

Supreme Court of India

Union Of India Etc vs G.N. Tiwari, K.L. Jain & Ors on 19 November, 1985

Equivalent citations: 1986 AIR 348, 1985 SCR Supl. (3) 744

Author: A Sen

Bench: Sen, A.P. (J)

PETITIONER:

UNION OF INDIA ETC.

Vs.

RESPONDENT:

G.N. TIWARI, K.L. JAIN & ORS.

DATE OF JUDGMENT 19/11/1985

BENCH:

SEN, A.P. (J)

BENCH:

SEN, A.P. (J)

MADON, D.P.

CITATION:

1986 AIR 348

1985 SCR Supl. (3) 744

1986 SCC (1) 89

1985 SCALE (2) 1081

ACT:

Indian Administrative Service (Regulation of Seniority) Rules, 1954, Rule 3(3) (b) - Year of allotment, reckoning of - Whether a member of the State Civil Service (Executive) on his temporary appointment by the State Government under rule 9 of the Indian Administrative Service (Cadre) Rules, 1954, for a period exceeding six months, is entitled to have his continuous period of officiation in a senior post for the purposes of computation of the "year of allotment" and fixation of seniority - Indian Administrative Service (Cadre) Rules, 1954, Rule 9, scope of - Clause (1) of Section III of Schedule II of the Indian Administrative Service (Pay) Rules, 1954.

HEADNOTE:

The respondent, in CA 5045 of 1985 was a substantive member of the State Civil Service (Executive) in the State of Madhya Pradesh. He was, on November 7, 1975, temporarily appointed by the State Government to the post of a collector which is a senior post on the cadre under rule 9 of the Indian Administrative Service (Cadre) Rule, 1954 and had been continuously officiating on such post with effect from November 10, 1975 till the Central Government accorded its approval on October 1, 1976 for his appointment in the

Indian Administrative Service. The promotion quota of non-cadre officers to cadre posts which was 50 prior to October 1, 1976 was on that date increased to 56. The respondent was formally appointed to the Indian Administrative Service by the Central Government on December 7, 1976. The State Government of Madhya Pradesh by its letter dated February 3, 1979 informed him that he was assigned 1972 as the year of allotment by the Central Government. The respondent, therefore, filed a petition under Article 226 of the Constitution for an appropriate writ or direction directing the appellants to assign him, 1971 as the year of allotment, fix his seniority accordingly and allow all consequential reliefs.

The High Court, held: (a) that though there was no specific approval of the Central Government to the appointment of the respondent, such prior approval was not a condition precedent

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for valid appointment to a cadre under rule 9 of the Cadre Rules and, therefore, the continuous officiation by the respondent as the Collector for the period from November 10, 1975 to September 30, 1976 could not be ignored on the ground that the appointment was not specifically approved by the Central Government: (b) the existence of a vacancy in the promotion quota of cadre officers was not a condition pre-requisite for making an appointment of a non-cadre officer to a cadre post under rule 9 of the Cadre Rules and therefore, the fact that there was over utilization of the State Deputation Reserve Quota had no bearing on the question of the validity of the appointment of the respondent on a cadre post; (c) that the condition of approval by the Central Government required by the proviso to clause (I) of Section III of Schedule II of the Indian Administrative Service (Pay) Rules, 1954 was only for pay fixation and it had nothing to do with the validity of the officiation of a non-cadre officer in a cadre post under Rule 9 of the Cadre Rules; and (d) that his continuous officiation in a senior post of Collector from November 10, 1975 was in accordance with Rule 9 of the Cadre Rules and the same must enure for his benefit to give him seniority under Rule 3(3) (b) of the Seniority Rules. The High Court thus allowed the petition.

Following the said case reported as K.L. Jain v. Union of India, (1984) MPLJ 284, the High Court of Madhya Pradesh in the connected cases out of which the present Civil Appeals Nos. 5040-5044 of 1985 arise held that the respondents therein also be assigned years 1966, 1967 and 1971 as their "years of allotment" respectively under rule 3(3) (b) of the Seniority Rules and their placement in the seniority list be accordingly revised.

Allowing the appeals, the Court

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HELD : 1.1 For the purposes of appointment of a non-

cadre officer to a cadre post under Rule 9 of the Indian Administrative Service (Cadre) Rules, 1954, neither the prior approval of the Central Government to such appointment nor the existence of a vacancy in the promotion quota is a condition precedent. [754 G]

1.2 It is plain upon a construction of Rule 9 of the Indian Administrative Service (Cadre) Rules, 1954, that under sub-rule (1) the State Government can direct that a cadre post may be filled by a person who is not a cadre officer. If it is satisfied that the vacancy is not likely to last for more than three months or that there is no suitable cadre officer available for filling

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the vacancy. Under sub-rule (2), where in any State a person than a cadre officer is appointed to a cadre post for a period exceeding three months, the State Government is required to forthwith report the fact to the Central Government together with the reasons for making the appointment. Under rule 3, on receipt of a report under sub-rule (2) or otherwise, the Central Government may direct that the State Government shall terminate the appointment of such person and appoint thereto a cadre officer, and where any direction is so issued, the State Government shall accordingly give effect thereto. Under sub-rule (4), where a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months, the Central Government is required to report the full facts to the Union Public Service Commission with the reasons for holding that no suitable officer is available for filling the post and may, in the light of the advice given by the Union Public Service Commission, give suitable direction to the State Government concerned in that behalf. [753 E-H; 754 A-D]

1.3 The power of the Central Government under sub-rule (3) to direct termination of appointment of a person other than a cadre officer to a cadre post for a period exceeding three months or more cannot be said to be a larger power and carried with it the power to direct curtailment of the period of officiation of such person. The power to direct termination of the appointment of a non-cadre officer in a senior post is distinct from the power to direct curtailment of his period of officiation. In the absence of a provision made in the Cadre Rules empowering the Central Government to direct the curtailment of the period of officiation of a non-cadre officer on a cadre post for purposes of reckoning his year of allotment under rule 3(3)(b) of the Seniority Rules and since such a power cannot be spelled out from sub-rule (3) of rule 9 of the Cadre Rules which confers power on the Central Government to direct termination of appointment of a non-cadre officer to a cadre post, the orders passed by the Central Government fixing different dates as the date from which the period of officiation of each of the respondents is to be reckoned for determining the year of allotment under rule 3(3)(b) of the Seniority Rules are

wholly arbitrary and capricious. Further the failure of the Central Government to give a direction under sub-rule (3) of rule 9 to terminate the appointment of the respondents implies that their continuous officiation on a cadre post had the tacit approval of the Central Government. [756 G-H; 757 A-D]

2. In these cases, the respondents as non-cadre officers could not be denied the benefit of continuous officiations in a senior post merely because the State Deputation Reserve Quota was over utilised. [757 D-E]
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Barjeet Singh v. Union of India & Ors., [1980] 3 S.C.R. 459; and Amrik Singh & Ors. V. Union of India & Ors..... [1980] 3 S.C.R. 485 followed.

2.2 The respondents who were appointed to the Service by promotion in accordance with sub-rule 1 of Rule 8 the Recruitment Rules are entitled under Explanation 1 to Rule 3(3)(b) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954 to have the entire period of their continuous officiation in a senior post, for the purpose of determination of their seniority, counted from the date of their officiating appointment to such senior post whichever was later. They are also entitled by reason of the legal fiction contained in Explanation 2 to have the entire period of their continuous officiation without a break in a senior post from the date of their officiating appointment to such senior post till the date of their appointment into the service, counted for purposes of determining their year of allotment under rule 3(3)(b) of the Indian Administrative Services (Regulation of Seniority) Rules 1954. It cannot be said that their officiation in a senior post on the cadre for the periods in question was merely fortuitous or stop-gap. [756 C-F]

2.3 Where a person other than a cadre officer is appointed to the service by promotion in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules, the year of allotment of the junior most amongst the officers recruited to the service in accordance with rule 7 of the Rules who officiated continuously in a senior post from a date earlier than the commencement of such officiation by the former, is the determinative factor in allocation of the "year of allotment" under rule 3(3)(b) of the Seniority Rules. [755 G-H; 756 A]

K.L. Jain v. Union of India, [1984] M.P.L.J. 284 affirmed and approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 5040- 5044 of 1985.

From the Judgment and Order dated 16.12.1983 of the Madhya Pradesh High Court in Misc. Petition Nos. 297, 142, 830, 891 and 1520 of 1982.

AND Civil Appeal No. 5045 of 1985.

From the Judgment and Order dated 9.9.1983 of the Madhya Pradesh High Court in Misc. Petition No. 1186 of 1981.

V. C. Mahajan, R.N. Poddar and Mrs. K. Kumarmanglam for the Appellants.

V. Bobde, C.L. Sahu and Miss Bina Gupta for the Respondents in C.A. Nos. 5040-5044 of 1985.

K.K. Venugopal, C.L. Sahu for the Respondent in C.A. No. 5045 of 1985.

The Judgment of the Court was delivered by SEN, J. After hearing learned counsel for the parties we had by our order dated October 11, 1985 dismissed these appeals. We now proceed to give the reasons therefor.

These appeals by special leave directed against the judgments and orders of the Madhya Pradesh High Court dated September 9, 1983 and December 16, 1983 raise a question as to whether a member of the State Civil Service (Executive) on his temporary appointment by the State Government under r. 9 of the Indian Administrative Service. (Cadre) Rules, 1954 for a period exceeding six months, is entitled to have his continuous period of officiation in a senior post, to be taken into account in reckoning the 'year of allotment' under r.3 (3)(b) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954. That depends on whether prior approval of the Central Government or the Union Public Service Commission to such appointment under sub-r.(2) of r.9 of the Cadre Rules for the appointment of a non-cadre officer to a cadre post by the State Government is a condition precedent for a valid appointment under r.9 of the Cadre Rules. Further, the question is whether the existence of a vacancy in the cadre strength of promotees, i.e. over-utilization of the State Deputation Reserve Quota is a relevant factor to be taken into consideration in determining the period of continuous officiation in a senior post on the cadre till the Central Government accords its approval to such appointment under r.9 of the Cadre Rules in assigning the year of allotment under r. 3(3)(b) of the Seniority Rules.

Facts in these cases are more or less similar. It will suffice for our purposes first to state the facts in K.L. Jain's case. The respondent was a substantive member of the State Civil Service (Executive) in the State of Madhya Pradesh. He was on November 7, 1975 temporarily appointed by the State Government to the post of a collector which is a senior post on the Cadre under r. 9 of the Indian Administrative Service (Cadre) Rules, 1954 and had been continuously officiating on such post w.e.f. November 10, 1975 till the Central Government accorded its approval on October 1, 1976, for his appointment in the Indian Administrative Service. The promotion quota of non-cadre officers to cadre posts was 50 prior to October 1, 1976 but was on that date increased to

56. The respondent was formally appointed to the Indian Administrative Service by the Central Government on December 7, 1976. The State Government of Madhya Pradesh by letter dated February 3, 1979 informed the respondent that he was assigned 1972 as the year of allotment by the Central Government. Feeling aggrieved, the respondent filed a petition before the High Court under Art. 226 of the Constitution for an appropriate writ, direction or order, directing that he should instead be assigned 1971 as his year of allotment under r. 3(3)(b) of the Seniority Rules and his seniority should be fixed on that basis, and that on refixation of his seniority, he be allowed the consequential reliefs to which he may be entitled.

The appellant contested the respondent's claim on three grounds, namely : (i) he was not entitled to count his continuous officiation in the senior post of Collector from November 10, 1975 as his appointment to such post in the cadre was not approved by the Central Government till October 1, 1976 i.e., for any period prior to October 1, 1976; (ii) there was no vacancy in the cadre strength of promotees for any period prior to October 1, 1976 and therefore the appointment of the respondent to the post of Collector for the period from November 10, 1975 to September 30, 1976 had to be ignored; and (iii) there was over- utilization of the State Deputation Reserve Quota and for this reason also his continuous officiation on the senior post of a Collector could not be taken into account.

G.P. Singh, CJ speaking for himself and Faizanuddin, J in *K.L. Jain v. Union of India*, (1984) MPLJ 284 held that though there was no specific approval of the Central Government to the appointment of the respondent, such prior approval was not a condition precedent for a valid appointment to a cadre under r.9 of the Cadre Rules and therefore the continuous officiation by the respondent as the Collector for period from November 10, 1975 to September 30, 1976 could not be ignored on the ground that the appointment was not specifically approved by the Central Government. Further, it was held that the existence of a vacancy in the promotion quota of cadre officers was not a condition pre-requisite for making an appointment of a non-cadre officer to a cadre post under r.9 of the Cadre Rules and therefore, merely because there was over-utilization of the State Deputation Reserve Quota had no bearing on the question of the validity of the appointment of the respondent on a cadre post. It also held that the condition of approval by the Central Government required by the proviso to cl.(1) of s.III of Schedule II of the Indian Administrative Service (Pay) Rules, 1954 was only for any fixation and it had nothing to do with the validity of the officiation of a non-cadre cadre officer in a cadre post under r.9 of the Cadre Rules. It, accordingly, allowed the writ petition filed by the respondent and held that his continuous officiation in a senior post of Collector from November 10, 1975 was in accordance with r.9 of the Cadre Rules and the same must enure for his benefit to give him seniority under r.3 (3)(b) of the Seniority Rules.

In the connected case, *G.N. Tiwari* and 19 other members of the Madhya Pradesh cadre of the Indian Administrative Service who had similarly been deprived of the benefit of their continuous officiation on their temporary appointment to the cadre post of a Collector by the State Government under r.9 of the Cadre Rules and had been assigned the year 1967 instead of 1966, the year 1968 instead of 1967, or the year 1972 instead of 1971 as the year of allotment under r. 3(3)(b) of the Seniority Rules also moved the High Court by a petition under Art. 226 of the Constitution based on the same grounds, and prayed for the grant of similar relief. A Division Bench consisting of J.S.

Verma and C.P. Sen, JJ following the decision in K.L.Jain's case allowed the writ petition filed by the aforesaid respondents and directed that they be assigned the years 1966, 1967 and 1971 as their years of allotment respectively under r. 3(3)(b) of the Seniority Rules, as claimed by them, and their placement in the seniority list be accordingly revised. It expressed the hope that the State Government and the Central Government would give them all the consequential reliefs to which they may be entitled on re-fixation of their seniority. Against the two judgments, the Union of India has preferred these appeals by special leave.

In support of the appeal, learned counsel for the appellant advanced two contentions, namely : (1) The respondents were not entitled to have their entire period of continuous officiation in a senior post under r.9 of the Cadre Rules taken into account in assigning the years of allotment under r. 3(3)(b) of the Seniority Rules as their temporary appointment to such senior post in the cadre was subject to the prior approval of the Central Government under sub-r.(2) of r.9 of the Cadre Rules, and (2) They as non-cadre officers were not entitled to appointment to the cadre post of a Collector because there was no actual vacancy in the cadre strength of promotees. It is urged that the power of the Central Government under sub-r.(3) of r.9 of the Cadre Rules to direct termination of appointment of a person other than a cadre officer appointed for a period exceeding three months is a larger power and necessarily carries within its ambit, the lesser power to direct curtailment of the period of officiation. It is further urged that the respondents were not entitled to the benefit of continuous officiation in a senior post to be taken into account in reckoning their year of allotment because there was no vacancy in the cadre strength of promotees. In fact, there was over-utilization of State Deputation Reserve Quota. We are afraid, we cannot accept this line of reasoning.

The assignment of the year of allotment is governed by r.3 of the Indian Administrative Service (Regulation of Seniority) Rules, 1954. The relevant clause applicable to the respondents is that contained in r. 3(3)(b) which reads as follows:

"3(3). The year of allotment of an officer appointed to the Service after the commencement of these rules shall be -

(a) x x x x

(b) Where the officer is appointed to the Service by promotion in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 7 of these rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former : Provided that the year of allotment of an officer appointed to the Service in accordance with sub- rule (1) of rule 8 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date of which any of the officer recruited to the Service in accordance with rule 7 of these Rules so started officiating, shall be determined ad hoc by the Central Government in consultation with the State Government concerned :

Explanation 1 - In respect of an officer appointed to the Service by promotion in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority, count only from the date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post, whichever is latter :

Explanation 2 - An officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from that date to the date of his confirmation in the senior grade he continues to hold without any break or reversion a senior post otherwise than as a purely temporary or local arrangement."

It is common ground that the post of Collector is a senior post. It is not disputed that the respondents were continuously officiating in a senior post for long periods prior to the date of their appointment to the Indian Administrative Service. It is also not in dispute that if the entire period of continuous officiation by the respondents in the senior posts of Collectors were taken into account, they would be entitled to the year 1966 instead of 1967, the year 1967 instead of 1968 and the year 1971 instead of 1972 as the 'year of allotment' to them in accordance with r. 3(3)(b) of the Seniority Rules.

The appointment of the respondents to the senior post of Collector was made in accordance with r.9 of the Indian Administrative Service (Cadre) Rules, 1954. It is in these terms:

"9. Temporary appointment of non-cadre officers to cadre posts -

(1) A cadre post in a State may be filled by a person who is not a cadre officer if the State Government is satisfied -

(a) that the vacancy is not likely to last for more than three months, or

(b) that there is no suitable cadre officer available for filling the vacancy.

(2) Where in any State a person other than a cadre officer is appointed to a cadre post for a period exceeding three months, the State Government shall forthwith report the fact to the Central Government together with the reasons for making the appointment.

(3) On receipt of a report under sub-rule (2) or otherwise, the Central Government may direct that the State Government shall terminate the appointment of such person and appoint thereto a cadre officer, and where any direction is so issued, the State Government shall accordingly give effect thereto.

(4) Where a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months, the Central Government shall report the full facts to the Union Public Service Commission with the reasons for holding that no suitable

officer is available for filling the post and may in the light of the advice given by the Union Public Service Commission give suitable direction to the State Government concerned." It is plain upon a construction of r.9 that under sub-

r. (1) the State Government can direct that a cadre post may be filled by a person who is not a cadre officer if it is satisfied that the vacancy is not likely to last for more than three months or that there is no suitable cadre officer available for filling the vacancy. In these cases, admittedly, the appointments of each of the respondents who was a person other than a cadre officer to the senior post of Collector in the cadre lasted for nearly a year or more and therefore exceeded the period of three months contemplated by sub-r.(1). Such an appointment could be made by the State Government on being satisfied that there was no suitable officer for filling the vacancy. It is not averred in the returns filed by the State Government or the Central Government in the High Court that this condition was not satisfied when the respondents were so appointed. Under sub- r.(2), where in any State a person other than a cadre officer is appointed to a cadre post for a period exceeding three months, the State Government is required to forthwith report the fact to the Central Government together with the reasons for making the appointment. From the documents filed by the State Government in the High Court, it appears that such a report was made by the State Government to the Central Government on June 26, 1976. The Central Government by letter dated February 19, 1977 asked for a consolidated proposal for approval of officiation of non-cadre officers on cadre posts for the half year ending September 30, 1976. In compliance therewith, the State Government sent the required proposal on March 29, 1977. Under sub-r. (3), on receipt of a report under sub-r.(2) or otherwise, the Central Government may direct that the State Government shall terminate the appointment of such person and appoint thereto a cadre officer, and where any direction is so issued, the State Government shall accordingly give effect thereto. Under sub-r.(4), where a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months, the Central Government is required to report the full facts to the Union Public Service Commission with the reasons for holding that no suitable officer is available for filling the post and may, in the light of the advice given by the Union Public Service Commission, give suitable direction to the State Government concerned in that behalf.

Interpreting the provisions of sub-rules (2),(3) and (4), the High Court in K.L. Jain's case, rightly observed :

"In the instant case, the Central Government never directed the State Government to terminate the petitioner's appointment. It is also not the case that the U.P.S.C. tendered any advice to the Central Government that the appointment be terminated. It is true that there is a specific approval of the Central Government to the appointment of the petitioner but that is not a condition precedent for a valid appointment under Rule 9 and the petitioner's officiation in a senior cadre post from 10th November 1975 to 30th September 1976 cannot be ignored on the ground that the appointment was not specifically approved by the Central Government. The petitioner's said officiation cannot also be ignored on the ground that there was no vacancy during this period in the promotion quota of the cadre officers."

The High Court held that prior approval of the Central Government was not a condition precedent to the appointment of a non-cadre officer to a cadre post under r.9 of the Cadre Rules. It further held that the existence of a vacancy in the promotion quota was not a pre-requisite for making such an appointment. The appointment of the respondent K.L. Jain to the Indian Administrative Service made by the Central Government on December 7, 1976 was on a post when there was admittedly a vacancy in the promotion quota of non-cadre officers, but his temporary appointment by the State Government to the post of Collector which is a senior post in the cadre under r.9 on November 7, 1975 was at a time when there was no such vacancy in the promotion quota. It appears that the promotion quota of non-cadre officers to cadre posts was 50 prior to October 1, 1976 and was on that date increased to 56. Since the existence of a vacancy was not a condition precedent for making an appointment under r. 9 of a non-cadre officer to a cadre post, the High Court held that the respondent's officiation from November 10, 1975 to September 30, 1976, could not be held to be invalid or ignored. On the same reasoning, it held that the fact that the State Government had over-utilized the Deputation Reserve Quota during the aforesaid period, could have no bearing on the question of validity of his appointment on the cadre post. It then added :

"It may be that if the Central Government thought that the State Deputation Reserve Quota which gave rise to a vacancy of a cadre post, it could have directed the State Government to terminate the petitioner's appointment but such a course was never adopted. As the Central Government did not issue any direction to the State Government to terminate the petitioner's appointment, the appointment has to be held to be valid and given effect to."

In that view, the High Court held that the respondent's continuous officiation in a senior post from November 10, 1975 was in accordance with r.9 of the Cadre Rules and the same must enure for his benefit for reckoning his seniority under r.3(3)(b) of the Seniority Rules. Further, it held that the requirement of approval of the Central Government as contained in the proviso to cl. I of s. III of Schedule II of the Indian Administrative Service (Pay) Rules, 1954 cannot be imported into r.9 of the Cadre Rules or r.3(3)(b) of the Seniority Rules. The view expressed by the High Court in K.L. Jain's case was followed with approval in the later case of G.N. Tiwari & Ors. v. Union of India.

Where a person other than a cadre officer is appointed to the Service by promotion in accordance with sub-r.(1) of r.8 of the Recruitment Rules, the year of allotment of the junior-most amongst the officers recruited to the Service in accordance with r.7 of the Rules who officiated continuously in a senior post from a date earlier than the commencement of such officiation by the former, is the determinative factor in allocation of the 'year of allotment' under r. 3(3)(b) of the Seniority Rules.

Proviso thereto enjoins that the year of allotment of an officer appointed to the Service in accordance with sub- r.(1) of r.8 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the Service in accordance with r.7 so started officiating, shall be determined and hoc by the Central Government in consultation with the State Government concerned. Explanation 1 to r.3(3)(b) interdicts that in respect of an officer appointed to the Service by promotion in accordance with sub-r.(1) of r.8 of the Recruitment Rules, the period of his continuous officiating in a senior post shall, for purposes of

determination of his seniority, count only from the date of inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post, whichever is later. Explanation provides that an officer shall be deemed to have officiate continuously in a senior post from a certain date if during the period from the date of the date of his confirmation in the senior post he continued to hold without any break or reversion the senior post otherwise than as a purely temporary or local arrangement. In these cases, the respondents who were appointed to the service by promotion in accordance with sub-r.(1) of r.8 of the Recruitment Rules were entitled under Explanation I to have the entire period of continuous officiation in a senior post, for the purpose of determination of their seniority, counted from the date of inclusion of their names in the Select List or from the date of his officiating appointment to such senior post, whichever was later. They were also entitled by reason of the legal fiction contained in Explanation 2 to have the entire period of their continuous officiation without a break in a senior post from the date of their officiating appointment to such senior post till the date of their appointment into the Service, counted for purposes of determining their year of allotment under r. 3(3)(b) of the Seniority Rules. It cannot be said that their officiation in a senior post on the cadre for the periods in question was merely fortuitous or stop-gap.

We are not impressed with the submission that the power of the Central Government under sub-r.(3) to direct termination of appointment of a person other than a cadre officer to a cadre post for a period exceeding three months or more was a larger power and carried with it the power to direct curtailment of the period of officiation of such person. Obviously, the power to direct termination of the appointment of a non-cadre officer in a senior post is distinct from the power to direct curtailment of his period of officiation. There is no such provision made in the Cadre Rules empowering the Central Government to direct the curtailment of the period of officiation of a non-cadre officer on a cadre post for purposes of reckoning his year of allotment under r.3(3)(b) of the Seniority Rules. Such a power cannot be spelled out from sub-r.(3) of r.9 of the Cadre Rules which confers power on the Central Government to direct termination of appointment of a non-cadre officer to a cadre post. In the absence of such a provision, the impugned order passed by the Central Government appointing October 1, 1976 as the date from which the period of officiation is to be reckoned for determining the year of allotment under r.3(3)(b) of the Seniority Rules was wholly arbitrary and capricious and therefore rightly struck down by the High Court. The failure of the Central Government to give a direction under sub-r.(3) of r.9 to terminate the appointment of the respondents implies that their continuous officiation on a cadre post had the tacit approval of the Central Government, particularly in view of the fact that the Central Government by letter dated February 19, 1977 required the State Government to submit a consolidated proposal for approval of officiation of non-cadre officer on cadre posts for the half year ending September 30, 1976. This was followed by a report of the State Government dated March 29, 1977. The Central Government by order dated October 1, 1976 accorded its approval to their appointment in the Indian Administrative Service. Furthermore, the respondents as non-cadre officers could not be denied the benefit of continuous officiation in a senior post merely because the State Deputation Reserve Quota was over utilised: vide *Harjeet Singh v. Union of India & Ors.*, [1980] 3 S.C.R. 459 and *Amrik Singh & Ors. v. Union of India & Ors.*, [1980] 3 S.C.R. 485.

The result therefore is that the appeals must fail and are dismissed. There shall be no order as to costs.

We are constrained to observe that although the judgment of the High Court in K.L. Jain's case was rendered as far back as September 9, 1983 and that in the case of G.N. Tiwari on December 16, 1983, the directions issued by the High Court have not been implemented so far. We hope and trust that the Central Government will take steps to comply with the directions issued by the High Court forthwith.

S.R.

Appeals allowed.