CASE NO.:
Appeal (civil) 1384 of 2008

PETITIONER:
AFHQ/ISOs SOs (DP) Association & Ors

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 19/02/2008

BENCH:
H. K. Sema & Altamas Kabir & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 1384 OF 2008
[Arising out of S. L. P. (C) No.4545 of 2007]
WITH
CIVIL APPEAL NO. 1385 OF 2008
[Arising out of S. L. P. (C) No.5853 of 2007]
AFHQ Officers' Association & Ors. .... Appellants
Versus
Union of India & Ors. ..... Respondents

Lokeshwar Singh Panta, J.

1. Leave granted.
2. The usual question as regards determination of inter se seniority between Direct Recruits (DRs) and Departmental Promotees (DPs) once again falls for consideration in these two appeals by special leave, therefore, for the sake of convenience, they are being heard and decided by this common judgment.
3. These appeals are directed against the judgment and order of the High Court of Delhi dated 14th November, 2006 in C.W.P. No. 4058/2002; C.W.P. No. 4458/2002; C.W.P. No. 5396/2002 and C.W.P. No. 62/2003 and order dated 15th January, 2007 in C.W.P. No. 18073/2005, whereby and whereunder the order dated 1st April, 2002 in O.A. No. 1356/1997 (Smt.Ammini Rajan & Ors. v. Union of India & Ors.) of the Central Administrative Tribunal, Principal Bench, New Delhi, is set aside.
4. The Central Administrative Tribunal (hereinafter referred to as "the Tribunal") allowed the said O.A. filed by Smt. Ammini Rajan & Ors. challenging the Select List of Assistants for promotion to the grade of Assistant Civilian Staff Officers (hereinafter referred to as "ACSOs") and Armed Forces Headquarters(AFHQ) Civil Services for the years 1977, 1978 and 1979 which was circulated vide letter dated 2nd July, 1996; the Select List for the year 1980 which was circulated vide another letter dated 20.09.1996; the Select List for the year 1981 circulated vide letter dated 20.11.1996 and also the Select List of 1982 circulated vide letter dated 14.03.1997. The applicants were also aggrieved by the consequential Seniority List of ACSOs of AFHQ Civil Services prepared by the Departmental Promotion Committee (for short "the DPC") for the years 1988-89 and 1989-90 respectively for promotion to further grade of Civilian Staff Officers (CSOs). Based on the revised Select List in the grade of ACSOs, the claim of the applicants was that the Select List and the Seniority List for promotion to the grade of CSOs were drawn in contravention

of the directions given by the Tribunal in TA No.356/1985 (CW 3/78) rendered in Shri M.G. Bansal & Ors. v. Union of India & Ors. on 20th November, 1992 and also in violation of AFHQ Civil Services Rules, 1968.

5. The Tribunal, on consideration of the entire material on record, disposed of O.A. No. 1356 of 1997 (Smt. Ammini Rajan's case) with the following directions:-

(i) Impugned orders Annexure-A-1 and A-2 are quashed. The respondents are directed to determine the seniority between the direct recruits and promotees regularly appointed/promoted within their respective quota by counting the length of continuous officiation in the grade of ACSO from their respective appointment to the substantive vacancies within their quota in accordance with the Rule 16(7) of the AFHQ Rules and Schedule III of the Rules. In the case of promotees ACSO, the length of continuous officiation in the grade will be determined from the date when they are promoted in substantive vacancies in their lawful quota. In case of direct recruits ACSO, their seniority shall be determined from the year in which they joined the service. While determining seniority, respondents are directed to adhere to the DPC year in case of promotee officer and to retain as 1st October to 30th of September of the following year as provided in the rules/regulations.

(ii) Respondents are further directed to prepare single Select List in a year for the ACSO grade and they cannot report to two separate lists for the purpose of merely identifying the Note (2) Schedule III vacancies as the rules do not envisage the same.

(iii) Respondents are further directed that the vacancies of DR quota may be carried forward but while determining the seniority the slots of the vacancies left unfilled by the DR quota shall not be carried forward for the purpose of determining seniority.

(iv) It is further directed that after finalizing the seniority list, the department shall prepare eligibility lists for the purpose of promotion to the next higher grade.

(v) These directions may be implemented within a period of 6 months from the date of receipt of a copy of this order. No costs.

6. Aggrieved by the order of the Tribunal, the AFHQ (DRs) Civil Service Officers' Association filed Writ Petition No. 4058 of 2002, the Union of India filed separate Writ Petition No. 5396/2002 and some of the Departmental Promotees ACSOs, namely, Shri K.S. Dhingra and Smt. Ammini Rajan, filed W.P. Nos. 4458/2002 and 62/2003 respectively, whereas AFHQ Civil Services Officers filed C.W.P. No. 18073/2005 in the High Court of Delhi. The Division Bench of the High Court allowed the Writ Petition Nos. 4058/2002 and 5396/2002 by an order dated 14.11.2006 and set aside the order dated 01.04.2002 recorded by the Tribunal in OA No. 1356/1997 with further direction to the respondent\026Union of India to determine the

issue of seniority in accordance with the judgment of the Tribunal in TA No. 356/1985 dated 20th November, 1992. C.W.P. No. 62/2003 and C.W.P. No. 4458/2002 filed by the DPs were dismissed and CWP No.18073/2005 was disposed of on 15.01.2007 on the basis of direction in the above-said writ petitions. These appeals, therefore, arise from the said judgments and orders of the High Court.

7. The case of the parties is that prior to the year 1968, the AFHQ Civil Services were governed by the executive instructions as there were no statutory rules governing the service. On 1st March 1968, the Armed Forces Headquarters Civil Service Rules, 1968 (hereinafter referred to as "the Rules") were framed, wherein the services are classified in the following Grades:-

(a) Senior Administrative Grade
(b) Director
(c) Selection Grade (Senior Civil Staff Officer/Joint Director)
(d) Civil Staff Officer/Deputy Director
(e) Assistant Civilian Staff Officer/Section Officer (initially designated as Superintendent)
(f) Assistant

Rule 16 of the said Rules deals with the seniority, which provides that the relative seniority of the direct recruit and promotees shall be regulated in accordance with the provisions made in this behalf in the Third Schedule. As per the Third Schedule of the Rules, all temporary vacancies in the grade of ACSO shall be filled by temporary promotion from amongst the Assistants by the method of selection. The Third Schedule further provides that substantive appointment to 75% of the substantive vacancies shall be made in order of seniority of the temporary officers of the grade, who have completed the period of probation subject to the rejection of unfit. 25% of the substantive vacancies shall be filled up by the direct recruit through Civil Service Examination conducted by UPSC. As per Note (2) of Third Schedule, unfilled vacancies of DR quota may be filled temporarily by promotion from amongst Assistants by selection method.

8. Aggrieved by the Seniority List of 1977 published by the Department, which was based on the principle of ante-dated seniority in respect of ACSOs (DR), some of the ACSOs (DP) filed Writ Petition No. 3/1978 titled as M.G. Bansal & Ors. v. Union of India & Ors. in the High Court of Delhi inter alia praying for the following reliefs:-

(a) Respondents have misapplied, misconstrued and misinterpreted Rule 16(7) as well as Third Schedule particularly Note (2), which violates Articles 14 and 16 of the Constitution of India.
(b) The Quota Rule has been applied discriminately without having regard to the approved service.
(c) When the direct recruits were inducted in the service, they were placed above departmental promotees who had been promoted much earlier. The said placing in the seniority list was done irrespective of the date of appointment of the direct recruits and they could not be positioned higher than the Departmental Promotees.

9. After the constitution of the Central Administrative Tribunal in the year 1985, the writ petition was transferred to the Tribunal and was numbered as T.A. No. 356/1985. The

Tribunal by its order dated 2nd June, 1989 disposed of the said petition holding that the quota prescribed in the Rules has not broken down and the seniority between the direct recruits and promotees regularly appointed/promoted within their respective quota should be determined by the length of the continuous officiation in the grade of ACSOs from their respective appointment to the substantive vacancies under Third Schedule.

10. It appears from the record that on 8th November 1989, the Union of India and some DR Officers filed two Special Leave Petitions before this Court against the order of the Tribunal dated 2nd June 1989. This Court by its order dated 20th July 1991 held that the CAT had decided the controversy without adverting to the Rules applicable to the service, particularly Note (2) in the Third Schedule and the matter must, therefore, be decided afresh. Pursuant to the order of this Court, the CAT again decided M.G. Bansal's case (supra) by an order dated 20th November 1992 in the following manner:-

"(a) It is held that Rule 16(7) and Schedule Third so far as it relates to appointment of the promotees and Direct Recruits in their respective quota and determination of seniority on the basis of quota and rota is held valid and these are not ultra vires of Articles 14 and 16 of the Constitution of India.

(b) Seniority between Direct Recruits and Promotees regularly appointed/promoted within their respective quota should be determined by the length of the continuous officiation in the grade of ACSO from their respective appointment to the substantive vacancies under Schedule II within their quota, i.e., in the case of promotee ACSOs the length of continuous officiation in the grade will be reckoned from the date when they are promoted in substantive vacancies.

(c) To elucidate further, in the case of temporarily appointed promotee ACSOs under Note (2) of Schedule III of the rules in the direct recruit quota w.e.f. 1969 onwards till 1977 and also thereafter their seniority will be reckoned from the date when they get a berth in the substantive vacancies of their 75% quota as envisaged under Schedule III of the Rules.

(d) The incumbents belonging to one source in excess of their own quota and utilizing the quota of the incumbents belonging to another source will only officiate in the promoted post. It is made clear that the direct recruits when inducted as nominees of the UPSC, the promotees in the quota of the direct recruits on the basis of Note (2) of the Rules of Schedule III will either be reverted or will be absorbed in the vacancies within their quota of subsequent year. The period of officiation outside their quota of either of their incumbents from other source will not count for their seniority. If an officer has been promoted within his quota, then it would be date of confirmation which would be relevant for

the officer's seniority.

(e) When the promotions are made from either of the sources, by direct recruitment or by departmental promotion there shall be due compliance of the various instructions and office memorandum issued by the Department of Personnel and Training on the reservation of vacancies for SC/ST and categories in the proportion directed in the said instruction. The reservation, however, shall remain only at the time of appointment and not in the seniority inter se of the Direct Recruits and promotees which shall be fixed as laid down in Rule 16(7) read with Schedule III and as directed in the preceding sub-paras above.

(f) It is further directed that each quota, as referred to in Schedule 3 of the Rules as to be worked out independently on its own force. Direct recruit quota of ACSO which is confined to substantive vacancies in the grade can be filled by temporarily appointed Assistants by promotion in the grade of ACSO, but without giving them any right of seniority on the basis of continuous officiation on the vacancies earmarked for Direct Recruits and indent for which has been sent to the UPSC for nomination from the civil services examination of a particular year. The hopes and aspirations of the promotees aforesaid cannot be related to availability of Direct Recruits filling their quota in that particular year and only it can be when there is total collapse and break down of the quota for a number of years.

(g) None of the parties including the official respondents have given relevant data as to when the actual promotion of Assistants were made to the temporary cadre of ACSO in the direct recruit quota under Note (2) of Schedule 3 the official respondents on the other hand have taken the stand in the chart quote in the body of the judgment that of such vacancies in the direct recruit quota were left unfilled and have been filled temporarily by the Assistant by making departmental promotions and since the exact number is not coming for the and also the position whether such departmental promotees were absorbed in the subsequent vacancies within their quota of 75% direct is issued to revise the impugned seniority list in the light of the observations made in the above sub-paras which shall be made final after hearing the objections on the same and the petitioners, who have since retired, shall be entitled to any consequential benefits occasioned on account of the revision of the seniority list. The impugned seniority list of 1977 shall stand quashed to that extent. In the circumstances, the parties shall bear their own costs."

11. The Union of India, in the garb of implementing the above-said order of the Tribunal in the case of M.G. Bansal, started splitting up vacancies from the year 1992 and prepared two separate Select Lists for each year retrospectively for the grade of ACSOs. One list was prepared in respect of ACSO(DPs) who allegedly were temporarily appointed against the unfilled vacancies meant for ACSO(DRs) as per Note (2) in the Third Schedule on the basis of calendar year as against originally drawn period from 1st October to 30th September each year as provided in the Rules. It appears that prior to the implementation of the order in M.G. Bansal's case, draft Seniority List issued in 1995 was based on the principle of carrying forward of slots and ACSO(DRs) were being given about 10 to 15 years ante-dated seniority even when they have not been holding any office in the service. Some of the ACSO (DPs), namely, Smt. Ammini Rajan and others filed O.A. No. 1356/1997 before the Central Administrative Tribunal challenging the redrawn Select List for the years 1988-89 and 1989-90 in purported compliance with the directions of M.G. Bansal's case. The Tribunal by its order dated 1st April, 2002, as noticed above, disposed of the said O.A. with the above-said directions.

12. The AFHQ Civil Services (DR Gazetted) Officers' Association and others filed O.A. No. 2484/2004 before the Tribunal. The Tribunal by its order dated 1st September, 2005 dismissed the said application holding that there is no illegality in the preparation of Seniority List. Some of the ACSOs(DRs) filed C.W.P. No. 18073/2005 before the High Court of Delhi challenging the order of the Tribunal dated 1st September, 2005 which was also allowed by the High Court along with the above-mentioned writ petitions.

13. We have heard the learned counsel for the parties, Shri R. Tanwar, President, AFHQ Civilian Officers' Association and other parties in-person.

14. Mr. Paramjit Singh Patwalia, learned senior Advocate appearing on behalf of the appellant- AFHQ/ISOs SOs (DP) Association contended that the Division Bench of the High Court has lost sight of the fact that Rules 16(6) and 16(7) do not provide carrying forward of slots, which were examined in detail by the Central Administrative Tribunal in M.G. Bansal's case. On the basis of the interpretation of the said Rules, the CAT had fixed the seniority of DR and DP ACSOs based on the length of continuous officiation and the High Court could not have reversed the judgment of M.G. Bansal's case which had attained finality after the dismissal of the SLP by the Hon'ble Supreme Court. He next contended that in the Smt. Ammini Rajan's case, the main claim was only for the implementation of the order recorded by the CAT in M.G. Bansal's case and other reliefs were ancillary in substance. According to the learned counsel, one of the main issues agitated in the case of M.G.Bansal was that DR ACSOs, who joined later in point of time, were made seniors to the promotees ACSOs, who were regularly promoted earlier to the DR ACSOs. The situation had occurred due to the assignment of antedated seniority, i.e., giving seniority from the date of occurrence of vacancy to DR ACSOs and as the Central Government has wrongly implemented the observations contained in para 25(b) of M.G. Bansal's case, which resulted in filing of the petition by Smt. Ammini Rajan and other DR ACSOs, which came to be decided by the CAT in favour of Smt. Ammini Rajan and others, relying upon the judgment of the CAT in M.G. Bansal's case. He also contended that if the vacant slots of DR vacancies are carried forward, as directed in the impugned judgments of the High Court, the direct recruits will get an undue advantage of more than 12 years of ante-dated seniority without holding the

office. He next submitted that the fundamental principle of determination of seniority between direct recruits and promotees regularly appointed/promoted within their respective quota should be determined by the length of continuous officiation in the grade of ACSOs from their respective appointment to the substantive vacancies under Third Schedule of the Rules within their quota and the impugned judgment of the High Court observing in paras 13 and 16 to carry forward vacant slots of direct recruits is conflicting with the final judgment of the CAT rendered in M.G. Bansal's case which has directed the fixation of seniority based on length of continuous officiation of direct recruits and promotees.

15. Mr. L.N. Rao, learned senior Advocate, resisting the aforesaid submissions, argued that the judgment of the High Court cannot be found faulty on any ground and the seniority inter se between the direct recruits and departmental promotees has to be determined in the ratio as prescribed in the Third Schedule of the Rules, which deals with the substantive vacancies without giving any benefit of length of the continuous officiation in the grade of ACSOs from the respective appointment to the substantive vacancies under Schedule Three to the Rules within their quota.

16. Mr. Rakesh Khanna, learned senior Advocate appearing on behalf of the respondents-AFHQ Civilian Officers' Association and Mr. P. Vishwanath Shetty, learned senior Advocate appearing on behalf of the Union of India, have sought to support the judgment of the High Court and contended that the promotees ACSOs appointed under Note (2) of the Third Schedule cannot get the benefit of continuous officiation in the grade of ACSOs. They also submitted that the seniority of promotees among themselves was determined under Rule 16(5), i.e. in the order in which they were appointed in substantive vacancies in their quota and the inter se seniority of the DRs among themselves was determined as per the Rule 16(6) in the order of merit in which they were placed in the competitive examination. According to the learned counsel, the actual date of joining in the post had no bearing on fixation of seniority among the promotees and direct recruits themselves and inter se seniority of DRs and DPs appointed against the substantive vacancies in their own quota was determined on the basis of rotation of vacancies between DRs and DPs in the ratio of 75% : 25% without allowing lapsing of vacancies either from DRs or DPs quota.

17. In support of the respective contentions, the learned counsel for the parties have relied upon certain decisions of this Court, which we shall deal and consider in the later part of the judgment.

18. After a perusal of the facts involved here and having heard the parties at length, we feel that the issues that need to be addressed by us in this case are:-

(i) Whether seniority between Direct Recruits and Promotees regularly appointed/promoted within their respective quota should be determined by the length of the continuous officiation in the grade of ACSO from their respective appointment to the substantive vacancies under Schedule II of the Rules within their quota, i.e., in the case of promotee ACSOs the length of continuous officiation in the grade will be reckoned from the date when they are promoted in substantive vacancies in their quota.

(ii) Whether the incumbents belonging to one source in excess of their own quota and utilizing the quota of the incumbents belonging to another source will only officiate in the promoted post. The direct recruits when inducted in service through selection by the UPSC, the promotees in the quota of the direct

recruits on the basis of Note (2) of the Rules of Schedule III will either be reverted or will be absorbed in the vacancies within their quota of subsequent year and the period of officiation outside their quota of either of the incumbents from other source will not count for their seniority.

19. For the purpose of determination of the above-said points, we may notice the relevant Rules.

Rule 13 deals with probation, which states that (1) Every direct recruit shall initially be appointed on probation for two years from the date of appointment and (2) Every person other than a direct recruit shall, when appointed to the grade of CSO, ACSO and Assistant, be on probation for a period of two years from the date of such appointment. Rule 14 deals with confirmation of probationers. The quota between the direct recruits and the promotees is governed by Rule 16, which reads as under:-

"16. Seniority:- (1) All permanent offices included in the initial constitution of a Grade under Rule 9 shall rank senior to all persons substantively appointed to that Grade with effect from any date after the appointed day, and all temporary officers included in the initial constitution of a grade under that rule shall rank senior to all temporary officers appointed to that Grade with effect from any date after the appointed day.

(2) The seniority inter se of permanent officers included in the initial constitution of a Grade shall be regulated in the order in which they are so appointed.

(3) The seniority inter se of temporary officers included in the initial constitution of a Grade shall be regulated in the order in which they are so appointed.

(4) The seniority inter se of officers regularly appointed to the grade of Joint Director and Senior Civilian Staff Officer before the coming into force of the Armed Forces Headquarters Civil Service (Second Amendment) Rules, 1975, shall be regulated in the Selection Grade of the Service in the following order:-

(a) Officers holding the posts of Joint Directors in an officiating capacity, arranged in the order of their seniority in that Grade;

(b) Officers holding the posts of Senior Civilian Staff Officers in a substantive capacity, arranged in the order of their seniority in that Grade;

(c) Officers holding the posts of Senior Civilian Staff Officers in an officiating capacity, arranged in the order of their seniority in that Grade;

(5) Except as provided, in sub-rule (7), the seniority of persons appointed to any grade after the appointed day shall be determined in the following manner, namely:-

(i) Permanent Officers.- The seniority inter se of officers substantively appointed to the

Grade after the appointed day shall be regulated in the order in which they are so appointed;
(ii) Temporary Officers.- The seniority inter se of temporary officers appointed to the Grade after the appointed day shall be regulated in the order of their selection for such promotion.
(6) Direct recruits shall be ranked inter se in the order of merit in which they are placed at a competitive examination on the results of which they are recruited, the recruits of an earlier examination being ranked senior to those of a later examination. On confirmation, their inter se seniority shall be regulated in the order in which they are so confirmed :
Provided that the seniority of persons recruited through the competitive examinations held by the Commission \026
(i) in whose case offers of appointment are revived after being cancelled, or
(ii) who are not initially appointed for valid reasons but are appointed after the appointment of candidates recruited on the basis of the results of the subsequent examination or examinations,
shall be such as may be determined by the Government in consultation with the Commission.
(7) The relative seniority of the direct recruits to a Grade and persons appointed to the Grade by departmental promotion shall be regulated in accordance with the provisions made in this behalf in the Third Schedule.
(8) All officers substantively appointed to any Grade shall rank senior to those holding temporary or officiating appointments in that Grade.

20. Rule 2(p) defines "temporary officer" to mean 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 officer" to mean a person who has been substantively appointed to a substantive vacancy in that grade. Rule 10 provides for future maintenance of the service which states that the service shall be maintained in future as indicated in the Third Schedule. Third Schedule of the Rules in relation to ACSO (Group 'B' Gazetted) reads as under:-
"Substantive vacancies
(a) Substantive appointments to 75% of substantive vacancies in the Grade shall be made in the order of seniority of temporary officers of the Grade, who have completed the period of probation satisfactorily, subject to the rejection of the unfit.
(b) 25% of the substantive vacancies shall be filled by direct recruitment on the basis of combined competitive

examination held by the Commission for recruitment to the Central Services, Group 'A'/Group 'B', Assistant Civilian Staff Officers so recruited shall be confirmed in the manner as indicated in Rule 14.
The relative seniority of the above categories of officers shall be determined according to the rotation of vacancies between departmental promotees and direct recruits which shall be based on the quotas of vacancies reserved for promotion and direct recruitment.
Note (1) Reservation of vacancies against the quota reserved for direct recruitment, for Scheduled Castes and Scheduled Tribes and released Emergency Commissioned Officers and Short Service Regular Commissioned Officers shall be in accordance with the rules and orders issued by the Government from time to time.
(2) Substantive vacancies at (b) may be filled temporarily by promotion from amongst Assistants on the basis of selection. Such promotions shall be terminated when the nominees of the Commission become available to fill the substantive vacancies."
Temporary Vacancies
Temporary vacancies in the Grade of Assistant Civilian Staff Officer shall be filled by temporary promotion from amongst Assistants on the basis of selection.
Provided that if any person in the Grade of Assistants is considered for promotion to the Grade of Assistant Civilian Staff Officer, all persons belonging to Scheduled Castes or Scheduled Tribes who are senior to him in that Grade, shall also be considered notwithstanding that they may not have rendered five years' continuous approved service in that grade.

21. On a plain reading of the above-extracted provisions of Third Schedule, it is clear that substantive vacancies to the extent of 75% shall be made in the order of seniority of temporary officers of the Grade, who have completed the period of probation successfully and 25% of the substantive vacancies shall be filled by direct recruitment on the basis of qualifying Combined Competitive Examination held by the Commission for recruitment to the Central Services, Group 'A' /Group 'B'. The relative seniority of the above categories of officers shall be determined according to the rotation of vacancies between departmental promotees appointed to the substantive posts and direct recruits which shall be based on the quota of vacancies reserved for each source. Note (2) under the Third Schedule of the Rules provides that "substantive vacancies" meant for direct recruits may be filled temporarily by promotion from amongst Assistants on the basis of selection, but such promotions shall be terminated when the nominees of the Commission become available to fill the substantive vacancies in 25% quota.
22. In the teeth of the relevant Rules governing the relative seniority inter se between DRs and DPs under Rule 16 and

substantive appointments of ACSOs in the ratio of 75% under clause (a) and appointments of direct recruits to the Central Services Group 'A' / Group 'B' in the ratio of 25% as provided in clause (b), the seniority list is required to be maintained by the authority.

23. The seniority list of 1977 circulated by the respondent-Union of India inter se the DRs and DPs was under challenge before the Central Administrative Tribunal, Principal Bench, New Delhi, in T.A. No.356/85 (C.W. 3/78) titled Shri M.G. Bansal & Ors. v. Union of India & Ors., which was decided on 20.11.1992. In the said petition, Union of India had submitted a Tabular Statement showing details of substantive vacancies in the grade of Assistant Civilian Staff Officers and from the perusal of the Chart, the Tribunal observed that every time the vacancies were calculated and a requisition was sent to the UPSC for sending nominees for appointment as direct recruits in the ratio \026 15% SC, 7.5% ST and 25% released emergency commission officers of the total number of vacancies. The Tribunal has found that all the direct recruits, who were nominated by the UPSC, did not join in that particular year. Before the Tribunal, the case of the Interveners was that the quota has lapsed and cannot be carried forward, whereas the case of the direct recruits was that the quota rule had broken down as direct recruitments had not been made for many years and on account of such failure, fixation of seniority with reference to the rotational method was not available to be followed. The Tribunal, on perusal of the Chart made available to it by the Union of India, observed that since 1969 till 1977 in each of the year, direct recruits have joined the service, though in lesser number. In 1969, 10 direct recruits joined against the quota of 32; in 1970, 3 direct recruits joined against 13 vacancies; whereas in the year 1971, 11 direct recruits joined against 16 vacancies, whereas in the year 1972, 16 direct recruits joined against 9 vacancies and in the year 1973, 8 direct recruits joined against 19 vacancies. Similarly, in the year 1974, against 20 vacancies only 13 direct recruits joined the service; in 1975, 29 direct recruits joined against 19 vacancies; in 1976, 17 direct recruits joined against 25 vacancies and in the year 1977, 23 direct recruits joined against 14 vacancies. Thus, there was a shortfall of direct recruits in joining the service in their quota excepting in the years 1972 and 1975 where persons in excess have joined than the earmarked quota as per the rules. It was a specific case of the DPs before the Tribunal that no substantive/temporary vacancy was kept unfilled and these were filled by promoting Assistants on officiation temporary basis in accordance with the provisions of the Rules. Thus, there has been no break down of the quota. The quota also to some extent was not filled up to the extent it was desired though UPSC has recommended sufficient number of direct recruits, but because of certain facts, all of them did not join for the reasons best known to them. The record would also show that the Union of India have carried forward the unfilled vacancies of direct recruits to the next year. The Chart would further show that in the year between 1968 and 1974, the direct recruits vacancies were 87 in the ratio of 25% in terms of the rules and the vacancies intimated to UPSC were 132. The UPSC nominated 126 candidates, but 48 candidates actually joined the service. Thus, taking all these facts into account, the Tribunal has rightly observed that there cannot be a case where the quota has broken down; rather this is a case of distortion of the quota. Note (2) to the Third Schedule referred to above mandates that 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 would become available to fill the substantive vacancy. In the AFHQ Civil Service, promotions were made against direct recruit vacancies after the vacancies had been notified to the Public Commission. The promotions were temporary and the promotees were given seniority in accordance with Rule 16.5(ii) and after completing their probation, they were confirmed only when substantive vacancies were found available in their quota. The inter se seniority was, therefore, only between substantive vacancy promotees and substantive direct recruits. All promotee substantive ACSOs were assigned seniority under Rule 16(1), whereas all direct recruits were assigned seniority under Rule 16.6. Thereafter, these two seniority lists of substantive officers from the two sources of recruitment are integrated under Rule 16.7, i.e. in accordance with the well-known principle of quota rota rule. Thus, it is evident that the late induction of the direct recruits does not interfere with the seniority of the promotee officers under Rule 16.5.

24. Further, Note (2) to the Third Schedule is to be read with Rule 11.1 of the Rules and the Regulations made thereunder so that substantive vacancies shall be intimated to UPSC well within time. Note (2) is an enabling provision insofar as it permits the Government to fill the vacancies temporarily through selection. There is a mandate in Note (2) that these promotions will be terminated when the direct recruits would join the post. Thus, by the time the direct recruit had come or is likely to come, such a promotee who happens to occupy a berth of the direct recruit by virtue of Note (2) to Schedule Third will normally, because of his seniority, get a berth in his own quota. The order of the Tribunal shows that the applicants and the interveners, however, could not furnish any data to show that the promotees, who are occupying the berth of direct recruits under Note (2) temporarily, were subsequently got adjusted in the prescribed quota of departmental promotees against the substantive vacancies. On perusal, we find that no time-limit is prescribed in Note (2) during which such temporarily promoted Assistants to the grade of ACSOs in the quota of direct recruits can enjoy that benefit. Note (2) only provides that whenever direct recruits become available, the appointment of such promotees shall stand terminated. No other interpretation of Note (2) can be possible. Note (2) to the Third Schedule safeguards the interest of the direct recruits, who though are successful in the Civil Service Examination conducted by the UPSC and yet are waiting for their appointment as the appointment of the direct recruits is bound to take some time. Merely because there is late arrival of direct recruits, the quota reserved for them cannot be taken as lapsed nor can it be taken to have led to break down of the quota rule. The relevant rules, as referred to above, clearly envisage that the continuous officiation in a service without break also gives the benefit of seniority, but in a case where the recruitment is from two sources and the quota is prescribed, then the person from one source cannot take the benefit available to the other source within the quota. Thus, promotees who have been promoted within their quota of 75% under the rules as prescribed under Third Schedule read with Rule 16(7) of the Rules would get the benefit of continuous officiation from the date of their substantive appointment to the grade of availability of a substantive post and after having worked on temporary basis in the grade. Those who have been appointed temporarily under Note (2) from the cadre of Assistants to the grade of Assistant Civilian Officers temporarily, would not get the benefit of their continuous officiation and shall be liable by

operation of law to be reverted or there shall be deemed reversion when the nominees from the UPSC would join on the recommendations of the UPSC. Such temporary officers may not actually face reversion because by the time the vacancies of the next year may become available in their quota of 75% and they can very well, by virtue of their seniority, earn the benefit of substantive appointment under the Third Schedule.

25. Now, coming to the issue whether the High Court was justified in granting relief to DRs Association in CWP No.4058 of 2002 and Union of India v. Smt. Ammini Rajan & Ors. in Writ Petition (C) No.5396 of 2002 by overlooking and not properly appreciating the substance of the order recorded by the CAT in Shri M.G. Bansal's case. The High Court, by its impugned order dated 14.11.2006, has held that the order of the Central Administrative Tribunal in Smt.Ammini Rajan's case is contrary to its earlier decision dated 20.11.1992 passed in M.G. Bansal's case. The High Court directed the issue of seniority to be determined as it was done prior to Smt. Ammini Rajan's case was decided by the Tribunal. The High Court further held that the direction of the CAT where it is held that the seniority of DRs should be determined from the date of joining and further that the unfilled vacancies and not the slots can be carried forward, is contradictory to the decision of the CAT in M.G. Bansal's case. We are afraid to agree with the reasoning of the High Court. If such reasoning of the High Court is accepted, the consequences would be that the draft seniority list of ACSOs would be taken as it stood on 01.05.1995, which was challenged before the Tribunal in O.A. filed by Smt. Ammini Rajan and others as the draft seniority list was not settled in terms of the decision of the CAT in M.G. Bansal's case, which admittedly has attained finality. The judgment of the High Court setting aside the order of the Tribunal in Smt. Ammini Rajan's case would plainly amount to interference with the decision of the CAT in M.G. Bansal's case and further if the order of the High Court is given effect to, the result thereof would be that the DRs. shall be permitted to take advantage of more than 12 years of ante-dated seniority without holding an office. The petition filed by Smt. Ammini Rajan was primarily seeking implementation of the earlier decision of the CAT in Shri M.G. Bansal's case. On bare examination of the decision of the CAT rendered in Smt. Ammini Rajan' case, we find no discrepancy, no contradiction or overlapping or inconsistency whatsoever in the said order as compared to the earlier decision of the CAT in Shri M.G. Bansal's case. Therefore, the order of the High Court, in our view, is erroneous as the High Court has committed an error in understanding and appreciating the gist of the order recorded by the CAT in Smt. Ammini Rajan's case.

26. Mr. Paramjit Singh Patwalia, learned senior Advocate appearing on behalf of the appellant-AFHQ/ISOs SOs (DP) Association, in support of his submissions, placed reliance upon the case of Suraj Prakash Gupta & Ors. v. State of J & K & Ors. [(2000) 7 SCC 561]. In the said case, this Court while dealing with a situation of giving direct recruitment appointment ante-dated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. The Court, in answer to Point No.4, held as under:

"Point 4
Direct recruits cannot claim appointment from date of vacancy in quota before their selection
80. We have next to refer to one other contention raised by the respondent

direct recruits. They claimed that the direct recruitment appointment can be ante-dated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. It was submitted that if the promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were so pushed down, even if the direct recruit came later, he should be put in the direct recruit slot from the date on which such a slot was available under the direct recruitment quota.

81. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not borne in the service. This principle is well settled. In N.K. Chauhan v. State of Gujarat 14 (SCC at p. 325, para 32) Krishna Iyer, J. stated:

Later direct recruits cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service.

Again, in A. Janardhana v. Union of India 25 it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. Similarly it was pointed out in A.N. Pathak v. Secy. to the Govt. (SCC at p. 767) that slots cannot be kept reserved for direct recruits for retrospective appointments."

27. In State of Uttaranchal & Anr. v. Dinesh Kumar Sharma [(2007) 1 SCC 683], this Court has clearly held that the seniority is to be reckoned not from the date when the vacancy arose, but from the date on which the appointment is made to the post.

28. In M. Subba Reddy & Anr., etc. v. A. P. State Road Transport Corporation & Ors. [(2004) 6 SCC 729], relied upon by Mr. L. N. Rao, learned senior Advocate appearing on behalf of AFHQ Civil Service (Direct Recruits-Gazetted) Officers' Association, this Court while dealing with inter se seniority between direct recruits and promotees to the posts of Assistant Traffic Manager (for short "ATM") and Assistant Mechanical Engineer (for short "AME") in A.P. State Road Transport Corporation, held that rota rule is inbuilt in the quota prescribed in Item 3, Annexure 'A' (Section B) to A.P. SRTC Employees (Recruitment) Regulations, 1966 and could not be deviated from. In that case, the appellant promotees were promoted to the posts of ATMs/AMEs temporarily under Regulation 30 as there were no direct recruits available. They were promoted subject to being reverted to substantive posts on approved candidates becoming available. Regulation 34(6) states that the revertees shall subsequently be considered for repromotion against the quota of vacancies reserved for

promotees. Therefore, one has to read Regulation 3 of the A.P. SRTC Employees (Service) Regulations, 1964 with Regulations 30 and 34 of the Recruitment Regulations. It is only when such revertees are repromoted as per Regulation 34, they can be deemed to have been appointed to the posts of ATM or AME. Therefore, when the appellants were tentatively appointed to the post of ATMs/AMEs originally for want of direct recruits and to the posts reserved for direct recruits, it cannot be said that they were first appointed to that category within the meaning of Regulation 3 of the Service Regulations. Therefore, seniority had to be fixed between the direct recruits and the promotees strictly in accordance with the quota provided for in Item 3 of Annexure 'A' (Section B). The said Regulations prescribe a quota of 1:1, which leads to rota for confirmation. The contention of the appellants before this Court was that they had a right to be promoted within their quota during the years 1981 to 1987, when vacancies for promotees' quota became available. M. Subba Reddy, appellant in that case, was regularized from 27.12.1986 vide order dated 9.9.1988, when no direct recruits were available and, therefore, it was improper for the Corporation to place direct recruits above the promotees. The appellant submitted that in such a case the quota in Item 3(1) of Annexure 'A' to the Recruitment Rules would not apply; that the said item prescribed only quota and not rota for seniority and that the direct recruits could not claim appointment from the date of vacancy in their quota before their selecton. They added that seniority was dealt with only by Regulation 3 of the Service Regulations, 1964 and not by Regulation 34 of the Recruitment Regulations, 1966. That in view of the 15.9.1995 amendment, Regulation 34 referred to only allocation of vacancy and not for determination of seniority. A total ban for direct recruitment was imposed by the State from the year 1977 to 1988 and, thus, the purported quota-and-rota rule contained in Item 3 of Annexure 'A' could not have been given effect to. The majority view of this Court was that 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. We, with respect, do not support the view of the learned Judges that in the facts and circumstances of the case the quota has not broken down because of inaction on the part of the Government in imposing ban in filling up the posts meant for direct recruits. The appellants in the said case were promoted in a regular manner having been regularized in service with retrospective effect. Their services were not regularized from the date of their initial ad hoc promotion but with effect from the date when the vacancies became available. Their services after regularization would not be by way of a stop-gap arrangement. The direct recruits who were appointed in the years 1990 and 1991, in terms of Item 3 of Annexure 'A' would be considered to have been appointed only after their successful completion of training. They were borne in the cadre in the years 1990-91 and, thus, prior thereto they cannot claim seniority. The learned third Judge, dissenting with the learned two Judges, has held that the direct recruit can claim seniority from the date of his regular appointment, he cannot claim seniority from a date when he was not borne in the service. Thus, the direct recruits of 1990 and 1991, by reason of the impugned seniority list, could not have been placed over and above the appellants-promotees because the purported quota and rota rule contained in Item 3 of Annexure 'A' could not have been given effect to because the State Government had imposed total ban for direct recruitment from the year 1977 to 1988. In such a situation, the said quota

rule became inoperative. We agree with the dissenting view of the learned Judge that in the facts of the case, the quota rule became inoperative because the direct recruits were borne in the cadre when they were appointed against the vacancies meant for them. Therefore, the majority view in M. Subba Reddy & Anr., etc. (supra) is of no assistance to the AFHQ Civil Service (Direct Recruits) Officers Association as the relative seniority between the direct recruits and regularly appointed/ promoted candidates within their respective quota, in the present case, shall be determined by the length of the continuous officiation in the grade of ACSO from their respective appointment to the substantive vacancies in terms of Schedule Third within their quota as held by the CAT in M.G. Bansal's case, which has attained finality after dismissal of the SLPs filed against the said order of the Tribunal.

29. Mr. Rakesh Khanna, learned senior Advocate appearing on behalf of some of the respondents, in support of his submissions, has placed reliance upon the case of O.P. Singla & Anr., etc. v. Union of India & Ors. [(1984) 4 SCC 450] inter alia contending that for determining an equitable rule of seniority between direct recruits and promotees, attempt must be made to minimise, as far as possible, the inequities and disparities in terms of the rota-quota rule which has broken down in this case. In the said case, this Court has held that the seniority of DRs and Promotees appointed under the relevant rules must be determined according to the dates of which direct recruits were appointed to their respective posts and the dates from which the promotees have been officiating continuously either in temporary posts created in the service or in substantive vacancies to which they were appointed in a temporary capacity. The said decision, in our view, is of no assistance to the contesting parties represented by Mr. Rakesh Khanna, learned senior counsel, in the facts and circumstances of the present cases.

30. In Arvinder Singh Bains v. State of Punjab & Ors. [(2006) 6 SCC 673], relied upon by Mr. Siddarth Dave, Advocate, the issue before this Court related to the inter-relation between Rules 18 and 21 of the Punjab Civil Services (Executive Branch) (Class I) Rules, 1976. On consideration of the factual situation of the case and the rules governing the services of the employees, this Court said that rota and quota must necessarily be reflected in the seniority list and any seniority list prepared in violation of rota and quota is bound to be negated. The Court found in the said case that the action of the respondents in determining the seniority is clearly in total disregard of rota-quota rule prescribed in Rule 18 of the 1976 Rules and, therefore, writ of mandamus was issued to the respondents directing them to prepare the seniority list of the appellants who belong to the PCS (EB) in accordance with Rule 18 and read with Rule 21 of the 1976 Rules by fixing seniority according to the roster prescribed under Rule 18 of the 1976 Rules.

31. In Gonal Bihimappa v. State of Karnataka & Ors. [1987 Suppl. 207] relied upon by Mr. P. Vishwanath Shetty, learned senior Advocate appearing on behalf of the Union of India, this Court held that the quota rules has to be strictly enforced and it is not open to the authorities to meddle with it on the ground of administrative exigencies. Further, in that case the scheme in force relating to the services for fixing inter se seniority took into account the filling up of the vacancies in the service from the two sources on the basis of the quota and fixation of inter se seniority in the gradation list has to be worked out on the basis of quota. There cannot be any doubt or quarrel to the well-settled law that inter se seniority between direct recruits and promotees should be fixed on the

basis of quota-and-rota rule/instructions governing the service conditions of the employees.

32. In the light of the above factual situation, service rules governing the conditions of service of employees and the settled proposition of law, we are of the opinion that the judgment and order dated 14.11.2006 in C.W.P. No.4058/2002, CWP No.5396/2002 and subsequent judgment dated 15.01.2007 in CWP No.18073/2005 of the High Court of Delhi passed in AFHQ Civil Service Officers Association v. Union of India & Ors. are not sustainable and deserve to be set aside to the extent of setting aside the order of the Tribunal in Smt. Ammini Rajan's case holding that the said order is contrary to the earlier judgment of the CAT dated 20.11.1992 recorded in M.G. Bansal's case. This view of the High Court apparently appears to be contrary and contradictory to the judgment and order of the CAT dated 20.11.1992 passed in T.A. No.356/1985 (CW 3/1978) titled Shri M.G. Bansal & Ors. v. Union of India & Ors. in which the impugned seniority list of 1977 stood quashed and the respondent(s)-authority were directed to implement the said judgment in terms of the observations/directions contained in paragraph 25 of the said judgment. The judgment of the CAT in M.G. Bansal's case has attained finality when two SLPs filed by the DRs against the said judgment came to be dismissed by this Court on 20.01.1995. Consequently, the Writ Petition CWP No.4058/2002 of the AFHQ Civil Service (Direct Recruits-Gazetted) Officers' Association and CWP No.5396/2002 preferred by Union of India against the order of the CAT in OA No.1356/1997 titled Smt. Ammini Rajan & Ors. v. Union of India & Ors. are dismissed. CWP No.62/2003 and CWP No.4458/2002 filed by the DPs shall stand allowed accordingly. CWP No.18073/2005 shall also stand disposed of in terms of this judgment. As the dispute and controversy relating to inter se seniority between the DPs and DRs has remained unsettled and is lingering over the past many years, the respondent-authority is directed to determine and settle the seniority list in strict compliance and spirit of the judgment of the CAT dated 20.11.1992 in TA No.356/1985 (CW 3/1978) rendered in Shri M.G. Bansal & Ors. v. Union of India & Ors. The directions so contained in the said judgment shall be carried out within three months from the date of this judgment.

33. For the reasons stated above, the appeals are allowed to the extent indicated above. However, in the facts and circumstances of the case, the parties are left to bear their own costs.