

Narender Chadha & Ors vs Union Of India & Ors on 11 February, 1986

Equivalent citations: 1986 AIR 638, 1986 SCR (1) 211, AIR 1986 SUPREME COURT 638, 1986 LAB. I. C. 590, (1986) IJR 206 (SC), 1986 UPLBEC 373, 1986 UJ (SC) 728, 1986 SCC (L&S) 226, (1986) UPLBEC 373, (1986) 1 SERVLJ 287, (1986) 1 CURLR 202, (1986) 52 FACLR 403, (1986) 1 LAB LN 665, (1986) 1 SCJ 307, 1986 (2) SCC 157, (1986) 1 SERVLR 437

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Bench: E.S. Venkataramiah, O. Chinnappa Reddy

PETITIONER:
NARENDER CHADHA & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 11/02/1986

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
REDDY, O. CHINNAPPA (J)

CITATION:
1986 AIR 638 1986 SCR (1) 211
1986 SCC (2) 157 1986 SCALE (1) 154

CITATOR INFO :

D	1987 SC 424	(12,24)
R	1987 SC 716	(13)
RF	1987 SC1676	(21)
D	1989 SC 278	(20)
E	1990 SC1256	(26,32)
R	1990 SC1607	(13)
E&D	1991 SC 284	(1,24,25,30,31)
D	1991 SC1818	(6)
D	1992 SC1188	(4,5)
E	1992 SC1363	(1,4,T0,7,9,T0,13)

ACT:
Constitution of India, 1950 - Articles 14 and 16.
Indian Economic/Indian Statistical Service Rules, 1961.

Direct recruits and promotees - Promotees holding posts in Grade IV of Service in deliberate breach of quota rules continuously for 15 to 20 years on temporary/ad hoc basis
Fixation of inter se seniority - Whether to be placed lower in seniority list to direct recruits entering service after such promotees - Quota rule - Not maintained - Rules confer relaxation power on Government - Whether relaxation of quota rule to be assumed.

HEADNOTE:

The Indian Economic Service Rules, 1961 and the Indian Statistical Service Rules, 1961 were notified on November 1, 1961. These Services were constituted with effect from that date by encadering numerous posts carrying economic and statistical functions in various ministries of the Government of India. Both the Services have Grade I, Grade II, Grade III and Grade IV posts and Officers of Grade I to Grade IV are classified as Class-I Officers. The authorised permanent strength of each of the Services is to be fixed by the Controlling Authority, constituted under Rule 6, in accordance with the Rules. Under Rule 7, the Union Public Service Commission was required to constitute a Selection Committee to determine the suitability of departmental candidates for appointment to the different grades and to prepare an order of preference for each grade for the initial constitution of both the Services. On receipt of the Committee's 8 report, the Commission was required to forward its recommendations to the Government. The departmental candidates who were not absorbed at the initial constitution of the Service were given the opportunity to apply for future vacancies. Future maintenance of the two Services is governed by Rule 8.

212

After the initial constitution of the two Services was completed it was found that a number of posts carrying economic/statistical functions could not be considered for inclusion in the officers' Grades. Further as the process of formation of the two Services was prolonged for a number of years and the need for appointing more officers in various Departments during that long period also arose gradually, several posts carrying economic/statistical functions were created. Although Rule 8 provided that not less than 75 per cent of the vacancies in Grade IV should be filled up by direct recruitment through an open competitive examination to be held by the Union Public Service Commission in the manner prescribed in Schedule II to the Rules and it further provided that not more than 25 per cent posts of the vacancies in that Grade should be filled by selection from among officers serving in the offices under the Government in Economic/ Statistical posts recognized for that purpose by the Controlling Authority, no direct recruitment was

resorted to till about the year 1968. In the meanwhile, a large number of persons in the feeder posts were appointed to the posts in Grade IV from time to time from the year 1962 onwards although the orders promoting them stated that they had been promoted only temporarily. Undisputedly, all those promotees have been holding those posts continuously till now without being reverted to the feeder posts from which they had been promoted. Some have been retried from those posts.

Thus the prescribed quota of appointment from the two different sources was not maintained right from the commencement of the constitution of the Services. After completion of the initial constitution of the two services under Rule 7, Rule 7A was added and subsequently amended. Rule 7A made special provision regarding certain departmental candidates who were to be absorbed in the two Services.

Between the years 1964 to 1984 in all there were 435 vacancies for direct recruitment in the Indian Economic Service out of which only 342 posts were filled up by direct recruitment. Out of 93 remaining unfilled posts most of them were held all along by persons promoted from the feeder posts. In the Indian Statistical Service as against a total of 303 vacancies meant for direct recruits between the years 1964 to 1984 only 275 direct recruits were appointed. The remaining

213

unfilled posts were held by the & departmental candidates. It was alleged that many of the departmental candidates had been allowed to hold posts including Grade IV of the two Services purely on ad hoc and ex gratia basis.

Earlier certain persons holding posts in Grade IV of these two services had filed Writ Petition under Article 32 seeking direction/order to the Union of India to confirm and regularise the petitioners in the posts held by them as and from the dates when they had become due for confirmation or regularisation in accordance with the Indian Economic Services Rules 1961 or the Indian Statistical Service Rules 1961 and to consider them for all future promotions when due on the basis of such seniority. This Court on February 1 1984 directed the Union of India to fill up, within four weeks, the vacancies available to the departmental candidates under Rule 8 (1)(a)(ii) with effect from the date from which the petitioners become entitled to be promoted on regular basis, that their seniority will be determined according to Rules and that rotation system will not apply under the existing Rules.

On May 1, 1984, after expiry of the extended time, the respondent - Union of India filed two sets of seniority lists in respect of the two services, namely, (i) lists based on the principle of rotation, and (11) lists based on Rule 9C of the Rules. Since the lists were to the disadvantage of the departmental prouotees, the Court while

declining to endorse either of the two seniority lists directed the respondent-Union to implement the order dated February 1, 1984 on or before 30th November, 1984. In the meanwhile the petitioners filed a petition for initiating contempt proceedings against the respondent-Union of India which was resisted by the respondents. Certain direct recruits also intervened and wanted to be heard before disposal of the contempt application. Opportunity was given to all the parties to make their submissions.

Disposing of the petition,

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HELD: 1. Having regard to the facts of the case and the events that have followed the order passed by this Court on February 1, 1984, no action for contempt against the Union Government or any of its officers for not obeying the orders of this Court would be taken. [221 B-C]

214

2. The Union Government is directed to treat all persons who have been promoted to several posts in Grade (n) in Indian Economic Service and Indian Statistical Service contrary to the Rules till now as having been regularly appointed to those posts in Grade (IV) under Rule 8(1) (a) (ii) and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in those posts. Even those promotees who have been selected in 1970, 1982 and 1984, shall be assigned seniority with effect from the date on which they commenced to officiate continuously in the posts prior to their selection. For purposes of seniority the dates of their selection shall be ignored. The direct recruits shall be given seniority with effect from the date on which their names were recommended by the Commission for appointment to such grade or posts as provided in clause (a) of Rule 9-C. A seniority list of all promotees and direct recruits shall be prepared on the above basis treating the promotees as full members of the Service with effect from the dates from which they are continuously officiating in the posts. This direction shall be applicable only to officers who have been promoted till now, which means that rotation system will not be applicable under the Rules, as they exist now. All appointments shall be made hereafter in accordance with the Rules, and the seniority of all the officers to be appointed hereafter shall be governed by Rule 9-C. [237 D-H: 238 A]

3. If as a result of the preparation of the seniority list as aforesaid any officer is likely to be reverted, such officer shall not be reverted. He shall be continued in the higher post which he is now holding by creating a supernumerary post to accommodate him. Further promotion shall be given to him when it becomes due as per the new seniority list to be prepared. There shall be a review of all the promotions made so far from Grade (IV) to higher posts in the light of the new seniority list. [238 B-D]

P.S. Mahal & Ors. v. Union of India & Ors. [1984] 3

S.C.R. 847 followed.

4. When an officer has worked for a long period for nearly 15 to 20 years in a post and had never been reverted it cannot be held that the officer's continuous officiation
215

was a mere temporary or local or stop gap arrangement even though the order of appointment may state so. In such circumstances the entire period of officiation has to be counted for seniority. Any other view would be arbitrary and violative of Articles 14 and 16(1) because the temporary service in the post in question is not for a short period intended to meet some emergent or unforeseen circumstances.
[236 C-E]

In the circumstances of the instant case, clause (b) of rule 9-C of the Rules which deals with the question of seniority of promotees becomes irrelevant as regards promotees who have been holding the posts from a long time.
[236 E]

5. It is permissible for the Government to recruit persons from different sources to constitute a service. It is also open to it to prescribe a quota for each source. Rules of recruitment framed on the above lines are perfectly legitimate and quite consistent with Articles 14 and 16 of the Constitution. When the Rules of recruitment prescribe recruitment from different sources in accordance with the specified quota the Government is bound to appoint persons to the Service concerned in accordance with the Rules. The seniority of persons recruited from different sources will have to be regulated accordingly. [230 C-E]

In the instant case, the Government had made violent departure from the Rules of recruitment by deliberately allowing those who were appointed contrary to Rules to hold the posts continuously over a period of long time. [230 E-F]

6. The petitioners were not promoted by following the actual procedure prescribed under rule 8(1)(a)(ii) but the fact remains that they have been working in posts included in Grade IV from the date on which they were appointed to these posts. The appointments are made in the name of the President by the competent authority. They are being paid all along the salary and allowances payable to incumbents of such posts. They have not been asked to go back to the posts from which they were promoted at any time since the dates of their appointment. The orders of promotion issued in some cases show that they are promoted in the direct line of their promotion. It was expressly admitted that the petitioners have been allowed to hold posts included in Grade IV of the said
216

Services, though on an ad hoc basis. Therefore, it cannot be said that the petitioners are not holding the posts in Grade IV of the two Services. Neither the Government has issued orders of reversion to their former posts nor has anybody so far questioned the right of the petitioners to continue in

the posts which they are now holding. It would be unjust to hold at this distance of time that the petitioners are not holding the posts in Grade IV. However, it is not the case that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post. [231 B-H; 232 A]

In the instant case, where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results. The Government has also not expressed its unwillingness to continue them in the said posts. The other contesting respondents have also not urged that the petitioners should be sent out of the said posts. There is no impediment even under the Rules to treat the petitioners and others who are similarly situated as persons duly appointed to the posts in Grade IV because of the enabling provision contained in Rule 16. [232 B-E]

7. If there is enormous departure from the Rules of recruitment in making appointments over several years, it should be presumed that the excess appointment by promotion had been made in relaxation of the Rules when power to relax the Rules is available. [233 C-D]

A. Janardhana v. Union of India & Ors. [1983] 2 S.C.R. 936; O.P. Singla & Anr. v. Union of India & Ors. [1985] 1 S.C.R. 351; G.S. Lamba & Ors. v. Union of India & Ors. [1985] 3 S.C.R. 431; D.B. Nim, I.P.S. v. Union of India [1967] 2 S.C.R. 323 followed.

S.B. Patwardhan & Ors. etc. etc. v. State of Maharashtra
JUDGMENT:

State of Bihar & Ors. [1980] 3 S.C.R. 450; Baleshwar Das Ors. etc. v. State of U.P. 7 Ors. etc. [1981] 1 S.C.R. 449; P.S. Mahal & Ors. v. Union of India & Ors. [1984] 3 S.C.R. 847; Pran Krishna Goswami & Ors. v. State of West Bengal Ors. [1985] Supp. S.C.C. 221; D.K. Mitra & Ors. v. Union of India & Ors. [1985] Supp. S.C.C. 243 referred to. Karam Pal Ors. etc. v. Union of India & Ors. [1985] 3 S.C.R. 271 distinguished.

8. By sticking to the quota rule as found in rule 8(1)(a), enormous prejudice would be caused to the petitioners and others who are similarly situated, even though their appointments have been made by deliberate deviation from the rules. The just solution to it would be to treat the petitioners as persons duly appointed to the Services with effect from the date on which they were promoted to the Grade IV posts. [235 G-H; 236 B] & ORIGINAL JURISDICTION: Civil Miscellaneous Petition No. 2604 of 1985.

IN Writ Petition No. 1595 of 1979.

(Under Article 32 of the Constitution of India.) Petitioner No. 1 in person.

P.P. Rao, Uma Dutta and Miss C.K. Suchitra for Petitioner Nos. 2 to 25.

Govinda Mukhoty and P.K. Gupta for the Intervener. R.K. Garg, R.K. Jain and Guptha Jain for the Respondents.

F.S. Nariman, A.K. Ganguli, R.D. Agarwala and C.V. Subba Rao for the Respondents. (Union of India) The Judgment of the Court was delivered by VENKATARAMIAH, J. The perennial dispute regarding seniority between direct recruits and promotees which exists in Almost all the departments of Government has not spared the Indian Economic Service and the Indian Statistical Service with which we are concerned in this case. This is the second phase of the battle which is being waged in this Court. Earlier certain persons who had been holding posts in Grade IV of these two Services had filed Writ Petition No. 1595 of 1979 under Article 32 of the Constitution of India praying for a writ, direction or order in the nature of mandamus directing the Union of India to confirm or regularise the petitioners in the posts held by them as and from the dates when they became due for confirmation or regularisation in accordance with the Indian Economic Service Rules, 1961 or the Indian Statistical Service Rules, 1961 and to consider them for all future promotions when due on the basis of such seniority. The said petition was filed in a representative capacity with the leave of the Court under Order I Rule 8 C.P.C. A few officers who had been recruited as direct recruits to the posts in Grade IV in the said departments were impleaded as respondents and they were sued in a representative capacity as representing all other direct recruits who were likely to be affected by the decision. After the above case was heard, the Court passed a short order on February 1, 1984 which reads thus :

"We are not able to understand why the vacancies available to the departmental candidates under Rule 8(ii) of the Indian Economic and Indian Statistical Services Rules, 1961, have not been filled up on regular basis. We find that some of the departmental candidates (petitioners) have been holding the promotional posts on ad hoc basis for several years. mere appears to be no justification for keeping them 'ad hoc' so long. We, therefore, issue a Writ of Mandamus directing the Union of India to fill up, within four weeks from today, the vacancies available to the departmental candidates under Rule 8(ii) with effect from the date from which the petitioners became entitled to be promoted on regular basis. Their seniority will be determined according to Rules. We wish to make it clear that there is no question of any rotation system being applied under the Rules, as they exist now. The writ petition is disposed of in these terms. There will be no order as to costs."

(Rule 8(ii) has to be read as Rule 8(1)(a)(ii)) The Union of India, as can be seen from the order set out above, was directed to comply with the directions contained therein within four weeks from the date of the order. On the expiry of four weeks, stipulated by this Court, the Union of India filed an application for extension of time to comply with the directions contained therein fully. Time was extended by the Court till April 30, 1984. On May 1, 1984 the Union of India filed before the Court two sets of seniority lists in respect of the above two Services namely, lists based on the principle of

rotation and lists based on Rule 9-C of the Indian Economic Service/Indian Statistical Service Rules. Since on a perusal of the said lists it was found that the position of some of the departmental promotees who had already put in nearly 15 years of service in Grade IV was worse than V the position in which they were before the writ petition was filed and were facing imminent threat of reversion to the feeder posts from which they had been promoted several years ago, the Court directed the petition to come up for hearing before the Court on its re-opening after summer vacation and directed that status quo should be maintained in the mean- while. Then on July 24, 1984 the Court while declining to endorse either of the two seniority lists directed the Union of India to implement the order dated February 1, 1984 on or before 30th November, 1984. In the meanwhile the petitioners filed Civil Miscellaneous Petition No. 2604 of 1985 complaining that the Union of India had failed to comply with the order made by this Court and that action should be taken for contempt against it. While opposing the application for contempt, on behalf of the Union of India it was stated in the course of the affidavit sworn by Shri P.L. Sakarwal, Deputy Secretary, Department of Economic Affairs, New Delhi thus :

"23. In view of the submissions made above this Respondent would urge that the directions of the Hon'ble Court dated 1.2.84 in the matter of (i) filling the vacancies under Rule 8(ii) and (ii) to fix the seniority according to Rules without the application of rotation system, have been complied with bona fide and in a good faith. Rule 8(ii) of the IES Rules/ISS Rules provides for the quota for the departmental promotees and also the manner in which the Select List for promotion by a duly constituted DPC presides over by a Member of UPSC has to be drawn. All the vacancies available to the departmental candidates under Rule 8(ii) up to the end of 1983 have already been given to them by issuance of Select Lists drawn from time to time. Action is in process to prepare further Select List in respect of the vacancies available to the officers till the end of the year 1984. As regards seniority, the Hon'ble Court had ordered to fix the seniority according to the Rules and without the application of the rotation system. The revised seniority lists prepared by this Respondent and finalised after inviting objections etc. from the concerned officers have been framed according to the Rules i.e. in terms of the provisions of Rule 9-C of the IES Rules/ISS Rules and without application of the rotation system. This Respondent, would, therefore, urge with respect ad all humility that he has complied with the directions of the Hon'ble Court bona fide ant in good faith. However, If there 18 any slip on the part of this Respondent in carrying out the directions of this Hon'ble Court of if the Hon'ble Court considers that the orders should have been executed in any other manner, this Respondent would tender unconditional apology ant will be duty bound to obey ant implement, such orders directions as this Hon'ble Court may deem fit or pleaset to issue in the circumstance of the case."

In the meanwhile certain direct recruits also intervened in the course of the said petition ant requested that they should be heart before any order was passed by the Court on the contempt application. While the order passed by the Court on February 1, 1984 did not require any clarification at all, since the parties tried to place different interpretation on It, prayer was mate by the Union Government as stated above seeking further clarifications in the light of certain recent

decisions rendered by this Court, we gave opportunity to all the parties to make their submissions once again. Availing themselves of the opportunity given by the Court learned counsel for the promotees and the direct recruits have virtually reargued the matter. It should be stated here that no specific stand was taken on this occasion by the Union Government except bringing to the notice of the Court the relevant provisions of law. On its behalf it was submitted very fairly by Shri F.S. Nariman, that there was no intention on the part of the Government or any of its officers to flout the order of the Court passed earlier and that if the Court found that there has been any mistake in the preparation of the lists of seniority, those lists would be prepared afresh in the light of any direction that may be given by the Court in the course of these proceedings. Having regard to the facts of the case and the events that have followed the order passed by this Court on February 1, 1984, we do not feel called upon to take any action for contempts against the Union Government or any of its officers for not obeying the orders of this Court. We have, however, found it necessary to consider the matter again in the light of the submissions made by the parties and issue fresh directions in this case. We feel that a detailed order is also called for in the circumstances of the case.

The Indian Economic Service Rules, 1961 and the Indian Statistical Service Rules, 1961 (hereinafter referred to as 'the Rules') which are more or less identical with regard to the questions involved in this case were notified on November 1, 1961 and these Services were constituted with effect from that date by encadering numerous posts carrying economic and statistical functions in the various ministries of the Government of India. These Services were meant to comprise a pool of officers having appropriate qualifications for performing the aforesaid technical functions involved in various posts. The strength of the various grades of the Indian Economic Service at the initial constitution of the Service, i.e., on November 1, 1961 was Grade I - 15, Grade II - 15, Grade III - 95 and Grade IV - 199 - Total 324 posts. The strength of the various grades of the Indian Statistical Service at the initial constitution of the Service, i.e., on November 1, 1961 was Grade I - 8, Grade II - 7, Grade III - 54 and Grade IV - 116 Total 185 posts.

The officers of Grade I to Grade IV are classified as Class-I Officers. The authorised permanent strength of each of the Services is to be fixed by the Controlling Authority with the guidance of the Ministry of Finance in accordance with the provisions of the Rules. It is required to be based on the following principles:

- 1) it shall be assumed that 80 per cent of the total number of semi-permanent posts are likely to be continued indefinitely in one form or another, and shall be provided for in the permanent strength; and
- 2) all the purely temporary posts and 20 per cent of the semi-permanent posts shall be excluded for purposes of determining the permanent strength.

The Ministry of Home Affairs (Department of Personnel and Administrative Reforms) advised by a Board known as the Indian Economic Statistical Service Board is designated as the Controlling Authority under rule 6 of the Rules. Initial constitution of both the Services was required to be done in accordance with rule 7. Under that Rule the Union Public Service Commission was required to constitute a Selection Committee with a Chairman or a Member of the commission as President, not

more than two representatives of the participating Ministries and the Chief Economic Adviser in the Ministry of Finance (Department of Economic Affairs) to determine the suitability of departmental candidates for appointment to the different grades and to prepare an order of preference for each grade for the initial constitution of the Service. On receipt of the Committee's report the Commission was required to forward its recommendations to the Government and such recommendations might include a recommendation that a person considered suitable for appointment to a grade might, if a sufficient number of vacancies were not available in that grade, be appointed to a lower grade. The departmental candidates who were not absorbed at the initial constitution of the Service were to continue to work as on the date of the initial constitution and were given the opportunity to apply (and getting selected if they were found suitable) for future vacancies. We are informed that the notifications regarding the initial constitution of these two Services were issued by the middle of February 1, 1964 with effect from February 15, 1964. Future maintenance of these two Services is governed by rule 8 of the Rules. Initially rule 8, which is relevant for the purposes of this case read as follows :

"8.(1) Future maintenance of the Service - after the initial constitution of the Service has been completed by appointment of departmental candidates or otherwise, vacancies shall be filled as hereinafter provided.

(a) Grade IV - Assistant Director.

(i) Not less than 75 per cent of the vacancies in this grade shall be filled by direct recruitment through an open competitive examination to be held by the Commission in the manner prescribed in Schedule II. Provided that 25 per cent of the said quota for direct recruitment may be set apart for a maximum period of 5 years for absorption of officers considered suitable for appointment at the initial constitution of the Service but who could not be so appointed in the absence of vacancies.

(ii) Not more than 25 per cent of the vacancies in this grade shall be filled by selection from among officers serving in offices under the Government in Economic posts recognised for this purpose by the Controlling Authority who shall prepare a list of such posts in consultation with the commission.

The Controlling Authority may, in consultation with the Commission, add to or modify the list from time to time. The selection will be made from amongst those who have completed at least 4 years of service in those posts on the basis of merit with due regard to seniority by the Controlling Authority on the advice of the Commission..... "

Rule 8(1)(a) now reads thus :-

"8.(1) Future maintenance of the service; after the initial constitution of the service had been completed by appointment of departmental candidates or otherwise and after promotions in accordance with sub-rule (2A) of Rule 7 have taken place, vacancies shall be filled as hereinafter provided.

(a) Grade IV - Assistant Director.

(i) Not less than 75 per cent of the vacancies in this grade shall be filled by direct recruitment through an open competitive examination to be held by the Commission in the manner prescribed in Schedule II. Provided that 25 per cent of the said quota for direct recruitment may be set apart for a maximum period of 5 years for absorption of officers considered suitable for appointment at the initial constitution of the service but who could not be so appointed in the absence of vacancies.

(ii) Not more than 25 per cent of the vacancies in this grade shall be filled by selection from among officers serving in offices under the Government in Economic posts recognised for this purpose by the Controlling Authority who shall prepare a list of such posts in consultation with the Commission.

The Controlling Authority may, in consultation with the Commission, add to or modify the list from time to time. The selection will be made from amongst those who have completed at least 4 years of service on a regular basis in these posts on the basis of merit with due regard to seniority by the Controlling Authority on the advice of the Commission.

Provided that if any junior person in an office under the Government is eligible and is considered for selection for appointment against these vacancies, all persons senior to him in that office shall also be so considered notwithstanding that they may not have rendered 4 years of service on a regular basis in their posts."

After the initial constitution of the two Services was completed it was found that a number of posts carrying Economic/Statistical functions could not be considered for inclusion in the officers' Grades due either to misunderstanding or to inadvertence. Further as the process of formation of the Indian Economic Service and the Indian Statistical Service was prolonged for number of years and the need for appointing more officers in the said Departments during that long period also arose gradually several posts carrying economic/statistical functions were created. Although rule 8 provided that not less than 75 per cent of the vacancies in Grade IV should be filled up by direct recruitment through an open competitive examination to be held by the Union Public Service Commission in the manner prescribed in Schedule II to the Rules and further provided that not more than 25 per cent posts of the vacancies in that grade should be filled by selection from among officers serving in the offices under the Government in Economic/Statistical posts recognised for that purpose by the Controlling Authority, no direct recruitment was resorted to till about the year 1968. In the meanwhile a large number of persons in the feeder posts were appointed to the posts in Grade IV from time to time from the year 1962 onwards although the orders promoting them stated that they had been promoted only temporarily. It is not disputed that all those promotees have been holding those posts continuously till now without being reverted to the feeder posts from which they had been promoted. Some have retired from those posts on attaining the age of superannuation.

We shall reproduce below one of the notifications issued in connection with the promotion to the posts in Grade IV of such officers, some of whom are the petitioners in this petition. It reads thus :

"GOVERNMENT OF INDIA PLANNING COMMISSION Yojana Bhawan, Parliament Street New Delhi-1, the 20th/23rd November '65 NOTIFICATION No.F.8(10)/65-ADM.I: The President is pleased to appoint the following Economic Investigators Grade I, Planning Commission, as Research Officers in the Commission in a temporary capacity with effect from the 6th November 1965 (forenoon), and until further order :-

Shri K.V. Vishwanathan Shri S.N. Padru Shri C.L. Kapur Smt. K. Passi Shri Narendra Chaddha Shri R.N. Mokhey Shri N. Srinivasan Shri K. Suryanarayana Shri P.N. Radhakrishnan Shri B.R. Kharbanda Shri Kamla Prasad Shri M.M. Gupta Shri S.P. Kumar Sd/-

(N.S. Gidwani) (Deputy Secretary to the Government of India)
..... All these officers excepting Shri P.N. Radha- Krishnan are either permanent or quasi-permanent in the grade of Economic Investigators. Shri Radha Krishnan is quasi Permanent in the grade of Senior Computer. The promotion of all is in the direct line.

..... In another order of promotion issued while promoting another officer by name Jagdish Chandra on November 21, 1966 it was mentioned that his promotion to the post of Research Officer was in direct line of Economic Investigator Grade I/II. It should be stated here that although rule 8 (1) (a) provided that not less than 75 per cent of the vacancies in Grade IV of the two Services should be filled up by direct recruitment through an open competitive examination to be held by the Commission in the manner prescribed in Schedule II to the Rules and that not more than 25 per cent of the vacancies in the Grade could be filled up by a selection from among officers serving in offices under the Government in Economic/Statistical posts recognised for this purpose by the Controlling Authority, the prescribed quota of appointment from the two different sources, referred to above, was not maintained right from the commencement of the Constitution of the Services. The initial constitution of the two Services was completed under rule 7 of the Rules with effect from February 15, 1964 as mentioned earlier. Thereafter rule 7A was added.

That rule was added by a notification dated December 24, 1966 and it has been amended subsequently by a notification dated February 12, 1972. Rule 7A made special provision regarding certain departmental candidates who were to be absorbed in the two Services. It provided that notwithstanding anything contained in rule 8 of the Rules, the Controlling Authority on the advice of the Board should constitute a Selection Committee for the purpose of appointing officers who were departmental candidates to the Services in question. A departmental candidate who was not selected for appointment for any grade in the Services could continue to hold the post which he was holding then and might be considered by the Controlling Authority on the advice of the Board for appointment to the service at the subsequent stage or

stages in consultation with the Commission. It further provided that any departmental candidate, referred to in sub-rule (1) of rule 7A who did not on a selection to any Grade in the Service desire to be absorbed in the service might continue to hold the post held by him immediately before the selection as if he had not been selected. The validity of rule 7A was questioned by some of the direct recruits, who were appointed in the year 1968 in the High Court of Delhi by a Writ Petition. We understand that the said writ petition has been transferred to the file of the Central Administrative Tribunal and the said writ petition is still pending. We are not concerned here with the merits of the contentions urged by the contesting parties in those proceedings. We are concerned in this case only with the question of seniority as between direct recruits and promotees.

From the statements annexed to the counter-affidavit filed by Shri V. Subramanian, Director in the Department of Economic Affairs, it is seen that in the Indian Economic Service there were 3 vacancies for direct recruits in the year 1964, 18 in the year 1965, 80 in the year 1966 and 12 in the year 1967. Nobody was recruited directly to those posts during those years. In the year 1968 there were 11 vacancies for direct recruits but 32 were recruited directly during that year. In 1969 there were 6 vacancies for direct recruits and 31 were recruited, in 1970 there were 33 vacancies for direct recruits, in 1971 there were 12 vacancies for direct recruits, in 1973 there were 25 vacancies for direct recruits, in 1974 there were 20 vacancies for direct recruits and in 1975 there were 11 vacancies for direct recruits. By the year 1984 in all there were 435 vacancies for direct recruits out of which only 342 posts were filled up by direct recruitment. In all 93 posts intended for direct recruits remained unfilled and most of them were held all along by persons who had been promoted from the feeder posts. The position in the Indian Statistical Service was more or less the same. As against a total of 303 vacancies meant for direct recruits between the years 1964 and 1984 only 275 direct recruits were appointed.

In this department also the posts which remained unfilled had been held by the persons who were departmental candidates. It is alleged in the counter-affidavit filed on behalf of the Union of India of which the deponent is Shri P.G. Lele, Deputy Secretary in the Department of Personnel and Administrative Reforms that many of the departmental candidates had been allowed to hold posts including in Grade IV of the aforesaid Services purely on ad hoc and ex gratia basis. The relevant part of the counter-affidavit is to be found in paragraphs 21 to 24 thereof. It is unfortunate that even though the promotees have been discharging their duties to the best of their ability and receiving salary and allowances from the Government for the services rendered by them, it is alleged in the course of the said counter-affidavit that what was being paid to them was by way of grace. This statement adds insult to injury. If the Government felt that they were not competent to discharge their duties and they had not been appointed permanently to the posts held by them, it was open to it to revert them to their posts from which they had been promoted leaving it open to them to question the orders of reversion in Court. The Government was in need of their services and the petitioners have been holding these posts for nearly 15 to 20 years. It is not fair to say at this distance of time that the Government was only keeping them in their posts as a matter of grace. Be

that as it may, it is seen that the Departmental Promotion Committee met only thrice between 1965 and 1984, i.e. 1970, 1972 and 1984 although under the rules and instructions issued by the Central Government on the advice of the Union Public Service Commission, the Departmental Promotion Committee had to meet annually. When the Departmental Promotion Committee met in the year 1970, it prepared a select list consisting of 33 names to fill 33 vacancies only in Grade IV from amongst those who had already been promoted to Grade IV temporarily and at that time only officers who had completed four years of regular service in the feeder posts as on December 31, 1966 were considered although the Departmental Promotion Committee was meeting in the year 1970. If it had taken into consideration the service put in by the departmental candidates till the date on which it took up their cases for consideration for promotion many others who had been promoted on a temporary basis to Grade IV would have become eligible for consideration. By omitting to take the cases of those persons into consideration on the ground that they had not completed four years of regular service in the feeder posts as on December 31, 1966 the Departmental Promotion Committee violated Articles 14 and 16(1) of the Constitution of India. It is further seen that the Departmental Promotion Committee made its recommendations on the basis of the records of service and seniority of each of the departmental candidate. It is not known whether any of them were found to be unfit on the basis of their record of service only. It is, however, seen that the select list contained only 33 names because the Departmental Promotion Committee felt that they were the only vacancies for which it could make recommendations under rule 8(1)(a)(ii) of the Rules. If it had made recommendations to the Government in respect of all the vacancies which were available then, perhaps, the names of some others who were left out would have been included in the select list. Then after an interval of 12 years the Departmental Promotion Committee met in the year 1982. There again the same procedure was followed and the next meeting of the Departmental Promotion Committee, as already stated, was in 1984. For no fault of the petitioners and the officers similarly situated their cases for promotion were not considered every year and even those who have been found fit by the Departmental Promotion Committee for promotion had to wait for nearly 15 years to get into the 'regular' service through a select list prepared by the Departmental Promotion Committee.

In, compliance with our direction the Government has produced before the Court two lists showing the names of officers who were appointed to Grade IV posts of the Indian Economic/Statistical Service either regularly or on ad hoc basis arranged according to the dates from which they have been officiating in these posts continuously.

large number of decisions were cited at the Bar by the learned counsel for the parties. Some of them are S.B. Patwarthana & Ors. etc. etc. v. State of Maharashtra & Ors. [1977]-3 S.C.R. 775, Rajendra Narain Singh & Ors. v. State of Bihar & Ors. [1980] 3 S.C.R. 450, Baleshwar Dass & Ors. etc. v. State of U.P. & Ors. etc. [1981] 1 S.C.R. 449, A. Janardhana v. Union of India & Ors. [1983] 2 S.C.R. 936, P.S. Mahal & Ors. v. Union of India & Ors. [1984] 3 S.C.R. 847, O.P. Singla & Anr. v. Union of India & Ors. [1985] 1 S.C.R. 351, Karam Pal & Ors. etc. v. Union of India & Ors. [1985] 3 S.C.R. 271, G.S. Lamba & Ors. v. Union of India & Ors. [1985] 3 S.C.R. 431, Pran Krishoa Goswami & Ors. v. State of West Bengal & Ors. [1985] Supp. S.C.C. 221 and D.K. Mitra & Ors. v. Union of India & Ors. [1985] Supp. S.C.C.

243. We have carefully considered all the decisions cited before us.

It is now well-settled that it is permissible for the Government to recruit persons from different sources to constitute a service. It is also open to it to prescribe a quota for each source. Rules of recruitment framed on the above lines are perfectly legitimate and quite consistent with Articles 14 and 16 of the Constitution. It is also true that when the Rules of recruitment prescribe recruitment from different Services in accordance with the specified quota the Government is bound to appoint persons to the Service concerned in accordance with the said Rules. The seniority of persons recruited from different sources will have to be regulated accordingly. So far there can be no controversy. But we are faced in this case with the problem of resolving conflicts which have arisen on account of a violent departure made by the Government from the Rules of recruitment by allowing those who were appointed contrary to the Rules to hold the posts continuously over a long period of time. The question is whether after such a long period it is open to the Government to place them in seniority at a place lower than the place held by persons who were directly recruited after they had been promoted, and whether it would not violate Articles 14 and 16 of the Constitution if the Government is allowed to do so. Promotions of officers have been made in this case deliberately and in vacancies which have lasted for a long time. A letter dated August 11, 1978 written by Shri S.D. Patil, Minister of State for Home Affairs, Personnel Department to Shri Ganga Bhakt Singh, Member of Parliament substantiates the conclusion. The relevant part of the letter reads :

"Government resorted to making ad-hoc appointments as it was separately considering proposals to re-

Organise Grade IV of the two Services. Pending such reorganisation Govt. has taken a deliberate decision to restrict direct recruitment for the present. It is, therefore not correct to say that ad-hoc appointments have been made due to nonavailability of direct recruits. I may add that but for his deliberate decision, most of the officers holding ad-hoc posts in Grade IV would have continued to stagnate in the lower posts of Investigators."

At one stage it was argued before us on behalf of some of the respondents that the petitioners who have not been appointed in accordance with rule 8(1)(a)(ii) could not be treated as members of the Indian Economic Service or of the Indian Statistical Service at all and hence there was no question of determining the question to seniority as between the petitioners and the direct recruits. This argument has got to be rejected. It is true that the petitioners were not promoted by following the actual procedure prescribed under rule 8(1)(a)(ii) but the fact remains that they have been working in posts included in Grade IV from the date of which they were appointed to these posts. The appointments are made in the name of the President by the competent authority. They have been continuously holding these posts. They are being paid all along the salary and allowances payable to incumbents of such posts. They have not been asked to go back to the posts from which they were promoted at any time since the dates of their appointment. The orders of promotion issued in some cases show that they are promoted in the direct line of their promotion. It is expressly admitted that the petitioners have been allowed to hold posts included in Grade IV of the aforesaid services,

though on an ad hoc basis. (See Para 21 of the counter- affidavit filed by Shri P.G. Lele, Deputy Secretary, Department of Personnel and Administrative Reforms). It is, therefore, idle to contend that the petitioners are not holding the posts in Grade IV of the two Services in question. It is significant that neither the Government has issued orders of reversion to their former posts nor has anybody so far questioned the right of the petitioners to continue in the posts which they are now holding. It would be unjust to hold at this distance of time that on the facts and in the circumstances of this case the petitioners are not holding the posts in Grade IV. The above contention is therefore without substance. But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post. But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results. In the instant case the Government has also not expressed its unwillingness to continue them in the said posts. The other contesting respondents have also not urged that the petitioners should be sent out of the said posts. The only question agitated before us relates to the seniority as between the petitioners and the direct recruits and such a question can arise only where there is no dispute regarding the entry of the officers concerned into the same Grade. In the instant case there is no impediment even under the Rules to treat these petitioners and others who are similarly situated as persons duly appointed to the posts in Grade IV because of the enabling provision contained in the rule 16 thereof. Rule 16 as it stood at the relevant time read as follows :

"16. The Government may relax the provisions of these rules to such extent as may be necessary to ensure satisfactory working or remove inequitable results.

" Now rule 16 reads thus :

"16. Powers to relax: The Government may in consultation with the Commission and for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons or posts and no such relaxation shall be given so as to have retrospective effect.

" G.S. Lamba's case (supra) may be carefully considered at this stage. In that case this Court was concerned with the Indian Foreign Service which was governed by the Indian Foreign Service, Branch 'B' (Recruitment, Cadres, Seniority and Promotion) Rules, 1964. The said rules provided for recruitment to the said Service from three different Services,

(i) direct recruitment by competitive examination, (ii) substantive appointment of persons included in the select list promoted on the basis of a limited competitive examination and (iii) promotion on the basis of seniority.

One of the Rules provided that the recruitment should be made from the above sources on the following basis: (i) 1/6th of the substantive vacancies to be filled in by direct recruitment, (ii) 33, 1/3% of the remaining 5/6 of the vacancies to be filled on the basis of results of limited competitive examinations and (iii) the remaining vacancies to be filled in by promotion on the basis of seniority. The Court found that the direct recruitment had not been made for years, limited competitive examination had also not been held for years and promotions from the select list had been made in excess of the quota. It found that there was enormous departure from the rules of recruitment in making appointments over several years. The Court was of the view that the situation in this case was similar to the situation in two other earlier cases of this Court in *A. Janarthana's case* (supra) and *O.P. Singla & Anr.* (supra). The Court felt that in the circumstances it should be presumed that the excess appointment by promotion had been made in relaxation of the Rules since there was power to relax the Rules similar to the power under rule 16 in the Rules with which we are concerned here. Justifying the above view the court observed at pages 458-459 thus :

"It was however contended that it is not permissible to infer that promotions in excess of quota were given by relaxing the quota rule because the posts in Integrated Grade II and III were within the purview of the Union Public Service Commission and the proviso to Rule 29(a) mandates that power to relax is hedged in with a condition that it can be done after consultation with the Commission, and there is nothing to show that the Commission was ever consulted. Undoubtedly, the proviso to Rule 29(a) requires that the controlling authority cannot relax any of the provisions of the rules in respect of posts which are within the purview of the Union Public Service Commission unless after consultation with the Commission. It was submitted that nothing is placed on the record by the petitioners to show that power to relax the quota rule was exercised after consultation with the Union Public Service Commission. Assuming that there was no consultation, would the exercise of power to relax be vitiated and the appointments made in relaxation of the mandatory quota rule would be ab initio invalid. Commencing from the decision of the Privy Council in *Montreal Street Railway Company v. Normandin* AIR 1917 P.C. 142 it is well-settled that 'when the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work general inconvenience or injustice to persons who have not control over those entrusted with the duty and that at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done'. The view was expressed in the context of the failure to revise list of Jurors by the Sheriff according to the revised statutes of Quebec and conviction was challenged on the ground of mistrial held by selecting Jurors from unrevised lists. The challenge failed. Coming home in *State of U.P. v. Manbodan Lal Srivastava*, [1958] S.C.R. 533 a Constitution Bench of this Court specifically held that where consultation with the Public Service Commission is provided as required by Art. 320(3) (c) of the Constitution such provisions are not mandatory and they do not confer any rights on public servants so that the absence of consultation or irregularity in consultation does not afford him a cause of action in a court of law. There are number of

subsequent decisions to which our attention was called reiterating the same principle. Therefore assuming there was failure to consult the Union Public Service Commission before exercising the power to relax the mandatory quota rule and further assuming that the posts in Integrated Grade IT and III were within the purview of the Union Public Service Commission and accepting for the time being that the Commission was not consulted before the power to relax the rule was exercised yet the action taken would not be vitiated nor would it furnish any help to Union of India which itself cannot take any advantage of its failure to consult the Commission. Therefore it can be safely stated that the enormous departure from the quota rule year to year permits an inference that the departure was in exercise of the power of relaxing the quota rule conferred on the controlling authority. Once there is power to relax the mandatory quota rule, the appointments made in excess of the quota from any given source would not be illegal or invalid but would be valid and legal as held by this Court in *N.K. Chauhan and Ors. v. State of Gujarat*, [1977] 1 S.C.R. 1037. Therefore the promotion of the promotees was regular and legal both on account of the fact it was made to meet the exigencies of service in relaxation of the mandatory quota rule and to substantive vacancies in service.

The Court ultimately quashed the seniority list and directed the preparation of seniority list on the basis of length of continuous officiation in the cadre. The facts in this case being almost identical there is no reason why the view express in *G.S. Lamba's case* (supra) should not be adopted here also.

The continuance of these petitioners may be justified on the basis of the above quoted rule 16 on the assumption that the Government had relaxed the Rules and appointed them to the posts in question to meet the administrative requirements.

The enormity of the prejudice that is likely to be caused to the petitioners and others who were similarly situated can be demonstrated by setting out the effect of sticking to the quota rule as found in rule 8(1)(a) even though there has been a deliberate deviation from it. The result of applying the quota rule would be as follows:

Petitioner No.1 who was promoted to Grade 17 on November 6, 1965 would be junior to a direct recruit of 1974 batch. Petitioner No.3 who was promoted to Grade IV on March 22, 1966 would become junior to a direct recruit of 1979 batch. Petitioner No.6 who was promoted to Grade IV post in July 1, 1966 would become junior to direct recruits of 1982 batch. Petitioner No. 10 who was promoted to Grade IV on May 18, 1968 would become junior to direct recruits of 1982 batch. Petitioners Nos. 16 to 18 and 21 to 25 would continue to be treated as ad hoc appointees and will be junior to every body appointed till now into the service as they cannot be fitted anywhere even though they have put in 9 to 15 years of service in Grade IV. These startling results ought to shock anybody's conscience. The only just solution to this problem is to treat the petitioners as persons duly appointed to the Service with effect from the day on which they were promoted to the Grade IV posts.

As observed in *D.R. Nim, I.P.S. v. Union of India* [1967] 2 S.C.R. 325 when an officer has worked for a long period as in this case for nearly fifteen to twenty years in a post and had never been reverted it cannot be held that the officer's continuous officiation was a mere temporary or local or stop gap arrangement even though the order of appointment may state so. In such circumstances the entire period of officiation has to be counted for seniority. Any other view would be arbitrary and violative of Articles 14 and 16(1) of the Constitution because the temporary service in the post in question is not for a short period intended to meet some emergent or unforeseen circumstances. Clause

(b) of rule 9C of the Rules which deals with the question of seniority of promotees becomes irrelevant in the circumstances of this case as regards the promotees who have been holding the posts from a long time as stated above.

The decision in *A. Janardhana's case* (supra) and the decision in *O.P. Singla's case* (supra) strongly support the above view. It is necessary to refer to them in great detail since in *G.S. Lamba's case* (supra) the effect of the said decisions is set out very clearly.

The decision in *Karam Pal's case* (supra) is not of much assistance to the direct recruits. In that decision there was a specific finding that except for a period of two years i.e. in 1966 and 1970, direct recruitment had been made in accordance with the Scheme governing recruitment to the Central Secretariat Service and that there was substantial compliance with the rules of recruitment governing that Service. The Court observed that in the absence of serious failure in implementing the relevant rules there was no ground to interfere with the inter se seniority of the officers in the Grades concerned. Hence that decision is distinguishable on facts from the present case.

We are aware that the view we are taking may upset the inter se seniority between those promotees who were included in the Select List of 1970, 1982 and 1984 and those who were included later on or who have not been included at all till now. The existence of this possibility should not deter us from adopting a uniform rule in the case of all promotees and direct recruits to adjust the equities amongst them as regards their relative seniority in the light of the violent departure made by the Government both as regards direct recruitments and promotions which it had to make every year under the Rules. The prejudice which the promotees included in the Select Lists might suffer is marginal and has to be ignored.

Having given our anxious consideration to the submissions made on behalf of the parties and the peculiar facts present in this case we feel that the appropriate order that should be passed in this case is to direct the Union Government to treat all persons who are stated to have been promoted in this case to several posts in Grade IV in each of the two Services contrary to the Rules till now as having been regularly appointed to the said posts in Grade IV under rule 8(1)(a)(ii) and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts. Even those promotees who have been selected in 1970, 1982 and 1984 shall be assigned seniority with effect from the date on which they commenced to officiate continuously in the posts prior to their selection. For purposes of seniority the dates of their selection shall be ignored. The direct recruits shall be given seniority with effect from the date on which their names were recommended by the Commission for appointment to such grade or post as provided in clause (a) of

Rule 9-C of the Rules. A seniority list of all the promotees and the direct recruits shall be prepared on the above basis treating the promotees as full members of the Service with effect from the dates from which they are continuously officiating in the posts. This direction shall be applicable only to officers who have been promoted till now. This is the meaning of the direction given by the Court on February 1, 1984 which stated, 'we wish to make it clear that there is no question of any rotation system being applied under the Rules, as they exist now.' All appointments shall be made hereafter in accordance with the Rules and the seniority of all officers to be appointed hereafter shall be governed by rule 9-C of the Rules.

We are informed that some of the promotees and direct recruits who are governed by this decision have been promoted to higher grades. If as a result of the preparation of the seniority list in accordance with the decision and the review of the promotions made to higher grades any of them is likely to be reverted such officer shall not be reverted. He shall be continued in the higher post which he is now holding by creating a supernumerary post, if necessary to accommodate him. His further promotion shall however be given to him when it becomes due as per the new seniority list to be prepared pursuant to this decision. There shall, however, be a review of all promotions made so far from Grade IV to higher posts in the light of the new seniority list. If any officer is found entitled to be so promoted to a higher grade he shall be given such promotion when he would have been promoted in accordance with the new seniority list and he shall be given all consequential financial benefits flowing therefrom. Such review of promotions shall be completed within three months and the consequential financial benefits shall be paid within three months thereafter. In giving these directions we have followed more or less the directions given in P.S. Mahal & Ors. V. Union of India & Ors. (supra).

We direct that the above directions shall be complied with within the period indicated above.

The petition is accordingly disposed of.

A. P. J.