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R. P. KHANNA & ORS.

v.

S.A.F. ABBAS & ORS. ETC.

February 22, 1972

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[S. M. SIKRI, C.J., A. N. RAY AND M. H. BEG, JJ.]

Indian Administrative Service (Regulation of Seniority) Rules 1954, *Rule* 3(3)(*b*)—*Year of allotment of promotee—Officiation in senior post prior to inclusion of promotee's name in Select List can be taken into consideration only after approval by Central Government and Union Public Service Commission—Post held by promotee may be declared equivalent to senior post retrospectively.*

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Rule 3(3)(b) of the Indian Administrative Service (Regulation of Seniority) Rules 1954 laid down in its main part that the year of allotment of an officer who was appointed to the service by promotion shall be the year of allotment of the junior-most among the officers who entered the service by direct recruitment who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former. The second proviso to the rule laid down that a promotee shall be deemed to have officiated continuously in a senior post prior to the date of inclusion of his name in the Select List prepared in accordance with the requirements of the Indian Administrative Service (Appointment by Promotion) Regulations, if the period of such officiation prior to that date was approved by the Central Government in consultation with the Union Public Service Commission. The appellants became members of the Indian Administrative Service in the years 1949 and 1950 by direct recruitment. The respondents were initially recruited to the executive branch of the Bihar State Civil Service and were subsequently in the years 1955 and 1956 promoted to the Indian Administrative Service. The Government of India on 3 September 1958 allotted to the respondents the year 1948 and placed them below the junior most amongst the direct recruits of the 1948 allotment in purported compliance with Rule 3(3)(b) aforesaid. The appellants thereupon made a representation to the Union Government as a result of which the Union Government by order dated 20 September 1967 revised the seniority of the promotees and allotted to some of the promotees the year 1950 and to others the year 1952. In making this order the Government of India agreed with the Ministry of Law in its view that rule 2(g) of the Seniority Rules did not permit retrospective declaration of a post as equivalent to a senior post within the meaning of Rule 3(3)(b) as had been done by the State Government in the case of the respondents. The respondents challenged the Union Government's order dated 20 September 1967 in the High Court. That Court quashed the said order and directed that the promotees would continue to hold the year of allotment assigned to them in the year 1958. In appeal to this Court by the direct recruits the questions that fell for consideration were (i) whether the period of officiation in a senior post by a promotees prior to the inclusion of his name in the Select List could be taken into consideration without the approval of the Central Government and the Union Public Service Commission as required by Rule 3(3)(b); (ii) whether the State Government was authorised to retrospectively declare a post as equivalent to a 'senior post'; (iii)

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A whether in the circumstances of the case the order of the High Court restoring the year 1948 as the year of allotment for the respondents was right.

HELD : (i) The Select List for the promotion of the respondents was finally approved by the Union Public Service Commission on 26 December 1955. Rule 3(3)(b) of the Regulation of Seniority Rules, 1954 speaks of approval by the Central Government in consultation with the Union
B Public Service Commission of the period of the officiation prior to the date of the inclusion of the names of the promotees in the select list. This approval as contemplated in rule 3(3)(b) is a specific approval and is directed to the particular matter mentioned therein as to whether there is approval of the period of officiation prior to the inclusion of the names in the select list. On the materials in the present appeals it could not be held that the Central Government gave any approval in consultation with the Union Public Service Commission within the meaning of rule
C 3(3)(b) so as to enable the promotees to have the benefit of the period of officiation prior to the date of the inclusion of their names in the select list. [556H-557C]

D. R. Nim, I.P.S. v. *Union of India*, [1967] 2 S.C.R. 325 and *State of Orissa & Anr.* v. *B. K. Mohapatra*, [1970] 1 S.C.R. 266, applied.

D (ii) The contention on behalf of the direct recruits that it is not open to the State to make a retrospective declaration with regard to posts being made equivalent to senior posts was, however, unacceptable. (Reasons discussed.) The State Government has power to make such a retrospective declaration. The order of the Union Government dated 20 September 1967 which directed the years of allotment on the basis that there could not be any retrospective declaration of equivalent post could not be sustained. [557C-559H]

E (iii) The High Court directed that the promotees must continue to hold ranks as assigned to them in the year 1958. This order of the High Court must be set aside for the reason that the year of allotment must now be determined by the approval of the Central Government in consultation with the Union Public Service Commission. [560A]

F CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 565 and 1470 to 1474 of 1970.

Appeals from the judgment and order dated November 7, 1969 of the Patna High Court in Civil Writ Jurisdiction Cases Nos. 853, 854 and 877 to 880 of 1968.

Basudeo Prasad, R. B. Datar and *S. N. Prasad*, for the appellants (in all the appeals).

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Lal Narain Sinha, Advocate-General for the State of Bihar, *C. K. Daphtary* and *U. P. Singh*, for respondent No. 4 (in C.A. No. 565 of 1970), respondent No. 2 (in C.A. No. 1473 of 1970) and respondent No. 3 (in C.As. Nos. 1470 to 1472 and 1474 of 1970).

H *M. C. Chagla, Gobind Das* and *S. P. Nayar*, for respondent No. 3 (in C.As. Nos. 565 and 1473 of 1970) and respondent No. 2 (in C.As. Nos. 1470 to 1472 and 1474 of 1970).

C. K. Daphtary, S. C. Agarwal, R. K. Garg and *V. J. Francis,* for respondent No. 1 (in C.A. No. 1470 of 1970). A

S. C. Agarwal, R. K. Garg and *V. J. Francis,* for respondents Nos. 1 and 2 (in C.A. No. 565 of 1970) and respondent No. 1 (in C.As. Nos. 1471 to 1474 of 1970).

The Judgment of the Court was delivered by B

Ray, J.—These six appeals are by certificate from the judgment dated 7 November, 1969 of the High Court at Patna quashing the order of the Government of India dated 20 September, 1967, and directing that the respondents must continue to hold rank as assigned to them in 1958. C

The appellants and the respondents are now members of the Indian Administrative Service. For the sake of brevity the appellants can be described as direct recruits and the respondents as promotees. The direct recruits were appointed to the Indian Administrative Service in the years 1949 and 1950 as a result of competitive examination held for recruitment of candidates to that Service. The promotees were initially recruited to the executive branch of the Bihar State Civil Service and were subsequently in the years 1955 and 1956 promoted to the Indian Administrative Service. D

The controversy in the present appeals is as to the seniority between the direct recruits and the promotees under the Indian Administrative Service (Regulation of Seniority) Rules, 1954. E

The Government of India on 3 September, 1958 allotted to the promotees the year 1948 and placed them below the junior most amongst the direct recruits of the 1948 allotment.

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The direct recruits thereafter made representation against the decision of the Government of India. Eventually, on 13 January, 1965 the State of Bihar forwarded the representation of the direct recruits to the Government of India against the decision made by the Government of India in the year 1958. On 4 January, 1966 the Government of India took a tentative decision to allow the representation of the direct recruits on the ground that the previous decision was on wrong facts and on wrong interpretation. G

On 14 April, 1967 the State of Bihar represented to the Government of India to reject the representation of the direct recruits on the ground that the facts alleged by the direct recruits were wrong. On 20 September, 1967 the Government of India however allowed the representation of the direct recruits and revised the seniority of the promotees and allotted to some of the promotees the year 1950 and to some of the promotees the year H

A 1952 as mentioned in the letter of the Government of India dated 20 September, 1967 set out hereunder :—

> "The matter was further examined in consultation with the Ministry of Law, who have reiterated their earlier advice and said that rule 2(g) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954 does not permit retro-active declaration of a post equivalent to a senior post of the I.A.S. The declaration made by the State Government in the present case cannot have retrospective operation. It will have prospective operation. The Government of India have therefore decided to revise the seniority of the officers concerned. It will appear from the attached statement that the relevant dates for the purposes of fixation of seniority will be 26 December, 1955 in the case of S/Shri S. C. Mishra, S. A. F. Abbas, R. S. Mandal, S. K. Sinha and S. K. Chakravarty; 1 February, 1956 in the case of Shri S. Sahay and 17 October, 1956 in the case of S/Shri Ramanand Sinha, Anwar Karim, R. C. Sinha, S. K. Ghosh and M. Alam. As Shri M. K. Mukherjee the seniormost regular recruit of 1950 batch started officiating continuously in senior posts with effect from 2 May, 1955 a date earlier than the relevant dates of S/Shri S. C. Mishra, S. A. F. Abbas, R. S. Mandal, S. K. Sinha, S. K. Chakravarty, N. P. Sinha and S. Sahay, these officers may be re-allotted to the year 1950 and may be placed before Shri S. D. Prasad (RR-1950) and above Shri P. S. Appu (RR-1951). Shri N. Nagamani, the seniormost regular recruit of 1952 batch started officiating continuously in senior posts earlier than the relevant dates of S/Shri Ramanand Sinha, Anwar Karim, R. C. Sinha, S. K. Ghosh and M. Alam. These officers may be allotted to the year 1952 and may be placed below Shri K. K. Srivastava (RR-1952) and above Shri R. B. Lal (SCS-SR-1952)".

The promotees impeached the Government of India Memorandum dated 20 September, 1967 principally on the ground that the Government of India was wrong in holding that it was not competent to the State of Bihar to make a retrospective declaration of a post as equivalent to a cadre post. The promotees succeeded in the High Court. The High Court quashed the order dated 20 September, 1967 and directed that the promotees would continue to hold the year of allotment assigned to them in the year 1958.

The Indian Administrative Service (Regulation of Seniority) Rules, 1954 formed the bone of contention between the direct

recruits and the promotees. In order to appreciate the rival contentions reference may be made to the origin of the Indian Administrative Service and the relevant rules and regulations in that behalf. A

The origin of the Indian Administrative Service is to be found in the Memorandum of Agreement dated 21 October, 1946 between the Government of India and the Government of the then Provinces. The Indian Administrative Service came to be constituted under the Agreement with effect from 21 October, 1946. Recruitment to the Indian Administrative Service was to be by direct recruitment or by promotion of members of a Provincial Civil Service. The Indian Civil Administrative Cadre Rules, 1950 specified in the Schedule thereto for each Province the strength of the cadre and the number and character of the posts. In 1951 the All-India Services Act came into existence. The All-India Service was defined to mean the Indian Administrative Service or the Service known as the Indian Police Service. Later on section 2(a) was introduced into the 1951 Act to include certain other specified Services as All India Services. B C D

Section 3 of the All-India Services Act, 1951 conferred power on the Central Government after consultation with the Governments of the States concerned to make rules for the regulation of recruitment and the conditions of service of persons appointed to All-India Service. That is how the Indian Administrative Service (Cadre) Rules, 1954 came into existence repealing the Indian Civil Administrative Cadre Rules, 1950. So did the Indian Administrative Service (Recruitment) Rules, 1954 and the Indian Administrative Service (Regulation of Seniority) Rules, 1954. Two other Regulations which are material for the purposes of the present appeals are the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955. The Promotion Regulations, 1955 were in exercise of the rule making power under rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954. The Fixation of Cadre Strength Regulations, 1955 were made in exercise of the rule making power conferred on the Central Government by rule 4 of the Indian Administrative Service (Cadre) Rules. The 1954 Cadre Rules defined cadre post to mean any of the posts specified in item 1 of the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations. The Cadre Strength Regulations, 1955 set out the strength and the composition of the cadre in relation to the different States including Bihar. For the State of Bihar there are 8 items. The first item relates to senior posts under the State Government which are 103 in number and item 2 relates to senior posts under the Central Government which are 41 in number. Of these 144 posts 36 are to be filled by promotion and selection in accordance with E F G H

A rule 8 of the Recruitment Rules, 1954. The other 108 posts are to be filled by direct recruitment. Items 5, 6, 7 and 8 in the Bihar Cadre Strength relate to other posts with which the present appeals are not concerned. Of the total authorised strength of 211 cadre posts in the State of Bihar 175 are direct recruitment posts and 36 are promotion posts. The Regulation of Seniority Rules, 1954 B defines senior post meaning a post included and specified under item 1 of the cadre of each State in the Schedule to the Fixation of Cadre Strength Regulations, 1955. The 1954 Recruitment Rules speak of recruitment to the Service *inter alia* (a) by a competitive examination, and (b) by promotion. The other two modes of recruitment by selection from emergency commissioned officers and C from persons who hold any substantive capacity gazetted post and who are not members of the State Civil Service are not relevant for the purpose of the present appeals. Rule 7 of the Recruitment Rules, 1954 relates to recruitment by competitive examination and rule 8 relates to recruitment by promotion or selection. The Promotion Regulations, 1955 prescribed the conditions of eligibility D for promotion.

In the background of these Rules and Regulations it follows that members of a State Civil Service are promoted to the Indian Administrative Service. The present appeals relate to promotees after the abovementioned Rules and Regulations came into existence.

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The question of seniority of promotees vis-a-vis direct recruits is covered by rule 3(3)(b) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954 which is set out hereunder :—

> "The year of allotment of an officer appointed to the Service after the commencement of these rules, F shall be :—
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> (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 officiating 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 on which any of the officers recruited to the service in accordance with rule 7 of those rules so started officiating, shall be determined ad hoc by the Central

Government in consultation with the State Government concerned. A

Provided further that an officer appointed to the Service after the commencement of these rules in accordance with sub-rule (1) of rule 8 of the Recruitment Rules shall be deemed to have officiated continuously in a senior post prior to the date of the inclusion of his name in the Select List prepared in accordance with the requirements of the Indian Administrative Service (Appointment by Promotion) Regulations framed under sub-rule (1) of rule 8 of the Recruitment Rules, if the period of such officiation prior to that date is approved by the Central Government in consultation with the Commission". B C

There are two explanations which need not be set out because they are not relevant for the purposes of the present appeals.

The scheme of the Indian Administrative Service (Regulation of Seniority) Rules, 1954 is that every officer shall be assigned a year of allotment in accordance with the provisions contained therein. The present appeals raise the question of the year of allotment of the promotees who were promoted to the Service, after the commencement of the Rules, in the years 1955 and 1956. Therefore, rule 3(3)(b) applies to the case of the promotees vis-a-vis the direct recruits. D E

The Indian Police Service (Regulation of Seniority) Rules, 1954 is the counter-part of the Indian Administrative Service (Regulation of Seniority) Rules, 1954. Rule 3(3)(b) of the Indian Police Service (Regulation of Seniority) Rules is in identical language with rule 3(3)(b) of the Indian Administrative Service (Regulation of Seniority) Rules. Rule 3(3)(b) of the Indian Police Service (Regulation of Seniority) Rules came up for consideration before this Court in two cases. These are the decisions in *D. R. Nim, I.P.S.* v. *Union of India*(1) and *State of Orissa & Anr.* v. *B. K. Mohapatra*(2). Rule 3(3)(b) which is in common language in the Rules of both the Services and the two provisos lay down the mode of regulation of seniority of the promotees vis-a-vis the direct recruits. Promotees will be given the year of allotment of the junior-most among direct recruits who officiated in a senior post from a date earlier than the date of commencement of such officiation by a promotee. The first proviso regulates the seniority between direct recruits and promotees who started officiating continuously in a senior post from a date earlier than the date on which the direct recruits so started officiating by prescribing the mode of regulation of seniority by ad hoc determination by the Central Government in consultation with the State Government. F G H

(1) [1967] 2 S.C.R. 325. (2) [1970] 1 S.C.R. 255.

A The effect of the second proviso was stated by this Court in *Nim's*(1) case to be this : "The second proviso limits the operation of the first proviso by dividing the officiating period into two classes; first, a period before the date of inclusion of an officer in the Select List and, secondly, the period after that date. The first period can only be counted if such period is approved by the Cen-
B tral Government in consultation with the Union Public Service Commission".

The rulings of this Court hold that a promotee can obtain the advantage of officiation continuously in a senior post prior to the inclusion of the name in the Select List if the period of such officiation is approved by the Central Government in consultation
C with the Union Public Service Commission. The officiation in a senior post is one of the indispensable ingredients in the application of rule 3(3)(b). A senior post as defined in the Regulation of Seniority Rules means a post included and specified under item 1 of the cadre of the State or any post declared equivalent thereto by the State Government concerned. It may be stated here that the
D definition of senior post underwent change in the year 1967 by notification No. 27/47/64-AIS(III)-A dated 17 April, 1967 and the new definition of senior post came into effect on 22 April, 1967. The present appeals are governed by the definition of senior post prior to the year 1967. The important words in the relevant definition of the senior post are 'any post declared equivalent thereto by the State Government'.

E The memorandum dated 20 September, 1967 was impeached by the promotees on the ground that the State Government could not make a retrospective declaration with regard to making posts equivalent to senior posts. Counsel on behalf of direct recruits contended that the letter dated 9 April, 1958 from the Chief Secretary to the Government of Bihar to the Secretary to the Govern-
F ment of India, Ministry of Home Affairs could not amount to a declaration of posts as equivalent to senior posts and further that there could not be any retrospective declaration of making posts equivalent to senior posts.

Counsel on behalf of the Union contended that the declaration contemplated with regard to senior posts must be a formal order
G and it was not open to the State to make a retro-active declaration because the rule contemplated approval of such officiation in consultation with the Commission. In other words, it was said that the State would first have to make a declaration with regard to making posts equivalent to senior posts and thereafter approval of such officiation would be given by the State Government in consultation with the Public Service Commission.

H Criticism was made by counsel for the direct recruits that there was no proper Select List and Rao's letter dated 9 July, 1958 and

(1) [1970] 2 S.C.R 325.

the reply thereto dated 3 September, 1958 by the Deputy Secretary to the Government of India were contended not to amount to approval by the Central Government in consultation with the Union Public Service Commission of the period of officiation prior to the date of inclusion of the names of promotees in the Select List. There was an ad hoc list in the year 1954 and the ad hoc list is referred to in the Chief Secretary's letter with the letter 'A'. The select list was prepared in the year 1955 and is referred to in the Chief Secretary's letter with the letter 'B'. In the Chief Secretary's letter the date of officiation of the promotees was proposed by the State Government to be 28 December, 1954. The date of officiation in the senior scale by the promotees as agreed to by the Government of India was shown in that letter as some time in the month of October, 1955 with regard to three promotees and in the month of December, 1955 with regard to the fourth promotee. With regard to the other three promotees no date was shown as having been agreed to by the Government of India. The State Government proposed with regard to some of the promotees that they should be allowed the benefit of officiation from the time of the inclusion of their names in the ad hoc list in the year 1954. The Deputy Secretary to the Government of India by letter dated 3 September, 1958 accepted the recommendation of the State Government with regard to the promotees and allotted to them the year 1948 and placed the promotees below Shri B. S. Srivastava who was the junior most among direct recruits who had started officiating continuously in a senior post earlier than 28 December, 1954. The impeached circular dated 20 September, 1967 did not allow retrospective declaration of equivalent posts and therefore the year of allotment was no longer 1948. The High Court held that there could be retrospective declaration and thus in effect restored 1948 as the year of allotment.

The Government of India by the letter dated 20 September, 1967 which is impeached by the promotees changed the year of allotment of the promotees from 1948 to 1950 with regard to the first three promotees and to the year 1951 with regard to the fourth promotee and the year 1952 with regard to the other two promotees and placed these promotees below the direct recruits of those batches who started officiating continuously in a senior post earlier than the date of such officiation by the promotees.

On these materials it appears that the ad hoc list was prepared with the approval of the Union Public Service Commission on 28 December, 1954 and the Select List was finally approved by the Union Public Service Commission on 26 December, 1955. The select list was the list prepared for appointment of the promotees by promotion to the Indian Administrative Service. Rule 3(3)(b) of the Regulation of Seniority Rules, 1954 speaks of approval by

A the Central Government in consultation with the Union Public Service Commission of the period of officiation prior to the date of the inclusion of the names of the promotees in the select list. This approval as contemplated in rule 3(3)(b) is a specific approval and is directed to the particular matter mentioned therein as to whether there is approval of the period of officiation prior to the B inclusion of the names in the select list. On the materials in the present appeals we are unable to hold that the Central Government gave any approval in consultation with the Union Public Service Commission within the meaning of rule 3(3)(b) so as to enable the promotees the benefit of the period of officiation prior to the date of the inclusion of their names in the select list.

C The contention on behalf of the direct recruits that it is not open to the State to make a retrospective declaration with regard to posts being made equivalent to senior posts is unacceptable. From the point of view of workability of the rule as well as the circumstances and the conditions of service it may not always be practicable to make such prospective declaration. It is only when the Government has found that it is necessary or desirable to declare D such posts equivalent to senior posts that the Government will do so. That will be usually possible after the Government will have considered several factors, namely, finance, structure of the service, the personnel fit for undertaking the post. Normally, the promotees obtain promotion from the State Civil Service after long service. That is why rule 3(3)(b) of the Regulation of Seniority E Rules is designed to arrive at a fair adjustment of the competing claims of the direct recruits and the promotees. To hold that a promotee could not get the benefit of officiation unless the post was declared as equivalent to a senior cadre post before the promotee was appointed to officiate might defeat the policy of the Government. A promotee may be officiating continuously for a long F period and his name may be included in the select list after some time. Again a person who officiates continuously for long time may thereafter be not included in the select list. Such a person might deprive a person who would otherwise be found suitable for appointment by promotion after similar officiation in a similar post. It is only when the State Government finds that it is desirable to G declare the post equivalent to a senior post *inter alia* by reason of the efficiency of the person which has entitled him to promotion that the consequential necessity arises for giving him that senior post by requisite declaration of a senior post. A retrospective declaration therefore is in the scheme of things practical as well as reasonable.

H The basic idea of declaration of post as equivalent to a senior post is that it is treated as a post of equal rank and responsibility. Rule 3(3)(b) is designed to strike a balance between conflicting

claims. When a promotee with the background of a long continuous officiation gets promotion it is in the fitness of things that the period of such officiation is not lost to him. The necessary check is supplied by approval by the Central Government in consultation with the Commission. There will be two sources charged with the responsibility of approval of the period of officiation prior to the inclusion of the name in the select list.

A retrospective declaration that a post is equivalent to a senior post really amounts to declaration of an existing fact. It is that the person who has officiated continuously for a long time is allowed the benefit of a senior post prior to the appointment by promotion of such officer to the Cadre of the Indian Administrative Service. Ordinarily, under Cadre Rules a non-cadre officer cannot hold a cadre post excepting for short time of three months and if it is for a longer period not without approval by the Central Government. Therefore, there is no occasion for declaration by the State Government of a non-cadre post as equivalent to a cadre post. The question of declaration arises only for the purpose of giving the promotee the benefit of the period of officiation prior to promotion. The use of the word 'deemed' in rule 3(3)(b) of the Regulation of Seniority Rules indicates that the Government has the power to make a retrospective declaration because it is only after promotion that there is any occasion to consider whether the period of offication prior to promotion will be counted for purposes of seniority.

The harmonious construction of the definition of 'senior post' occurring in the 1954 Cadre Rules along with rule 3(3)(b) of the Regulation of Seniority Rules is that promotee will by a legal fiction obtain advantage of the period of officiation first by the declaration and second by the approval of the Central Government in consultation with the Union Public Service Commission. It is not the declaration but the approval which introduces the legal fiction.

There is an apprehension that retrospective declaration might cause mischief in the sense that it would enable a promotee to obtain seniority as against a direct recruit. The apprehension is unmerited because promotees obtain promotion after long service and that is why the year of allotment of promotee is below the junior most among direct recruits who continuously officiated in a senior post from a date earlier than the date of commencement of such officiation by the promotee. Again, there may be a salutary reason to defend a retrospective declaration because a prospective declaration by the State Government may not be acceptable to the Central Government by not giving approval of the period of officiation prior to the date of inclusion of the names in the select list. There is no time limit fixed with regard to approval by the

A Central Government. Therefore, a retrospective declaration will be under the check of approval by the Central Government and such approval will always act as a safecty valve against any abuse or mischief of retospective declaration.

It is important to notice that the definition of 'Senior post' has
B undergone change in the year 1967. The amendment of the definition has brushed away the necessity of any declaration by the Government of a post being made equivalent to senior cadre post. also deleted the second proviso to rule 3(3)(b) of the Regulation of Seniority Rules. In place of the second proviso a new explanation has been added. The explanation states that in respect of a pro-
C motee the period of 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 later. The declaration of a post to be equivalent to a senior post and the approval of the Government of India in consultation with the
D Commission for allowing a promotee the benefit of the period of continuous officiation prior to the inclusion of his name in the Select List are all obsolete now. One of the reasons for the changes may be that a prospective declaration might give rise to show of preference or favour to some chosen persons who might not turn out to be suitable person to fill that post. Again, the disadvantage of prospective declaration may be that the Government might
E be saddled with the problem of a declaration in anticipation and later finding out the absence of necessity of such a post or even of not finding a suitable person for occupying such a post. The soundness of a retrospective declaration rests on the consideration that not only will the promotee by that time have been tried and tested in that post but also his promotion would indicate the bene-
F fit of the period of continuous officiation which earned promotion for him. To deny a retrospective declaration would in the case of promotion of persons from State Civil Service deprive them of the opportunity of enjoyment of the period of officiation.

For these reasons, we uphold the judgment of the High Court
G that the memorandum dated 20 September, 1967 which stated that the State Government could not retrospectively declare a post to be equivalent to a senior post was bad. The State Government has power to make such a retrospective declaration. The order dated 20 September, 1967 which also directed the years of allotment on the basis that there could not be any retrospective declaration of equivalent post cannot be sustained.
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The High Court however further directed that the promotees must continue to hold ranks as assigned to them in the year 1958.

This order of the High Court is to be set aside, for the reason that the year of allotment will now have to be determined by the approval of the Central Government in consultation with the Union Public Service Commission. A

The appeals are therefore dismissed in so far as they relate to quashing of the order of the Central Government dated 20 September, 1967. The appeals are allowed setting aside the order of the High Court that the promotees would continue to hold ranks as assigned to them in the year 1958. In the facts and circumstances of the case parties will pay and bear their own costs. B

G.C. *Appeals allowed.*