



(DELIVERED BY HON'BLE SHRI JP SHARMA, MEMBER (J))

Civil writ of 1978 was filed by MC Bansal and two others in Delhi High Court. These petitioners are promoted as Assistant Civilian Staff Officers(hereinafter referred to as ACSO). The petitioners in the Writ Petition were aggrieved by the seniority list of 1977(Annexure P-2) issued by the respondents vis-à-vis ACSO recruited directly by UPSC through Civil Service Examination since 1969 against the 25% quota of direct recruits vacancies as provided in the Armed Forces Headquarters Civil Services Rules, 1968(hereinafter referred to as Rules). The grievance of these petitioners is that when direct recruits are inducted in the service, they are placed above departmental promotees who have been promoted much earlier, without paying regard to the continuous service rendered by them on the post.

2. In the Writ Petition, the petitioners have prayed for quashing of the seniority list of 1977 with the mandamus to respondent No. 1 to prepare fresh seniority list of the officers in the grade of ACSO in accordance with law and a declaration to the effect that the petitioners for all purposes should rank senior to all persons who joined in the grade of ACSO later to the applicants. It is also prayed, in the alternative, that Rule 16(7) read with 3<sup>rd</sup> Schedule of the Rules be declared ultra vires infringing Articles 14 and 16 of the Constitution.

3. The Writ Petition stood transferred to the Principal Bench of Central Administrative Tribunal and registered as T.A. 356 of 1985. The respondents contested the Writ Petition in the High Court and filed their counter affidavit which is on the record. This Transferred Application was decided by this Tribunal on 22-1-1989 and the impugned seniority list was quashed with the direction to respondent No. 1 to prepare a fresh seniority list on the lines indicated in the judgement. This judgement was assailed before the Hon'ble Supreme Court by Union of India & Others as well as by another set of interveners, Jai Prakash and Another. The Hon'ble Supreme Court disposed of the Appeal by the judgement dated 20-7-1990 setting aside the judgement of the Tribunal and remitting the matter again to the Tribunal for fresh decision with the following decision :-

*"The grievance made against the Tribunal's order is that the Tribunal overlooked the provisions for fixation of seniority in the AFHQ Civil Services Rules, 1968 ... and more particularly Note II in the Third Schedule of the Rules which is as under :*

Note II

*"Substantive vacancies at (b) may be filled temporarily by promotion from amongst Assistants on the basis of selection. Such promotion shall be terminated when the nominees of the Commission become available to fill the substantive vacancies."*

*"It is also urged that the distinction made by the Tribunal of Gonal Bhimappa Vs State of Karnataka(1987)(4) (SLR p. 526) is based on an erroneous view taken of the above Rules. It does appear that the Tribunal has decided the controversy without fully advertng to the Rules applicable to the service in the situation on the assumption for the same. The matter therefore be decided afresh.*

4. After remand of the case to the Tribunal, MP 2329/90 was filed by some interveners for impleading them as respondents as also MP 2716/90 was filed by Shri Jai Prakash and Brij Bhushan and MP 172/92 was moved by directly recruited reserved category officers to ACSO post and these MPs are allowed and they were allowed to be impleaded as respondent. Thus the petitioners are promoted from the grade of Assistants so also the 15 interveners of MP 2329/90, but the respondents already impleaded in the Writ Petition No. 2328 as well as Jai Prakash and Brij Bhushan and 12 interveners directly recruited reserved category ACSO are direct recruits. The impleaded interveners have also filed their submissions in writing to which the reply has also been filed by the petitioners as well as the other contesting parties.

5. It is necessary to refer to relevant rules in this regard before coming to the main issue in controversy. Sub rule 4(A) of Rule 9 of the Rules provides that temporary posts in the grade of Senior Civilian Staff Officers, Civilian Staff Officers and Superintendents to the Service shall be filled by appointment by departmental candidates holding appointment in existing grades who may be screened for such appointments by the appropriate selection board or, as the case may be, by D.P.C. on the basis of merit with due regard to seniority. Sub Rule 5(A) further provides that the departmental candidates who are declared as suitable for appointment to the grade by the appropriate selection board or, as the case may be, by D.P.C. but are not appointed there on account of sufficient number of vacancies not being available in the grade, shall be absorbed in the lower grade. Rule 2(P) lays down definition of temporary officers ---- temporary officers in relation to any grade means a person holding a temporary or officiating appointment in that grade on the basis of his being regularly approved for such appointment. Rule 2(L) defines permanent officers in relation to any grade means the person who has been substantively appointed to the substantive

