

DR. S.P. KAPOOR ETC.

v.

STATE OF HIMACHAL PRADESH & ORS. ETC.

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November 2, 1981

[S. MURTAZA FAZAL ALI AND A. VARADARAJAN, JJ.]

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Central Health Service Rules 1963, Rules 7A and 8A and Himachal Pradesh Health Service Rules 1974, Rules 9(4), and 10(a)(iii)—Union territory of Himachal Pradesh—Health Department manned by officers of Central Health Service—Union Territory becoming a State—Formation of Himachal Pradesh Health Service—Officers exercising option to continue in the new Health Service—Determination of seniority-basis—Not date of induction into Central Health Service—Only under Rule 10(a) (iii) of State Rules.

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Service Rule not providing category with which Roster to be started—Government direction supplementing the Rule that Roster be started with category of Specialists—Government action whether valid.

E

Annual Confidential Report—Initiated by an officer who is junior and also an aspirant for promotion to higher post—Such confidential report whether valid—Consideration by Departmental Promotion Committee—Effect of.

F

Services and Dismissals—State Health Service—Officers holding posts on ad hoc basis from 1973—Seniority list finalised on November 2, 1979—Departmental Promotion Committee constituted on November 3, 1979—Promotions made and orders of appointment issued on the same day—Post haste manner of selection and appointment—Effect of.

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The Central Health Service was constituted by the Central Government and the Central Health Service Rules 1963 came into force with effect from 15-5-1963. These Rules were amended by the Central Health Service (Amendment) Rules 1966. Before the Punjab Reorganisation Act came into force the State of Punjab had its own Health Service known as the PCMS with two grades, Grade I and Grade II. After the Punjab Reorganisation Act came into force, and the Central Health Service was formed, some persons belonging to the PCMS and some persons working as Medical Officers in hospitals run by Local Bodies were inducted into that Service after they had exercised their option to be inducted therein. The petitioners and contesting employees-respondents in writ petition nos. 2 of 1980 and 288 of 1979 filed in the High Court had been inducted into the Central Health Service after they had exercised their option. When the Himachal Pradesh Union Territory was in existence, its Health Department was manned by Officers of the Central Health Service, but after Himachal Pradesh became a full fledged State, the Himachal Health Service was constituted on 24.1.1974

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A under the Himachal Pradesh Health Service Rules which came into force on 19.1.74. The members of the Central Health Service serving in the erstwhile Himachal Pradesh Union Territory were asked to exercise their option to continue in the new Himachal Pradesh Health Service. The writ petitioners and the contesting employees-respondents exercised their option to continue in the Himachal Pradesh Health Service.

B The Appellant in C. A. No. 2384 of 1980, who was one of the petitioners in writ petition No. 288 of 1979 contended before the High Court that his reversion from the post of Deputy Director of Health Services to which post he was appointed on a regular basis was void. The petitioner in writ petition No. 2 of 1980 claimed that the seniority list of Specialists prepared by the State Government was contrary to the rules and that the appointment of the appellant in C.A. No. 2104 of 1980 and of respondents 2 and 4 in writ petition 288 of 1979 as Deputy Directors of Health Services was contrary to the provisions of the 1974 Rules. It was contended that the appointments were also vitiated because : (i) the Departmental Promotion Committee constituted for making appointment was not properly constituted because one of the members of the committee the Principal Secretary to the Chief Minister was unauthorisedly inducted into the Committee in place of the Secretary to the Government, Health and Family Welfare Department, and (ii) that their confidential reports were written by an officer junior to them and who was an aspirant for promotion to the higher post. The appointments of the Director of Health Services and the two Deputy Directors having been made in haste immediately after the seniority list was issued rendered the appointments void.

E The petitioner in writ petition 2 of 1980 claimed that the *inter se* seniority between himself and the respondents could not be disturbed at the time of absorption in the Himachal Pradesh Health Services having regard to the Punjab Reorganisation Act and the protection given to the members of the Punjab Service.

F These two petitions were contested. It was contended by the State of Himachal Pradesh that the petitioners in W.P. No. 288 of 1979 were appointed as Deputy Directors of Health Services only on *ad hoc* basis, that the post is a selection post which cannot be claimed as of right by persons appointed on *ad hoc* basis by way of stop-gap arrangement. The incumbent to the post of Secretary, Health and Family Welfare being on leave at the relevant period, the Principal Secretary to the Chief Minister was appointed to function in his place as Secretary to Government in the Departmental Promotion Committee, the constitution of the Departmental Promotion Committee was perfectly valid. The annual confidential reports which were written by the junior officer who was working on *ad hoc* basis, were not the only reports taken into account by the Departmental Promotion Committee. The post of Director of Health Services was manned on an *ad hoc* basis. *Ad hoc* appointments were necessitated by the absence of the final seniority list which was prepared only on 2.11.1979 and since that impediment was over the Departmental Promotion Committee met on 3.11.1979 and orders of appointment to those selected by that Committee were issued on the same day. Specialists were officers possessing post-graduate qualifications while General Duty Officers were as a rule only graduates. The Rule making autho-

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riety divided the higher posts equally amongst the officers of the two categories taking all factors into consideration. Therefore, the claim for being considered to the post of Director of Health Services is wholly untenable having regard to Rule 9(3) of the Rules, which provides that only Deputy Directors should be considered for promotion to the post of Director of Health Services.

On behalf of the Central Government it was contended that the Central Health Service was constituted with effect from 9.9.1966 and the seniority of the Medical Officers appointed to the service with effect from that date had been determined to be that officers appointed to a grade under rule 7A of the Central Health Services Rules 1963 as amended by the Central Health Service (Amendment) Rules, 1966 will rank *en bloc* senior in that grade to those who may be appointed to that grade under rule 8A. The officers of the Punjab Government were appointed to the Central Health Service with effect from 1.11.1966 under rule 8A. As these officers have come into the Central Health Service only after the initial constitution of that service was over, it was not possible to assign them seniority over the officers appointed at the initial constitution of the service. The Government of Himachal Pradesh having proposed to formulate their own Health Service and the Medical Officers who are to opt from the Central Health Service are to be included in that service, those officers were asked to exercise their option. Those officers who opted to join the proposed Himachal Pradesh Health Service were given the benefit of past continuous service while fixing their seniority in the Himachal Pradesh Health Service.

The High Court allowed the writ petitions and held (1) that the petitioners therein being appointed as Deputy Directors on *ad hoc* basis cannot claim a right to the post of Deputy Directors of Health Services or to seniority on the basis of *ad hoc* appointment though then can add the period of such appointment in the matter of experience for promotion and confirmation. (2) The Principal Secretary to the Chief Minister was appointed to function additionally as Secretary to Government, Health and Family Welfare Department as per office order dated 2.11.1979 and therefore the Departmental Promotion Committee had been properly constituted. (3) Seniority has to be determined on the basis of the date of induction into the Central Health Service and not on the basis of the earlier service.

Allowing the appeal to this Court,

HELD : 1. The High Court erred in holding that the *inter se* seniority has to be determined only on the basis of the date of induction into the Central Health Service and not with reference to Rule 10(a)(iii) of the Rules. *Inter se* seniority has to be determined only in accordance with Rule 10(a)(iii) of the Rules and Dr. S.P. Kapoor would be senior to Dr. R.M. Bali who in turn would rank senior to Dr. Jiwan Lal. [1072 H, 1073 B]

In the instant case the Central Government was under an obligation to see that in fairness and equity the seniority of officers drafted into the newly formed State from the integrating States is properly fixed and that obligation has been properly discharged by the Central Government. Dr. S. P. Kapoor had been appointed to the PCMS (Grade I) post on 29.1.1965 and he was inducted into the Specialist Grade in the Central Health Service with effect from 1.11.1966 while

A Dr. R.M. Bali and Dr. Jiwan Lal who were in the Central Health Service on the date of its constitution on 9.9.1966 had been taken in the Specialists Grade and G.D.O. Grade I respectively under the Central Health Service with effect only from 9.9.1968. [1072 F, 1068 C]

Roshan Lal Tandon v. Union of India, [1968] 1 SCR 185, held inapplicable.

B *N. Subba Rao etc. v. Union of India and Ors.*, [1973] 1 SCR 945 and *C.P. Damodaran Nayar and P.S. Menon v. State of Kerala and others*, [1974] 2 SCR 867, referred to.

C 2. The annual confidential reports were initiated by an officer not only junior, but also an aspirant for promotion to the higher post, and, therefore, such confidential reports should not have been taken into consideration for further promotion. [1073 C]

In the instant case it would not have been fair for the Departmental Promotion Committee to take into account the annual confidential reports made by Dr. Grover though they might have been revised by the higher authorities. [1073 F]

D 3. The post-haste manner in which the Departmental Promotion Committee Meeting was held on 3.11.1979 suggests that some higher-up was interested in pushing through the matter hastily when the regular Secretary, Health and Family Welfare was on leave. The matter is therefore required to be considered afresh.

[1075 B]

E In the instant case the Director of Health Services and Deputy Director of Health Services were holding the posts on *ad hoc* basis from the year 1973. The final seniority list was prepared only on 2.11.1979 and the Departmental Promotion Committee was constituted on 3.11.1979. The Joint Secretary, Personnel Department had written the letter dated 3.11.1979 requesting the Principal Secretary to the Chief Minister who was appointed additionally as Secretary of Health and Family Welfare to attend the Departmental Promotion Committee Meeting at 3.00 p.m. on that day. There is room for suspecting the reason why the whole thing was completed in haste on 3.11.1979 after the preparation of the final seniority list on 2.11.1979. The matter was not such as could not have been put off by a few days. Such rush is not usual in any State Government.

[1074 C-D, 1075 A]

G 4. The High Court was right in finding that the Specialists had an advantage for their category starting the roster by the senior-most of the Specialists having put in more number of years of qualifying service than the HPHS (Grade I) Officers and that the Government was right in getting the roster started with Specialists instead of HPHS (Grade I) Officers. [1076 B-C]

H In the instant case as Rule 9(4) did not provide the category with which the roster may be started whether with HPHS (Grade I) Officers or Specialists, difficulty arose. The Government, therefore, stepped in and supplemented the Rule by directing that the roster may be started with the category of Specialists keeping in view the length of qualifying service in each of the two grades, namely Specialists and HPHS (Grade I) Officers. This they were entitled to by Rule 21. [1075 H, 1076 A]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2104 of 1980.

Appeal by special leave from the judgment and order dated the 30th July, 1980 of the Himachal Pradesh High Court at Simla in C.W.P. No. 2 of 1980.

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WITH

CIVIL APPEAL NO. 2384 OF 1980

Appeal by special leave from the judgment and order dated the 30th July, 1980 of the Himachal Pradesh High Court at Simla in C.W.P. No. 288 of 1979.

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T.U. Mehta, S.K. Sabharwal, A. P. Mohanty and C.P. Pandey for the Appellant in C. A. No. 2104/80 & for Respondent 2 in C.A. No. 2384 of 1980.

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G.L. Songhi, Vineet Kumar and Ashok Kaul for the Appellant in C.A. No. 2384 of 1980.

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M.M. Abdul Khader and Miss A. Subhashini for the Respondent : State

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V.M. Tarkunde and C.M. Nayar for Respondent No. 5 in C.A. No. 2104 of 1980.

The Judgment of the Court was delivered by

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VARADARAJAN, J. These appeals by special leave are against the common judgment of a Division Bench of the Himachal Pradesh High Court rendered in Writ Petitions Nos. 2 of 1980 and 288 of 1979. They were heard together by us in view of this Court's Order dated 6.11.1980. Writ Petition No. 288 of 1979 was filed by Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur against the State of Himachal Pradesh, Dr. S.P. Kapoor, Dr. R.M. Bali and Dr. K. Pandeya. Writ Petition No. 2 of 1980 was filed by Dr. R.M. Bali against the State of Himachal Pradesh and eight others including Dr. Jiwan Lal, Dr. (Mrs.) Damyanti Kapur, Dr. S.P. Kapoor and Dr. K. Pandeya, who were respondents Nos. 8, 9, 6 and 7 respectively in the Writ Petition. Dr. S.P. Kapoor, the appellant in C.A. No. 2104 of 1980 is the second respondent in Writ Petition No. 288 of 1979 and 6th respondent in W.P. No. 2 of 1980. Dr. Jiwan Lal,

A the appellant in C.A. No. 2384 of 1980 is the first petitioner in W.P. No. 288 of 1979 and 8th respondent in W. P. No. 2 of 1980.

Writ Petition No. 288 of 1979 challenged the reversion of Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur, the petitioners therein, from the post of Deputy Directors of Health Services, as illegal and violative of the conditions of service as also the provisions of the Constitution of India. In Writ Petition No. 2 of 1980 Dr. R.M. Bali prayed for quashing the seniority of specialists indicated in the Office Memo dated 2.11.1979 and Annexure PX-1 containing the list and for assignment of Serial No. 1 in the seniority list to him.

B Dr. R.M. Bali prayed for certain other reliefs also including declaration of the appointment of Dr. S.P. Kapoor as Director of Health Services as null and void and for his case being considered for appointment to that post on the basis of the seniority prayed for in his Writ Petition.

D The case of Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur, the Writ Petitioners in W.P. No. 288 of 1979, was that they were appointed as Deputy Directors of Health Services on a regular basis. The post of Deputy Director, Health Services was held by Dr. Jiwan Lal for 4½ years and by Dr. (Mrs.) Damyanti Kapur for about 3½ years. The appointment of Dr. S.P. Kapoor, the appellant in C.A. No. 2104 of 1980 and Dr. R.M. Bali and Dr. K. Pandeya (respondents 2 and 4 in W.P. No. 288 of 1979) as Deputy Directors of Health Services, is contrary to the provisions of the Himachal Pradesh Health Services Rules, 1974 (hereinafter referred to as the 'Rules'). They were appointed in disregard of the rights of Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur. The Departmental Promotion Committee constituted for making the appointment was not properly constituted as one of the members of the Committee, namely, the Principal Secretary to the then Chief Minister was unauthorisedly inducted into the Committee in the place of the Secretary to Government, Health and Family Welfare Department, Himachal Pradesh. Therefore, the proceedings of the Committee are vitiated.

E The annual confidential reports of the petitioners Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur were initiated by an officer who was not only junior to them but also an aspirant for promotion to the higher post along with them. Therefore, those confidential reports should not have been taken into consideration for further promotion by the Departmental Promotion Committee. The appointment of Dr. S.P. Kapoor, the appellant in C.A. No. 2104 of 1980, Dr. R.M. Bali and Dr. K. Pandeya, res-

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pondents 2 and 4 in that Writ Petition was made in haste on 3.11.1979 immediately after the final seniority list was issued on 2.11.1979. The appointment of Dr. S.P. Kapoor, the second respondent in W.P. No. 288 of 1979 and appellant in C.A. No. 2104 of 1980 as Director of Health Services on the same day is illegal as he did not satisfy the conditions prescribed in the Rules and he did not have even the requisite qualifying service. Further the post of Director of Health Services must have been filled up from amongst the Health Services Grade-I officers and not from amongst Specialists. The reversion of Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur from the posts of Deputy Directors is illegal and violative of the conditions of their service as also the provisions of the Constitution of India.

The case of Dr. R.M. Bali, the petitioner in W.P. No. 2 of 1980 was that he was appointed as T.B. Officer, T.B. Sanatorium, Mandodhar, a Gazetted Class II post, with effect from 9.4.1955 and he continued to work as such till 28.5.1962. He was, thereafter, appointed as Superintendent in that Sanatorium, a Class I post, and after joining the post he was selected for appointment on a regular basis through the Public Service Commission and he was confirmed in that post, categorized as Category 'D' post and Class I post in the Central Health Services, in 1966. The Medical and Health Department of Himachal Pradesh Government appointed him as Director of Health (T.B.), a Category 'D' post by a Notification dated 1.7.1963. He was inducted into the Central Health Services with effect from 9.9.1966 and included in the initial constitution of that Service and confirmed in that Service on 9.9.1968. But Dr. Grover, who has since retired, and Dr. S.P. Kapoor, who were respondents 5 and 6 respectively in Writ Petition No. 2 of 1980, were appointed merely on a temporary basis to the Central Health Service with effect from 1.11.1966. The *inter se* seniority of Dr. R.M. Bali, the petitioner in W.P. No. 2 of 1980 and Dr. Grover and S.P. Kapoor in the Central Health Services (Specialists' Grade) had to be preserved and could not be disturbed at the time of absorption in the Himachal Pradesh Health Services having regard to the Punjab Reorganisation Act and the protection given to the members of the Punjab Service. In these circumstances, Dr. R.M. Bali prayed for quashing of the seniority list of the cadre of Specialists indicated in the Office Memorandum dated 2.11.1979 (Annexure PX-1 containing in the list) and assigning to him Serial No. 1 in the seniority list. He also prayed for other reliefs including declaration of the appointment of Dr. S.P. Kapoor as Director of Health Services as null and

A void and for his appointment to that post on the basis of the revised seniority claimed by him.

B The contention of the Himachal Pradesh Government, the first respondent in W.P. No. 288 of 1979 was that Dr. Jiwan Lal and Dr. (Mrs) Damyanti Kapoor were appointed as Deputy Directors of Health Services on *ad hoc* basis. The Deputy Director's post is a selection post which cannot be claimed as of right by persons appointed on *ad hoc* basis by way of stop-gap arrangement. The incumbent to the post of Secretary to Government, Health and Family welfare was on leave from the 3rd to 9th November, 1979 and the Principal Secretary to the then Chief Minister was appointed to function in his place as Secretary to Government in the Departmental Promotion Committee by order dated 3.11.1979. The constitution of the Departmental Promotion Committee was, therefore, perfectly valid.

C The annual confidential reports written by Dr. Grover, who was working on *ad hoc* basis, were not the only reports taken into account by the Departmental Promotion Committee. That Committee did not take into account the reports of Dr. J. C. Sharma about the work and conduct of Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur. The post of Director of Health Services was manned on an *ad hoc* basis since the retirement of Dr. Krishan Swarup in December 1973. The posts of Deputy Director also were manned on an *ad hoc* basis. These *ad hoc* appointments were necessitated by the absence of the final seniority list which was prepared only on 2.11.1979 and since that impediment was over on 2.11.1979, the Departmental Promotion Committee met on 3.11.1979 and orders of appointment to those selected by that Committee on that date were issued on the same day. The promptness in making the regular appointments was necessitated by the intention to make the regular appointment as quickly as possible after the preparation of the final seniority list on 2.11.1979. Specialists are necessarily officers possessing post-graduate qualifications while G.D.Os. Class I are, as a rule, only graduates. Therefore, the Rule making authority divided the higher posts equally amongst the Officers of the two categories taking all factors into consideration. The appointment of Dr. S. P. Kapoor, the second respondent in W.P. No. 288 of 1979 as Director of Health Services is valid. Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapoor were not Deputy Directors of Health Services on the date of selection of Dr. S.P. Kapoor as Director of Health Services and, therefore, their claim for being considered for promotion to that post is wholly untenable having regard to Rule 9(3) of the Rules, according to

which only Deputy Directors could be considered for promotion to the post of Director of Health Services.

The contention of the Himachal Pradesh Government, the first respondent in W.P. 2 of 1980 was that the post of Superintendent, T.B. Sanatorium held by Dr. R.M. Bali, the petitioner in that Petition, was a junior Class I post until he was appointed to the Specialist grade of the Central Health Services with effect from 9.9.1966. Dr. Grover and Dr. S.P. Kapoor, respondents 5 and 6 respectively in W.P. No. 2 of 1980 were appointed to the Specialists' grade in the Central Health Services with effect from 1.11.1966 though the Central Government kept the question of seniority open. Dr. R.M. Bali exercised his option to join the Himachal Pradesh Health Service after a copy of the Rules was supplied to him. The final seniority of Dr. R.M. Bali and others was fixed under the provisions of the Rule issued on 10.1.1974. Seniority assigned to Dr. R.M. Bali is strictly in accordance with the provisions of Rule 10 (a) (iii) of the Rules. The words "whichever is earlier" which occurred in the original Rule 10 (a)(i) and 10 (a)(iii) were deleted by the Amendment Rules, 1966. The claim of Dr. R.M. Bali for seniority on the basis of his *ad hoc* appointment is not tenable.

The Central Government and Dr. S.P. Kapoor, respondents 2 and 6 in W.P. No. 2 of 1980 had also filed counter-affidavits opposing the Writ Petition. In the Central Government's counter-affidavit it is stated that Dr. R.M. Bali has been in the Specialist's grade only from 9.9.1966 and that Dr. Grover and Dr. S.P. Kapoor were appointed to the Specialists' grade on 1.11.1966 leaving the question of seniority open. In the counter-affidavit of Dr. S.P. Kapoor reference is made to Government of India's letter dated 9.7.1971 which deals with the fixation of seniority of medical officers of the Punjab Government absorbed in the Central Health Services in the Himachal Pradesh Union Territory and states as follows. ;

"The Central Health Services was constituted with effect from 9.9.1966 and the seniority of Medical Officers appointed to the Service with effect from that date has been determined in accordance with the principles laid down in this Ministry's letter dated 27.7.1967. In accordance with sub-para 1 of this memorandum Officers appointed to a grade of the Central Health Services under Rule 7A of the Central Health Services Rules, as amended by the Central Health Services Amendment Rules, 1966, will rank *en bloc* senior

A in that grade under Rule 8 of the Central Health Services Rules, 1963.

B 2. The Officers of the Punjab Government were appointed to the Central Health Services with effect from 1.11.1966 under Rule 8(A) of the Central Health Services Rules, 1963. Those officers have come to the Central Health Service only after the initial constitution of that Service was over. In accordance with the principles laid down for the Central Health Services it is not permissible to assign them seniority in the Central Health Services over the Officers appointed to the Central Health Services at the initial constitution of the Service.

C 3. However, as the Government of Himachal Pradesh have proposed to formulate their own Health Services and the Medical Officers who opt from the Central Health Services are to be included in that Service, those Officers may be asked to exercise their option. In case they chose to remain as members of the Central Health Services their seniority will be reckoned only at the maintenance stage of the Central Health Services and they cannot get seniority in the Central Health Service on the basis of their prior service under the Punjab Government. Those Officers who opt to join the proposed Himachal Pradesh Health Service may, however, be given the benefit of their past continuous service while fixing their seniority in the Himachal Pradesh Health Service. At the time of formation of that Service these persons can be considered for inclusion in the initial constitution of that Service and their seniority fixed bearing in mind the principles mentioned in Shri A.D. Pande's D.O. Letter No. 22/5/67-SR(S) dated 14th February, 1967".

G The learned Judges of the Himachal Pradesh High Court who heard these two Writ Petitions and other Writ Petitions jointly found that Dr. Jiwan Lal, Dr. S.P. Kapoor and Dr. (Mrs.) Damyanti Kapur were appointed as Deputy Directors of Health Services on *ad hoc* basis in July 1975 and January 1976 respectively after the Rules came into force on 19.1.1974, that it has not been contended by them that they had been appointed in accordance with the Rules or after relation of the Rules, that Dr. Jiwan Lal, Dr. (Mrs.) Dayanti Kapur and Dr. S.P. Kapoor were specifically appointed

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on *ad hoc* basis and that, therefore, Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur cannot claim right to the post of Deputy Directors of Health Services or to seniority on the basis of their *ad hoc* appointments, though they can add the period of such appointment in the matter of experience for promotion and confirmation in view of the addition of notice to Rule 9 of the Rules.

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Regarding the attack on the constitution of the Departmental Promotion Committee, the learned Judges found that when the regular Secretary to the Government, Health and Family Welfare Department, was on leave, the Principal Secretary to the then Chief Minister was appointed to function additionally as Secretary to Government, Health and Family Welfare Department, as per Office Order dated 2.11.1979 and, therefore, the Departmental Promotion Committee has been properly constituted. Regarding the question whether seniority in the Himachal Pradesh Health Service is to be determined with reference to the date of joining the Central Health Service or with reference to the date of joining the Punjab Civil Medical Service, Grade I [in short PCMS (I)] with Post-Graduate qualifications on the date of appointment as Deputy Medical Superintendent/Resident Medical Officer/Surgical Specialists, Ripon Hospital from the date on which they were given the PCMS scale, the learned Judges of the High Court found that the Central Health Service was constituted by the Central Government and the Health Service Rules, hereinafter referred to as the "Central Rules", framed by the President of India, in exercise of the powers conferred by Article 309 of the Constitution of India, came into force with effect from 15.5.1963 and that the Central Rules were amended by the Central Health Services (Amendment) Rules, 1966. Before the Punjab Reorganisation Act came into force the State of Punjab had its own Health Service known as the PCMS with two grades, Grade I and Grade II. After the Punjab Reorganisation Act came into force, and the Central Health Service was formed, some persons belonging to the PCMS and some persons working as Medical Officers in hospitals run by Local Bodies were inducted into that Service after they had exercised their option to be inducted therein. The Writ Petitioners and contesting employees-respondents had been inducted into the Central Health Service after they had exercised their option. When the Himachal Pradesh Union Territory was in existence, its Health Department was manned by Officers of the Central Health Service. But after Himachal Pradesh became a full-fledged State, the Himachal Health Service was constituted on 24.1.1974 under the Himachal Pradesh Health Service Rules, which

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A came into force on 19.1.74 and the members of the Central Health Service serving in the erstwhile Himachal Pradesh Union Territory were asked to exercise their option to continue in the new Himachal Pradesh Health Service. The writ petitioners and the contesting employees-respondents exercised their option to continue in the Himachal Pradesh Health Service. The question for consideration was the basis on which seniority in the Himachal Pradesh Health Service is to be determined, namely, whether it is with reference to the date of entry into the Central Health Service or into the PCMS (I) with post-graduate qualifications or the date of appointment as Deputy Medical Officer/Surgical Specialists,

B Ripon Hospital from the date on which they were given PCMS scales According to Rule 4 of the Himachal Pradesh Health Service Rules, which relates to classification, categories and scales of pay, there are two wings in the Himachal Pradesh Health Service, namely, the General Wing and the Teaching Wing, which are independent and not inter-changeable except in regard to certain posts.

C The writ petitions had nothing to do with any of the Officers in the Teaching Wing. The General Wing has six categories, each having grades as specified in the table annexed to the Rules. We are concerned in these appeals with Specialists and Grade I Officers. The Officers who were concerned with the writ petitions were Specialists on the one hand and Himachal Pradesh Health Service Grade I Officers on the other in respect of whom seniority is to be fixed on a separate basis. Under the Himachal Pradesh Health Service Service Rule 10 relating to fixation of seniority, *inter se* seniority of departmental candidates absorbed under Rule 7 and 8 shall be determined under Rule 10 (a) (ii) as regards (i) Himachal Pradesh Health Service Grade I Officers from the date of regular appointment having been duly selected by the Union Public Service, Punjab Public Service Commission and Himachal Pradesh Public Service Commission and or by a regular Departmental Promotion Committee in the grades of (i) PCMS (I) and (ii) G.D.O. Grade I, and

G under Rule 10 (a) (iii) as regards (ii) Specialists from the date of regular appointment having been selected by the Union Public Service Commission, Public Service Commission and Himachal Pradesh Public Service Commission and or by a regular Departmental Promotion Committee in the following grades, namely (i) Specialists (Central Health Service), (ii) PCMS (I) with post-graduate qualifications and (iii) Deputy Medical Superintendent/Resident Medi-

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cal Officer/Surgical Specialists, Ripon Hospital from the date on which the scale of PCMS (I) was given to them. It was admitted that as alleged in W.P. No. 2 of 1980, Dr. R.M. Bali was inducted into the Central Health Service on a regular basis only on 9.9.1966 and Dr. Grover and Dr. S.P. Kapoor, respondents 5 and 6 in that Writ Petition, were inducted into the Central Health Service only with effect from 1.11.1966 and, therefore, Dr. R.M. Bali was senior to Dr. Grover and Dr. S. P. Kapoor in the Central Service. Dr. R. M. Bali and Dr. S. P. Kapoor were both specialists. S. P. Kapoor contended before the High Court that he had been selected by the Punjab Service Commission on 29.1.1965 and had post-graduate qualifications when he was inducted into the Central Health Service. But Dr. R.M. Bali contended that he was entitled to seniority from 1.6.1962 when he was appointed as T.B. Specialist at Mandodhar on an *ad hoc* basis or at least from 31.3.1964 when he was regularly appointed after selection by the Union Public Service Commission. In Rule 10 (a) (iii) the words "whichever is earlier" which were originally found have been deleted retrospectively by an amendment as stated earlier. The learned Judges of the High Court held that seniority has to be determined on the basis of the date of induction into the Central Health Service and not on the basis of the earlier service if any, in the PCMS though they have observed that the words "whichever is earlier" which occurred in the Himachal Pradesh Health Service Rule 10 (a) (iii) were omitted retrospectively in order to do justice in the matter of seniority to those doctors who came into the Himachal Pradesh Health Service from any local authority or PCMS and not from the Central Health Service. They have fixed the seniority of Dr. R.M. Bali above Dr. S.P. Kapoor on the basis that the former was inducted on 9.9.1966 and the latter was inducted on 1.11.1966 into the Central Health Service and held that Dr. D.S. Chauhan's seniority is rightly reflected in the Specialists' grade, and they directed modification of the seniority of Doctors in the Specialists' grade in accordance with their decision, namely, on the basis of date of induction into the Central Health Service.

Regarding writing of the annual confidential reports by Dr. Grover and Dr. J.C. Sharma, the contention of the Himachal Pradesh Government in W.P. No. 2 of 1980 was that Dr. Sharma's reports were not taken into consideration, that Dr. Grover's reports were revised, sometimes with additional remarks in favour or against the incumbents, by the higher authorities and that his reports were not the only reports which were taken into consideration by the

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A Departmental Promotion Committee in November 1979. The learned Judges of the High Court accepted that contention of the first respondent and held that no prejudice has been caused to the writ petitioners while the annual confidential reports were considered by the Departmental Promotion Committee on 3.11.1979. They quashed the seniority list of Specialists prepared on 2.11.1979 as well as the notification dated 3.11.1979 appointing Dr. S.P. Kapoor, the appellant in C.A. No. 2104 of 1980, Dr. K. Pandeya and Dr. R.M. Bali as Deputy Directors (super-time Grade II—General) and Dr. S.P. Kapoor as Director, Health Services (Super-time Grade I—General) and directed the State Government to make the appointments to these posts on the basis of the modified seniority list to be prepared in accordance with the directions given in their judgment. They disposed of Writ Petitions Nos. 288 of 1979 and 2 of 1980 as indicated above and directed the parties to bear their respective costs.

D The Himachal Pradesh Union Territory was constituted on 1.11.1966. On and from the appointed day, which in the present case is 1.11.1966, Simla, Kangra, Kulu and Lahaul and Spiti districts and certain other areas in the original State of Punjab became parts of that Union Territory under s. 5 of the Punjab Reorganisation Act (Central Act) 1966. The Central Rules, 1963 came into force on the appointed day and were later amended by the Central Health Service (Amendment) Rules 1966. These Rules, as amended, are found on pages 336 to 346 of the paper-book in C.A. No. 2104 of 1980. The Central Health Service was constituted only with effect from 9.9.1966. This is clear from the letter dated 9.7.1971 from the Ministry of Health and Family Planning (Department of Health) Government of India, addressed to the Secretary to Government (Medical and Health Department), Himachal Pradesh to which detailed reference will be made later in the course of this judgment. Dr. R.M. Bali was regularly appointed in the specialist's grade of the Central Health Service on probation with effect from 9.9.1966 alongwith certain others, pursuant to the power conferred by Rule 7A(1) of the Central Rules, as amended in 1966, by the President's Order No. 1-3/67-CHS II dated 8.6.1967. At that time Dr. R.M. Bali was working as a Specialist in the T.B. Sanatorium, Mandodhar, Himachal Pradesh Union Territory, a category 'D' post, having been appointed on the recommendation of the Union Public Service Commission. According to the counter-affidavit filed on behalf of the Himachal Pradesh Government in W.P. No. 2 of 1980, the post of

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Superintendent, T.B. Sanatorium, Mandodhar was a Junior Class I post at that time. It has been up-graded subsequently. Dr. Jiwan Lal was appointed substantively on 21.12.1946 as Assistant Surgeon (Grade I) and had been promoted as the Chief Medical Officer in the Civil Surgeon's grade on 1.7.1958. According to paragraph 3 of the counter-affidavit filed by Dr. Jiwan Lal in S.L.P. (Civil) No. 6574 of 1980, he was appointed under rule 7A(1) (b) of the Central Rules, as amended in 1966, to a post in the category of G.D.O, Grade I on 9.9.1966 before the constitution of Himachal Pradesh Union Territory and was confirmed in the post on 9.9.1968 after the constitution of that State. Dr. R.M. Bali and Dr. Jiwan Lal were allotted to Himachal Pradesh Union Territory on its constitution. On the recommendation of the Punjab Public Service Commission, Dr. S.P. Kapoor was appointed by the Governor of Punjab as officiating Senior Medical Officer against the up-graded post of PCMS (Class I) by Memo No. 177-4-HBI-65 dated 7.1.1965 with a direction to join the new assignment within a fortnight, which he did on 29.1.1965, and he was put on probation for a period of two years with effect from the date of taking charge of the post. After joining the post as per that order, Dr. S.P. Kapoor was serving at a station which was in the territory of the former Punjab State prior to the date of its organisation, which later became part of the Himachal Pradesh Union Territory under section 5 of the Punjab Reorganisation Act, 1966 as mentioned above. During the period of his probation he had to come into the Central Health Service on the constitution of Himachal Pradesh Union Territory on 1.11.1966 as he was allotted to that State and had been selected by the Union Public Service Commission in the same manner as Dr. R.M. Bali had been selected. Thus, all the three individuals, Dr. R.M. Bali, Dr. Jiwan Lal and Dr. S.P. Kapoor came to be in the Central Health Service on the constitution of Himachal Pradesh Union Territory on 1.11.1966. Dr. S.P. Kapoor was appointed to to Specialists' Grade in the Central Health Service along with Dr. Grover and two others under Rule 8A of the Central Rules as amended in 1966 by the President's Order No. F.32/48/65-CHS-II (V. II) dated 26.8.1970 with effect from 1.11.1966. Dr. R.M. Bali was appointed along with another to the Specialists' Grade in the Central Health Service with effect from 9.9.1968 by the President's Order No. F. 32-1(6)/70-CHS III dated 27.1.1971.

The full fledged Himachal Pradesh State was formed under Section 3 of the State of Himachal Pradesh Act 53 of 1970, a Cen-

A tral enactment, on and from the appointed day, 25.1.1971, and it comprised the Himachal Pradesh Union Territory. The Rules (Himachal Pradesh Health Service Rules) came into force on 19.1.1974. Consequent on the exercise of option for being absorbed in the Himachal Pradesh Health Service on the terms and conditions stipulated in the Rules and keeping in view the recommendations of the Screening Committee appointed under Rule 7 of those Rules, the Governor of Himachal Pradesh appointed Dr. Grover, Dr. S.P. Kapoor, Dr. R.M. Bali and Dr. D.S. Chauhan as Specialists on the General Side and Dr. K. Pandeya, Dr. Jiwn Lal, Dr. Jyoti Prasad and Dr. (Mrs.) Damyanti Kapur as Himachal Pradesh Grade I Officers with effect from 24.1.1974 by his order No. 1-15/75-H&FP dated 9.6.1975 in the categories to which they had been appointed prior to the commencement of the Rules as amended. In that order relating to seven Specialists and four Himachal Prashdesh Health Grade I offlcers, Dr. Grover, Dr. S.P. Kapoor, Dr. R.M. Bali and Dr. D.S. Chauhan are ranked as Nos. 2, 3, 6 & 7 respectively among Specialists while Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur are ranked later as Nos. 2 and 4 respectively amongst Himachal Pradesh Health Service Grade I Officers. This was after the Governor of Himachal Pradesh, in view of the Central Government's concurrence to the transfer of the Officers of the Central Health cadre to the

E Himachal Pradesh Health Service and on the recommendations of the Screening Committee constituted under Rule 7 of the Rules, appointed nine Doctors as Professors on the Teaching Wing, 19 Doctors as Specialists in the Teaching Wing, 10 Doctors including S.P. Kapoor and Dr. R.M. Bali as Specialists on the General Side and Dr. K. Pandeya and Dr. Jiwan Lal as Himachal Pradesh Health Service Grade I Officers by his Order No. 1/15/75-H&FP dated 9.6.1975. As stated earlier, we are not concerned in these appeals with any of the Doctors on the Teaching Wing. In that Order dated 9.6.1975 also Dr. Grover, Dr. S.P. Kapoor and Dr. R.M. Bali are ranked as Nos. 2, 3 and 6 respectively amongst the General Side Specialists while Dr. Jiwan Lal is ranked later as No. 2 ond below Dr. K. Pandeya amongst the Himachal Pradesh Health Service Grade I Officers. Thus it is seen that Dr. S.P. Kapoor and Dr. R.M. Bali are Specialists on the General Side and that Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur are Himachal Pradesh Health Service Grade I Officers.

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The Hemachal Pradesh Government, by Order No. HFW/B-(9)-7/78 dated 19.8.1978 confirmed Dr. Grover and Dr. S.P. Kapoor,

who originally belonged to the Punjab Civil Medical Service, with effect from 27.4.1964 and 29.1.1965 respectively and Dr. R.M. Bali who came originally from the Central Health Service with effect from 9.9.1966 and certain others with effect from 24.1.1974, leaving the question of seniority open.

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Prior to 2.11.1979, Dr. S.P. Kapoor, Dr. K. Pandeya, Dr. R.M. Bali, Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur were working as Deputy Directors, Health Services in the Himachal Pradesh Health Service on *ad-hoc* basis and Dr. Grover was working as Director of Health Services on *ad-hoc* basis during 1975 to 1977. Dr. K. Pandeya replaced Dr. Grover as Director of Health Services on *ad-hoc* basis in June 1978 by the Government's Order No. 1-15/74-HP (Apptt) dated 8.6.1978. This fact, mentioned by Mr. Mehta, learned counsel appearing for Dr. S.P. Kapoor in the course of the arguments, was not disputed by Mr. V.M. Tarkunde, learned counsel appearing for Dr. R.M. Bali and Mr. G.L. Sanghi, learned counsel appearing for Dr. Jiwan Lal. On 2.11.1979 the final seniority lists of Specialists and Grade I Officers in the Himachal Pradesh Health Service as on 1.1.1979 were published by the Himachal Pradesh Government's Order No. HPW-B(9)-2/77 dated 2.11.1979. In the List relating to eight Specialists, Dr. Grover, Dr. S.P. Kapoor, Dr. R.M. Bali and Dr. D.S. Chauhan are ranked as Nos. 1, 2, 3 and 5 respectively while in the List relating to 79 Grade I Officers, Dr. K. Pandeya, Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur are ranked as Nos. 1, 2 and 3 respectively. Now, Dr. Grover and Dr. K. Pandeya are stated to have retired. On 3.11.1979, the Departmental Promotion Committee constituted under Rule 2(g) of the Rules, the constitution of which is attacked by Mr. Mehta, Mr. Tarkunde and Mr. Sanghi, recommended on the basis of the said final seniority lists, the appointment of Dr. S.P. Kapoor, Dr. K. Pandeya and Dr. R.M. Bali as

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Deputy Directors of Health Services and Dr. S.P. Kapoor as Director of Health Services in the place of Dr. K. Pandeya. On the same day, they were appointed as such by the Government's Order No. Health-Kb(9)4/79 dated 3.11.1979. On the same day Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur were reverted with immediate effect to Himachal Pradesh Grade I posts by the Governor's Order No. Health-B(9)4/79 and Dr. S.P. Kapoor was promoted as Director of Health Services by the Government's Notification No. 171002 and put on probation for a period of two years. It is stated in that Notification that orders of posting of Dr. K. Pandeya, presently officiating as Director of Health Services purely on a temporary basis, will be issued by the Secretary (Health and Family Welfare) to the

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- A** Government of Himachal Pradesh separately. The correctness of these seniority lists and orders of appointments were challenged in the Writ Petitions. The writing of the annual confidential reports by Dr. Grover and Dr. J.C. Sharma, the constitution of the Departmental Promotion Committee, and the rotation of Specialists in preference to Himachal Pradesh Grade I Officers for appointment as Director of Health Services on the admitted 50 : 50 basis were also questioned in the Writ Petitions. There is no dispute that the basis for selection of the Specialists and Grade I Officers as Director of Health Services is 50 : 50.
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- C** The learned Judges of the High Court held that seniority has to be determined on the basis of the date of induction into the Central Health Service and not on the basis of the earlier induction into the Punjab Civil Medical Service though they have observed that the words "whichever is earlier" which occurred originally in Rule 10 (a) (iii) of the Rules were omitted retrospectively in order to do justice in the matter of seniority to these Doctors who came into the Himachal Pradesh Health Service from any local authority or the Punjab Civil Medical Service and not from the Central Health Service. On that basis they have fixed the seniority of Dr. R.M. Bali above Dr. S.P. Kapoor on the ground that the former was inducted on 9.9.1966 and the latter was inducted on 1.11.1966 into the Central Health Service and found that the seniority of Dr. D.S. Chauhan is rightly reflected in the Specialists' Grade. They have directed modification of the seniority of Doctors in the Specilists Grade in accordance with their judgment; namely, on the basis of the date of induction into the Central Health Service. Regarding writing of the annual confidential reports by Dr. Grover and Dr. J.C. Sharma, the learned Judges of the High Court accepted the contention put forward by the Himachal Pradesh Government in the counter-affidavit filed in W.P. No. 2 of 1980 that Dr. Sharma's reports were not taken into consideration that Dr. Grover's report were revised, sometimes with additional remarks, in favour or against the incumbents by the higher authorities and that his reports were not the only reports that were taken into consideration by the Departmental Promotion Committee in November 1979 and held that no prejudice has been caused to the Writ Petitioners while the annual confidential reports were considered by the Departmental Pramotion Committee. The learned Judges have not expressed any view regarding the attack on the Departmental Promotion Committee. On the question of rotation and selection of the Specialist as Director of Health Services in preference to Grade I Officers, the learned Judges of the High Court
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held that the Rules are silent on the question as to which category should be chosen first and they accepted the contention of the Himachal Pradesh Government that the Government had power under Rule 21 of the Rules to supplement the same by providing for starting the roster with the category of Specialist on the ground that the senior most of the Specialists had on the date of meeting of the Departmental Promotion Committee, namely, 3.11.1979, put in greater length of qualifying service than the senior-most officer of the Himachal Pradesh Health Service Grade I officers and that the Government, therefore, started the roster rightly with the category of Specialists keeping in view the length of qualifying service in each of grades, namely, Specialists and Himachal Pradesh Service Grade I Officers.

Mr. Mehta, appearing for Dr. S.P. Kapoor, contended that having regard to Rule 10 (a) (iii) of the Rules and the fact that Dr. S.P. Kapoor had been appointed as PCMS Grade I Officer by the Punjab Government on 29.8.1965, long before Dr. R.M. Bali and Dr. Jiwan Lal came into Central Health Service on 9.9.1966 and that Dr. S.P. Kapoor had been appointed as a Specialist in the Central Health Service with effect from 1.11.1966 while Dr. R.M. Bali had been appointed in the Specialists' Grade only with effect from 9.9.1968, Dr. S.P. Kapoor is senior to both Dr. R.M. Bali and Dr. Jiwan Lal in the Himachal Pradesh Health Service though he would undoubtedly be junior to Dr. R.M. Bali and Dr. Jiwan Lal in the Central Health Service as he had come to that Service only on 1.11.1966 while those two individuals had come into that Service on 9.9.1966. But Mr. Tarkunde, appearing for Dr. R.M. Bali and Mr. Sanghi, appearing for Dr. Jiwan Lal, contended that the basis of seniority has been rightly determined by the learned Judges of the High Court, and Mr. Sanghi submitted that in the List Dr. Jiwan Lal will come first and that if Dr. R.M. Bali is held to be senior, Dr. Jiwan Lal would rank next to him.

Mr. Pande, the then Joint Secretary, Home Affairs, Government of India had stated in his D.O. Letter No. 22/5/67-67-SR (S) dated 14-2-1967 addressed to the Chief Secretary, Himachal Pradesh Government (Union Territory), that the Central Government has already informed the Chief Secretary by letter dated 17.11.1966 that the allocation of the Government servants among the States of Punjab, Haryana and Himachal Pradesh and Chandigarh, which had already been made provisionally under S. 82 (b) of the Punjab Reorganisation Act, are to be finalized by the end of February, 1967.

- A He had requested the Chief Secretary for action for integration of the service being initiated soon after the finalisation of the allocation and had stated that it involves two steps, namely (1) determination of the equivalent posts and (2) determination of the relative seniority of persons holding equivalent posts but drawn from different integrating units. It is also stated in that letter that while determining the relative seniority as mentioned above, it may also be borne in mind that inter-se seniority of officers drawn from the same integrated unit should, as far as possible, be maintained. He had further stated in that letter that as the Chief Secretary is aware that Section 82 (4) of the Punjab Reorganisation Act casts responsibility on the Central Government for ensuring fair and equitable treatment to all the officers affected by the provisions of that Act.

- D The Ministry of Health and Family Planning (Department of Health), Government of India wrote, the letter dated 9.7.1971 to the Secretary to the Government, Medical and Health Department Himachal Pradesh regarding fixing of seniority of the Medical Officers of the Punjab Government absorbed in the Central Health Service in Himachal Pradesh as in the case of Dr. S.P. Kapoor. Unfortunately, the learned Judges of the High Court have not referred to this letter, which is strongly relied upon by Mr. Mehta, in their judgment. Mr. Tarkunde submitted that this letter was not relied upon before the High Court. That letter cannot be ignored. It is stated in that letter thus :

- F "The Central Health Service was constituted with effect from 9.9.1966 and the seniority of the Medical Officers appointed to this Service with effect from that date, has been determined in accordance with the principles laid down in this Ministry's O.M No. 5 (II)-/67-CHSI dated 22.7.1967. In accordance with sub-para 1 of this Memorandum, officers appointed to a grade of the Central Health Service under Rule 7A of Central Health Service Rules, 1963 as amended by the Central Health Service (Amendment) Rules, 1966, will rank en bloc senior in that grade to those who may be appointed to that grade under Rule 8A of the Central Health Service Rules, 1963.

- H The Officers of the Punjab Government were appointed to the Central Health Service with effect from 1.11.1966

under Rule 8A of the Central Health Service Rules, 1963. As these Officers have come into the Central Health Service only after the initial constitution of that service was over, in accordance with the principles laid down for the Central Health Service, it is not permissible to assign them seniority in the Central Health Service over the officers appointed to the Central Health Service at the initial constitution of the Service.

However, as the Government of Himachal Pradesh have proposed to form their own Health Service and the Medical Officer who are to opt from the Central Health Service are to be included in that Service, these Officers may be asked to exercise the option first. In case they choose to remain as members of the Central Health Service, their seniority will be ranked only at the maintenance stage of the Central Health Service and they cannot get seniority in the Central Health Service on the basis of their prior service under the Punjab Government. Those officers who opt to join the proposed Himachal Pradesh Health Service may, however, be given the benefit of their past continuous service while fixing their seniority in the Himachal Pradesh Health Service. At the time of formation of that Service these persons can be considered for inclusion in the initial constitution of that service and their seniority fixed bearing in mind the principles mentioned in Shri A.D. Pande's D.O. letter No. 22/5/67-SR (S) dated 14th February, 1967."

We think that this stand of the Central Government in regard to seniority of Officers who came into the Central Health Service at the initial constitution of that Service vis a vis those who came into that service after initial constitution of that service is correct and the only stand that could be reasonably taken in the circumstance of the case. It would not be proper for anyone who came into that Service after it had been constituted, to ask for seniority over those who were in that Service on the date of its initial constitution on the basis of their earlier appointment before they came into the Central Health Service after its initial constitution.

Before the Rules were framed there was a meeting of officials on 24.1.1972 to consider the question as to how seniority of officers

A who were already in the Central Health Service, having been appointed to that Service under Rule 7A of that Central Health Service Rules at the initial constitution of the service and of officers of the erstwhile Punjab Government who were appointed in the Central Health Service with effect from 1.11.1966 should be fixed. The minutes of that meeting are found at pages 285 to 287 of the paper-book relating to C.A. No. 2104 of 1980. It is seen from those minutes that in that meeting Mr. T.V. Menon of the Ministry of Law, Central Government, evidently on the basis of the aforesaid letter dated 9.7.1971 of the Ministry of Home Affairs, Health and Family Planning addressed to Secretary to Government, Himachal Pradesh, stated that :

C “As the Government of Himachal Pradesh proposes to form a separate Himachal Pradesh Health Service, it is well within the right of the Himachal Pradesh Government to frame Rules and Regulations to govern the service conditions of officers who might be appointed to that Service including their seniority. The only safeguard that should be taken is that these rules and principles of seniority should be circulated among all the officers and their option obtained in writing either to join the Himachal Pradesh Health Service or to remain in the Central Health Service. The Government of Himachal Pradesh need not be bound by the Rules and Regulations governing Central Health Service Scheme in respect of the provisions that might be made in the Himachal Pradesh Health Service. The Government of Himachal Pradesh may lay down any principles that may be acceptable to the officers concerned keeping in view the principles of equity and justice.”

Rule 4 of the Rules relates to classification, categories and scales of pay and reads as follows :

G “4. Classification, categories and scales of pay and reads as follows :

H (1) The Himachal Pradesh Health Service Card will consist of the two wings namely the General Wing and the Teaching Wing. These two wings of the service shall

be independent of the each other and posts will not be inter changeable at any stage, except the posts which carry a scale of Rs. 400-1100 or a pay scale lower than that which are included in the service. There shall be six categories in Health Wing; (General) and four categories in Health Wing (Teaching). Each category shall consist of the grades specified in column 2 of the table below :

(2) The scales of pay and classification of such grades shall be specified in corresponding entries in columns 3 & 4 of the said tables.

General Sr. Categories Wing No.	Scales of pay	Classification
1. Super time Grade-I	2250-125-2500 including NPA	Class-I
2. Super time Grade-II	1800-100-2000 including NPA	Class-I
3. Specialists	900-50-1150/50-1300	Class I
4. Himachal Pradesh Health Service, Grade-I.	900-50-1150/50-1300	Class-I
5. Himachal Pradesh Health Services, Grade-II.	400-30-700/40-1109	Class-II
Amend- 6. Dental Surgeon ment Eight-II	400-30-700/40-1100	Class-II

A Note : Two Selection Grade posts one each for Himachal Pradesh Health Services Grade-I and specialists shall be in the pay scale of Rs. 1800-100-2000 (inclusive of N.P.A.)

B *Note-II : See amendment sixth and eighth (III).*

Teach- 1. Principal/Professors 1300-30-1600-100-1800 Class-I
ing Wing

C 2. *Specialists Grade*

Associate Prof./ 900-50-1150/50-1300 Class-I

Asstt. Professor

D 3. Asstt. Professor 900-50-1150/50-1350 Class-I
(Dental).

Amend- 4. Asstt. Surgeon 450-30-660-EB-40- Class-I
ment (Dental). 1100-50-1250

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The special pay attached to various posts is as under :—

F (1) Principal (Medical College) Rs. 100/- PM

(2) Assistant Professor Rs. 100/- PM

(3) Officers appointed as Chief Medical Officers Rs. 100/- PM

G Rule 10(a) mentions about how seniority of departmental condidates absorbed under Rules 7 and 8 shall be determined and reads as follows :

H “10. Fixation of Seniority.

(a) The inter-se-seniority of departmental candidates absorbed under rule 7 and 8 shall be determined as follows :—

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(ii) Himachal Pradesh Health Service Grade-I from the date of regular appointment having been duly selected by the Union Public Service Commission, Punjab Public Service Commission and Himachal Pradesh Public Service Commission and or by a regular Departmental Promotion Committee (whichever is earlier) in the following grades :—

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(iii) Sepecialists—From the date of regular appointment having been duly selected by Union Public Service Commission, Punjab Public Service Commission and Himachal Pradesh Public Service Commission and or by a regular Departmental Promotion Committee (whichever is earlier) in the following grades :—

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1. Specialists (C.H.S.)

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2. P.C.M.S.I. (with post graduates qualifications)

3. Deputy Medical Supdt./Resident Medical Officers/Surgical Specialists, Ripon Hospital from the date the scale of P.C.M.S.I. was given.”

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It would appear from Rule 10 (a) (ii) that so far as Himachal Pradesh Health Service-Grade I officers are concerned, seniority will have to be reckoned from the date of regular appointment having been duly selected by the Union Public Service Commission and Himachal Pradesh Public Service Commission and or by regular Departmental Promotion Committee in the following grades,

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A namely, PCMS-Grade I and GDO Grade I and that so far as Specialists are concerned, their seniority will count from the date of regular appointment having been duly selected by the Union Public Service Commission, Punjab Service Commission, Himachal Pradesh Public Service Commission and or by regular Departmental Promotion Committee in the following grades namely, (1) Specialist (CHS); (2) PCMSI (with post graduate qualifications) and (3) Deputy Medical Superintendents/Resident Medical Officers/Surgical Specialists, Ripon Hospital from the date on which the scale of PCMS (I) was given to them. It has been seen above that Dr. S.P. Kapoor has been appointed to the PCMS (Grade I) post on 29.1.1965 and he was inducted into the Specialists, grade in the Central Health Service with effect from 1.11.1966 while Dr. R.M. Bali and Dr. Jiwan Lal, who were in the Central Health Service on the date of its constitution on 9.9.1966 had been taken in the Specialists' grade and G.D.O. Grade I respectively under the Central Health Service with effect only from 9.9.1968. Therefore, under Rule 10 (a) (iii) of the Rules, Dr. S.P. Kapoor has to rank senior to Dr. R.M. Bali as well as Dr. Jiwan Lal who admittedly has to rank after Dr. R.M. Bali.

E Mr. Tarkunde submitted that a letter like the one dated 9.7.1971 mentioned above could have been addressed by the Central Government under Section 84 of the Punjab Reorganisation Act to the Administrator of the Himachal Pradesh Union Territory and that the letter dated 9.7.1971 referred to above could not have been written under that Section as Himachal Pradesh Union Territory ceased to be in existence when the full-fledged Himachal Pradesh State came into existence on 25.1.1971 itself. Section 84 of the Punjab Reorganisation Act says that the "Central Government may give such directions to the State Government of Punjab and Haryana and to the Administrators of the Union Territories of Himachal Pradesh and Chandigarh as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this part and the State Governments and the Administrator shall comply with such directions."

G Mr. Tarkunde relied in this connection upon the decision of this Court in *Roshan Lal Tandon v. Union of India*⁽¹⁾ and submitted that having come into the Central Health Service on 1.11.1966 it is not open to Dr. S.P. Kapoor who came into that service subsequent to the date on which Dr. R.M. Bali joined that Service on the date of its initial constitution to contend that his seniority must be fixed

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

with reference to the date of his appointment to the Punjab Civil Medical Service Grade I. In that decision we find the following passage at page 192 :—

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“At the time when the petitioner and the direct recruits were appointed to Grade ‘D’ there was one class in Grade ‘D’ formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade ‘D’ were integrated into one class and no discrimination could therefore be made in favour of recruits from one source against the recruits from the other source in the matter of promotion to Grade ‘C’. To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade ‘C’. In the present case it is not disputed on the part of the first respondent that before the impugned Notification was issued there was only one rule of promotion for both the departmental promotees and the direct recruits and that rule was seniority-cum-suitability, and there was no rule of promotion separately made for application to the direct recruits. As a consequence of the impugned notification a discriminatory treatment is made in favour of the existing Apprentice Train Examiners who have already been absorbed in Grade ‘D’ by March 31, 1966 because the Notification provides that this group of Apprentice Train Examiners should first be accommodated *en bloc* in Grade ‘C’ up to 80 percent of vacancies reserved from them without undergoing any selection. As regards 20 per cent of the vacancies made available for the category of Train Examiners to which the petitioners belong the basis of recruitment was selection on merit and the previous test of seniority-cum-suitability was abandoned. In our opinion, the present case falls within the principle of the recent decision of this Court of *Marvyn v. Collector* [1966] 3 SCR 600.”

We are of the opinion that the ratio of this decision will not apply to the facts of the present case.

On the other hand, Mr. Mehta invited our attention to two decisions of this Court in *N. Subba Rao etc. v. Union of India and Ors*(¹), and *C.P. Damodaran Nayar and P.S. Menon v. State of Kerala*

A and Others⁽¹⁾). The decision in *N. Subba Rao etc. v. Union of India and Ors.* related to the *inter se* seniority of officers of two regions of different States which came to form a single State on 1st November, 1956. On 1.11.1956 the State of Andhra Pradesh came into existence under the States' Reorganisation Act 1956. That State was formed out of the former State of Andhra Pradesh and the Telangana area of the former Hyderabad State. The appellants in that case were Engineers in the employment of Andhra Pradesh. On the formation of Andhra Pradesh, the appellants under the States' Reorganisation Act, 1956 continued to serve the State of Andhra Pradesh. The respondents who were Telangana officers in the employment of the Hyderabad State continued to serve the State of Andhra Pradesh. The Central Government directed the State Government in September, 1956 to draw up provisional common Gradation List keeping in view the general principles agreed to at the Conference of the Chief Secretaries held in April and May, 1966. The State Government prepared a provisional common gradation list of Gazetted Officers in November 1961. The Telangana Engineers challenged the common Gradation List by filing Writ Petition in the Andhra Pradesh High Court. This Court observed in the Judgment that:—

“Under the States' Reorganisation Act power is conferred on the Central Government to bring out the integration of the Service in the State of Andhra Pradesh by ensuring fair and equitable treatment to all persons affected by the provisions of Section 115 of the Act. The Government of Andhra Pradesh has a duty to bring all relevant facts to the notice of the Central Government.

F Under the States' Reorganisation Act, the Central Government is entrusted with the power of the division and integration of the Service and the ensuring of fair and equitable treatment to all persons affected by the provisions of Section 115 of the Act in regard to allotment of Officers from an existing State to a successor State.”

G In the case of *C.P. Damodaran Nayar and P.S. Menon v. State of Kerala and Others* (supra) the State of Kerala came into being on 1.11.1956 and the appellant had been selected by the Madras Public Service Commission as a District Munsif and was posted as such on 26.5.1951 and he was in continuous service since then. The service of appellant was regularised as from 6.10.1961. The appellant was allotted to Kerala State with effect from 24.10.1956. On 26.3.1966

the Kerala State published the final integrated list of the Travancore-Cochin and Madras Judicial Officers in the integrated State of Kerala as on 1.11.1956, showing respondents 6 and 7, whose dates of commencement of continuous service were 20.7.1951 and 1.10.1951 respectively as senior to the appellant on the basis that he commenced his continuous service on 6.10.1951. The appellant questioned the final seniority list contending that the date of commencement of his continuous service is 26.5.1951. This Court observed thus :

“Under Section 117 of the Act (States Reorganisation Act 1956) the Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions.”

In accordance with the provisions of that Act, a meeting of the Chief Secretaries of the various States that were to be affected by the reorganisation was held at the invitation of the Central Government. In that meeting it was agreed that in determining the relative seniority as between two persons holding posts declared equivalent to each other and drawn from different States, *inter alia* the length of continuous service, whether temporary or permanent, excluding periods in which an appointment is held in a purely stop-gap or fortuitous arrangement, should be taken into account. This Court held that the appellant in that case should be given the benefit of his seniority reckoning his continuous appointment and assigning the date 26.5.1951 and substituting the same in the final list for 6.10.1951, and observed :

“It is common ground that the appellant has been appointed in a regular manner through the Public Service Commission and his appointment cannot by any stretch of imagination be made to fill a “pure stop-gap or fortuitous” vacuum. As noted earlier, the Government of India has accepted the position that an allotted employee should not suffer any disadvantage if he would not have been subjected to a like handicap in his parent State.

It is clear from the position taken by the Madras Government that the appellant would have got the benefit

A of his continuous appointment in Madras with effect from May 26, 1951. That being the position, the submissions of the learned counsel for the respondents are of no avail".

B We are of the opinion that the ratio of these two decisions relied upon by Mr. Mehta would apply to the facts of the present case. Section 45 of the State of Himachal Pradesh Act, 1970 lays down that "the Central Government may give such directions to the Government of the State of Himachal Pradesh as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and also the provisions of Part 9 of the Punjab Reorganisation Act, 1966 and the State Government shall comply with such directions".

C We agree with Mr. Mehta that the aforesaid letter dated 9.7.1971 from the Ministry of Health, Family Planning, Department of Health, Government of India, addressed to the Government of Himachal Pradesh, was written under the provisions of Section 45 of the State of Himachal Pradesh Act 1970. Mr. Tarkunde submitted that even if that letter dated 9. 7. 1971 had been written under the provisions of Section 45 of the State of Himachal Pradesh Act, 1970, equivalent posts must be determined and that nobody has fixed the equivalent posts and it is for the Government of India to decide. We are of the opinion that this submission is not well-founded as the equivalent grades have already been fixed by placing Dr. S. P. Kapoor and Dr. R. M. Bali in the category of Specialists and Dr. Jiwan Lal in the category of Himachal Pradesh Health Service Grade I Officer, as mentioned above by the Himachal Pradesh Government's Notification No. 1-15/75-H&FP dated 9. 6. 1975 referred to above. The Central Government was under an obligation to see that in fairness and equity the seniority of officers drafted into the newly formed State from the intergrating States is properly fixed and that obligation has been discharged by the Central Government: (1) by Mr. Pande's D. O. letter dated 14.2.1967, (2) the stand taken by Mr. T. V. Menon, Deputy Legal Adviser, Central Government in the meeting of Officers held on 24.1.1972 and (3) the letter dated 9.7.1971 written by the Ministry of Health and Family Planning Welfare, Government of India to the Secretary to the Government of Himachal Pradesh. In these circumstances we are of the opinion that the learned Judges of the High Court have erred in holding that the *inter se* seniority has to be determined only on the basis of the date of induction into the Central Service and not with reference to Rule 10 (a) (iii) of the Rules

which had, however, been noticed by the learned Judges without a correct appreciation of its impact on what the Government of Himachal Pradesh should do in the matter of fixing the relative seniority of the Officers drawn from the integrating States. We are of the opinion that *inter se* seniority has to be determined only in accordance with Rule 10 (n) (iii) of the Rules and that Dr. S. P. Kapoor would be senior to Dr. R. M. Bali, who in turn would rank senior to Dr. Jiwan Lal.

The annual confidential reports relating to Dr. S. P. Kapoor, Dr. Jiwan Lal and others had to be looked into by the Departmental Promotion Committee on 3.11.1979. The contention of Dr. Jiwan Lal was that the annual confidential reports of Dr. Jiwan Lal and Dr. (Mrs.) Damyanti Kapur were initiated by an Officer not only junior to them but also an aspirant for promotion to a higher post alongwith them, and, therefore, these confidential reports should not have been taken into consideration for further promotion. The contention of the Himachal Pradesh Government was that the confidential reports made by Dr. J. C. Sharma were not taken into account and that Dr. Grover's reports were revised, sometimes with additional remarks for or against the individuals by higher authorities and they were not the only reports which were taken into consideration by the Deparemental Promotion Committee. It is clear from this contention of the Himachal Pradesh Government that Dr. Grover's reports were taken into consideration by the Departmental Promotion Committee, though it is stated that they had been earlier revised by higher authorities. Dr. Grover was in the field competing with Dr. S.P. Kapoor, Dr. R.M. Bali and Dr. (Mrs.) Damyanti Kapur at the relevant time for promotion to the higher post. Therefore, it would not have been fair for the Departmental Promotion Committee to take into account the annual confidential reports made by Dr. Grover though they might have been revised by the higher authorities

Section 2 (g) of the Rules defines a Departmental Promotion Committee as: "a Committee constituted from time to time by the Government for the purpose of making recommendation for promotion or confirmation in any catagory".

Dr. Jiwan Lal has stated in his Special Leave Petition that under the Rules the Departmental Promotion Committee of Himachal

A Pradesh in respect of the Health Services consisted of the Chief Secretary, Financial Commissioner and Secretary, Health and Family Welfare, of the Himachal Pradesh Government. There is no dispute about this fact. But the Departmental Promotion Committee which met on 3.11.1979 to consider the question of appointment of Deputy Directors and Director of Health Services, consisted of the Chief Secretary, Financial Commissioner and Principal Secretary to the Chief Minister of Himachal Pradesh, who was appointed additionally as Secretary of Health and Family Welfare in the absence on leave of the regular Secretary, Health and Family Welfare from 3rd to 8th November, 1979. It is seen from the counter-affidavit of the Himachal Pradesh Government that the Director of Health Services and Deputy Director of Health Wealth were holding the posts on *ad hoc* basis from the year 1973. The final seniority list was prepared only on 2.11.1979 and the Departmental Promotion Committee was constituted on 3.11.1979. The Joint Secretary, Personnel Department, Himachal Pradesh Government had written the letter No. Per (A-1) B-79 dated 3.11.1979 requesting Mr. R. C. Gupta, Secretary (Health) Himachal Pradesh Government to attend the Departmental Promotion Committee Meeting to be held at 3.00 P. M. on that day for considering the names of officers for the posts of Director, Health Services. It is seen from what has been stated above and it is also admitted by the Himachal Pradesh Government that the selection of the Deputy Directors and the Director of Health Services from amongst the Deputy Directors had been made by the Departmental Promotion Committee on 3.11.1979 itself and that even the orders of appointment had been issued on the same day with the approval of the Governor of Himachal Pradesh. Though before the High Court it does not appear that Dr. Jiwan Lal had alleged any *mala fides* to anybody he has alleged in Special Leave Petition that the constitution of the Departmental Promotion Committee and the process of selection and appointment were obviously *mala fides* and that they were appointed on the date on which Mr. Yadav, the regular Secretary, Health and Family Welfare Department, was on leave and that this haste suggests that he would not have agreed to carry out the political wish of the then Chief Minister in making the appointments in the post haste manner. Though it is not possible to accept the belated contention that there was any *mala fides* on the part of the then Chief Minister in the matter of constitution of the Departmental Promotion Committee with his Principal Secretary as one of its members in the place of the regular Secretary, Health and Family Welfare, we are of the opinion

that there is room for suspecting the reason why the whole thing was completed in haste on 3.11.1979 after the preparation of the final seniority list on 2.11.1979, in the light of the admitted position that the Deputy Directors and Director of Health Services, Himachal Pradesh were holding *ad hoc* appointments from 1973. The matter was not such as could not have been put off by a few days. Such rush is not usual in any State Government. The post-haste manner in which these things have been done on 3.11.1979 suggests that some higher-up was interested in pushing through the matter hastily when the regular Secretary, Health and Family Welfare was on leave. Therefore, we are of the opinion that the matter requires to be considered afresh.

In regard to the question of rotation, Rule 9(4) of Rules lays down : (1) super-time Grade II (General) posts shall be filled by promotion of (i) HPHS-Grade I Officers with not less than seven years of service in the category or (ii) Specialists' Grade Officers with not less than five years service in that category. The selection will have to be on the recommendation of a Departmental Promotion Committee on the basis of merit-cum-seniority of the officers concerned at (i) and (ii) above on 50 : 50 basis keeping in view the nature of the duties of the post. Supertime Grade I (General) posts shall be filled by promotion on the recommendations of the Departmental Promotion Committee on the basis of merit with due regard to seniority of Officers holding the posts of Deputy Directors with not less than five years service in that category. The contention of Dr. Jiwan Lal was that the Departmental Promotion Committee should not have started the rotation to post of Director of Health Services with a Specialist. On the other hand, the contention of the Himachal Pradesh Government before the High Court was that Rule 9 was silent on the question as to the category with which the roster should be started and, therefore, the State Government decided to supplement the Rule by starting the roster with the category of Specialists having regard to the fact that the senior-most Specialist Officer available on the date of the Departmental Promotion Committee meeting on 3.11.1979 had put in greater length of qualifying service than the senior-most HPHS (Grade I) Officer. Rule 21 of the Rules provides that if any difficulty is felt in giving effect to provisions of these Rules the Government may in consultation with the Public Service Commission give such directions not inconsistent with the provisions of those Rules, as appear to be necessary or expedient for the removal of the difficulty. In view of the fact that Rule 9(4) does not provide the category with which the roster may be started,

A whether with HPHS (Grade I) Officer or Specialists, difficulty appears to have arisen in starting the roster. Therefore, the Government stopped in and supplemented the Rule by directing that the roster may be started with the category of Specialists keeping in view the length of qualifying service in each of the two grades, namely, Specialists and HPHS (Grade I) Officers. The learned Judges of the High Court have expressed the view that the Specialists had an advantage for their category starting the roster by the senior most of the Specialists having put in more number of years of qualifying service than the HPHS (Grade I) Officers. We are of the opinion that the learned Judges were perfectly justified in taking this view and that the Government was right in getting the roster started with Specialists instead of of HPHS (Grade I) Officers.

For the reasons stated above Civil Appeal No. 2104 of 1980 is allowed and Civil Appeal No. 2384 of 1980 is dismissed. The principle on which relative seniority should be fixed having been settled in this judgment, it shall be fixed accordingly and the matter of selection of Deputy Directors and Director of Health Services, Himachal Pradesh shall be decided afresh according to the Rules and in the light of this judgment. Under the circumstances of the case, we make no order as to costs.

E

N.V.K.

*C.A. 2104 of 1980 allowed
and C.A. 2384 of 1980 dismissed.*