

Union Of India And Ors vs M. Ravi Varma And Ors. Etc on 4 January, 1972

Equivalent citations: 1972 AIR 670, 1972 SCR (2) 992, AIR 1972 SUPREME COURT 670, 1972 LAB. I. C. 345

Author: Hans Raj Khanna

Bench: Hans Raj Khanna, J.M. Shelat, I.D. Dua

PETITIONER:
UNION OF INDIA AND ORS.

Vs.

RESPONDENT:
M. RAVI VARMA AND ORS. ETC.

DATE OF JUDGMENT 04/01/1972

BENCH:
KHANNA, HANS RAJ
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KHANNA, HANS RAJ
SHELAT, J.M.
DUA, I.D.
MITTER, G.K.

CITATION:
1972 AIR 670 1972 SCR (2) 992
1972 SCC (1) 379
CITATOR INFO :
F 1975 SC 483 (15)
RF 1975 SC 538 (1,3,5,7,8, TO 14,16,21, TO 27
D 1975 SC2164 (22)
RF 1977 SC1673 (1)
RF 1986 SC2086 (6,7)
F 1989 SC1071 (5)

ACT:
Civil Service-office Memorandum of Union Ministry of Home Affairs ,dated June 22, 1949 laying down that seniority of Central Government servants in the same grade shall be governed by length of service-subs quaintly Office Memorandum dated December 20, 1959 laying down that seniority to be determined on the basis of general principles annexed to Memorandum-Memorandum of 1959 is not retrospective--Persons appointed before it are governed by

1949 Memorandum.

HEADNOTE:

In order to provide for the seniority of Central Government servants displaced from Pakistan the Home Ministry by Office Memorandum dated June 22, 1949 laid down that the seniority of all Central Government servants in the same grade shall be governed by the length of their service in that grade. By 1959 the object underlying that memorandum had been achieved. Accordingly by another memorandum dated December 20, 1959 the Home Ministry decided that in respect of persons appointed after that date the general rules annexed to the memorandum shall apply, one of those being that seniority shall be governed by the date of confirmation and not length of service.

In 1957 the Central Board of Revenue issued a circular whereby seniority in the offices under it was to be determined on the basis of date of confirmation. In 1962 a revised seniority list of employees under the Central Board of Revenue was prepared on the basis of date of confirmation. As a result respondents G and R who were Inspectors of Central Excise lost several positions in the seniority. These respondents had been appointed in 1947 and confirmed in 1956. They filed writ petitions in the High Court of Mysore. The High Court held that the memorandum of 1949 applied to their case and their seniority must be decided on the basis of length of service and not the date of confirmation.

S and T were employees under the Directorate General of Health Services, Government of India. They had joined service in 1950 and 1951 respectively. In the seniority list, which had been prepared on the basis of length of service in accordance with the Office Memorandum of 1949 their positions were 32 and 34. Subsequently Memorandum dated June 19 1963 was issued by the Directorate General of Health Services in which it was stated that Scheduled Castes and Scheduled Tribes candidates who were confirmed in reserved vacancies would rank senior to temporary, including quasi-permanent persons respective of their positions in the seniority list. As a result of the application of this principle S and T lost seniority by several positions. They filed writ Petitions in the High Court of Punjab and Haryana. The Single Judge dismissed their petitions but the Division Bench allowed them on the ground that the Memorandum dated June 19, 1963 issued by the Directorate of Health Services was not in consonance with the Home Ministry's Memoranda 1949 and 1959.

Against the judgments of the High Courts the Union of India and others appealed to this Court.

Dismissing the appeals,

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HELD: (1) The office Memorandum dated December 22, 1959 expressly made it clear that the general principles embodied in the annexure thereto were not to have retrospective effect. In order to put the matter beyond any pale of controversy, it was mentioned that "hereafter the seniority of all persons appointed in the various Central Services. after the date of these instructions should be determined in accordance with the General principles annexed hereto". It was therefore, manifest. that except in certain cases with which the present appeals were not concerned laid down in the Annexure thereto could not apply to persons appointed to the various central services before the date of that Memorandum. [1000 G]

There was thus no escape from the conclusion that the seniority of G and respondents who were appointed prior to December 22, 1959 would have to be determined on the basis of their length of service in accordance with the Office Memorandum dated June 22, 1949 and not on the basis of date of their confirmation. This position was confirmed by the Central Board of Revenue in its letter dated August 27, 1971 addressed, to all Collectors of Central Excise. [1002 D; 1001 E]

Mervyn Coutindo & Ors. v. Collector of Customs, Bombay & Ors., [1966] 3 S.C.R. 600, referred to.

(ii) It was no doubt true that a direction was given in the Memorandum and R respondents who were appointed prior to December 22, 1959 would and Scheduled Tribe candidates confirmed in reserved vacancies should be ranked senior to temporary, including quasi-permanent persons irrespective of their position in the seniority list but such direction went beyond the rule of seniority contained in the office Memorandum dated December 22, 1959 issued by the Ministry of Home Affairs in respect of employees appointed before the date. It was not disputed that according to the Government of India allocation of Business Rules, 1961 general questions relating to recruitment promotion and seniority in Central services had to be dealt with by the Ministry of Home Affairs. As S and T respondents were appointed prior to December 22, 1959 their seniority was governed by the rule of length of service as contained in the Annexure to the Memorandum dated December 22, 1959. [1003 E-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1845 and 1846 of 1968.

Appeals by special leave from the judgment and order dated January 10, 1968 and October 20, 1967 of the Mysore High Court in Writ Petitions Nos. 1519 of 1967 and 1216 of 1965- respectively.

Jagdish Swarup, Solicitor-General of India and S. P. Nayar, for the appellants (in all the appeals).

S. S. Javali and M. Veerappa, for respondent No. 1 (in C.As. Nos. 184-1 and 1946 of 1968).

S. L. Bhatia for respondents Nos. 1 and 2 (in C.A. No. 50 of 1969.

S. K. Mehta, K. L. Mehta and K. R. Nagaraja, for the Intervener (in C.A. No. 1845 of 1968).

The Judgment of the Court was delivered by Khanna, J. Whether the criterion to determine the seniority of Ravi Varma and Ganapathi Kini respondents should be length of service in accordance with the Office Memorandum dated June 22, 1949 issued by the Ministry of Home Affairs, as claimed by the said respondents, or whether it should be the date of confirmation, as claimed by the appellants, is the main question which arises for decision in civil appeals Nos. 1845 and 1846 of 1968 which have been filed by the Union of India and two others by special leave against the judgment of Mysore High Court. Similar question arises in respect of the seniority of Suresh Kumar and Tara Chand Jain, respondents in civil appeal No. 50 of 1969 which has been filed by the Union of India and two others on a ,certificate granted by the Punjab and Haryana High Court against the judgment of that Court reversing in Letters Patent appeal the ,decision of the single judge and issuing a writ in favour of those respondents. The High Court held in all the cases that the seniority of the concerned respondents should be determined on the basis of the length of service in accordance with the above ,mentioned Office Memorandum.

Before giving the facts of the three cases, it would be pertinent to refer to two Office Memoranda issued by the Ministry of Home Affairs. One of the memoranda is dated June 22, 1949. It was mentioned in this memorandum that the Government of India had under consideration the question of the fixation of seniority of ;displaced government servants and temporary employees in the various grades. Employees of the Central Government who were displaced from their offices in Pakistan, according to the memorandum, had been absorbed in offices under the control of the same administrative ministry or on nomination by the Transfer Bureau of the Ministry of Home Affairs in other offices. All those persons had been appointed, with a few exceptions, on tem- porary basis. The Ministry of 'Home Affairs accordingly conveyed the following decision :

"It has now been decided in consultation with the Federal Public Service Commission that the question of seniority in each grade should also be examined in the same context and specific rules suitable for each service prescribed in framing those instructions. The question of seniority of Assistants in the Secretariat was recently examined very carefully in consultation with all the Ministries and Federal Public Service Commis-

sion and the decisions reached are incorporated in para 8 of the 'Instructions for the initial constitution of the grade of Assistants' an extract of which is attached. It has been decided that this rule should generally be taken as the model in traming the rules of seniority for other services and in respect of persons employed in any particular grade seniority should, as a general rule, be determined on the basis of the

length of service in that Grade irrespective of whether the latter was under the Central or Provincial Government of India or Pakistan. It has been found difficult to work on the basis of 'comparable' posts or grades and it has therefore been decided that 'Service in an equivalent Grade', should, generally be defined as service on a rate of pay higher than the minimum of the time scale of the grade concerned. The seniority of persons appointed on permanent or quasi-permanent basis before the 1st January, 1944 should, however not be disturbed."

Direction was accordingly issued by the Ministry of Home Affairs that the principles given in the Memorandum be borne in mind in determining the seniority of 'Government servants of various categories employed under the Ministry of Finance, etc.' On December 22, 1959 another Office Memorandum was issued by the Ministry of Home Affairs on the subject of the general principles for determining seniority of various categories of persons employed in Central services. Material part of this memorandum was as under:

"The instructions contained in this Ministry's Office Memorandum No. 30/44/48-Appnts, dated the 22nd June, 1949, were issued in order to safeguard the interests of displaced Government servants appointed to the Central Services after partition. As it was not possible to regulate the seniority of only displaced Government servants by giving them credit for previous service, the instructions were made applicable to all categories of persons appointed to Central Services. The principles contained in the 22nd June, 1949, orders were extended to-

- (i) ex-Government servants of Burma appointed to Central Services; and
- (ii) the employees of former part 'B' States taken over to the Centre as a result of Federal Financial_ Integration.

The instructions contained in this Ministry's Office Memorandum No. 32/10/49-CS dated the 31st March-, 1950 and No. 32/49-CS(C), dated the 20th September, 1952 similarly regulate the seniority of candidates with war service appointed to the Central Services.

2. The question has been raised whether it is necessary to continue to apply the instructions contained in the Office Memoranda cited above. Displaced Government servants have by and large been absorbed in the various Central Services and their seniority has been fixed with reference to the previous service rendered by them. Similarly, the seniority of ex-employees of the Government of Burma and of Part 'B' States as well as of candidates with war service has already been determined in accordance with the instructions cited above. As the specific objects underlying the instruction is cited above have been achieved, there is no longer any reason to apply those instructions in preference to the normal principles for determination of seniority. It has, therefore, been decided in consultation with the Union Public Service Commission, that hereafter the seniority of all persons appointed to the various Central Services after the date of these instructions should be determined in accordance with the General principles annexed hereto.

3. The instructions contained in the various office memoranda cited in paragraph I above are hereby cancelled, except in regard to determination of seniority of persons appointed to the various Central Services prior to the date of this Office Memorandum. The revised General principles embodied in the Annexure will not apply with retrospective effect, but will come into force with effect from the date of issue of these 'orders, unless a different date in respect of any particulate service/ grade from which these revised principles are to be adopted for purposes of determining seniority has already been or is hereafter agreed to by this Ministry.', Relevant parts of paragraphs 2, 3 and 4 of the Annexure to this Memorandum were as under :

"2 Subject to the Provision of para 3 below, persons appointed in a substantive or officiating capacity to a grade prior to the issue of these general principles shall retain the relative seniority already assigned to them or such seniority as may hereafter be assigned to them under the existing orders applicable to their cases and shall en-bloc be senior to all others in that grade.

3. Subject to the provisions of para 4 below, permanent officers of each grade shall be ranked senior to persons who are officiating in that grade.

4. Direct Recruits :

Notwithstanding the provisions of para 3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment, on the recommendations of the U.P.S.C. or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

Ravi Varma, respondent No. 1 in civil appeal No. 1845 of 1968. was appointed as an Inspector in the Central Excise Collectors in Madras on 27-5-47 and was confirmed on 7-4-56. Ganapathi Kini respondent No. 1 in civil appeal No. 1846, was appointed as an inspector in the Central Excise Collectorate in Madras on 28-5-47. In view of the war service rendered by Ganapathi Kini, his service for purposes of seniority was computed with effect from 10-10-46 and he was confirmed on 7-4-56. Ganapathi Kini and Ravi Varma were shown at serial Nos. 115 and 141 in accordance with the length of service in seniority list of inspectors prepared in 1959. Subsequently on the directions of the Central Board of Revenue contained in letter dated October 19, 1962, a revised seniority list was prepared in 1963 by computing seniority from the date, of confirmation. In the revised list Ganapathi Kini and Ravi Varma were shown at serial, Nos. 149 and 150, junior to persons to whom they had been shown senior in the earlier seniority list. Ganapathi Kini and Ravi Varma thereupon filed petitions under article 226 of the Constitution of India praying for quashing the revised seniority list prepared in 1963. The main ground taken in the writ petitions was that the seniority should be determined according to length of service in terms of Office Memorandum dated June 22, 1949 of the Ministry of Home Affairs. Impleaded in the writ petitions as respondents were the Union of India, the Central Board of Revenue

and the Collector of Central Excise as also those inspectors of Central Excise who, according to the petitioners, were junior to them but who on account of being shown senior to the petitioners in the revised seniority list, had been appointed as Senior Grade Inspectors of Central Excise. The above mentioned writ petitions were resisted by the appellants. The learned judges of the Mysore High Court referred to the memoranda dated June 22, 1949 and December 22, 1959

-L736SupCI/72 and held that the altered rule embodied in the Memorandum dated December 22, 1959 for the determination of seniority would be inapplicable to persons appointed before June 22, 1949 like Ganapathi Kini. Argument was advanced on behalf of the appellants that on July 3, 1957 the Central Board of Revenue had again adopted the rule that the date of the confirmation should form the basis for determination of seniority. This argument did not find favour with the learned judges, and it was observed "But what is however clear is that in the case of a person like the petitioner who was appointed before June 22, 1949 the rule made by the Ministry of Home Affairs on that date was what constituted the basis for the determination of seniority and not the rule which was revived by the Central Board of Revenue on July 3, 1957."

Direction was accordingly issued that Ganapathi Kini's seniority should be determined on basis of the formula contained in the Office Memorandum dated June 22, 1949 and the revised seniority list be rectified accordingly. In the petition filed Ravi Varma the High Court made a short order when, after referring the decision in the case of Ganapathi Kini, the learned judges granted similar relief to Ravi Varma.

Suresh Kumar, respondent No. 1 and Tara Chand Jain, respondent No. 2 in civil appeal No. 50 of 1969 were appointed as Lower Division Clerks in the Medical Stores Depot, Karnal under the Directorate General of High Services on October 9, 1950 and November 26 1951 respectively. Both of them were confirmed on March 31, 1960. In the Seniority list which was Prepared in accordance with Office Memorandum dated June 22, 1949 Suresh Kumar and Tara-Chand Jain, respondents, were shown at serial Nos. 32 and 34 in accordance with their length of Service. Subsequently Memorandum dated June 19, 1963 Was received from the Directorate General of Health Services in which there was a reference to the Ministry of Home Affairs office Memorandum date December 22, 1959. It was stated in the Memorandum from the Directorate General of Health Services that scheduled castes' and scheduled tribes candidates who were confirmed in reserved vacancies would rank senior to temporary, including quasi-permanent persons irrespective of their position in the seniority list. A revised seniority list was thereafter prepared and a number of scheduled castes candidates who had been recruited later but had been confirmed earlier than Suresh Kumar and Tara Chand Jain were shown senior. Suresh Kumar and Tara Chand Jain were thus shown at serial Nos. 40 and 42 in the revised seniority list Suresh Kumar and Tara Chand Jain thereafter filed petition under article 226 and 227 of the Constitution of India for quashing the instructions contained in the Memorandum dated June 19, 1963 issued by the Directorate General of Health Services as well as the revised seniority list and other consequential reliefs. Impleaded respondents in the petition were the Union of India, the Director General of Health Services, the

Deputy Assistant Director General Medical Stores, as well as other scheduled caste employees of the Medical Stores Depot Karnal who had been shown senior to the petitioners in the revised seniority list.

The above petitions were resisted by the appellants and were dismissed by the learned single judge. On Letters Patent appeal the judgment of the single judge was reversed and it was held that Suresh Kumar and Tara Chand Jain having been appointed prior to December 22, 1959 were governed by the rule of seniority contained in the Office Memorandum dated June 22, 1949 issued by the Ministry of Home Affairs. This position, in the opinion of the learned judges, was not affected by the subsequent Office Memorandum issued by the Ministry of Home Affairs. So far as the Memorandum dated June 19, 1963 issued by the Directorate General of Health Services was concerned, it was found to be not in consonance with the Office Memoranda issued by the Ministry of Home Affairs on June 22, 1949 and December 22, 1959. As such the Memorandum issued by the Directorate General of Health Services, according to the learned judges, could not affect the seniority of Suresh Kumar and Tara Chand Jain. In the result the revised seniority list was held to be invalid and the Union of India and two other appellants were directed to prepare a revised seniority list in accordance with the original seniority of Suresh Kumar and Tara Chand Jain. The learned Solicitor General on behalf of the appellants has at the outset referred to Memoranda dated June 22, 1949 and December 22, 1959 issued by the Ministry of Home Affairs and has argued that after the issue of the latter Memorandum the seniority of all Central Government employees should be determined by the date of their confirmation and not on the basis of the length of service. In this connection, we find, that the case of a large number of Government employees after the partition of the country from areas now forming part of Pakistan resulted in a situation wherein the Government had to review the rules relating to seniority. As most of those displaced Government servants had been employed on temporary basis and as it was felt that they should be given some weightage in the matter of seniority on compassionate grounds, the rule was evolved that the seniority should be determined on the basis of the length of service in equivalent grades. The seniority of persons appointed on permanent basis or quasi-permanent basis before January 1, 1944 was, however, left undisturbed. Further, as it was not possible to regulate the seniority of only displaced Government servants by giving them credit for previous service, the instructions were made applicable to all categories of persons appointed to Central services. Office Memorandum dated June 22, 1949 was consequently issued. The above principles were also extended to other category of Government employees, including those with war service. The matter was reviewed thereafter in 1959. The Government then found that displaced Government servants had by and large been absorbed in the various Central services and their seniority had been fixed with reference to the previous service rendered by them. Same was found to be the position of other Government servants who had been given the benefit of the principles contained in Memorandum dated June 22, 1949. As the objects underlying the instructions of June 22, 1949 had been achieved and it was no longer considered necessary to apply those instructions in preference to the normal principle for determination of seniority, it was decided that the seniority of Central Government employees would henceforth be determined in accordance with the general principles contained in Annexure to the Office Memorandum issued by the Ministry of Home Affairs on December 22, 1959. One of those principles was that permanent officiating of each grade would be ranked senior to persons who were, officiating in that grade. The effect of that, as submitted by the learned Solicitor General, was that the seniority was to be

determined by the date of confirmation and not on the basis of length of service as was the rule contained in the Office Memorandum dated June 22, 1949.

The Office Memorandum dated December 22, 1959, however, expressly made it clear that the general principles embodied in the Annexure thereto were not to have retrospective effect. In order to put the matter beyond any Pale of controversy, it was mentioned that 'hereafter the seniority of all persons appointed to the various Central Services after the date of these instructions should be determined in accordance with the General principles annexed hereto'. It is, therefore, manifest that except in certain cases with which we are not concerned, the Office Memorandum dated December 22, 1959 and the provisions laid down in the Annexure thereto could not apply to persons appointed to the various Central services before the date of that Memorandum. It may also be mentioned that while dealing with the above Memorandum, this Court in the case of *Mervyn Coutindo & Ors.*

v. *Collector of Customs, Bombay & Ors.* (1) observed that these principles were not to apply retrospectively but were given effect from the date of their issue, subject to certain reservations with which we are not concerned. It has next been argued by the learned Solicitor General that whatever might be the position in respect of the employees in other Central services, so far as the clerks, supervisors and inspectors under the Central Board of Revenue were concerned, a decision was taken that for purposes of promotion, the permanent employees should have precedence before nonpermanent employees. Our attention in this connection has been invited to letter dated March 15, 1958 sent by the Central Board of Revenue to all Collectors of Central Excise. In this letter there was a reference to an earlier letter dated July 3, 1957 from the Board and it was mentioned that the instructions contained in the earlier letter that for purposes of promotion from ministerial grade to inspectors grade, permanent clerks would first be considered before considering persons who were non-permanent, should be followed in respect of promotions to other grades also. The Solicitor General accordingly contends that the direction contained in the Memorandum dated December 22, 1959 that it could not apply to employees appointed before that date would not hold good in the case of clerks, supervisors and inspectors functioning under the Central Board of Revenue. It is, in our opinion, not necessary to go into this aspect of the matter because we find that the Central Board of Revenue as per letter dated August 27, 1971 addressed to all Collectors of Central Excise, gave fresh instructions regarding the principles of seniority. In this letter there was a reference to the Office Memorandum dated December 22, 1959 issued by the Ministry of Home Affairs and it was stated :

"In supersession of all previous orders on the subject, it has now been decided that-in so far as the nongazetted staff in the Central Excise, Customs and Narcotics Departments and other subordinate offices are concerned, the seniority of persons appointed to various posts and services after receipt of these orders should be regulated in accordance with the Ministry of Home Affairs O.Ms. referred to above."

It would follow from the above that so far as the non-gazetted staff in the Central Excise, Customs and Narcotics Departments and other subordinate offices of the Central Board of Revenue are (1) [1966]3 S.C.R. 600.

concerned, the question of seniority would have to be decided in accordance with the Office Memorandum dated 19-10-1959. As the said Office Memorandum has, except in certain cases with which we are not concerned, applied the rule of seniority contained in the Annexure thereto only to employees appointed after the date of that Memorandum, there is no escape from the conclusion that the seniority of Ganapathi Kini and Ravi Varma, respondents, who were appointed prior to December 22, 1959, would have to be determined on the basis of their length of service in accordance with Office Memorandum dated July 22, 1949 and not on the basis of the date of their confirmation. In civil appeal No. 50 of 1969 the learned Solicitor General has referred to Office Memoranda dated January 28, 1952, April 20, 1961 and March 27, 1963 issued by the Ministry of Home Affairs to show a departure from the rule of seniority for the benefit of members of scheduled castes and scheduled tribes. Office Memorandum dated January 28, 1952 makes provision for communal representation in services for candidates to scheduled castes and scheduled tribes as also the Anglo Indian community. The Memorandum gives a model roster which should be applied in filling the vacancies. Perusal of the Memorandum shows that it relates only to recruitment and has nothing to do with the rule of seniority.

Office Memorandum dated April 20, 1961 deals with the question of seniority of direct recruits who were confirmed in an order different from the original order of merit. According to the Memorandum, it often happens that a scheduled caste or scheduled tribe candidate occupying a lower position in the merit list is appointed permanently to a reserved vacancy, while candidates above him in the merit list are not appointed at that time. If such candidates are appointed in the following year, they are not entitled to a higher seniority on the ground that in the previous year they had obtained a higher position in the merit list. It is plain that the above Office Memorandum did not deal with the question of seniority on the basis of length of service as contained in Office Memorandum dated June 22, 1949 but with the question as to what would be the effect if a direct recruit scheduled caste or scheduled tribe candidate though occupying a lower position in the merit list, is confirmed earlier in a reserved vacancy. We are in the present case not concerned with any merit list nor with any question of seniority based on such a list. As such, Office Memorandum dated April 20, 1961 is also of not any material help to the appellants. It may be stated that the counsel for the appellants in the High Court conceded that the above Memorandum had no direct relevance in the present controversy.

The third Office Memorandum dated March 27, 1963 referred to by the learned solicitor General deals with the subject of maintenance of roster for giving effect to the reservations provided for scheduled castes and scheduled tribes' in Central Government services. This Memorandum has a bearing only on the question of recruitment and provides no guidelines for determining seniority. We, thus, find that none of the three Office Memoranda relied upon by the Solicitor General is of any material assistance to the appellants.

We may now advert to the Memorandum dated June 19, 1963 issued by the Directorate General of Health Services. As mentioned earlier, it was after the receipt of this Memorandum that the seniority list of class III employees of the Government Medical Stores Depot, Karnal was revised and the seniority was determined on the basis of the date of confirmation and not on the basis of length of service. The above Memorandum from the Directorate General of Health Services expressly refers

to the Office Memorandum dated December 22, 1959 issued by the Ministry of Home Affairs and seeks implementation of that. It is no doubt true that a direction was given in the Memorandum of the Directorate General of Health Services that scheduled caste and scheduled tribe candidates confirmed in reserved vacancies should be ranked senior to temporary, including quasi- permanent persons, irrespective of their position in the seniority list, but such a direction went beyond the rule of seniority contained in the, Office Memorandum dated December 22, 1959 issued by the Ministry of Home Affairs in respect of employees appointed before that date. As mentioned earlier Office Memorandum dated December 22, 1959 did not disturb the, seniority of Central Government employees who had been appointed prior to the date of that Memorandum, except in certain cases with which we are not concerned. It is not disputed that according to the Government of India Allocation of Business Rules, 1961 general questions relating to recruitment, promotion and seniority in Central services like the one with Which we are concerned, have to be dealt with by the Ministry of Home Affairs. As Suresh Kumar and Tara Chand Jain, respondents, were appointed prior to December 22, 1959 their seniority was governed by the rule of length of service as contained in Office Memorandum dated June 22, 1949 and not by the rule based upon date of confirmation as contained in the Annexure to the Memorandum dated December 22, 1959.

Reference was made by the learned Solicitor General to the case of Roshan Lal Tandon v. Union of India⁽¹⁾ wherein it has been laid down that the service rules may be framed and altered unilaterally by the Government. No occasion for invoking the above dictum arises in this case because the learned counsel for the contesting respondents have not questioned the right of the Government to frame and alter unilaterally the service rules.

In the result, all the three appeals fail, and are dismissed with costs.

One hearing fee.

G.C.

Appeals dismissed.

(1) [1968] 1 S.C.R. 185.