

CASE NO.:
Appeal (civil) 4907 of 1999

PETITIONER:
M. Subba Reddy & Another

RESPONDENT:
A.P. State Road Transport Corporation & Others

DATE OF JUDGMENT: 12/04/2004

BENCH:
CJI., V.N. KHARE & S.H. KAPADIA.

JUDGMENT:
J U D G M E N T

WITH

CIVIL APPEAL No.4908 OF 1999.

K. V. N. Acharyulu & Others
Versus
A.P. State Road Transport Corporation
KAPADIA, J.

The civil appeals herein raise a common point of law i.e. fitment of the promotees in the integrated seniority list. The posts of Assistant Traffic Manager (for short "ATM") and Assistant Mechanical Engineer (for short "AME") are Class-I Junior Scale Officers posts. It is the case of the appellants that for several years, due to ban on recruitment, promotions were made from lower feeder posts even in excess of the ratio of 1:1 under A.P. State Road Transport Corporation Employees (Recruitment) Regulations, 1966 (hereinafter referred to as "the recruitment regulations"). It is the case of the appellants that whenever direct recruitment was not possible within a short period and when administrative exigencies warranted the filling of posts, like the one in the instant case, promotions were made either on ad hoc or on temporary basis and in course of time they were regularized. M. Subba Reddy, appellant herein, was appointed as a Traffic Apprentice on 10.8.1971 in the Corporation. He was promoted temporarily on 31.1.1983 as ATM vide Office Order dated 10.1.1983 and regularized on 27.12.1986 vide order dated 9.9.1988. He was confirmed on 1.4.1987 as ATM. It is the case of the appellants that while they were senior to direct recruits, who entered the above posts in 1988, 1990 etc., in the impugned integrated seniority list dated 10.11.1994, they have been placed below the direct recruits. The appellants contend that when their promotions were regularized, the direct recruits were not even born on the cadre of ATMs/AMEs and, therefore, there was no reason for placing them below the direct recruits. Per contra, it is the case of direct recruits that the integrated seniority list is in consonance with the quota rule of 1:1 under the statutory rules mentioned supra.

Before coming to the arguments advanced on both sides, we notice the relevant provisions of recruitment regulations framed by the corporation under section 45 of the Road Transport Corporation Act, 1950. For the purposes of deciding

this matter, we quote herein below the relevant provisions of the recruitment regulations:\027

"3. Appointment and qualifications:

1) Appointment to the posts in the Corporation shall be made\027

a) by direct recruitment; or

b) by promotion; or

c) by transfer or deputation of an official already in the service of a Department of the Central or State Government or a State Transport Undertaking.

2) The method of recruitment to each post specified in column 2 of Annexure-A shall be as shown in the corresponding entry in column (3) thereof and the qualifications prescribed for each such post shall be as shown in the corresponding entry in column (4).

3) Notwithstanding anything in Clause (2) the Corporation may at any time, appoint suitable officers of the State or Central Government or any State Transport Undertaking to any of the posts specified in Annexure-A on 'Foreign Service' terms.

4) Where suitable departmental candidates are not available for promotion to any of the posts specified in Annexure-A where the posts are to be filled by promotion only, such posts may be filled by direct recruitment by selection provided that recruitment to all the higher posts from the lower posts shall be made by way of promotion and resort had to direct recruitment only when suitable and qualified persons are not available for promotions.

17). Temporary appointment:

(1) Where it is necessary in administrative interests owing to an emergency which has arisen, to fill immediately a vacancy in a post borne on the cadre of a service and if it is likely that there would be undue delay in making any appointment in accordance with these regulations, the appointing authority may appoint a person temporarily otherwise than in accordance with these regulations, until a person is appointed in accordance with these regulation, provided the post is not one which is reserved to be filled by promotion.

(2) No appointment under clause (1) shall ordinarily be made of a person who does not possess the qualifications, if any, prescribed for the said post. Every person who does not possess such qualifications and who has been or is appointed under this clause shall be replaced as soon as possible by an approved candidate.

(3) Where it is necessary to fill a short vacancy in a post borne on the cadre of a service and the appointment of the person entitled to such

appointment under the regulations or orders in force would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience, the appointing authority may appoint any other person who possesses the qualifications, if any, prescribed for the said post.

(4) A person appointed under clause (1) shall, whether or not he possess the qualification prescribed for appointment to the post to which he is appointed, be replaced as soon as possible by an employee or an approved candidate as the case may be, who is qualified to hold the post under the regulations or orders in force.

(5) A person appointed under clause (1) or clause (3) shall not be entitled by reason only of such appointment to any preferential claim to future appointment to such post or category of posts.

(6) Notwithstanding anything in these regulations, if and when a temporary post is created as an addition to the cadre of a service and the holder thereof is required by the corporation to possess any special qualifications, knowledge or experience, any person who possesses such qualifications, knowledge or experience, and is considered to be the best suited to discharge the duties of such post may, irrespective of other considerations, be appointed to that post by the appointing authority but the person so appointed shall not by reason only of such appointment be regarded as a probationer in such service, class, category nor shall be acquired thereby any preferential right to future appointment to such service, class, category or posts.

18). Date of Commencement of probation of persons appointed temporarily:

If a person, having been appointed temporarily under clauses (1), (3) or (6) of regulation 17 to a post borne on the cadre of any service, or having been appointed to any services otherwise than in accordance with the regulations governing appointment thereto is subsequently appointed to the service in accordance with these regulations, he shall commence his probation from the date of such subsequent appointment or from such earlier date (not being earlier than the date of his first appointment on a temporary basis) as the appointing authority may determine. He shall also be eligible to draw increments in the time scale of pay applicable to him from the date of commencement of his probation but shall not be entitled to arrears of pay unless otherwise ordered by the corporation.

30). Temporary Promotion :

(1)(i) Where it is necessary in the administrative interest to fill emergently a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from lower category and if the

filling of such vacancy in accordance with these regulations is likely to result in undue delay, the appointing authority may promote a person temporarily otherwise than in accordance with these regulations.

(ii) No person who does not possess the qualifications, if any, prescribed for the said service, class, or category shall ordinarily be promoted under sub-clause (i). Every person who has been or is promoted under sub-clause (i) shall be replaced as soon as possible by promoting a person possessing such qualifications.

(2) Where it is necessary to fill a short vacancy in a post borne on the cadre of a higher category in a service or a class, by promotion from lower category and the appointment of a person who is eligible for such promotion under these regulation, would involve excessive expenditure on traveling allowance of exceptional administrative inconvenience, the appointing authority may promote any other person possessing the qualifications, if any, prescribed for the post.

(3) A person promoted under sub-clause (i) of clause (1), whether or not he possesses the qualification prescribed for the service, class or category to which he is promoted shall as soon as possible be replaced by a member of the service who is eligible to hold the post under the regulations or orders in force.

(4) A person promoted under clauses (1) or (2) of regulation 30 shall not be regarded as a probationer in the higher category or be entitled by reason only of such promotion to any preferential claim to future promotion to such higher category.

(5) The appointing authority shall have the power to revert to a lower category or post any person promoted under clause (1) or (2) of regulation 30 at any time without assigning any reason and without notice.

(6) If any person referred to in clause (4) is subsequently promoted to the higher category in accordance with these regulations, he shall commence his probation in such category from the date of such subsequent promotion or from such earlier date as the appointing authority may in its discretion determine. He shall also be eligible to draw increments in the time scale of pay applicable to him from the date of commencement of his probation but shall not be entitled to arrears of pay unless otherwise ordered.

34. If in any of the following categories a sufficient number of approved candidates who have successfully completed their training is not available for filling posts reserved to be filled by

direct recruitment such posts may be filled temporarily by departmental promotion until approved candidates who have successfully completed their training become available to replace the promotees and the reverted person shall subsequently be considered for repromotion against the quota of vacancies reserved for being filled by promotion.

(a) Asstt. Mechanical Engineer and Asstt. Works Manager.

(b) Asst. Traffic Manager

(c) Chargeman

(d) Traffic Inspector Grade II and Head Depot Clerk.

(e) Artisans.

Item-3 of Annexure 'A' (Section-B) Class-I Jr. Scale Service :

"3. Assistant Traffic Manager. \027 In a unit of four:\027

1) The first and third vacancy shall be filled in by appointing of an officer under training, who has successfully completed his training and the second and fourth by promotion of a Chief Inspector.

2) If a suitable candidate is not available in a particular category for filling up a vacancy reserved for that category, the vacancy may be filled in by a suitable candidate from the other categories.

3) If no suitable candidate is available in any of the categories mentioned above, the post may be filled in by direct recruitment by selection.

Qualifications:

1) For Promotion:

The Chief Inspector must have put in not less than 5 years of service as such.

For Direct Recruitment: The Candidate\027

a) must hold a degree in Mechanical Engineering from a recognised University or have passed sections 'A' & 'B' of the Associate Membership Examination of the Institution of Engineers (India) or hold a diploma or a certificate recognized by the Institution of Engineers (India) as exempting him from Section 'A' & 'B' of their Associate Membership Examination.

b) must have had experience for not less

then four years as Traffic Executive in large size passenger road transport organization exclusive of the period of training, if any, preference will be given to a candidate who is a graduate member of the Indian Institution of Road Transport or any other recognised Institution of Transport; and

c) must not be above 30 years of age as on 1st July of the year in which the recruitment is made."

We also quote herein below regulation 3 of Employees Service Regulations, 1964 (hereinafter referred to as "the service regulations"):\027

"3. Seniority:

(a) The "Seniority" of a person in service, class, category or grade shall unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade. If any portion of the service of such person does not count towards probation his seniority shall be determined by the date of commencement of his service which counts towards probation.

(b) The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service fix the order of preference among them; and where such order has been fixed seniority shall be determined in accordance with it.

(c) The transfer of a person from one category or grade of a service to another category or grade carrying the same pay or scale of pay shall not be treated as a first appointment to the latter for purposes of seniority and the seniority of a person so transferred shall be determined with reference to the date of his first appointment to the category or grade from which he was transferred. Where any difficulty or doubt arises in applying this regulation, seniority shall be determined by the appointing authority.

(d) Where a member of any service, class, category or grade, is reduced to a lower service class, category or grade, he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall take rank in such lower service, class, category or grade next below any specified member thereof."

A bare reading of the above regulations indicate that under service regulation 3, the seniority is reckonable from the date of appointment to a service or a grade. On the other hand, regulation 3 of the recruitment regulations deals with the method and manner in which the appointments shall be made to various posts. It states that appointments can be made by direct recruitment, promotions and transfer. The method of recruitment to each post is specified in column 2 of Appendix-

A to the recruitment regulations as shown in the corresponding column 3. Therefore, one has to read regulation 3 of the recruitment regulations with Appendix-A in order to ascertain the method of recruitment to each post. Item 3 quoted above relates to method of recruitment to the post of Assistant Traffic Manager (ATM). Under item-3 (1), it is stipulated that in a unit of four vacancies, the first and third vacancies shall be filled by direct recruits whereas the second and fourth vacancies shall be filled by promotees. It further provides that if a suitable candidate is not available in a particular category for filling up a vacancy reserved for that category, the vacancy may be filled in by a suitable candidate from the other category. Regulation 17 of the recruitment regulations deal with temporary appointments, the sole criteria being undue delay in making of regular appointments. Regulation 18 specifies that if a person appointed to a temporary post under regulation 17 is subsequently appointed to the service in accordance with the regulations, his probation shall commence only from the date of such subsequent appointment in accordance with the regulations. Regulation 17 deals with power to make temporary appointments whereas regulation 30 deals with the power to make temporary promotions. Regulation 30(1) stipulates that the appointing authority may promote a person temporarily, otherwise than in accordance with the regulations, in cases where administrative exigency requires the appointing authority to immediately fill in a vacancy in the cadre of a higher category. Regulation 30(3) specifies further that the temporary promotee covered by regulation 30(1) shall as soon as possible be replaced by a member of the service eligible to hold the post under the regulations. Regulation 30(4) stipulates that the temporary promotee shall not be regarded as the probationer in the higher category, neither shall he have any preferential claim to future promotion in the higher category. Regulation 30(6) states that if a temporary promotee is subsequently promoted to the higher category in accordance with the regulations, his probation shall commence in the higher category only from the date of subsequent promotion in the higher category and he shall not be entitled to any benefits for the period when he was a temporary promotee. Regulation 34 applies to posts reserved only to be filled by direct recruits. Reading item 3 of Appendix-A (Section-B) with regulation 34, it is clear that filling up of the posts reserved for direct recruits by departmental promotees has to be on temporary basis under regulation 30 and as soon as eligible candidates from direct recruits quota become available, they are to replace the temporarily promotees.

Regulation 3 of the Service Regulations inter alia states that seniority shall be determined by the date of first appointment to such service, class, category or grade. In the present case, regulation 3 of the service regulations has been pressed into service by the appellants, who have urged that their seniority shall be determined on the basis of the date of appointment. However, one has to read regulation 3 of the service regulations with regulations 30 and 34 of the recruitment regulations. In the present case, the appellants' promotees were promoted to the posts of ATMs/AMEs temporarily under regulation 30 as there were no direct recruits available. They were promoted subject to being reverted to substantive posts on approved candidates becoming available. Regulation 34(6) states that the revertees shall subsequently be considered for repromotion against the quota of vacancies reserved for promotees. Therefore, in the present case, one has to read regulation 3 of the service regulations with regulations 30 and 34 of the recruitment regulations. It is only when such

reverttees are repromoted as per regulation 34, they can be deemed to have been appointed to the post of ATM or AME. Therefore, when the appellants were tentatively appointed to the post of ATMs/AMES originally for want of direct recruits and to the posts reserved for direct recruits, it cannot be said that they were first appointed to that category within the meaning of regulation 3 of the service regulations. Therefore, in so far as posts reserved for direct recruits are concerned, the temporary promotions cannot be said to be first appointments to that category. It follows that seniority had to be fixed between the direct recruits and the promotees strictly in accordance with the quota provided for in Item\0263 of Appendix-A (Section-B).

Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the appellants submitted that the appellants had a right to be promoted within their quota during the years 1981 to 1987, when vacancies for promotees quota became available. During this period, no direct recruits were available. Direct recruits became available in July 1988, November, 1990 and June, 1992. Appellant M. Subba Reddy was regularized from 27.12.1986 vide order dated 9.9.1998, when no direct recruits were available and, therefore, it was improper for corporation to place direct recruits above the promotees. It is the case of the appellants that the direct recruits cannot claim appointments from the date of the vacancy in their quota before their selection. It has been contended that Item-3 of Appendix-A (Section-B) prescribes the method of recruitment in the manner in which vacancy is allocated. According to the learned counsel it does not involve rota for the purposes of seniority. It prescribes only quota, therefore, rota cannot be implied. It was urged that seniority is dealt with only by regulation 3 of the service regulations, 1964 and not by regulation 34 of the recruitment regulations, 1966. Reliance was placed in this connection on regulation 34 as amended on 15.9.1995. It was submitted that in view of the said amendments, Appendix-A refers to only allocation of vacancy and not for determination of seniority. It was to be determined only by regulation 3 of the service regulations. The non-availability of candidates in a particular category, it was urged, may be on account of ban on recruitment or on any other ground. Therefore, in the present case, where promotees were regularized in the promotion quota when direct recruits were not available, the quota in item-3(1) of Appendix-A will not apply. It was submitted that in any event, allocation of vacancy under the said clause was not rigid and it cannot be a basis for denying seniority to the promotees from the date of regularization. Reliance was place on the judgment of this Court in the case of The Direct Recruit Class-II Engineering Officers' Association & Ors. v. State of Maharashtra & Ors. reported in [AIR 1990 SC 1607].

We do not find any merit in the above arguments. Appellants have not challenged the validity of the above regulations. As stated above, it has been contended before us on behalf of the appellants that item-3(1) of Appendix-A (Section-B) prescribes method of recruitment and the manner in which vacancy is to be allocated, which does not involve rotation for the purposes of seniority; that item-3(1) of Appendix-A (Section-B) prescribes only quota and rota cannot be implied. However, the appellants before the High Court unequivocally submitted that under the above regulations, promotions and direct recruitments were required to be made in the ratio of 1:1 and that the said regulations provided for a cycle in which vacancies were to be rotated. [See: Affidavit of M.

Subba Reddy dated 28.12.1994]. In the said affidavit, it is further submitted that in the absence of direct recruits, the slots reserved for direct recruits were liable to be adjusted with the promotees immediately and subsequently arrived direct recruits should be given their positions in the seniority list subsequently in a bunch. In our view, the averments of the appellants before the High Court, if accepted, would result in complete violation of the quota and rota rule embodied in the above regulations, which cannot be permitted. As stated above, appellants were promoted originally subject to the conditions envisaged in regulation 34 and, therefore, they cannot claim seniority by ignoring the said regulations and on the basis of their officiating services. They were promoted temporarily under regulation 30 which provides for ad hoc promotions. Regulation 34 ensures induction of qualified direct recruits. But for regulation 34, candidates from feeder posts would be temporarily promoted to the slots reserved for direct recruits and on their regularization, the quota prescribed for direct recruits will be defeated. Regulation 34 has been enacted to protect quota prescribed for direct recruits. As stated above, regulation 3 of the service regulations has to be read with regulations 30 and 34 of the said recruitment regulations. The appellants were promoted on temporary basis under regulation 30 with the clear understanding that the period of officiation will not give them any right over direct recruits in future. It is for this reason that regulation 30 (6) states that if a temporarily promotee is subsequently promoted in accordance with the regulations, his probation will commence in the higher category only from the date of subsequent promotions. For the same reason, regulation 34 states that reverts shall be subsequently considered for repromotion against the quota of vacancies reserved for being filled by promotion. Therefore, regulation 34 protects the quota prescribed for direct recruits. On reading regulation 3 of the service regulations with regulations 30 and 34 of the recruitment regulations, it becomes clear that neither the date of promotion nor the date of selection is the criteria for fixation of seniority. The fixation of seniority under the above regulations depends upon the number of vacancies falling in a particular category. Therefore, the rule of rota is inbuilt in the quota prescribed for direct recruits and for promotees in terms of item-3 of Appendix-A (Section-B) to the recruitment regulations. In the present case, the above regulations prescribe a quota of 1:1, which leads to rota for confirmation. The fixation of seniority under the above regulations depends upon the number of vacancies against which promotees became due for promotion. In the case of Devendra Prasad Sharma v. State of Mizoram & Ors. reported in [(1997) 4 SCC 422], rule 25(iii) stated that the relative seniority of direct recruits and of promotees shall be determined according to rotation of vacancies between direct recruits and promotees based on the quotas of vacancies reserved for direct recruitment and promotion. Rule 25(iii) is similar to Item-3 (1) of Appendix-A (Section-B). It was held by this Court that in cases where there is rotation of vacancies between direct recruits and promotees based on quota of vacancies, the rotation has to be considered in accordance with the vacancies as and when they accrue under the rules. Therefore, the quota rule needs to be strictly adhered to, if not, it would lead to absurdity. If the contention of the appellants is accepted, it would mean that the entire group of direct recruits will have to be placed below the entire group of promotees. We are of the opinion that having fixed the quota between the two sources of recruitment, there is no discretion with the corporation to alter the quota or to deviate from the quota. In the circumstances, there is no merit in the argument of the appellants that item-3(1) of Appendix-A (Section-B)

prescribes only quota and not rota and that the said item was not for determination of seniority. In the case of S.G. Jaisinghani v. Union of India & Ors. reported in [AIR 1967 SC 1427], this Court held that having fixed the quota between two sources of recruitment, it is not open to the government to alter the quota or to deviate from the quota. In the case of Union of India & Ors. v. S.D. Gupta & Ors. reported in [AIR 1996 SC 3325], the respondents were promotees \026 Extra Assistant Directors (Class-III) in Central Water Commission Engineering Class-I Service. The recruitment rules were made w.e.f. 15.10.1965. In the earlier litigation, the tribunal found that one Shri V.P. Misra, Extra Assistant Director was promoted on ad hoc basis on 31.3.1978 and he was required to be confirmed with effect from the date on which vacancy was available to him in the quota of promotees. The vacancy had admittedly arisen in the quota of promotees on 3.5.1979. Shri V.P. Misra was fitted in that vacancy. While doing so, the department applied principle of rota and quota and determined the inter-se seniority of promotees and direct recruits. Consequently, the promotees were pushed down in the order of seniority which led to second round of litigation. The question which arose for determination before this Court was whether fitment of seniority determined by the department was in accordance with the rules. The Court found that 60% of the vacancies were to be filled by direct recruits and 40% by promotees. Among the 40% quota, there was a further demarcation in the ratio of 25% and 15% between promotees and transferees. Admittedly, the promotees were entitled to their fitment within 25% quota. Vacancies for the promotees had arisen on 3.5.1979 and, therefore, V.P. Misra was entitled to that vacancy which arose on that date. However, as stated above, in the integrated list, the promotees were pushed down. It was contended on behalf of the promotees that the direct recruits were not born in the service when the promotees were promoted and equity requires that the promotees cannot be pushed down. This Court rejected the said argument by observing that the object of direct recruitment is to blend talent and experience. So long as the system continues, consequences were inevitable. Although, the direct recruits were recruited later, their fitment in the order of seniority had to be determined with reference to rota and quota prescribed under the rules. In such a case, there was no illegality even when promotees were pushed downwards in the order of seniority. In our view, the judgment of this Court in the case of S.D. Gupta's case (supra) squarely applies to the facts of the present case.

Appellants have relied upon the judgment of this Court in the case of The Direct Recruit Class-II Engineering Officers' Association's case (supra). In that matter, an unusual situation had developed under which the rota and quota system had broken down. The promotees had worked for twenty years without being reverted and in view of that fact, the Constitution Bench of this Court confirmed the principles of counting towards seniority, the period of continuous officiation. The said judgment has no application to the facts of this case. In the present case, the argument of the appellants is that on the date when the appellants were regularized, there were no direct recruits available and consequently they cannot be pushed down in the integrated seniority list. Hence, the judgment of this Court in the case of The Direct Recruit Class-II Engineering Officers' Association (supra) has no application to the present case. In fact, in the later judgment of this Court in the case of State of West Bengal & Ors. v. Aghore Nath Dey & Ors. reported in [(1993) 3 SCC 371], it has been held, relying on the judgment in the case of The Direct Recruit Class-II

Engineering Officers' Association (supra), that seniority has to be counted from the date of initial appointment and not from the date of confirmation provided the initial appointment is according to the rules. But the corollary to the above proposition is that where initial appointment is only ad hoc and not according to rules, the officiation cannot be taken into account for considering the seniority. The ratio of the judgment of this Court in the case of Aghore Nath Dey (supra) is that the benefit of ad hoc or temporary service is not admissible, if appointment was outside the rules. Applying the ratio of the said judgment to the facts of this case, the benefit of temporary promotion to the appellants under regulation 30 was not admissible to them for computation of seniority.

It was, however, urged on behalf of the appellants that the position changed when vacancies became available in the promotion quota and the appellants came to be regularized vide order dated 9.9.1988. By the said order, according to the appellants, regularization took place with retrospective effect from the dates indicated against their names and against the post earmarked for promotion and consequently in the integrated seniority list, they were not liable to be pushed down below direct recruits. We do not find any merit in this argument. Under regulation 30 read with regulation 34, temporary promotees were liable to be reverted as and when approved direct recruits became available. The promotees were liable to be replaced by direct recruits. Under regulation 34, the said reverts were to be considered for repromotion only against the quota of vacancies reserved for promotees. This is clear from the terms of the order dated 9.9.1988. In the case of U.P. Secretariat U.D.A. Association & Ors. v. State of U.P. & Ors. reported in [(1999) 1 SCC 278], it has been held that a direct recruit is to be treated as in service from the date he joins it, whereas the promotee has to be fitted into service from the date when he becomes entitled to fitment in accordance with the quota and rota rule prescribed under the rules. In the case of A. N. Sehgal & Ors. v. Raje Ram Sheoram & Ors. reported in [AIR 1991 SC 1406], one of the arguments advanced on behalf of the promotees was that they were promoted as Executive Engineers against regular vacancies and they continued in service without break from the respective dates of their promotion, therefore, they were members of the service in substantive capacity from respective dates of promotion. It was argued that the direct recruit Shri Raje Ram was recruited long after the promotion of the appellants (promotees) and, therefore, the promotees cannot be pushed down and placed below the direct recruit. On examination of the rules, this Court found that recruitment to the service was from three sources, namely, direct recruitment, promotion and by transfer. A ratio was prescribed under rule 5(2) between the promotees and direct recruits. The ratio was 1:1. It was held that rule 5(2) had restricted the number of posts to promotees at 50%. Under the proviso to rule 5(2), it was laid down that the rigour of 50% quota may be relaxed in cases where direct recruits were not available. On reading rule 5, it was held by this Court that a promotee within his quota under rule 5 got his seniority from the date when the vacancy arose in his quota. It was held that the promotee occupying the post within 50% quota of the direct recruit acquired no right to the post and should yield to direct recruit though promoted later to him. It was held that the seniority of the promotee has to be reckoned only from the date of availability of the post and, therefore, he has to be placed below his immediate senior promotee within the said quota. The officiating period of the promotee between the date of initial promotion and the date of availability of vacancy would

stand excluded. A direct recruit on promotion within his quota, though later to the promotee is interposed in between the periods and interjects the promotee's seniority; he snaps the links in the chain of continuity and steals a march over the promotee. It has been further held that the rule of quota is a statutory rule and must be strictly implemented. The result of pushing down the promotees may work hardship but it is unavoidable as it would nullify otherwise the statutory rules. In the case of U.P. Secretariat U.D.A. Association (supra), it has been held by this Court that mere inaction on the part of the government cannot be made ground to contend that the quota rule has broken down. In the present case, in the absence of direct recruitment, the appellants could not have got seniority over direct recruits. Where there is inaction on the part of the Government or employer or imposed ban on direct recruitment in filling up the posts meant for direct recruits, it cannot be held that the quota has broken down.

Before concluding, it may be pointed out that in the present case, the impugned seniority list is dated 10.11.1994 whereas regulation 34 has been amended w.e.f. 15.9.1995. Therefore, reliance placed on the amended regulation 34 by the appellants is incorrect.

For the aforesaid reasons, we do not find any merit in the above civil appeals and the same are dismissed accordingly, with no order as to costs.