GURCHARAN DASS VAID

v.

STATE OF PUNJAB & ORS.

September 24, 1971

[C. A. VAIDIALINGAM AND P. JAGANMOHAN REDDY, JJ.]

States Reorganisation Act, 1956, *ss.* 115, 117 *and* 127—*Reorganisation of Punjab and PEPSU—Punjab Clerical Service Rules*, 1960—*No previous approval by Central Government—Applicability—Directions given by Central Government under s.* 117—*Overriding effect of.*

The appellant was an Assistant Grade Clerk in the Police Department in the State of Punjab prior to reorganisation and the 4th respondent was occupying a similar post in PEPSU. The 4th respondent was senior to the appellant. At the time of the States reorganisation a provisional list of persons in service in the State of Punjab was prepared in 1957 and the 4th respondent was placed in a rank lower than that of his juniors including the appellant. The appellant was subsequently promoted and on March 1, 1962, he was confirmed as Deputy Superintendent (Office). The 4th respondent's seniority was however rectified in the final list and he was promoted as Deputy Superintendent (Office) in March 1960. On April 18, 1965, the Central Government issued an order under s. 117 of the States Reorganisation Act, 1956, directing the Government of Punjab to determine the seniority, pay and other matters concerning the officers included in the final gradation list in accordance with the principles set out therein. The 4th respondent was promoted on 26th July, 1966 as officiating Superintendent and was given March 1, 1962, as the deemed date of confirmation as Deputy Superintendent in accordance with the directive of the Central Government. He had thus become senior by virtue of his seniority in the grade of Assistants in accordance with r. 8 of Punjab Rules of 1933.

The appellant filed a writ petition contending that since the promotion of 4th respondent was overlooked at the beginning and since the appellant was promoted earlier than the 4th respondent the confirmations and deemed date must be from the date of actual promotion according to rule 10 of the Punjab Police Clerical Service (State Service Class III) Rules, 1960. By the time the writ petition came up for hearing the 4th respondent was given April 6, 1961 as the deemed date of promotion as Superintendent after comparing his record as Deputy Superintendent with that of another officer who was senior to the appellant and who was also promoted as officiating Superintendent. On 26th February 1969, the 4th respondent was confirmed as Superintendent with effect from January 29, 1963. The High Court dismissed the appellant's writ petition.

Dismissing the appeal to this Court,

HELD : (1) The Punjab Clerical Service Rules of 1960 do not apply to persons governed by s. 115 of the States Reorganisation Act. They are governed only by the rules which immediately prior to the reorganisation governed them. In the present case, the Punjab Rules of 1933 governed the appellant and the PEPSU Rules of 1933 governed the 4th respondent. Those rules were identical, so that, under r. 8(d) the seniority of the members of the service holding the same posts shall be determined by the dates of their substantive appointment to such posts, provided that, if two or more members are subsequently appointed on the same date, in

A the case of the members who are both or all recruited by promotion, seniority shall be determined according to seniority in the appointments from which the members are promoted. [904 E—H]

(2) The 1960 rules cannot also apply because they were not issued with the previous approval of the Central Government under s. 115. Therefore, only those directions which the Central Government could B give under s. 117 read with s. 127 of the States Reorganisation Act would govern the *inter se* seniority of the appellant and the 4th respondent. It cannot also be contended that when the 1960 rules were made by the Punjab Government they must be deemed to have received the previous approval of the Central Government. The proviso to s. 115(7) is clear and categorical and therefore, previous approval must not be presumed but must be either categorically given or the approval must be unmistakably apparent from the correspondence between the State and Central C Governments. [905 G—H; 906 F—G]

Mohammed Bhakar v. *Y. Krishna Reddy*, Services Law Reporter (Vol. IV) 1970, 768, followed.

Raghavandra Rao v. *Deputy Commissioner, South Kanara*, A.I.R. 1956 S.C. 136, explained.

D (3) In the present case, the Government of India had given directions. Under s. 127 of the States Reorganisation Act, an overriding effect is given to such directions and they would prevail against all other service rules. The directions show that whatever promotions were made on the basis of the provisional gradation list prior to 27th February, 1961, should not be disturbed but the claims of officers for future promotion on the basis of seniority determined in accordance with the principles E stated therein was not to be prejudiced, namely, the promotions made after 27-2-1961 on the basis of the provisional gradation list would be reviewed to the extent necessary to give effect to the claims of the officers who are senior in the final gradation list to the officers who have been promoted; and wherever applicable, the directions should be treated as being without prejudice to the principles of promotion on merit. Pursuant to those directions the Government of Punjab granted to the 4th respondent the deemed date of confirmation as Deputy Superintendent with effect from F March 1, 1962. [900 F; 907 B—F]

(4) The 4th respondent was never superseded on merit and the appellant was not promoted on merit. The 4th respondent's promotion was made late due to an error in the provisional list which was later rectified by the Government. He was not only found to be fit, but subsequently, on a comparison of records, he was found to be superior to another officer G who was senior to him and senior to the appellant. In any case among the promotees to the Superintendent's post the 4th respondent was definitely senior to the appellant. [903 B—G; 904 B—D]

(5) The appellant's specific prayer in his writ petition that he should be deemed to have been confirmed as Superintendent from 17-10-1966 having been granted subsequently, he was not justified in making the unfair and unjust claim that the deemed date of the 4th respondent should H be quashed. No injustice had been caused to the appellant because, he is now occupying the post which he would have occupied otherwise, and future promotion would not be determined by *inter se* seniority but on a selection basis, depending on merit. [906 H; 907 A—B, G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 83 of 1971. A

Appeal by special leave from the judgment and order dated May 20, 1970 of the Punjab and Haryana High Court in Letters Patent Appeal No. 171 of 1970.

The appellant appeared in person. B

H. L. Sibbal, Advocate-General, Punjab and *R. N. Sachthey,* for respondents Nos. 1 to 3.

The respondent No. 4 appeared in person.

The Judgment of the Court was delivered by

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P. Jaganmohan Reddy, J.—This appeal is by Special leave against the summary rejection of the Letters Patent appeal challenging the Judgment of a Single Judge of the Punjab & Haryana High Court. The appellant was an Assistant Grade Clerk in the Police Department in the State of Punjab prior to its Reorganisation. Respondent 4 was also occupying a similar post in the Patiala & East Punjab States Union (hereinafter called 'Pepsu') D as Head Assistant which was equivalent to the post of an Assistant. At the time of the States reorganisation a provisional list of the persons in this service was prepared and published in 1957 in which the 4th Respondent was given 36th place while 5 others namely Prakash Chand, Jaswant Singh, Gurcharan Dass Vaid (the Appellant), Santokh Singh and Hem Raj were given 17th E 18th, 19th, 20th and 21st place respectively. Respondent 4 appealed to the Govt. of India which under the States reorganisation Act 1956 was the competent authority to determine this question, against his seniority in the provisional list. While this appeal was pending promotions were made and Prakash Chand and Jaswant Singh were promoted as Deputy Superintendent (Office) on F 25-7-58 while the Appellant was promoted on 23-8-58, Hem Raj and Santokh Singh on 6-10-58. After these promotions were given the Government of India accepted the appeal of Respondent 4 on 11-7-59 and placed him at serial No. 16 in the provisional seniority list *i.e.* over Prakash Chand. This decision was communicated to the Inspector General of Police on the 18th G August '59. The Inspector General of Police in the meanwhile had promoted on 7th December '59 five other persons as officiating Deputy Superintendents who were also juniors to Respondent 4 and were in fact junior even to the first five who were earlier promoted. The respondent appealed on 15-1-60 against the first and second batch of promotions made overlooking his seniority. It is alleged that on the 18th August '60 the State Government had H examined the service records of the 10 officials who were given promotion, gave them a personal hearing and rejected the repre-

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sentation of Respondent 4. On 9th November '60, Prakash Chand who was at serial No. 17 and below the seniority of Respondent 4 as accepted by the Government of India was promoted as Superintendent. It is also alleged, though we find no order of the Government stating that Respondent 4 was not considered fit for promotion and that he may wait for one more year namely upto 18-8-1960 after which his fitness or otherwise would be determined. The appellant contends that this was a case of supersession under rule 6(3) of 1933 Rules, Rule 8 of which provides that *inter se* seniority will only be determined by the dates of substantive appointment in the same post *i.e.* for the purposes of the same post and not for different posts. This averment has been made in the affidavit of the appellant but as we said, that since there is no specific order of the Government superseding Respondent 4 we cannot accept this contention as valid. This contention however is to a large extent contradicted by the fact that soon thereafter on the 22nd March 1960 the Respondent was promoted and assumed charge of his office. After this promotion the State Government rejected the appeal earlier filed by the Respondent 4 against his supersession. Thereafter the Government on 22-1-63 confirmed Prakash Chand as Deputy Superintenden with effect from 24-12-60. Jaswant Singh, Gurcharan Dass Vaid the Appellant and Hem Raj were confirmed on March 1, 1962 and Santokh Singh with effect from July 17, 1952. By another notification dated 19-1-65 the remaining six officiating Deputy Superintendents including Respondent 4 were confirmed in their appointment with effect from January 13, 1963, in the existing vacancies. The Inspector General of Police in the return filed by him explained that the approval of the Public Service Commission in respect of the four officials Prakash Chand, Jaswant Singh, Gurcharan Dass Vaid and Santokh Singh was taken on a mistaken view that seniority which was determined under the Punjab Police Clerical Service (State Service Class III) Rules 1960 (hereinafter called 'the 1960 Rules') which had not come into force in February-March '60 but were enforced with effect from December 2, 1960 would govern their cases. On this mistaken view it was said that the name of Respondent 4 was not sent to the Commission as he was considered to be a Junior Officer. On April 18, 1965, however, the Central Government issued an order under Section 117 of the States Reorganisation Act 1956 directing the Government of Punjab to determine the seniority, pay and other matters concerning the officers included in the final gradation lists in accordance with the principles set out below :

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"(1) Promotions made before 27th February, 1961, on the basis of the provisional gradation lists shall not be disturbed.

Provided that the claims of officers for future promotion on the basis of seniority determined in accordance with the principles set out hereafter shall not be prejudiced. A

(2) Promotions made after 27th February, 1961 on the basis of the Provisional gradation lists shall be reviewed to the extent necessary to give effect to the claim of officers who are senior in the final gradation lists to the officers who have been promoted. B

(3) The seniority of an officer who would have been available on 1st November 1956, should be counted from the date on which an officer junior to him had started continuous officiation in the higher post because of his promotion under the provisional gradation lists. C

(4) The pay of an officer whose promotion and seniority is determined in accordance with clauses (2) & (3) shall be fixed at a stage which he would have attained in the time-scale of the higher post if he had been promoted to that post on the date set out in clause (3); D

Provided that he shall not be entitled to arrears of pay for the period to the date of his actual promotion.

Action as aforesaid may be taken without prejudice to the principles of promotion on merit wherever applicable". E

The provisions of Sec. 127 of the States Reorganisation Act gave an overriding effect to the directions given by the Central Government which would prevail against rules of all other services. It appears that one Ram Narain Bahl one of the six persons who were confirmed by the order dated 19-1-65 alongwith Respondent 4, made a representation against that order and the Inspector General of Police issued a notification on 27-7-66 fixing the seniority of the six Deputy Superintendents to whom the notification of 19-1-65 related, as a result of which Respondent 4 became senior to the other five. Vishwanath Sharma one of the six affected by that order who was appointed on 7-12-59 prior to Respondent 4 filed a Writ Petition challenging the notifications dated 19-1-65 as well as the one dated 27-7-66. In view of the fact that when the Writ Petition came up for hearing before the Single Judge of the High Court the Inspector General made a statement that the question of the seniority of various officers concerned would be decided afresh and it was prayed that the case may be dismissed. In that case Respondent 4 was Respondent 11 and he also raised no objection to the Writ Petition being dismissed. F G H

A as long as it did not affect him. By the time the matter was adjourned and came up for hearing on 27-1-67 a fresh notification had been issued on 17-1-67 according to which different dates of confirmation in the rank of Deputy Superintendents were given to the respective persons. In view of this, that Writ Petition was dismissed on the ground that the impugned orders had been superB seded by the Government itself and that Vishwanath Sharma would be at liberty to file another Writ Petition challenging the order dated 17-1-67 if he was so advised. It may here be mentioned that Respondent 4 was promoted as officiating Superintendent on July 26, 1966 and he was given March 1, 1962 as the deemed date of confirmation as Deputy Superintendent in accordance with the C directive of the Central Government dated 18th April '65 by an order dated December 7/9, 1966. The appellant filed an appeal against that order on December 22, 1966. It is unnecessary to set out the various views which the several Departments expressed in this regard while processing the appeal including that of the Chief Secretary, Legal Rememberencer and the Advocate General, as that will not in any way determine the question raised in this D appeal. What really matters is that the appeal was rejected on 26-11-68 after the Writ Petition was filed by the Appellant. Sometime before the appeal of this Appellant was rejected the Inspector General on 19th October '68 issued the following notification published in the Gazette dated 1st November 1968 :—

E "Promotion : Subsequent upon the implementation of the directive issued by the Government of India, Ministry of Home Affairs, vide their order No. 17/4/60-SR(S), dated the 18th April, 1965, read with No. 17/10/67-SR(S) dated the 24th February, 1968, the President of India is pleased to give deemed date of promotion as officiating Superintendent (Office) to Shri F Kishan Chand (Respondent 4) from April 6, 1961. He will get the benefit of increments from 6th April, 1961, but will not be entitled to arrears of pay for the period from April 6, 1961 to July 25, 1966".

Thereafter, by notification dated February 26, 1969, respondent G 4 was confirmed as Superintendent with effect from January 29, 1963, the date from which his immediate junior, Jaswant Singh had been confirmed. By this order Jaswant Singh (one of the 11 persons who were earlier confirmed) was deconfirmed with effect from September 2, 1965, on which date a permanent vacancy occurred due to the retirement of Shri Gurbux Singh H Brar.

The apnellant did not however challenge these two aforesaid notifications as they had been published after the filing of the

Writ Petition. The learned Judge who heard the Writ Petition of the appellant however decided with the concurrence of the Counsel on both sides, to adjudicate on the validity of both these notifications also in order to see whether any relief can be granted to the appellant.

It may also be mentioned that after the deemed date of confirmation as Deputy Superintendent was given to Respondent 4 as March 1, 1962 with effect from which date Jaswant Singh, the appellant and Hem Raj had been confirmed, it was considered that Respondent 4 had become senior to all of them by virtue of his seniority in the grade of Assistant in accordance with Rule 8 of 1933 rules and in order to render him justice in accordance with the directive of the Central Government dated April 18, 1965, his case was reopened so as to consider whether he could be given the deemed date of promotion as Superintendent with effect from April 6, 1961, on which date, Jaswant Singh had been promoted as officiating Superintendent. To this end the record of Respondent 4 and Jaswant Singh were compared and the Inspector General of Police was of the opinion that the records of Respondent 4 as officiating Deputy Superintendent was superior to that of Jaswant Singh. A reference was thereafter made to the Public Service Commission to find out whether Respondent 4 was fit to be given promotion as officiating Superintendent with effect from 6-4-61. The records of Respondent 4, Jaswant Singh, the Appellant, Hem Raj and Santokh Singh were sent to the Public Service Commission which by its Memorandum dated the 14th July '56 informed the Inspector General of Police that the Commission considered Respondent 4 suitable for officiating promotion as Superintendent (Punjab Secretariat Service) with effect from 6-4-61.

The appellant claims that he should have been confirmed as Superintendent with effect from 17-10-66 when a permanent vacancy arose. The Inspector General of Police in his return stated that the Appellant's case was being considered as Superintendent with effect from October 17, 1966 for which the approval of the Public Service Commission has to be obtained. The main argument before the learned Judge of the High Court of Punjab and Haryana as well as before us is that since the promotion of Respondent 4 was overlooked and since the Appellant and others were promoted earlier than Respondent 4, the confirmations and deemed date must be from the date of actual promotion according to rule 10 of the Rules of 1960.

The chronology of the various orders, representations, notifications etc. with respect to the contestants in this appeal show that

A even 16 years after the States Reorganisation Act the trouble relating to integration of services, fixation of seniority, promotions, provisional lists, confirmations and deemed dates etc. still continue to trouble the Courts, without really affording much satisfaction to the aggrieved persons mostly because of the confusion and complications which have been the result of long and protracted adminis-
B trative action and interaction. In so far as this petition is concerned we find little difficulty in simplifying the issues to be determined by us. These are—(1) whether Respondent 4 was senior in service as Assistant to the Appellant, (2) whether Respondent 4 was superseded on merits and the appellant and others who were promoted in two batches were promoted purely on merit, (3)
C whether the directions of the State Government to give a date of confirmation to the 4th Respondent both as an officiating Deputy Superintendent and officiating Superintendent are *ultra vires* the powers of the State Government under the rule or, (4) whether they were in accord with the directions of the Government of India under the States Reorganisation Act.

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Admittedly Respondent 4 is senior to the Appellant and over some others, who are without doubt senior to the appellant. As we understand, the appellant wants to take advantage of the fortuitious circumstance of Respondent 4 not being promoted at the time when others who are juniors to him were promoted because
E in the provisional gradation list he was wrongly given a very low seniority, and which was rectified by the Government of India. Instead of giving effect to it by promoting him, the appointing authority was playing for time probably because they wanted to avoid reversion of the previous promotees and on that score wanted to justify their action in not promoting him on the ground that he was not fit. But as we have shown in the narration of
F facts even before his representation was rejected Respondent 4 was promoted, so that the main ground upon which the appellant relies for his continued seniority over him cannot be availed of. In so far as Respondent 4 is concerned he was unaffected by his representation being rejected, as he was already promoted, nor was his alleged unfitness appears to be a valid ground because he
G was found subsequently on a comparison of the records not only fit but superior in merit to Jaswant Singh a person senior to him and hence senior to the Appellant. This opinion was also confirmed by the State Public Service Commission and Respondent 4 was given a deemed date of promotion with effect from 6-4-1961 the date from which Jaswant Singh was promoted as an officiating
H superintendent. Jaswant Singh does not appear to be aggrieved nor has he been made a party. The appellant however argues that Jaswant Singh was transferred to Haryana and so he has no ground for complaint. This contention cannot be valid because

even if that be so the appellant should have challenged that order of 14th July 1967, as rectified on the ground of a typographical error by the letter of 2nd July 1968, because as long as that order is valid he cannot claim seniority over Respondent 4. It cannot be that Respondent 4 is senior to Jaswant Singh a person admittedly senior to the Appellant and yet he considered junior to the appellant, which will be the effect, if the aforesaid order remains in force.

Apart from this defect, as we have pointed out the main basis of the appellant's attack against Respondent 4 who is decidedly senior and admitted by him to be so, was that he was not found fit but when that is found to be untenable the entire force of the appellant's arguments looses significance. Yet another ground of attack is that under the seniority rules as he was confirmed earlier than Respondent 4 in the post of Deputy Superintendent he will be considered senior, but this contention is again devoid of merit because Respondent 4's case was under consideration, that he was not superseded at any time except that his promotion was made late due to an error in the provisional list and that in any case among the promotees to the Superintendent's post, Respondent 4 is definitely senior to the appellant by virtue of the orders of 14th July 1967 and 2nd July 1968.

The appellant has referred to rule 10 of the Punjab Clerical Services Rules of 1960 and contends that his seniority should be determined from the date when he commenced his probation as against a person who started on probation later and that under rule 11 of the said rule *inter se* seniority should be determined by the date of their respective appointments. It may however be mentioned that these rules do not apply to the persons governed by Section 115 of the States Reorganisation Act but only by those rules which immediately prior to the reorganisation governed them. In this case the Punjab Rules of 1933 will govern the appellant and the Pepsu rules of 1933 will govern Respondent 4. These rules are identical so that under rule 8 and clause (d) of the proviso to these rules, the seniority of the members of the service holding the same posts shall be determined by the dates of their substantive appointment to such posts provided that if two or more members are subsequently appointed on the same date, in the case of members who are both or all recruited by promotion, seniority shall be determined according to seniority in the appointments from which the members are promoted. It is contended that these rules are repealed but in so far as the services which are to be governed by the provisions of the States Reorganisation Act their conditions of service are subject to the directions of the Government of India which determine their *inter se* seniority. Such directions, as we have noticed, had been given by the Government

A of India more particularly those dated the 18th April 1965 contained in Annexure G. The relevant directions contained in paragraph (1) and (2) are as follows :

> "In exercise of the powers conferred by Section 117 of the States Reorganisation Act 1956 (Act 37 of 1956)
B the Central Government hereby directs the Government of Punjab to determine the seniority, pay and other matters concerning the officers included in the Final Gradation Lists in accordance with the principles set out below :—
>
C (1) Promotions made before 27th February, 1961, on the basis of the Provisional Gradation Lists shall not be disturbed.
>
> PROVIDED THAT THE claims of officers for future promotion on the basis of seniority determined in accordance with the principles set out hereafter shall
D not be prejudiced.
>
> (2) Promotions made after 27th February, 1961 on the basis of the provisional gradation lists shall be reviewed to the extent necessary to give effect to the claims of officers who are senior in the Final Gradation Lists to the officers who have been promoted.
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> Action as aforesaid may be taken without prejudice to the principles of promotion on merit wherever applicable".

Pursuant to this the Government of Punjab by its order dated 9th December 1966 (Annexure 'H') granted to Respondent 4 the
F deemed date of confirmation as Deputy Superintendent (Office) with effect from 1-3-1962 the date from which Shri Jaswant Singh officiating Deputy Superintendent (Office) was confirmed in his appointment. We have already discussed the position of the Appellant *vis-a-vis* the seniority of Jaswant Singh in the post of officiating Superintendent and the same reasoning will apply
G equally to the position relating to his promotion to the Deputy Superintendents post. When confronted with this situation the Appellant takes his stand on the 1960 rules, which however, whatever be the merits of the contention thereunder, cannot apply because they were not issued with the previous approval of the Central Government under Section 115 and only those directions
H which the Central Government can give under Sec. 117 read with Sec. 127 of the Reorganisation Act will govern the *inter se* seniority of the Appellant and Respondent 4. The Appellant says that in *Raghavendra Rao* v. *Deputy Commissioner South*

Kanara(1) this Court had observed that the previous approval will be presumed. This construction would be a misleading of the judgment because in that case the Central Government had already in a Memorandum addressed to all State Governments after examining the various aspects agreed with the view of State Governments that it would not be appropriate to provide any protection in the matter of travelling allowance, discipline, control, classification, appeal, conduct, probation and departmental promotion; in other words it means that the State Governments might, if they so desire, change service rules as indicated in the Memorandum, which would amount to 'previous approval' within the proviso to Sec. 115(7) to the making of the Mysore General Services(Revenue Subordinate Branch) Recruitment Rules 1959, so as to make them valid. The circumstances in which such a direction was given justified this Court from coming to the conclusion that 'previous approval' was given to the making of the rules. In any case in a subsequent decision of this Court in *Mohammed Bhakar & Ors.* v. *Krishna Reddy & Ors.*(2), it was explained that generally the remarks like that contained in *Raghavendra Rao's* case were not meant to lay down the proposition contended for namely that the previous approval of the Central Government was not required for prescribing departmental examinations as a qualification for promotion. Any rule which affects the promotion of a person relates to his condition of service and therefore unless there be the approval of the Central Government in terms of proviso to sub-sec. (7) of Sec. 115, a rule which lays down the passing of certain departmental examination as a condition for promotion of a person who was an allottee to the new State of Mysore would be in violation of sub-sec. (7) of Sec. 115.

There is in our view no force in the contention urged by the Appellant before us that the rules of 1960 made by the Punjab Government must be deemed to have received the previous approval of the Central Government. The proviso to sub-sec. (7) of Sec. 115 is clear and categorical and therefore previous approval must not be presumed but must be either categorically given or that approval becomes unmistakably apparent from the correspondence between the State Governments and the Central Government.

One other ground upon which the petitioner's case does not merit acceptance is that his specific prayer in the Writ Petition was that under the rules he be deemed to have been confirmed as Superintendent from 17-10-66. The learned Advocate General for the State of Punjab has stated before us that since the Judgment of the High Court and Government has granted the prayer

(1) AIR 1965 SC 136. (2) Services Law Reporter (Vol. IV) 1970 p. 768.

A of the Appellant and has confirmed him as Superintendent from 17-10-66. The appellant however is not satisfied and wants the orders giving the Respondent 4 the deemed date quashed. Apart from this claim being unfair and unjust particularly having regard to the fact that the appellant is trying to canvass all kinds of technical contentions which are unwarranted in order to project his seniority over Respondent 4 who is admittedly senior to him. the direction of the Central Government and those of the State Government in implementation of those directions, establish the seniority of the 4th Respondent over the Appellant. The directions to which we have referred show that whatever promotions were made, have been made on the basis of the provisional gradation list prior to 27-2-61. Though they should not be disturbed, the claims of officers for future promotion on the basis of seniority determined in accordance with the principles stated therein was not to be prejudiced; namely that promotions made after 27-2-61 on the basis of the provisional gradation list would be reviewed to the extent necessary to give effect to the claim of officers who are senior in the final gradation list to the officers who have been promoted and wherever applicable these directions should be treated as being without prejudice to the principles of promotion on merit. We have already dealt with the contentions that the Respondent 4 was denied promotion because he was found unfit and therefore the appellant and others must be deemed to be promoted out of seniority because of their merit. There is therefore no validity in the submission that Respondent 4 cannot be given a deemed date of confirmation either as a Deputy Superintendent or as officiating Superintendent. In fact we are informed by the learned Advocate General that no injustice has been done to the Appellant because even his grouse that if he had got his seniority he would have been attached to the Inspector General and would have got Rs. 50/- as allowance or special pay is no longer available to him because he is now occupying that post. It is also pointed out to us that the highest promotion that the Appellant or Respondent 4 can expect to have in the service is the post of Superintendent which both he and Respondent 4 are occupying. If either of them aspire to any post in a higher service that will not be determined by their *inter se* seniority but on a selection basis depending upon the respective merits. We only refer to this to indicate that even the sense of injustice which the Appellant appears to suffer from has no justification. The appeal is accordingly dismissed but in the circumstances without costs.

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V.P.S. *Appeal dismissed.*