the purpose of fixation of seniority, would be the actual

year of appointment “…after the declaration of the result/selection, i.e.,

after the conclusion of the selection process, and after the “…completion

of the pre-appointment formalities…” (medical fitness, police verification,

etc.).

(c) As per the OM dated 3.7.1986, when appointments are made against

unfilled vacancies in subsequent year(s), the persons appointed would “not”

get seniority with reference to the year in which the vacancy arose, or the

year in which the recruitment process was initiated, or the year in which

the selection process was conducted.

(d) As per the OM dated 3.3.2008, when appointments are made against

unfilled vacancies in subsequent year(s), the persons appointed would get

seniority of the year in which they are appointed “on substantive basis”.

26. Before examining the merits of the controversy on the basis of the OM

dated 3.3.2008, it is necessary to examine one related submission advanced

on behalf of the direct recruits. It was the contention of learned

counsel, that the OM dated 3.3.2008 being an executive order issued by the

Department of Personnel and Training, would apply only prospectively. In

this behalf it was pointed out, that the disputed seniority between rival

parties before this Court was based on the appointment to the cadre of

Income Tax Inspectors, well before the OM dated 3.3.2008 was issued. As

such, it was pointed out, that the same would not affect the merits of

controversy before this Court. We have considered the instant submission.

It is not possible for us to accept the aforesaid contention advanced at

the hands of the learned counsel. If the OM dated 3.3.2008 was in the

nature of an amendment, there may well have been merit in the submission.

The OM dated 3.3.2008 is in the nature of a “clarification”. Essentially,

a clarification does not introduce anything new, to the already existing

position. A clarification, only explains the true purport of an existing

instrument. As such, a clarification always relates back to the date of

the instrument which is sought to be clarified. In so far as the instant

aspect of the matter is concerned, reference may be made to the decision

rendered by this Court in S.S. Garewal vs. State of Punjab, (1993) 3 Suppl.

234, wherein this Court had observed as under:

“8 ….. In the alternative, it was urged that the order dated April

8, 1980 could only have prospective operation with effect from the

date of issue of the said order and the sub-roster indicated by the

said order could be given effect to only from that date and on that

basis the first post reserved for Scheduled Castes should go to

Balmikis or Mazhabi Sikhs and on that basis also respondent No. 3 was

entitled to be placed against point No. 7 in the 100-point roster and

Shri G.S. Samra against point No. 9 in the said roster.

9. From a perusal of the letter dated April 8, 1980, we find that

it gives clarifications on certain doubts that had been created by

some Departments in the matter of implementation of the instructions

contained in the earlier letter dated May 5, 1975. Since the said

letter dated April 8, 1980 is only clarificatory in nature, there is

no question of its having an operation independent of the instructions

contained in the letter dated May 5, 1975 and the clarifications

contained in the letter dated April 8, 1980 have to be read as a part

of the instructions contained in the earlier letter dated May 5, 1975.

In this context it may be stated that according to the principles of

statutory construction a statute which is explanatory or clarificatory

of the earlier enactment is usually held to be retrospective. (See:

Craies on Statute Law, 7th Ed., p.58). It must, therefore, be held

that all appointments against vacancies reserved for Scheduled Castes

made after May 5, 1975 (after May 14, 1977 in so far as the Service is

concerned), have to be made in accordance with the instructions as

contained in the letter dated May 5, 1975 as clarified by letter dated

April 8, 1980. On that view, the appointment of Shri Bal want Rai in

1979 has to be treated to be an appointment made under the said

instructions and operation of these instructions cannot be postponed

till April 8, 1980…..”

In view of the above, it is not possible for us to accept that the OM dated

3.3.2008, would only apply prospectively. We are also satisfied, that the

OM dated 3.3.2008 which is only a “clarification” of the earlier OM dated

3.7.1986, would relate back to the original instrument, namely, the OM

dated 3.7.1986.

27. We shall now endeavour to examine the effect of OM dated 3.3.2008 on

the subject of inter se seniority between direct recruits and promotees.

Would the OM dated 3.3.2008 supersede the earlier OMs dated 7.2.1986 and/or

3.7.1986? And, would the OMs dated 7.2.1986 and 3.7.1986 negate the OM

dated 3.3.2008, to the extent that the same is repugnant to the earlier OMs

(dated 7.2.1986 and 3.7.1986)? In our view, what needs to be kept in mind

while determining an answer to the aforesaid queries is, that the OM dated

7.2.1986 is in the nature of an amendment/modification. The Department of

Personnel and Training consciously “amended” the earlier OM dated

22.11.1959, by the later OM dated 7.2.1986. The said amendment was

consciously carried out, with the object of remedying the inappropriateness

of direct recruits of later years becoming senior to promotees with long

years of service. It is not the case of any of the parties before us, that

the OM dated 7.2.1986, has ever been “amended” or “modified”. It is

therefore imperative to conclude, that the OM dated 7.2.1986 is binding for

the determination of the issues expressed therein, and that, the same has

the force of law. The OM dated 3.7.1986 is in the nature of consolidatory

instruction, whereby, all earlier instructions issued from time to time

were compiled together. This is apparent, not only from the subject of the

aforesaid OM dated 3.7.1986, but also, the contents of paragraph 1 thereof.

Paragraph 1 of the OM dated 3.7.1986, is being reproduced hereunder:

“ Dated 3.7.86

OFFICE MEMORANDUM

Subject: SENIORITY – consolidated orders on

The undersigned is directed to say that instructions have been

issued by this Department from time to time laying down the principles

for determining seniority of persons appointed to services and posts

under the Central Government. For facility of reference, the

important orders on the subject have been consolidated in this office

memorandum. The number and date of the original communication has

been quoted in the margin so that the users may refer to it to

understand fully the context in which the order in question was

issued.”

(emphasis is ours)

It is therefore clear, that the OM dated 3.3.2008 is neither in the nature

of an “amendment” nor in the nature of a “modification”. Since the OM

dated 3.3.2008, is a mere “consolidation” or compilation of earlier

instructions on the subject of seniority, it is not prudent to draw any

inferences therefrom which could not be drawn from the earlier

instruction/office memoranda being “consolidated” or compiled therein, or

which is contrary thereto.

28. It is relevant to notice, that there is a marginal note against

paragraph 2.4.2 in the OM dated 3.7.1986. The aforesaid marginal note is

being extracted hereunder:

“DOPT No.35014/2/80-Estt(D) dt.7.2.86”

Therefore, paragraph 2.4.2 must be deemed to have been recorded in the

consolidating OM, on the basis of the OM dated 7.2.1986. The instant

assertion has been made on account of it having been expressly mentioned in

the opening paragraph of the OM dated 3.7.1986 (extracted above), that the

number and date of the original communication has been quoted in the

margin, so that the user may refer to it, to understand fully the context

in which the order in question was issued. Therefore, for all intents and

purposes the OM dated 3.3.2008 is with reference to the OM dated 7.2.1986.

It is for this reason, that while debating the exact purport of the OM

dated 3.3.2008, it has been our endeavour to examine the same, with

reference to the earlier OMs dated 7.2.1986 and 3.7.1986, which were inter

alia “consolidated” in the OM dated 3.3.2008.

29. A perusal of the OM dated 3.3.2008, would reveal, that a reference to

paragraphs 2.4.1 and 2.4.2 of the OM dated 3.7.1986, has been made therein.

Thereupon, the meaning of the term “available” used in paragraph 2.4.2 of

the OM dated 3.7.1986, is statedly “clarified”. In view of the conclusion

drawn in the foregoing paragraph, the said clarification must be deemed to

be with reference, not only to the OM dated 3.7.1986 but also the OM dated

7.2.1986. We have already noticed, in an earlier part of the instant

judgment, the essential ingredients of a “clarification” are, that it seeks

to explain an unclear, doubtful, inexplicit or ambiguous aspect of an

instrument, which is sought to be clarified or resolved through the

“clarification”. And that, it should not be in conflict with the

instrument sought to be explained. It is in the aforesaid background, that

we will examine the two queries posed in the preceding paragraph. We have

already analysed the true purport of the OM dated 7.2.1986 (in paragraph 20

hereinabove). We have also recorded our conclusions with reference to the

OM dated 3.7.1986 wherein we have duly taken into consideration the true

purport of paragraph 2.4.2 contained in the OM dated 3.7.1986 (in paragraph

21 hereinabove). The aforesaid conclusions are not being repeated again

for reasons of brevity. We have separately analysed the effect of the OM

dated 3.3.2008 (in paragraph 26 of the instant judgment). It is not

possible for us to conclude that the position expressed in the earlier

office memoranda is unclear, doubtful, inexplicit or ambiguous. Certainly

not on the subject sought to be clarified by the OM dated 3.3.2008. A

comparison of the conclusions recorded in paragraph 20 (with reference to

the OM dated 7.2.1986) and paragraph 21 (with reference to OM dated

3.7.1986) on the one hand, as against, the conclusions drawn in paragraph

26 (with reference to OM dated 3.3.2008) on the other, would lead to

inevitable conclusion, that the OM dated 3.3.2008 clearly propounds, a

manner of determining inter se seniority between direct recruits and

promotees, by a method which is indisputably in conflict with the OMs dated

7.2.1986 and 3.7.1986. Ofcourse, it was possible for the Department of

Personnel and Training to “amend” or “modify” the earlier office memoranda,

in the same manner as the OM dated 7.2.1986 had modified/amended the

earlier OM dated 22.11.1959. A perusal of the OM dated 3.3.2008, however

reveals, that it was not the intention of the Department of Personnel and

Training to alter the manner of determining inter se seniority between

promotees and direct recruits, as had been expressed in the OMs dated

7.2.1986 and 3.7.1986. The intention was only to “clarify” the earlier OM

dated 3.7.1986 (which would implicitly include the OM dated 7.2.1986). The

OM dated 3.3.2008 has clearly breached the parameters and the ingredients

of a “clarification”. Therefore, for all intents and purposes the OM dated

3.3.2008, must be deemed to be non-est to the extent that the same is in

derogation of the earlier OMs dated 7.2.1986 and 3.7.1986. Having so

concluded, it is natural to record, that as the position presently stands,

the OMs dated 7.2.1986 and 3.7.1986 would have an overriding effect over

the OM dated 3.3.2008 (to the extent of conflict between them). And the OM

dated 3.3.2008 has to be ignored/omitted to the extent that the same is in

derogation of the earlier OMs dated 7.2.1986 and 3.7.1986. In the light of

the conclusions recorded hereinabove, we are satisfied that the OM dated

3.3.2008 is not relevant for the determination of the present controversy.

30. Besides the interpretation of the relevant OMs issued by the DOPT,

learned counsel representing the promotees placed reliance on some

judgments of this Court in order to press their contention, that seniority

for direct recruits could not be determined with reference to a date

preceding the date of their recruitment. In so far as the instant aspect

of the matter is concerned, reliance was placed on Jagdish Ch. Patnaik &

Ors. v. State of Orissa and others, (1998) 4 SCC 456; Suraj Prakash Gupta &

Ors. v. State of J&K & Anr., (2000) 7 SCC 561; and Pawan Pratap Singh &

Ors. v. Reevan Singh & Ors., (2011) 3 SCC 267.

31. The seniority rule applied in Jagdish Ch. Patnaik’s case (supra) has

been extracted in paragraph 24 of the said judgment. The seniority rule in

question, inter alia expressed, that seniority would be determined with

reference to the date of recruitment. In Suraj Prakash Gupta’s case

(supra), the relevant seniority rule was extracted in paragraph 53 which

provided, that seniority would be determined with reference to the date of

first appointment. The rule itself expressed that the words “date of first

appointment” would mean the date of first substantive appointment against a

clear vacancy. In Pawan Pratap Singh’s case (supra) the question which

arose for consideration, related to determination of inter se seniority

between two sets of direct recruits. The first set comprised of vacancies

advertised in 1987 which came to be filled up in 1994, and the second set

comprised of vacancies of the year 1990 which came to be filled up in the

year 1991. The controversy in Pawan Pratap Singh’s case (supra) was

conspicuously different from the controversy in hand. In view of the fact

that the seniority rules, as also the factual matrix in the cases relied

upon was substantially at variance with the relevant OMs dated 7.2.1986 and

3.7.1986 (which are the subject of interpretation in so far as the present

case is concerned), as also the facts of the cases in hand, it is apparent,

that the judgments relied upon by the learned counsel are inapplicable to

determine the present controversy.

32. One finds attracted to the observations recorded in Jagdish Ch.

Patnaik’s case (supra) wherein it was observed, “when the language used in

the statute is unambiguous and on a plain grammatical meaning being given

to the words in the statute, the end result is neither arbitrary, nor

irrational nor contrary to the object of the statute, then it is the duty

of the court to give effect to the words used in the statute because the

words declare the intention of the law making authority best”. We are of

the view that the aforesaid observations are fully applicable to the

present controversy. We may add that the various ONs and letters issued by

the DOPT (referred to above) do not leave room for any ambiguity.

33. Having interpreted the effect of the OMs dated 7.2.1986 and 3.7.1986

(in paragraphs 20 and 21 hereinabove), we are satisfied, that not only the

requisition but also the advertisement for direct recruitment was issued by

the SSC in the recruitment year in which direct recruit vacancies had

arisen. The said factual position, as confirmed by the rival parties, is

common in all matters being collectively disposed of. In all these cases

the advertised vacancies were filled up in the original/first

examination/selection conducted for the same. None of the direct recruit

Income Tax Inspectors herein can be stated to be occupying carried forward

vacancies, or vacancies which came to be filled up by a “later”

examination/selection process. The facts only reveal, that the examination

and the selection process of direct recruits could not be completed within

the recruitment year itself. For this, the modification/amendment in the

manner of determining the inter-se seniority between the direct recruits

and promotees, carried out through the OM dated 7.2.1986, and the

compilation of the instructions pertaining to seniority in the OM dated

3.7.1986, leave no room for any doubt, that the “rotation of quotas”

principle, would be fully applicable to the direct recruits in the present

controversy. The direct recruits herein will therefore have to be

interspaced with promotees of the same recruitment year.

34. In view of the above, the Civil Appeals, the Transferred Case, as

well as, the Transfer Case (filed by the direct recruits and the Union of

India) are hereby allowed. The claim of the promotees, that the direct

recruit Income Tax Inspectors, in the instant case should be assigned

seniority with reference to the date of their actual appointment in the

Income Tax Department is declined.

……………………………………J.

(D.K. Jain)

……………………………………J.

(Jagdish Singh Khehar)

NEW DELHI;

NOVEMBER 27, 2012

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