UNION OF INDIA & ORS.

v.

N.R. PARMAR & ORS.

(Civil Appeal Nos. 7514-7515 of 2005 etc.)

NOVEMBER 27, 2012

[D.K. JAIN AND JAGDISH SINGH KHEHAR, JJ.]

Service Law – Seniority – Inter-se-seniority – Between direct recruit and promotee Income Tax Inspectors – Applicability of 'quota' and 'rota' principle – Vacancies for the year 1993-94 required to be filled up by promotion as well as direct recruitment – Simultaneously referred to Departmental Promotion Committee and to Staff Selection Commission respectively – Appointment of promotees prior to the direct recruits as the selection process for direct recruits could not be completed within the recruitment year – Determination of date of seniority of the direct recruits – Plea of promotees that the date of seniority of the direct recruits should be from the date of their actual appointment, primarily placing reliance on Office Memorandum dated 7.2.1986 – Held: The date of seniority of direct recruits could not be the date of their actual appointment, but would be the date of initiation of process of recruitment – The general principles for determining inter se seniority between promotees and direct recruits was provided in the Office Memorandum dated 22.11.1959 – The Office Memorandum dated 7.2.1986 only introduced modification in respect of the vacancies which could not be filled and were carried forward and had to be filled later through a subsequent process of selection – In the instant case, the advertised vacancies were not carried forward vacancies – Direct recruits have to be interspaced with promotees of the same recruitment year.

Interpretation of Statutes – When the language used in

A *a statute is unambiguous and on a plain meaning being given to the words, the end result is neither arbitrary, nor irrational nor contrary to the object of the statute, the words used should be given effect to.*

B **The instant appeals and transferred cases, involved the dispute of *inter-se* seniority between the direct recruit and promotee income Tax Inspectors. The question to be decided was whether determination of the seniority of the direct recruits would be with reference to the date of their**
C **actual appointment, or the date of arising of the direct recruit vacancies, or the date of initiation of the process of recruitment, or the date when the Staff Selection Commission made recommendations for filling up direct recruit vacancies.**

D **The rival parties agreed that the seniority dispute was liable to be determined on the basis of Office Memoranda dated 7.2.1986 and 3.7.1986 issued by the Department of Personnel and Training read with the clarificatory Office Memoranda and Office Notes.**

E

Allowing the appeals and the transferred cases, the Court

HELD: 1. General principles for determining seniority in Central services have been laid down in an annexure
F **to an Office Memorandum dated 22.11.1959 issued by the Government of India, Ministry of Home Affairs. Under the OM dated 22.11.1959 *inter se* seniority between the promotees and direct recruits was based on the "quota" and "rota" principle. The OM dated 22.11.1959, was**
G **modified by an Office Memorandum dated 7.2.1986, issued by the Government of India, Department of Personnel and Training. The modification introduced through the OM dated 7.2.1986 was to redress a situation, wherein vacancies of one of the sources were kept (or**
H **remained) unfilled during the process of selection, and**

the unfilled vacancies, had to be filled up through "later" examinations or selections. For the determination of seniority, in the contingency wherein the process of recruitment resulted in filling the vacancies earmarked for the two sources of recruitment, the manner of determining *inter se* seniority between promotees and direct recruits, expressed in the OM dated 22.11.1959 remained unaltered. But where the vacancies could not be filled up, and unfilled vacancies had to be filled up "later" through a subsequent process of selection, the manner of determining *inter se* seniority between promotees and direct recruits, was modified. The O.M. dated 7.2.1986, was followed by another Office Memorandum issued by the Government of India, Department of Personnel and Training, dated 3.7.1986. The purpose of this O.M. was to "consolidate" existing governmental orders on the subject of seniority. The position expressed in the O.Ms. dated 7.2.1986 and 3.7.1986, on the subject of *inter se* seniority between direct recruits and promotees, was absolutely identical. [Paras 18, 19 and 21] [577-C-G-H; 578-B-E; 586-F; 590-B]

2. An Office Note of the Department of Personnel and Training, Establishment (D) Section, dated 20.12.1999 was issued. It was provided therein that only where the appointing authority has not been able to fill up the vacancies earmarked for direct recruits/promotees, with reference to the requisition for a particular recruitment year, inspite of its best efforts, the instructions contained in O.M. dated 7.2.1986 would come into operation; and that it was not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. Initiation of action for recruitment within the recruitment year would be sufficient to assign seniority

A to the concerned appointees in terms of the "rotation of
quotas" principle, so as to arrange them with other
appointees (from the alternative source), for vacancies of
the same recruitment year. Yet another Office Note dated
2.2.2000 provided that if the process of recruitment has
B been initiated during the recruitment year (in which the
vacancies have arisen) itself, even if the examination for
the said recruitment is held in a subsequent year, and the
result is declared in a year later (than the one in which
the examination was held), and the selected candidates
C joined in a further later year (than the one in which the
result was declared), the selected candidates would
entitled to be assigned seniority, with reference to the
recruitment year (in which the requisition of vacancies
was made). The words "initiation of action for
D recruitment", and the words "initiation of recruitment
process", were explained to mean, the date of sending
the requisition to the recruiting authority. Ministry of
Finance, Department of Revenue issued letter dated
11.5.2004, whereby it was clarified that Direct Recruits'
seniority vis-à-vis the promotees is reckoned from the
E year in which they are actually recruited. They cannot
claim seniority of the year in which the vacancies had
arisen. By Another letter dated 27.7.2004, the application
of the clarification dated 11.5.2004 was directed to be
kept in abeyance till further orders. By yet another letter
F dated 8.9.2004, it was provided that the clarification given
in the letter dated 11.5.2004, would be ignored and the
seniority of direct recruits would be reckoned with
reference to the date of initiation of the process of
recruitment in their case. Office memorandum was issued
G by the Government of India, Department of Personnel
and Training, dated 3.3.2008 which was in the nature of
a "clarification", to the earlier consolidated instructions
on seniority, contained in the OM dated 3.7.1986. [Paras
22, 23, 24 and 25] [590-D; 591-C; 593-C-D-E-F; 595-G-H;
H 596-A-C-D; 597-A-C; 598-F-G; 600-A-B-D-G; 602-C]

3. The OM dated 7.2.1986 is binding for the A
determination of the issues expressed therein, and the same has the force of law. The OM dated 3.7.1986 is in the nature of consolidatory instruction, whereby, all earlier instructions issued from time to time were compiled together. [Para 27] [605-B] B

4. The OM dated 3.3.2008 clearly propounds, a manner of determining *inter se* seniority between direct recruits and promotees, by a method which is indisputably in conflict with the OMs dated 7.2.1986 and C
3.7.1986. A perusal of the OM dated 3.3.2008, however reveals, that it was not the intention of the Department of Personnel and Training to alter the manner of determining *inter se* seniority between promotees and direct recruits, as had been expressed in the OMs dated D
7.2.1986 and 3.7.1986. The intention was only to "clarify" the earlier OM dated 3.7.1986 (which would implicitly include the OM dated 7.2.1986). The OM dated 3.3.2008 has clearly breached the parameters and the ingredients of a "clarification". Therefore, for all intents and purposes the OM dated 3.3.2008, must be deemed to be non-est to E
the extent that the same is in derogation of the earlier OMs dated 7.2.1986 and 3.7.1986. Thus, the OMs dated 7.2.1986 and 3.7.1986 would have an overriding effect over the OM dated 3.3.2008 (to the extent of conflict between them). And the OM dated 3.3.2008 has to be ignored/omitted to F
the extent that the same is in derogation of the earlier OMs dated 7.2.1986 and 3.7.1986. [Para 29] [607-D-H]

Jagdish Ch. Patnaik and Ors. v. State of Orissa and Ors. (1998) 4 SCC 456: 1998 (2) SCR 676; *Suraj Prakash Gupta* G
and S. V. State of J&K and Ors. (2000) 7 SCC 561: 2000 (3) SCR 807; *Pawan Pratap Singh and Ors. v. Reevan Singh and Ors.* (2011) 3 SCC 267: 2011 (2) SCR 831 – distinguished.

5. The OM dated 3.3.2008 is neither in the nature of H

A an "amendment" nor in the nature of a "modification". Since the OM dated 3.3.2008, is a mere "consolidation" or compilation of earlier instructions on the subject of seniority, it is not prudent to draw any inferences therefrom which could not be drawn from the earlier
B instruction/office memoranda being "consolidated" or compiled therein, or which is contrary thereto. [Para 27] [605-G-H; 606-A]

S.S. Garewal vs. State of Punjab (1993) 3 Suppl. 234 –
C relied on.

6. Reliance on the letter dated 11.5.2004, for the determination of the present controversy, is liable to outright rejection because the letter dated 11.5.2004 though styled as a "clarification", breaches both the
D essential ingredients of a "clarification". A perusal of the letter dated 11.5.2004 also reveals, that it adopts a position in clear conflict with the one expressed in the OMs dated 7.2.1986 and 3.7.1986, as well as, in the ONs dated 20.12.1999 and 2.2.2000. That apart, the letter dated
E 11.5.2004 is liable to be ignored in view of two subsequent letters of the Ministry of Finance, Department of Revenue dated 27.7.2004 and 8.9.2004, whereby clarification was directed to be kept in abeyance till further orders. [Para 24] [597-E-F-G; 598-B-E]

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7. An office note has no legal sanction, and as such, is not enforceable in law. Yet an office note is certainly relevant for determining the logic and process of reasoning which prevailed at the relevant point of time. These would aid in the interpretation of the binding office
G memoranda, only when the language of the office memoranda is ambiguous and where there is no conflict between the two i.e., the office note and the office memoranda sought to be interpreted. [Para 22] [590-D-F]

H 8. "When the language used in the statute is

unambiguous and on a plain grammatical meaning being given to the words in the statute, the end result is neither arbitrary, nor irrational nor contrary to the object of the statute, then it is the duty of the court to give effect to the words used in the statute because the words declare the intention of the law making authority best". The various ONs and letters issued by the DOPT (referred to above) do not leave room for any ambiguity. [Para 32] [609-C-E] A B

Jagdish Ch. Patnaik and Ors. v. State of Orissa and Ors. **(1998) 4 SCC 456: 1998 (2) SCR 676 – relied on.** C

9. In the present cases, not only the requisition but also the advertisement for direct recruitment was issued by the SSC in the recruitment year in which direct recruit vacancies had arisen. In all the cases the advertised vacancies were filled up in the original/first examination/ selection conducted for the same. None of the direct recruit Income Tax Inspectors can be stated to be occupying carried forward vacancies, or vacancies which came to be filled up by a "later" examination/ selection process. The facts only reveal, that the examination and the selection process of direct recruits could not be completed within the recruitment year itself. For this, the modification/amendment in the manner of determining the *inter-se* seniority between the direct recruits and promotees, carried out through the OM dated 7.2.1986, and the compilation of the instructions pertaining to seniority in the OM dated 3.7.1986, leave no room for any doubt, that the "rotation of quotas" principle, would be fully applicable to the direct recruits in the present controversy. The direct recruits will therefore have to be interspaced with promotees of the same recruitment year. In view of the above, the Civil Appeals, the Transferred Case, as well as, the Transfer Case (filed by the direct recruits and the Union of India) are allowed. The claim of the promotees, that the direct recruit Income D E F G H

Tax Inspectors, in the instant case should be assigned seniority with reference to the date of their actual appointment in the Income Tax Department is declined. [Para 33] [609-F-H; 610-A-D]

Case Law Reference:

(1993) 3 Suppl. 234	**Relied on**	**Para 26**
1998 (2) SCR 676	**Distinguished**	**Para 30**
	Relied on	**Para 32**
2000 (3) SCR 807	**Distinguished**	**Para 30**
2011 (2) SCR 831	**Distinguished**	**Para 30**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7514-7515 of 2005.

WITH

Civil Appeal No. 3876-3880 of 2007.

Civil Appeal No. 7516 of 2005.

T.C. (C) No. 91 and 681 of 2006.

P.P. Malhotra, ASG, P. Vishwanatha Shetty, Arvind Varma, Pallav Shishodia, Vikas Malhotra, Abhinav Mukherjee, Anil Katiyar (for B.V. Balaram Das), A.K. Behera, Dr. Krishan Singh Chauhan, Ajit Kumar Ekka, Adam Ambrose P., Chand Kiran, Vijay Kumar Paradesi, Ajay Sharma, Kiran, Sanjay Kumar Singh, Syed I. Ibrahim, T. Mahipal, R.C. Kaushik, Kishan Datta, Subramonium Prasad, Sobhit Tiwari, Pradeep Aggarwal, Lal Pratap Singh and Ruchi Kohli for the appearing parties.

N.R. Parmar (in-person).

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. The present controversy is a dispute of inter se seniority between Income Tax Inspectors of the Income Tax Department. Direct recruits and promotees are pitted on opposite sides.

2. One of the matters in hand came to be considered by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (hereinafter referred to as "the CAT, Ahmedabad") in *R.C. Yadav & Ors. vs. Union of India & Ors.* (OA no.92 of 2003). The said Original Application had been filed by direct recruits. Another Original Application, on the same subject matter, being OA no.123 of 2003 (*N.R. Parmar & Ors. vs. Union of India & Ors.*) was filed by promotees. Both the OA no.92 of 2003 and OA no.123 of 2003 were decided by a common order dated 12.1.2004. In its determination the CAT, Ahmedabad held, that seniority of direct recruits would have to be determined with reference to the date of their actual appointment. The implicit effect of the aforesaid determination was, that the date of arising of the direct recruit vacancies, or the date of initiation of the process of recruitment, or the date when the Staff Selection Commission had made recommendations for the filling up direct recruit vacancies, were inconsequential for determination of seniority of direct recruits.

3. The decision rendered by the CAT, Ahmedabad dated 12.1.2004 was assailed before the High Court of Gujarat at Ahmedabad (hereinafter referred to as "the Gujarat High Court"), in *Union of India & Ors. vs. N.R. Parma & Ors.* (Special Civil Appeal no.3574 of 2004). Direct recruits separately filed Special Civil Application no.1512 of 2004 (*Virender Kumar & Ors. vs. Union of India & Ors.*). The Gujarat High Court by its order dated 17.8.2004, upheld the order of the CAT, Ahmedabad, dated 12.1.2004.

4. The Union of India assailed the order passed by the Gujarat High Court dated 17.8.2004 before this Court, through Civil Appeal nos.7514-7515 of 2005 (*Union of India & Ors. vs. N.R. Parmar & Ors.*). Direct recruits have also separately raised a challenge to the order passed by the Gujarat High Court dated 17.8.2004, by filing Civil Appeal No.7516 of 2005 (*Virender Kumar & Ors. vs. Union of India & Ors.*).

5. On the same subject, an identical controversy was

raised before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the CAT, Principal Bench"). After a series of legal battles between the rivals, i.e., promotee Income Tax Inspectors and direct recruit Income Tax Inspectors (details whereof are being narrated at a later juncture), the CAT, Principal Bench passed an order dated 22.9.2004. The aforesaid order of the CAT, Principal Bench was assailed by direct recruit Income Tax Inspectors by filing Writ Petition (C) nos.3446-49 of 2005 before the Delhi High Court.

6. In Writ Petition (C) nos.3446-49 of 2005 a Division Bench of the Delhi High Court on 2.3.2005, while issuing notice, had stayed the impugned order passed by the CAT, Principal Bench dated 22.9.2004. Mukund Lal (one of the applicants in OA no.2107 of 2003, *Mahender Pratap & Ors. vs. Union of India & Ors.*), respondent no.9 in Writ Petition (C) nos.3446-49 of 2005, filed an application for vacation of the interim order passed by the Delhi High Court dated 2.3.2005 (whereby the order of the CAT, Principal Bench dated 22.9.2004 had been stayed). Since the application was not disposed of by the Delhi High Court within the time frame expressed in Article 226(3) of the Constitution of India, Mukund Lal aforesaid, approached this Court to assail the order dated 2.3.2005 by filing Civil Appeal nos.3876-3880 of 2007. Since the subject matter of the controversy in the aforesaid writ petitions was identical to the one raised in Civil Appeal nos.7514-7515 of 2005 (*Union of India & Ors. vs. N.R. Parma & Ors.*) and Civil Appeal no.7516 of 2005 (*Virender Kumar & Ors. vs. Union of India & Ors.*), the said writ petitions were transferred to be heard with the Civil Appeals referred to hereinabove. On transfer to this Court, the aforesaid writ petitions were re-numbered as Transferred Case (C) No.91 of 2006 (*Pritpal Singh & Ors. vs. Union of India & Ors.*).

7. OA no.270 of 2002 (*R.K. Bothra & Ors. vs. Union of India & Ors.*), OA no.271 of 2002 (*G.R. Chalana & Ors. vs.

Union of India & Ors.), OA no.275 of 2002 (*Bhanwar Lal Soni & Ors. vs. Union of India & Ors.*), OA no.293 of 2002 (*Ranjeet Singh Rathore & Ors. vs. Union of India & Ors.*), were filed by promotee Income Tax Inspectors before the Central Administrative Tribunal, Jodhpur Bench, Jodhpur (hereinafter referred to as "the CAT, Jodhpur"), to assail the seniority-list wherein direct recruit Income Tax Inspectors, though appointed later, were placed higher in the seniority-list, i.e., above promotee Income Tax Inspectors, merely because they occupied vacancies of earlier years. The CAT, Jodhpur allowed the claim of the promotee Income Tax Inspectors by a common order dated 8.9.2003. The order passed by the CAT, Jodhpur dated 8.9.2003 was assailed before the High Court of Judicature for Rajasthan at Jodhpur (hereinafter referred to as "the Rajasthan High Court") by filing four writ petitions (DBC WP no.785 of 2004, *Union of India & Ors. vs. R.K. Bothra & Ors.*; DBC WP no.786 of 2004, *Union of India & Ors. vs. Banwari Lal Soni & Ors*; DBC WP no.787 of 2004, *Union of India & Ors. vs. Giriraj Prasad Sharma & Ors*; DBC WP no.788 of 2004, *Union of India & Ors. vs. G.R. Chalana & Ors.*). The petitioners in the aforesaid writ petitions before the Rajasthan High Court (i.e., Union of India) filed Transfer Petition (C) no.681 of 2006 under Article 139A(1) of the Constitution of India, seeking the transfer of the aforesaid writ petitions to this Court by asserting that the controversy raised therein was identical to the one pending adjudication before this Court in the Civil Appeals already mentioned above. Accordingly Transfer Petition (C) no.681 of 2006 was ordered to be tagged with Civil Appeal nos.7514-7515 of 2005 (and other connected matters).

8. Learned counsel for the rival parties are agreed, that the legal issue involved in all the matters, referred to hereinabove which are tagged together for disposal, is the same. During the course of hearing submissions came to be advanced first of all in Transferred Case no.91 of 2006. As such, the facts recorded in the said case have been adverted to while passing the instant judgment.

A 9. Appointment to the cadre of Income Tax Inspectors in the Income-Tax Department is made by way of promotion, as also, by direct recruitment in the ratio of 2:1 respectively, i.e., 66-2/3 by promotion and 33-1/3 by direct recruitment. The controversy in TC (C) no.91 of 2006 pertains to vacancies for
B the year 1993-94. The vacancies for the year 1993-94 which were identified to be filled up by way of promotion were referred to the Departmental Promotion Committee (hereinafter referred to as "the DPC"), whereas, those identified to be filled up by direct recruitment, were simultaneously referred to the Staff
C Selection Commission (hereinafter referred to as "the SSC").

10. Based on the recommendations made by the DPC, the Income-tax Department promoted five persons from the feeder cadre(s) (respondents 5, 7, 8, 10 and 11) as Income Tax Inspectors on 30.8.1993. A day later, on 1.9.1993, one more
D person (respondent no.6) was similarly promoted as Income Tax Inspector. Thereafter on 14.12.1993 yet another promotion (of respondent no.9) was ordered, in the same manner. Likewise, respondent no.12 was promoted as Income Tax Inspector on 8.9.1995. It is essential to emphasize, that all these promotions
E were ordered against promotee vacancies, identified for the year 1993-94.

11. On the receipt of a requisition pertaining to the post of Income Tax Inspectors from the Income Tax Department, the SSC issued advertisements in May/June, 1993, inviting
F applications for appointment by way of direct recruitment, against vacancies of Income Tax Inspectors of the year 1993-94. To fill up these vacancies, the SSC held the Inspectors of Central Excise and Income Tax Examination, 1993. All the petitioners in TC (C) no.91 of 2006 responded to the aforesaid
G advertisement. The said petitioners, were in the first instance, subjected to a written test conducted by the SSC in December, 1993. Thereafter, those who qualified the written examination, were invited for an interview/viva-voce. All the petitioners appeared for the viva-voce test conducted in October 1994. On

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21/28.1.1995 the SSC declared the result of the Inspectors of A
Central Excise and Income-Tax Examination, 1993. The names of the petitioners in TC (C) no.91 of 2006, figured in the list of successful candidates. After verification of their character and antecedents, and after they were subjected to a medical fitness examination, the petitioners in TC (C) no.91 of 2006 B
were issued offers of appointment as Income Tax Inspectors in the Department of Income Tax. All the petitioners joined the cadre of Income Tax Inspectors between March and May, 1995.

12. In the interregnum, some promotee Income Tax Inspectors were promoted to the next higher post of Income Tax C
Officer. Certain direct recruits who considered themselves senior to the promoted Income Tax Officers, approached the CAT, Principal Bench, seeking consideration for promotion to the cadre of Income Tax Officers, from the date their juniors were promoted as such. Reference in this behalf may be made to D
two Original Applications being *K.C. Arora & Ors. vs. Union of India & Ors* (OA no.1478 of 1995) and *J.S. Tanwar & Ors. vs. Union of India & Ors.* (OA no.1899 of 1995). In the pleadings of the aforesaid two original applications, it was acknowledged by the official-respondents, that the impugned E
promotions in the aforesaid two original applications, had been made on purely adhoc basis, as the seniority list of the cadre of Income Tax Inspectors had not by then been finalized. It was also mentioned therein, that after the seniority-list is finalized, the official-respondents would review the promotions already F
made, and if necessary, a review DPC would also be convened. During the pendency of the aforesaid two original applications, the Income Tax Department issued a seniority list of the cadre of Income Tax Inspectors on 8.2.1999. The aforesaid factual-position was brought to the notice of the CAT, G
Principal Bench, whereupon, the aforesaid two original applications came to be disposed of with the following directions on 8.9.1999:

"6. In the result, both the OAs are disposed of as follows:

1. As admitted in the counter reply mentioned above and H

in view of the seniority list dt.8.2.1999 the official respondents are directed to make promotions strictly in terms of the seniority list dt.8.2.1999. They must arrange a review DPC to consider the claim of the applicants for promotion. In case, the applicants are found fit and suitable for promotion by the review DPC then on the basis of the said seniority list, the applicants shall be granted promotion from the date their juniors got promotion. The applicants should get seniority over the juniors in case they are found suitable for promotion. However, the applicants will not be entitled to any monetary benefits. In such a case, the applicants' pay may be fixed notionally from the dates of their deemed retrospective promotion. However, the applicants will not be entitled to any actual arrears of monetary benefits till the date of actual order of promotion. The actual monetary benefits are prospective, only from the date of order of promotion and consequent date of assuming charge.

2. In the circumstances of the case, the official respondents are granted three months time from the date of receipt of copy of this order to comply with these directions.

3. In the circumstances of the case, there will be no order as to costs."

On 10.9.1999 a clarificatory order was passed by the CAT, Principal Bench. A relevant extract, of the aforesaid clarificatory order, is being reproduced hereunder:

"2. But, on reconsideration and on second thought, we feel that there is no necessity to allow this M.A. and to recall our order dt.8.9.99 for the simple reason that our order will not prejudice the case of the private respondents in any way. What we have stated in our order dt.8.9.1999 is that the official respondents should strictly enforce the seniority list dt.8.2.99 and then on that basis hold review DPC and consider the claim of the applicants for promotion. This order we have passed on the basis of the admission made by the official respondents in their reply. Now, the private respondents are contending that the seniority list dt.8.2.1999 has been challenged by the applicants in OA 676/99 and other cases and there is a stay order granted by the Delhi High Court in C.W. No.3468/99 staying the official respondents holding a review DPC on the basis of the impugned seniority list dt.8.2.1999.

3. We may place it on record that we have not considered the correctness and legality of the impugned seniority list dt.8.2.1999. We have simply directed the administration to follow the latest seniority list as admitted by the official respondents in their reply. We may also place it on record that we have not expressed any opinion on the correctness or legality of the seniority list dt.8.2.1999. We have simply directed the Administration to follow the latest seniority list which they have issued and considers the case of the applicants for promotion. If the seniority list itself is in dispute and its correctness is challenged by other officials, then naturally the department will not be able to take any decision unless the seniority list is upheld by the Tribunal. If there is any such stay order granted by any Tribunal or High Court, then naturally our direction in our order dt.8.9.1999 will be subject to such directions or stay orders passed by any Tribunal or any High Court. We also place on record that we have not expressed any opinion whether the promotion of private respondents was regular or ad-hoc, but only referred to the contentions in the reply statement without giving a finding on that point. If the private respondents feel that their promotions were regular, then it is for them to take up the stand whenever that occasion arises. But, we have not given any finding on that disputed question of fact. In view of this clarifications issued by us, there is no necessity to allow the M.A. or recall our order dt.8.9.1999.

4. In the result, the M.A. No.1938/99 is disposed of subject to above observations. No order as to costs."

13. Some direct recruits again approached the CAT, Principal Bench by filing Original Application no.2307 of 1999 (*Sanjeev Mahajan & Ors. vs. Union of India & Ors.*) alleging, that while drawing the seniority list dated 8.2.1999, the Department of Income Tax had not applied the "quota" and "rota" principle. On 23.2.2000, the CAT, Principal Bench disposed of OA no.2307 of 1999, and other connected original applications (*Krishan Kanahiya & Ors. vs. Union of India*, OA No.676 of 1999; *H.P.S Kharab & Ors. vs. Union of India & Ors.*, OA no.387 of 1999; *Muneesh Rajani & Ors. vs. Union of India & Ors.*, OA no.964 of 1999) by a common order. In paragraph 7 of its order the CAT, Principal Bench, narrated the issues which came up for its determination as under:

> "7. The short question which is posed for our consideration is as to what is the precise date on which direct recruits can be considered for seniority vis-à-vis the promotees. Whether it is (i) the date on which the vacancies have arisen; (ii) the date when the same have been notified by the department by sending requisitions to the Staff Selection Commission; (iii) the date on which selection by the Commission is made; (iv) the date when the selection is reported to the department; or (v) the date on which the direct recruit actually assumes office."

During the course of hearing of the aforementioned original applications, it was acknowledged by the rival parties, that the questions under consideration had to be determined with reference to instructions contained in two office memoranda dated 7.2.1986 and 3.7.1986, issued by the Department of Personnel & Training (hereinafter referred to as the "DoPT"). Based on the aforesaid office memoranda, the CAT, Principal Bench, vide its order dated 23.2.2000 quashed the seniority-list dated 8.2.1999 by holding as under:

> "8. In our judgment, for deciding the aforesaid controversy a reference to the office memorandum of 7.2.1986 may usefully be made. In the earlier O.M. it has inter alia been provided as under:

.....the relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between the direct recruits and the promotees, which will be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules......

.........the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with.

Thus, if adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter, in the year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for the year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed on en bloc below the last promotee for direct recruit (as the case may be), in the seniority list based on the rotation of vacancies for the year. The same principle holds good for determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years.

ILLUSTRATION:

Where the Recruitment Rules provide 50% of the vacancies of grade to be filled by promotion and the remaining 50% by direct recruitment, and assuming there are ten vacancies in the grade arising in each of the years 1986 and 1987 and that two vacancies intended for direct recruitment, remain unfilled during 1986 and they could be filled during 1987. The seniority position of the promotees and direct recruits of these two years will be as under:

1986	1987
1. P1	9. P1
2. D1	10. D1
3. P2	11. P2
4. D2	12. D2
5. P3	13. P3
6. D3	14. D3
7. P4	15. P4
8. P5	16. D4
	17. P5
	18. D5
	19. D6
	20. D7

It is not necessary to make a reference to the subsequent office memorandum of 3.7.1986 as the same is nothing but a repetition of the instructions contained in the office memorandum dated 7.2.1986. A

9. We have heard the learned counsel appearing for the contending parties at considerable length and we are of the view that as far as inter se seniority is concerned, the same has to be based on the vacancies arising for a particular year. Thereafter, the seniority has to be determined on the basis of rota quota rule which has been illustrated in the aforesaid illustration contained in the O.M. of 7.2.1986. As far as direct recruits are concerned, the crucial date on which they have to be considered will be the date when the Staff Selection Commission makes the selection of direct recruits. Hence the date of forwarding the dossier of direct recruits by the Commission to the department, date of actual joining or taking over charge by the direct recruit would all be irrelevant. It would be the date on which the Staff Selection Commission makes the selection of the direct recruits that will be the material date for fixing the seniority. This would avoid injustice being done on account of administrative delays, i.e., delay in matter of issue of orders of appointment and posting and of actual taking over of charge. Similar will be the position in regard to promotees. It will be the date on which the promotee is selected for promotion by the departmental promotion committee. Hence the date on which the promotee actually assumes charge of the promotional post similarly will be relevant. The seniority list which is impugned in the present proceedings, it appears, has not followed the instructions which we are not issuing in the present order. B C D E F G

10. In the circumstances, the said seniority list is hereby quashed and set aside. Respondent no.3 is directed to recast the seniority list on the basis of directions contained H

in this order. The present order will also apply to seniority list of UDCs which is the subject matter of OA No.676/1999.

11. All the OAs stand disposed of on the above lines. There shall, however, be no order as to costs."

14. Direct recruit Income Tax Inspectors, assailed the interpretation placed by the CAT, Principal Bench, on the office memorandum dated 7.2.1986 (in its order dated 23.2.2000), by filing a number of writ petitions (Civil Writ Petition No.460 of 2000, *Sanjiv Mahajan & Ors. vs. Union of India & Ors;* Civil Writ Petition No.670 of 2002, *Pankaj Saxena vs. Union of India & Ors.;* Civil Writ Petition No.7356 of 2000, *Chief Commissioner of Income Tax vs. Sanjiv Mahajan & Ors;* Civil Writ Petition No.5549 of 2001, *Kamal Khanna & Ors. vs. Union of India & Ors.)* before the Delhi High Court. The aforesaid writ petitions were disposed of by the Delhi High Court by a common order dated 25.9.2002, whereby, the order dated 23.2.2000 passed by the CAT, Principal Bench, was set aside with the following observations:

"23. Having regard to the fact that the judgment of the learned Tribunal is absolutely cryptic and no cogent or valid reason has been assigned in support thereof, and as the contentions raised before the Tribunal as also before us have not been considered at all, we are of the opinion that for determination of the crucial questions where for, it may be necessary, for the parties to adduce further evidence, the matter may be remitted back to the learned Tribunal for consideration of the matter afresh and the parties may bring on record such other or further materials as may be directed by the learned Tribunal. The impugned judgment is, therefore, set aside. However, having regard to the facts and circumstances of the case, we would request the learned Tribunal to consider the desirability of disposing of the matter as expeditiously as possible.

These writ petitions are disposed of with the A
aforementioned observations and directions without any
order as to costs."

15. Consequently, the matters referred to above went back
to the CAT, Principal Bench for re-adjudication. During their
pendency before the CAT, Principal Bench, an additional B
affidavit dated 12.3.2003 was jointly filed by the official-
respondents. In the aforesaid additional affidavit it was, inter
alia, pleaded as under:

"Para 4 C

(a) ....

(b) The respondent has since obtained the advice of the
Central Board of Direct Taxes and the Deptt. of Personnel
and Training which is the nodal Ministry for promulgation
and monitoring of the relevant rules and regulations, issuing D
Office Memorandums and the clarifications thereof. Based
on the advice of the DOP&T there has been a change in
the stand taken by the respondent before this Hon'ble
Tribunal and as such, an application for amendment was
made before the Hon'ble Delhi High Court which allowed E
the application and has also taken note of the same in its
judgment dt.25.9.2002. In view of the revised position, the
seniority list dt.8.2.1999 was not in conformity with the
clarifications provided by the DoP&T with reference to its
O.M. Dt.7.2.1986 and 2.7.1986. Relevant extracts based F
on the DoP&T's O.M. dt.7.2.1986 and 3.7.1986 and the
clarifications furnished by that department which formed
part of the application for amendment of the writ petition
which was filed before the Hon'ble Delhi High Court is
annexed (Annexure R-1). G

(c) to (q) ...."

The applicants before the CAT, Principal Bench were direct
recruits. They were satisfied with the latest position adopted
by the official respondents before the CAT, Principal Bench H

through the additional affidavit dated 12.3.2003. They therefore, chose not to press their applications any further. The CAT, Principal Bench passed the following order on 26.4.2003:

> "Learned counsel for the applicants, keeping in view the amended reply dated 12.3.2003, does not press the present application.
>
> Accordingly, the OA is dismissed as withdrawn."

16. The Income Tax Department thereupon, issued another seniority list of Income Tax Inspectors, dated 17.7.2003, by following the "quota" and "rota" principle prescribed in the office memoranda dated 7.2.1986 and 3.7.1986. The aforesaid seniority-list was assailed by promotee Income Tax Inspectors before the CAT, Principal Bench, through OA no.2068 of 2003 (*C.P.S. Yadav & Anr. vs. Union of India & Ors.*), OA no.2107 of 2003 (*Mahender Pratap & Ors. vs. Union of India & Ors.*), OA No.124 of 2004 (*S.K. Puri-II & Anr. vs. Union of India & Ors.*). The CAT, Principal Bench, by a common order dated 22.9.2004 allowed the claim preferred by the promotee Income Tax Officers, and as such, quashed the seniority list dated 17.7.2003. The direct recruit Income Tax Inspectors, who were respondents in the original applications referred to above, assailed the order passed by the CAT, Principal Bench, dated 22.9.2004, before the Delhi High Court by filing Writ Petition (C) No.3446-49 of 2005 (*Pritpal Singh & Ors. vs. Union of India & Ors.*). As already mentioned hereinabove, the aforesaid writ petitions were transferred to this Court and assigned TC (C) no.91 of 2006.

17. During the course of hearing, learned counsel for the rival parties agreed, that the seniority dispute between the promotee and direct recruit Income Tax Inspectors of the Income Tax Department was liable to be determined on the basis of office memoranda dated 7.2.1986 and 3.7.1986, read with the clarificatory office memoranda and office notes. It is important to notice, before embarking upon the claim of the

rival parties, that none of the parties have assailed the vires of the office memoranda dated 7.2.1986 and 3.7.1986 (or for that matter, the clarificatory office memoranda/office notes). It is therefore apparent, that the dispute between the rival parties is nothing but, the true and correct interpretation of the office memoranda dated 7.2.1986 and 3.7.1986, read with clarificatory office memoranda and office notes. It is therefore, that the matter in hand is being examined in the light of the aforesaid office memoranda.

18. General principles for determining seniority in Central services are shown to have been laid down in an annexure to an office memorandum dated 22.11.1959 issued by the Government of India, Ministry of Home Affairs (hereinafter referred to as "the OM dated 22.11.1959"). Paragraph 6 of the annexure, referred to above, laid down the manner of determining inter se seniority between direct recruits and promotees. Paragraph 6 is being extracted hereunder:

> "6. **Relative seniority of Direct Recruits and Promotees.**
>
> The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Department Rules."

It is apparent from the above extract of the OM dated 22.11.1959, that the "quota" between promotees and direct recruits was to be read into the seniority rule. The OM also provided for a definite rotation of seniority points ("rota") between promotees and direct recruits. The rotation provided for was founded on the concept of rotation of quotas between promotees and direct recruits. It is therefore apparent, that under the OM dated 22.11.1959 inter se seniority between the promotees and direct recruits was based on the "quota" and

A "rota" principle. The same has been meaningfully described as "rotation of quotas" in some of these instruments.

19. The aforesaid prescription of the manner of determining inter se seniority between the direct recruits and promotees, determined through the OM dated 22.11.1959, was B modified by an office memorandum dated 7.2.1986, issued by the Government of India, Department of Personnel and Training (hereinafter referred to as, "the OM dated 7.2.1986"). The modification introduced through the OM dated 7.2.1986 was to redress a situation wherein, vacancies of one of the sources C were kept (or remained) unfilled during the process of selection, and the unfilled vacancies, had to be filled up through "later" examinations or selections. For the determination of seniority, in the contingency wherein the process of recruitment resulted in filling the vacancies earmarked for the two sources of D recruitment, the manner of determining inter se seniority between promotees and direct recruits, expressed in the OM dated 22.11.1959 remained unaltered. But where the vacancies could not be filled up, and unfilled vacancies had to be filled up "later" through a subsequent process of selection, the E manner of determining inter se seniority between promotees and direct recruits, was modified.

20. Since it is the case of the rival parties before us, that the OM dated 7.2.1986 is the principal instruction, on the basis whereof the present controversy is to be settled, the same is F being extracted hereunder in its entirety.

"The 7 February, 1986.

Office Memorandum

G Subject: General Principles for determining the seniority of various categories of persons employed in Central Services.

As the Ministry of Finance etc. are aware, the General Principles for determination of seniority in the Central Services are contained in the Annexure to Ministry of Home

H

Affairs O.M. No. 9/11/55-RPS dated 22nd December 1959. According to Paragraph-6 of the said Annexure, the relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between the direct recruits and the promotees, which will be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. In the Explanatory Memorandum to these Principles, it has been stated that a roster is required to be maintained based on the reservation of vacancies for direct recruitment and promotion in the Recruitment Rules. Thus where appointment to a grade is to be made 50% by direct recruitment and 50% by promotion from a lower grade, the inter-se seniority of direct recruits and promotees is determined on 1:1 basis.

2. While the above mentioned principle was working satisfactorily in cases where direct recruitment and promotion kept pace with each other and recruitment could also be made to the full extent of the quotas as prescribed, in cases where there was delay in direct recruitment or promotion, or where enough number of direct recruits or promotees did not become available, there was difficulty in determining seniority. In such cases, the practice followed at present is that the slots meant for direct recruits or promotees, which could not be filled up, were left vacant, and when direct recruits or promotees became available through later examinations or selections, such persons occupied the vacant slots, thereby became senior to persons who were already working in the grade on regular basis. In some cases, where there was short-fall in direct recruitment in two or more consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly long years of regular service already to their credit. This matter had also come up for consideration in various Court Cases both before the High Courts and the Supreme Court and in several cases the

relevant judgement had brought out the inappropriateness of direct recruits of later years becoming senior to promotees with long years of service.

3. This matter, which was also discussed in the National Council has been engaging the attention of the Government for quite some time and it has been decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unitended seniority over promotees who are already in position, would be dispensed with. Thus, if adequate number of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter, in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancies for that year. The same principle holds good in

determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years.

Illustration:

Where the Recruitment Rules provide 50% of the vacancies in a grade to be filled by promotion and the remaining 50% by direct recruitment, and assuming there are 10 vacancies in the grade arising in each of the years 1986 and 1987 and that 2 vacancies intended for direct recruitment remained unfilled during 1986 and they could be filled during 1987, the seniority position of the promotees and direct recruits of these two years will be as under:

1986	1987
1. P1	9. P1
2. D1	10. D1
3. P2	11. P2
4. D2	12. D2
5. P3	13. P3
6. D3	14. D3
7. P4	15. P4
8. P5	16. D4
	17. P5
	18. D5
	19. D6
	20. D7

4. In order to help the appointing authorities in determining the number of vacancies to be filled during a year under each of the methods of recruitment prescribed, a Vacancy

Register giving a running account of the vacancies arising and being filled from year to year may be maintained in the proforma enclosed.

5. With a view to curbing any tendency of under-reporting/ suppressing the vacancies to be notified to the concerned authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share falling to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated only as ad-hoc promotees.

6. The General Principles of seniority issued on 22nd December, 1959 referred to above, may be deemed to have been modified to that extent.

7. These orders shall take effect from 1st March 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principle in force prior to the issue of this O.M.

8. Ministry of Finance etc. are requested to bring these instructions to the notice of all the Attached/Subordinate Offices under them to whom the General Principles of Seniority contained in O.M. dated 22.12.1959 are applicable within 2 week as these orders will be effective from the next month.

Sd/- Joint Secretary to the Govt. of India"

(emphasis is ours)

Since the OM dated 7.2.1986 would primarily constitute the determination of the present controversy, it is considered just and appropriate to render an analysis thereof. The following conclusions are apparent to us, from a close examination of the OM dated 7.2.1986:

(a) Paragraph 2 of the OM dated 7.2.1986 first records the existing manner of determining inter se seniority between direct recruits and promotees (i.e., as contemplated by the OM dated 22.11.1959), namely, "...the slots meant for direct recruits or promotees, which could not be filled up, were left vacant, and when direct recruits or promotees become available through later examinations or selections, such persons occupied the vacant slots, (and) thereby became senior to persons who were already working in the grade on regular basis. In some cases, where there was shortfall in direct recruitment in two or more consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly long years of regular service to their credit....". The words, "when direct recruits or promotees become available through later examination or selections", clearly connotes, that the situation contemplated is one where, there has been an earlier examination or selection, and is then followed by a "later" examination or selection. It is implicit, that in the earlier examination or selection there was a shortfall, in as much as, the available vacancies for the concerned recruitment year could not all be filled up, whereupon, further examination(s) or selection(s) had to be conducted to make up for the shortfall. In the instant situation, the earlier OM dated 22.11.1959 contemplated/provided, that slots allotted to a prescribed source of recruitment which remained vacant, would be filled up only from the source for which the vacancy was reserved, irrespective of the fact that a candidate from the source in question became available in the next process of examination or selection, or even thereafter. In other words the "rotation of quotas" principle was given effect to in letter and spirit under the OM dated 22.11.1959, without any scope of relaxation.

(b) The position expressed in the sub-paragraph (a) above, A was sought to be modified by the OM dated 7.2.1986, by providing in paragraph 3 thereof, that the earlier "...principle of rotation of quotas would still be followed for determining the inter se seniority of direct recruits and promotees..." except when the direct recruit vacancies were being "... filled up by B direct recruits of later years...". Read in conjunction with paragraph 2 of the OM dated 7.2.1986, the words "...direct recruits of later years..." must be understood to mean, direct recruits who became available through "later" examination(s) or selection(s). Essentially the "later" examination(s) or C selection(s) should be perceived as those conducted to fill up the carried forward vacancies, i.e., vacancies which could not be filled up, when the examination or selection for the concerned recruitment year was originally/ first conducted. This change it was clarified, was made to stop direct recruits of D "later" years, from gaining "...unintended seniority over promotees who are already in position...", as High Courts and the Supreme Court had "...brought out the inappropriateness..." thereof. It is therefore apparent, that the OM dated 7.2.1986 partially modified the "rotation of quotas" E principle in the determination of inter se seniority originally expressed in the OM dated 22.11.1959. The OM dated 7.2.1986, provided that the "rota" (rotation of quotas) would be adhered to "...only to the extent of available direct recruits and promotees...", i.e., for promotee and direct recruit vacancies which could be filled up through the original/first process of F examination or selection conducted for the recruitment year in which the vacancies had arisen.

(c) For the vacancies remaining unfilled when the same were originally/first sought to be filled up, the slots available G under the "rota" principle under the OM dated 22.11.1959, would be lost to the extent of the shortfall. In other words, the "rotation of quotas" principle would stop operating after, "...the last position upto which it is (was) possible to determine seniority on the basis of rotation of quotas...", for the concerned recruitment year.

H

(d) Paragraph 3 of the OM dated 7.2.1986 provided, the manner of assigning seniority to vacancies carried forward on account of their having remained unfilled in the original/first examination or selection process. The change contemplated in the OM dated 7.2.1986, referred to hereinabove, was made absolutely unambiguous by expressing that, "The unfilled direct quota vacancies would ...be carried forwarded and added to the corresponding direct recruitment vacancies of the next year.....". It is therefore apparent, that seniority of carried forward vacancies would be determined with reference to vacancies of the recruitment year wherein their selection was made, i.e., for which the "later" examination or selection was conducted.

(e) The OM dated 7.2.1986 formulated the stratagem to be followed, where adequate number of vacancies in a recruitment year could not be filled up, through the examination or selection conducted therefor. The OM provided, "...to the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list, below the last position upto which it is (was) possible to determine the seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available...".

(f) Paragraph 3 of the OM dated 7.2.1986 further postulated, that the modification contemplated therein would be applied prospectively, and that, "...the present practice of keeping vacant slots for being filled up by direct recruits of later years, ...over promotees who are (were) already in position, would be dispensed with...". It is therefore apparent, that the slots assigned to a particular source of recruitment, would be relevant for determining inter se seniority between promotees and direct recruits, to the extent the vacancies could successfully be filled up (and the unfilled slots would be lost) only for vacancies which arose after the OM dated 7.2.1986, came to be issued.

(g) The illustration provided in paragraph 3 of the OM dated 7.2.1986 fully substantiates the analysis of the OM dated 7.2.1986 recorded in the foregoing sub-paragraphs. In fact, the conclusions drawn in the foregoing sub-paragraphs have been drawn, keeping in mind the explanatory illustration narrated in paragraph 3 of the OM dated 7.2.1986.

(h) In paragraph 6 of the OM dated 7.2.1986 it was asserted, that the general principles for determining seniority in the OM dated 22.11.1959 were being "modified" to the extent expressed (in the OM dated 7.2.1986). The extent of modification contemplated by the OM dated 7.2.1986 has already been delineated in the foregoing sub-paragraphs. Para 6 therefore leaves no room for any doubt, that the OM dated 22.11.1959 stood "amended" by the OM dated 7.2.1986 on the issue of determination of inter se seniority between direct recruits and promotees, to the extent mentioned in the preceding sub-paragraphs. The said amendment was consciously carried out by the Department of Personnel and Training, with the object of remedying the inappropriateness of direct recruits of "later" examination(s) or selection(s) becoming senior to promotees with long years of service, in terms of the OM dated 22.11.1959.

21. The O.M. dated 7.2.1986, was followed by another Office Memorandum issued by the Government of India, Department of Personnel and Training, dated 3.7.1986 (hereinafter referred to as, "the O.M. dated 3.7.1986"). The purpose of the instant O.M., as the subject thereof suggests, was to "consolidate" existing governmental orders on the subject of seniority. Paragraphs 2.4.1 to 2.4.4 of the O.M. dated 3.7.1986 dealt with the issue of inter se seniority between the direct recruits and promotees. The same are accordingly being reproduced hereunder:-

"2.4.1 The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

2.4.2 If adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees.

In other words, to the extent direct recruits are not available the promotees will be bunched together at the bottom of the seniority list below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional, direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be), in the seniority list based on the rotation of vacancies for that year. The same principle holds good for determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent year.

ILLUSTRATION: Where the Recruitment Rules provide 50% of the vacancies of a grade to be filled by promotion and the remaining 50% by direct recruitment, and a assuming there are ten vacancies in the grade arising in each of the year 1986 and 1987 and that two vacancies intended for direct recruitment remain unfilled during 1986 and they could be filled during 1987, the seniority position of the promotees and direct recruits of these two years will be as under:

<u>1986</u>	<u>1987</u>
1. P1	9. P1
2. D1	10. D1
3. P2	11. P2
4. D2	12. D2
5. P3	13. P3
6. D3	14. D3
7. P4	15. P4
8. P5	16. D4
	17. P5
	18. D5
	19. D6
	20. D7

2.4.3 In order to help the appointing authorities in determining the number of vacancies to be filled during a year under each of the methods of recruitment prescribed, a Vacancy Register giving a running account of the vacancies arising and being filled from year to year may be maintained in the proforma enclosed.

2.4.4 With a view to curbing any tendency of under-reporting/suppressing the vacancies to be notified to the concerned authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share failing to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated only as ad-hoc promotees."

(emphasis is ours)

The following conclusions have been drawn by us from the O.M. dated 3.7.1986:-

(a) If adequate number of direct recruits (or promotees) do not become available in any particular year, "rotation of quotas" for the purpose of determining seniority, would stop after the available direct recruits and promotees are assigned their slots for the concerned recruitment year.

(b) To the extent direct recruits were not available for the concerned recruitment year, the promotees would be bunched together at the bottom of the seniority list, below the last position upto which it was possible to determine seniority, on the basis of rotation of quotas. And vice versa.

(c) The unfilled direct recruitment quota vacancies for a recruitment year, would be carried forward to the corresponding direct recruitment vacancies of the next year (and to subsequent years, where necessary). And vice versa. In this behalf, it is necessary to understand two distinct phrases used in the OM dated 3.7.1986. Firstly, the phrase "in that year" which connotes the recruitment year for which specific vacancies are earmarked. And secondly, the phrase "in the subsequent year", which connotes carried forward vacancies, filled in addition to, vacancies earmarked for a subsequent recruitment year.

(d) The additional direct recruits selected, against the carried forward vacancies of the previous year, would be placed en-bloc below the last promotee. And vice versa.

It is, therefore, apparent, that the position expressed in the O.Ms. dated 7.2.1986 and 3.7.1986, on the subject of inter se seniority between direct recruits and promotees, was absolutely identical. This is indeed how it was intended, because the OM dated 3.7.1986 was only meant to "consolidate" existing governmental instructions, on the subject of seniority.

22. Chronologically, it is necessary, at the present juncture to refer to an Office Note of the Department of Personnel and Training, Establishment (D) Section, dated 20.12.1999 (hereinafter referred to as, "the O.N. dated 20.12.1999"). Undoubtedly, an office note has no legal sanction, and as such, is not enforceable in law. Yet an office note is certainly relevant for determining the logic and process of reasoning which prevailed at the relevant point of time. These would aid in the interpretation of the binding office memoranda, only when the language of the office memoranda is ambiguous. Ofcourse, only where there is no conflict between the two i.e., the office note and the office memoranda sought to be interpreted. In the aforesaid background, and for the aforesaid limited purpose, reference is being made to the O.N. dated 20.12.1999. The same is being reproduced hereunder:-

"Department of Personnel and Training

Estt.(D) Section

Ref. Preceding notes.

It is not clear whether the instructions contained in our O.M. dated 07.02.1986 has been interpreted correctly. It is clarified that on a perusal of our O.M. dated 22.12.1959 read with our O.M. dated 07.02.1986 it will be clear that the inter-se seniority of direct recruits and promotees will have to be fixed by following the principle of rotation of quotas prescribed for them in the recruitment rules subject to the condition that the rotation as per quota will be made only upto the actual number of DRs/ Promotees available and to the extent direct recruits/ promotees do not become available in any recruitment year the promotees or the direct recruits as the case may be will be bunched together at the bottom of the seniority list. In other words, only where appointing authority has not been able to fill up the post inspite of best efforts with reference to the requisition for the particular recruitment year in question, the instructions contained in O.M. dated 07.02.1986 will come into operation as will be clear from para 5 thereof. For example, if the quota in the Rrs and DR and promotee is fifty-fifty and if the UPSC has recommended only 2 DRs against the three vacancies of a particular recruitment year, say 1987 for which requisition was sent to them in 1987 and even if both the DRs had joined in 1988 the inter-se seniority of DRs and promotees may be fixed in the ratio of 1:1 upto the number of DRs available i.e. the first four places in the seniority list will be assigned alternatively to DR and promotee, the 5th in the seniority list which would have normally gone to DR will not go to the promotee because of the non-availability of DR and the 6th will in any case go to promotee. But for the instructions contained in our O.M. dated 07.02.1986, the 5th place would have been kept reserved for the DR as and when it is actually filled by DR, even if it takes a few years. However, after the issue of our O.M. dated 07.02.1986, it is no longer kept vacant but is assigned to the promotee who is available. It is not necessary that the DR for 1987 vacancy should join in 1987 itself. It would suffice if action has been initiated for 1987 DR vacancies in 1987 itself. This is because, in a case of direct recruitment, if the administrative action in filling up the post by DR takes more than a year or so the individual cannot

A be held responsible for such administrative delay and hence it would not be appropriate to deprive him of his due seniority for delay on the part of administration in completing his selection by direct recruitment. In fact ordinarily the process of direct recruitment takes more than B a year to be completed and if DR is to join in the same year for getting seniority of that year then no DR will get seniority of the same year because as already stated the DR process takes more than a year. Hence, as already stated initiation of action for recruitment in sufficient.

C It is not clear whether our O.M. of 07.02.1986 has been interpreted correctly on the above line by the Deptt. of Revenue. Hence the above position may be suitably incorporated in the para-wise comments prepared by them and it may be modified accordingly. Subject to this, the D parawise comments appear to be generally in order. It is however for the Department of Revenue to ensure the correctness of the factual position mentioned therein.

Deptt. of Revenue may please see.

Sd/-
E (K. Muthu Kumar)
Under Secretary

3357/DIR E 1/99
20/12

F Dir (E-1)

The clarification given above needs to be adhered to as we have been consistently advising on the aforesaid lines. Any other interpretation of the relevant instructions would be illogical.

G Sd/-
DIR (E-1)
21.12.99"

(emphasis is ours)

H

The logic and the process of reasoning, emerging from the O.N. dated 20.12.1999, as they appear to us, are analysed below:-

(a) Only where the appointing authority has not been able to fill up the vacancies earmarked for direct recruits/promotees, with reference to the requisition for a particular recruitment year, inspite of its best efforts, the instructions contained in O.M. dated 7.2.1986 will come into operation.

(b) It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. It would suffice if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority. As such, initiation of action for recruitment within the recruitment year would be sufficient to assign seniority to the concerned appointees in terms of the "rotation of quotas" principle, so as to arrange them with other appointees (from the alternative source), for vacancies of the same recruitment year.

23. Following the ON dated 20.12.1999, the Department of Personnel and Training, Establishment (D) Section, examined the issue in yet another Office Note dated 2.2.2000 (hereinafter referred to as "the ON dated 2.2.2000"). Just like the earlier ON dated 20.12.1999, the instant ON dated 2.2.2000 also has no legal sanction, and as such, is not enforceable in law. But just like the earlier office note, the instant ON dated 2.2.2000 would also be relevant in determining the logic and process of reasoning which prevailed at the relevant point of time. This would aid in the interpretation of binding office memoranda, only where the language is ambiguous, and only if there is no conflict between the two (the office note and the office memoranda, sought to be interpreted). In the aforesaid

A background, and for the aforesaid limited purpose, reference is also being made to the ON dated 2.2.2000. The same is being extracted hereunder:

"Department of Personnel & Training
Estt. (D) Section

B Notes from p.17/ante may please be seen with reference to our earlier note on Pp.9-10 ante.

With reference to 'X' on p.18 and 'Y' on p.19/ante, it will be clear from our note on Pp.9-10/ante that <u>if action</u>
C <u>for the Recruitment Year 1986-1987 has been initiated at any time during that Recruitment Year even if the exam is held in 1988 and the results are declared in 1989 and the candidate join only in 1990, since the action for recruitment was initiated in 1986-1987 itself merely because the</u>
D <u>process of recruitment took so long for which the candidates cannot be blamed and since the responsibility for the delay in completing the process of recruitment squarely lies with the administration, it would not be appropriate to deprive the candidates of their due seniority</u>
E <u>of 1986-87. Consequently, if action was initiated during the Recruitment Year 1986-1987 even if it culminates in the joining by the selected candidates only in 1990, they will get seniority of 1986-1987. This applies equally to DRs as well as promotees. In other words, if such DRs of 1986-</u>
F <u>1987 ultimately join in 1990 yet they will be rotated with promotees of 1986-87</u>.

As regards point (1) on page 19/N, <u>it is clarified that "initiation of action for recruitment/initiation of recruitment process" would refer to the date of sending the requisition</u>
G <u>to the recruiting authority for a particular Recruitment Year</u> in question.

Points (2) & (3) are the concern of Estt.(B).

H As regards point (4), it is clarified that as already stated the concept of initiation of action for recruitment is applicable equally to direct recruits and promotees.

As regards point (5), it may be stated that even if DOPT is also one of the respondents, it is for the Administrative Ministry/Department who are concerned with the persons involved in the CAT court case to take necessary action on behalf of DOPT also. In any case, our comments are already contained in our earlier note as well as this note. It is for the Administrative Ministry/Department to incorporate them suitably in the counter reply. Hence, the counter reply on Pp.159-175/Cor. May be suitably modified in the light of our advice on Pp.9-10/ante as already advised at 'X' on p.10/ante and this note.

In future, the Department of Revenue, if they want our advice, refer such cases well in time (instead of making such reference at the eleventh hour) to enable us to consider the matter in its proper perspective without any time constraint.

Estt.(B) may please see for comments on points (2) and (3) on Pp.19-20/ante before the file is returned to Department of Revenue.

Sd/-

(Under secretary)
2.2.2000."

The logic and process of reasoning emerging from the ON dated 2.2.2000, as is apparent to us, is being analysed below:

(a) If the process of recruitment has been initiated during the recruitment year (in which the vacancies have arisen) itself, even if the examination for the said recruitment is held in a subsequent year, and the result is declared in a year later (than the one in which the examination was held), and the selected candidates joined in a further later year (than the one in which

A the result was declared), the selected candidates will be entitled to be assigned seniority, with reference to the recruitment year (in which the requisition of vacancies was made). The logic and reasoning for the aforesaid conclusion (expressed in the ON dated 2.2.2000) is, if the process of direct recruitment is
B initiated in the recruitment year itself, the selected candidate(s) cannot be blamed for the administrative delay, in completing the process of selection.

(b) The words "initiation of action for recruitment", and the words "initiation of recruitment process", were explained to
C mean, the date of sending the requisition to the recruiting authority.

24. Having examined the matter thus far, it is necessary to refer to the Ministry of Finance, Department of Revenue's,
D letter dated 11.5.2004 (hereinafter referred to as, "the letter dated 11.5.2004"). The aforesaid letter is being reproduced below:

"New Delhi, the 11th May, 2004

E To,

The Chief Commissioner of Income Tax (CCA),
CHANDIGARH

Subject: Fixation of inter-se seniority of DR and
F Promotee Income Tax Inspectors in view of clarification given by DOP&T in r/o OM dated 3.7.87

Sir,

G I am directed to refer to your letter F.No.CC/CHD/2003-04/935 dated 4.12.2003 on the above subject and to say that the matter has been examined in consultation with DOP&T and necessary clarification in the matter is given as under:

H

Point/querry raised	Clarification
Whether direct recruit inspectors should be given seniority of the year in which selection process initiated or vacancy occurred orotherwise	'It is clarified by DOP&T that Direct Recruits' seniority vis-à-vis the promotees is reckoned from the year in which they are actually recruited. DRs cannot claim seniority of the year in which the vacancies had arisen. The question of grant of seniority to DRs of the period when they were not even in service does not arise.'

3. The representations may please be disposed off accordingly.

Yours faithfully,
Sd/-
Under Secretary to the Government of India"

A perusal of the letter dated 11.5.2004 reveals, that it adopts a position in clear conflict with the one expressed in the OMs dated 7.2.1986 and 3.7.1986, as well as, in the ONs dated 20.12.1999 and 2.2.2000. In the aforesaid letter dated 11.5.2004 it was sought to be "clarified", that the seniority of direct recruits vis-à-vis promotees, would be determined with reference to the year in which the direct recruits are appointed. And further, that direct recruits cannot claim seniority with reference to the year in which the vacancies against which they are appointed had arisen. In our considered view reliance on the letter dated 11.5.2004, for the determination of the present controversy, is liable to outright rejection. This is so because, the letter dated 11.5.2004 has been styled as a "clarification" (see heading in right hand column). One of the essential ingredients of a clarification is, that it "clarifies" an unclear, doubtful, inexplicit or ambiguous aspect of an instrument. A "clarification" cannot be in conflict with the instrument sought to be clarified. The letter dated 11.5.2004 breaches both the essential ingredients of a "clarification" referred to above. That apart, the letter dated 11.5.2004 is liable to be ignored in view of two subsequent letters of the Ministry of Finance, Department of Revenue dated 27.7.2004 and 8.9.2004. The letter dated 27.7.2004 is reproduced hereunder:

"New Delhi, the 27th July, 2004

To

Chief Commissioner of Income Tax (CCA)
CHANDIGARH

Subject: Fixation of inter-se seniority of DR and Promotee Income tax Inspectors in view of clarification given by DOP&T in r/o OM dated 3.7.86.

Sir,

I am directed to refer to Board's letter of even number dated 11.5.2004 on the above subject and to request that the application of this clarification may be kept in abeyance till further orders.

Yours faithfully,

Sd/-

Under Secretary to the Government of India"

A perusal of the letter dated 27.7.2004 reveals, that the allegedly clarificatory letter dated 11.5.2004, had been kept in abeyance. The second letter dated 8.9.2004 (referred to above) is also being reproduced below:

"New Delhi, the 8th September, 2004

To

Al CCITs(CCA)

Sub: Fixation of inter se seniority between Direct Recruits (DR) and Promotee (PR) Inspectors of Income tax in various charges of the Income tax Department – regarding.

Sir,

I am directed to say that a number of OAs/WPs are pending/under adjudication in the various benches of CAT and High Courts on the above subject. The Board has been taking a consistent stand in all those cases that the policy as laid down in Sanjeev Mahajan's case (pertaining to CCIT, Delhi Charge), which was finalized in consultation with DOP&T and the Ministry of Law would prevail and that seniority of DRs would be reckoned with reference to date of initiation of recruitment process in their case.

2. Subsequently on a query raised by CCIT, Chandigarh on an issue relating to the treatment to be given to the promotee Inspectors, who would face reversion on account of refixation of seniority as per DOP&T/Ministry of Law's advice, the Board issued a clarification vide letter of even number, dated 11.5.2004, which created an adverse situation before the Gujarat High Court in a related case. As such this clarification was held in abeyance vide letter dated 27.07.2004 till further orders.

3. The matter has been reexamined and it has been decided that the stand taken/finalized by the Board in the case of Sanjeev Mahajan would hold good in future also and all the cases on the issue would be handled/defended in the light of clarification submitted in that case.

4. All CCITs(CCA) are accordingly requested to take necessary action in the matter of fixation of seniority of DRs & Promotee Inspectors accordingly.

Yours faithfully,
Sd/-
Under Secretary (V&L)"

A A perusal of the letter dated 8.9.2004 reveals, that the clarification given in the letter dated 11.5.2004, would be ignored in favour of the position adopted in Sanjeev Mahajan's case, in consultation with the Department of Personnel and Training. It would be relevant to notice, that the position adopted B in Sanjeev Mahajan's case, referred to in the letter dated 8.9.2004 was, that seniority of direct recruits would be reckoned with reference to the date of initiation of the process of recruitment in their case. In the aforesaid view of the matter, the letter dated 11.5.2004 is bound to be disregarded and C excluded from consideration not only because it does not satisfy the legal parameters of a "clarification", but also because, it is deemed to have been superseded by the subsequent letters dated 27.7.2004 and 8.9.2004.

25. Reference necessarily needs to be made to yet D another office memorandum issued by the Government of India, Department of Personnel and Training, dated 3.3.2008 (hereafter referred to as, "the OM dated 3.3.2008"). In view of the emphatic reliance on the OM dated 3.3.2008, during the course of hearing, the same is reproduced hereunder, in its E entirety:

New Delhi, dated the 3rd March, 2008

OFFICE MEMORANDUM

Subjec: Consolidated instructions on seniority F contained in DOP&T O.M. No.22011/7/1986-Estt.(D) dated 3.7.1986 – Clarification regarding

The undersigned is directed to refer to this Department's consolidated instructions contained in O.M. G No.22011/7/1986-Estt.(D) dated 3.7.1986 laying down the principles on determination of seniority of persons appointed to services/posts under the Central Government.

2. Para 2.4.1 and 2.4.2 of the O.M. dated 3.7.1986 H contains the following provisions:

2.4.1 The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees, which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

2.4.2 If adequate number of direct recruits does not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of available direct recruits and the promotees.

3. Some references have been received seeking clarifications regarding the term 'available' used in the preceding para of the OM dated 3.7.1986. It is hereby clarified that while the inter-se seniority of direct recruits and promotees is to be fixed on the basis of the rotation of quota of vacancies, the year of availability, both in the case of direct recruits as well as the promotees, for the purpose of rotation and fixation of seniority, shall be the actual year of appointment after declaration of results/ selection and completion of pre-appointment formalities as prescribed. It is further clarified that when appointments against unfilled vacancies are made in subsequent year or years, either by direct recruitment or promotion, the persons so appointed shall not get seniority of any earlier year (viz. year of vacancy/panel or year in which recruitment process is initiated) but should get the seniority of the year in which they are appointed on substantive basis. The year of availability will be the vacancy year in which a candidate of the particular batch of selected direct recruits or an officer of the particular batch of promotees joins the post/ service.

4. Cases of seniority already decided with reference to any other interpretation of the term 'available' as contained in O.M. dated 3.7.1986 need not be reopenec'.

5. Hindi version will follow.

Sd/-
Director (Estt.I)"
(emphasis is ours)

The following conclusions, in our view, can be drawn from the OM dated 3.3.2008:

(a) The OM dated 3.3.2008 is in the nature of a "clarification", to the earlier consolidated instructions on seniority, contained in the OM dated 3.7.1986 (referred to and analysed, in paragraph 21 above).

(b) The term "available" used in para 2.4.2 in the OM dated 3.7.1986 has been "clarified" to mean, both in case of direct recruits as well as promotees, for the purpose of fixation of seniority, would be the actual year of appointment "...after the declaration of the result/selection, i.e., after the conclusion of the selection process, and after the "...completion of the pre-appointment formalities..." (medical fitness, police verification, etc.).

(c) As per the OM dated 3.7.1986, when appointments are made against unfilled vacancies in subsequent year(s), the persons appointed would "not" get seniority with reference to the year in which the vacancy arose, or the year in which the recruitment process was initiated, or the year in which the selection process was conducted.

(d) As per the OM dated 3.3.2008, when appointments are made against unfilled vacancies in subsequent year(s), the persons appointed would get seniority of the year in which they are appointed "on substantive basis".

26. Before examining the merits of the controversy on the basis of the OM dated 3.3.2008, it is necessary to examine one related submission advanced on behalf of the direct recruits. It was the contention of learned counsel, that the OM dated 3.3.2008 being an executive order issued by the Department of Personnel and Training, would apply only prospectively. In this

behalf it was pointed out, that the disputed seniority between rival parties before this Court was based on the appointment to the cadre of Income Tax Inspectors, well before the OM dated 3.3.2008 was issued. As such, it was pointed out, that the same would not affect the merits of controversy before this Court. We have considered the instant submission. It is not possible for us to accept the aforesaid contention advanced at the hands of the learned counsel. If the OM dated 3.3.2008 was in the nature of an amendment, there may well have been merit in the submission. The OM dated 3.3.2008 is in the nature of a "clarification". Essentially, a clarification does not introduce anything new, to the already existing position. A clarification, only explains the true purport of an existing instrument. As such, a clarification always relates back to the date of the instrument which is sought to be clarified. In so far as the instant aspect of the matter is concerned, reference may be made to the decision rendered by this Court in *S.S. Garewal vs. State of Punjab,* (1993) 3 Suppl. 234, wherein this Court had observed as under:

> "8 ..... In the alternative, it was urged that the order dated April 8, 1980 could only have prospective operation with effect from the date of issue of the said order and the sub-roster indicated by the said order could be given effect to only from that date and on that basis the first post reserved for Scheduled Castes should go to Balmikis or Mazhabi Sikhs and on that basis also respondent No. 3 was entitled to be placed against point No. 7 in the 100-point roster and Shri G.S. Samra against point No. 9 in the said roster.
>
> 9. From a perusal of the letter dated April 8, 1980, we find that it gives clarifications on certain doubts that had been created by some Departments in the matter of implementation of the instructions contained in the earlier letter dated May 5, 1975. Since the said letter dated April 8, 1980 is only clarificatory in nature, there is no question of its having an operation independent of the instructions

contained in the letter dated May 5, 1975 and the clarifications contained in the letter dated April 8, 1980 have to be read as a part of the instructions contained in the earlier letter dated May 5, 1975. In this context it may be stated that according to the principles of statutory construction a statute which is explanatory or clarificatory of the earlier enactment is usually held to be retrospective. (See: Craies on Statute Law, 7th Ed., p.58). It must, therefore, be held that all appointments against vacancies reserved for Scheduled Castes made after May 5, 1975 (after May 14, 1977 in so far as the Service is concerned), have to be made in accordance with the instructions as contained in the letter dated May 5, 1975 as clarified by letter dated April 8, 1980. On that view, the appointment of Shri Bal want Rai in 1979 has to be treated to be an appointment made under the said instructions and operation of these instructions cannot be postponed till April 8, 1980….."

In view of the above, it is not possible for us to accept that the OM dated 3.3.2008, would only apply prospectively. We are also satisfied, that the OM dated 3.3.2008 which is only a "clarification" of the earlier OM dated 3.7.1986, would relate back to the original instrument, namely, the OM dated 3.7.1986.

27. We shall now endeavour to examine the effect of OM dated 3.3.2008 on the subject of inter se seniority between direct recruits and promotees. Would the OM dated 3.3.2008 supersede the earlier OMs dated 7.2.1986 and/or 3.7.1986? And, would the OMs dated 7.2.1986 and 3.7.1986 negate the OM dated 3.3.2008, to the extent that the same is repugnant to the earlier OMs (dated 7.2.1986 and 3.7.1986)? In our view, what needs to be kept in mind while determining an answer to the aforesaid queries is, that the OM dated 7.2.1986 is in the nature of an amendment/modification. The Department of Personnel and Training consciously "amended" the earlier OM dated 22.11.1959, by the later OM dated 7.2.1986. The said amendment was consciously carried out, with the object of

remedying the inappropriateness of direct recruits of later years becoming senior to promotees with long years of service. It is not the case of any of the parties before us, that the OM dated 7.2.1986, has ever been "amended" or "modified". It is therefore imperative to conclude, that the OM dated 7.2.1986 is binding for the determination of the issues expressed therein, and that, the same has the force of law. The OM dated 3.7.1986 is in the nature of consolidatory instruction, whereby, all earlier instructions issued from time to time were compiled together. This is apparent, not only from the subject of the aforesaid OM dated 3.7.1986, but also, the contents of paragraph 1 thereof. Paragraph 1 of the OM dated 3.7.1986, is being reproduced hereunder:

> "Dated 3.7.86
>
> OFFICE MEMORANDUM
>
> Subject: SENIORITY – consolidated orders on
>
> The undersigned is directed to say that instructions have been issued by this Department from time to time laying down the principles for determining seniority of persons appointed to services and posts under the Central Government. For facility of reference, the important orders on the subject have been consolidated in this office memorandum. The number and date of the original communication has been quoted in the margin so that the users may refer to it to understand fully the context in which the order in question was issued."
>
> (emphasis is ours)

It is therefore clear, that the OM dated 3.3.2008 is neither in the nature of an "amendment" nor in the nature of a "modification". Since the OM dated 3.3.2008, is a mere "consolidation" or compilation of earlier instructions on the subject of seniority, it is not prudent to draw any inferences therefrom which could not be drawn from the earlier instruction/ office memoranda being "consolidated" or compiled therein, or which is contrary thereto.

28. It is relevant to notice, that there is a marginal note against paragraph 2.4.2 in the OM dated 3.7.1986. The aforesaid marginal note is being extracted hereunder:

"DOPT No.35014/2/80-Estt(D) dt.7.2.86"

Therefore, paragraph 2.4.2 must be deemed to have been recorded in the consolidating OM, on the basis of the OM dated 7.2.1986. The instant assertion has been made on account of it having been expressly mentioned in the opening paragraph of the OM dated 3.7.1986 (extracted above), that the number and date of the original communication has been quoted in the margin, so that the user may refer to it, to understand fully the context in which the order in question was issued. Therefore, for all intents and purposes the OM dated 3.3.2008 is with reference to the OM dated 7.2.1986. It is for this reason, that while debating the exact purport of the OM dated 3.3.2008, it has been our endeavour to examine the same, with reference to the earlier OMs dated 7.2.1986 and 3.7.1986, which were inter alia "consolidated" in the OM dated 3.3.2008.

29. A perusal of the OM dated 3.3.2008, would reveal, that a reference to paragraphs 2.4.1 and 2.4.2 of the OM dated 3.7.1986, has been made therein. Thereupon, the meaning of the term "available" used in paragraph 2.4.2 of the OM dated 3.7.1986, is statedly "clarified". In view of the conclusion drawn in the foregoing paragraph, the said clarification must be deemed to be with reference, not only to the OM dated 3.7.1986 but also the OM dated 7.2.1986. We have already noticed, in an earlier part of the instant judgment, the essential ingredients of a "clarification" are, that it seeks to explain an unclear, doubtful, inexplicit or ambiguous aspect of an instrument, which is sought to be clarified or resolved through the "clarification". And that, it should not be in conflict with the instrument sought to be explained. It is in the aforesaid background, that we will examine the two queries posed in the preceding paragraph. We have already analysed the true

Having so concluded, it is natural to record, that as the position presently stands, the OMs dated 7.2.1986 and 3.7.1986 would have an overriding effect over the OM dated 3.3.2008 (to the extent of conflict between them). And the OM dated 3.3.2008 has to be ignored/omitted to the extent that the same is in derogation of the earlier OMs dated 7.2.1986 and 3.7.1986. In the light of the conclusions recorded hereinabove, we are satisfied that the OM dated 3.3.2008 is not relevant for the determination of the present controversy.

30. Besides the interpretation of the relevant OMs issued by the DOPT, learned counsel representing the promotees placed reliance on some judgments of this Court in order to press their contention, that seniority for direct recruits could not be determined with reference to a date preceding the date of their recruitment. In so far as the instant aspect of the matter is concerned, reliance was placed on *Jagdish Ch. Patnaik & Ors. v. State of Orissa and others,* (1998) 4 SCC 456; *Suraj Prakash Gupta & Ors. v. State of J&K & Anr.,* (2000) 7 SCC 561; and *Pawan Pratap Singh & Ors. v. Reevan Singh & Ors.,* (2011) 3 SCC 267.

31. The seniority rule applied in *Jagdish Ch. Patnaik's* case (supra) has been extracted in paragraph 24 of the said judgment. The seniority rule in question, inter alia expressed, that seniority would be determined with reference to the date of recruitment. In *Suraj Prakash Gupta's* case (supra), the relevant seniority rule was extracted in paragraph 53 which provided, that seniority would be determined with reference to the date of first appointment. The rule itself expressed that the words "date of first appointment" would mean the date of first substantive appointment against a clear vacancy. In *Pawan Pratap Singh's* case (supra) the question which arose for consideration, related to determination of inter se seniority between two sets of direct recruits. The first set comprised of vacancies advertised in 1987 which came to be filled up in 1994, and the second set comprised of vacancies of the year 1990 which came to be filled up in the year 1991. The

purport of the OM dated 7.2.1986 (in paragraph 20 hereinabove). We have also recorded our conclusions with reference to the OM dated 3.7.1986 wherein we have duly taken into consideration the true purport of paragraph 2.4.2 contained in the OM dated 3.7.1986 (in paragraph 21 hereinabove). The aforesaid conclusions are not being repeated again for reasons of brevity. We have separately analysed the effect of the OM dated 3.3.2008 (in paragraph 26 of the instant judgment). It is not possible for us to conclude that the position expressed in the earlier office memoranda is unclear, doubtful, inexplicit or ambiguous. Certainly not on the subject sought to be clarified by the OM dated 3.3.2008. A comparison of the conclusions recorded in paragraph 20 (with reference to the OM dated 7.2.1986) and paragraph 21 (with reference to OM dated 3.7.1986) on the one hand, as against, the conclusions drawn in paragraph 26 (with reference to OM dated 3.3.2008) on the other, would lead to inevitable conclusion, that the OM dated 3.3.2008 clearly propounds, a manner of determining inter se seniority between direct recruits and promotees, by a method which is indisputably in conflict with the OMs dated 7.2.1986 and 3.7.1986. Ofcourse, it was possible for the Department of Personnel and Training to "amend" or "modify" the earlier office memoranda, in the same manner as the OM dated 7.2.1986 had modified/amended the earlier OM dated 22.11.1959. A perusal of the OM dated 3.3.2008, however reveals, that it was not the intention of the Department of Personnel and Training to alter the manner of determining inter se seniority between promotees and direct recruits, as had been expressed in the OMs dated 7.2.1986 and 3.7.1986. The intention was only to "clarify" the earlier OM dated 3.7.1986 (which would implicitly include the OM dated 7.2.1986). The OM dated 3.3.2008 has clearly breached the parameters and the ingredients of a "clarification". Therefore, for all intents and purposes the OM dated 3.3.2008, must be deemed to be non-est to the extent that the same is in derogation of the earlier OMs dated 7.2.1986 and 3.7.1986.

controversy in *Pawan Pratap Singh's* case (supra) was conspicuously different from the controversy in hand. In view of the fact that the seniority rules, as also the factual matrix in the cases relied upon was substantially at variance with the relevant OMs dated 7.2.1986 and 3.7.1986 (which are the subject of interpretation in so far as the present case is concerned), as also the facts of the cases in hand, it is apparent, that the judgments relied upon by the learned counsel are inapplicable to determine the present controversy.

32. One finds attracted to the observations recorded in *Jagdish Ch. Patnaik's* case (supra) wherein it was observed, "when the language used in the statute is unambiguous and on a plain grammatical meaning being given to the words in the statute, the end result is neither arbitrary, nor irrational nor contrary to the object of the statute, then it is the duty of the court to give effect to the words used in the statute because the words declare the intention of the law making authority best". We are of the view that the aforesaid observations are fully applicable to the present controversy. We may add that the various ONs and letters issued by the DOPT (referred to above) do not leave room for any ambiguity.

33. Having interpreted the effect of the OMs dated 7.2.1986 and 3.7.1986 (in paragraphs 20 and 21 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by the SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of. In all these cases the advertised vacancies were filled up in the original/ first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried forward vacancies, or vacancies which came to be filled up by a "later" examination/selection process. The facts only reveal, that the examination and the selection process of direct recruits could not be completed within the recruitment

year itself. For this, the modification/amendment in the manner of determining the inter-se seniority between the direct recruits and promotees, carried out through the OM dated 7.2.1986, and the compilation of the instructions pertaining to seniority in the OM dated 3.7.1986, leave no room for any doubt, that the "rotation of quotas" principle, would be fully applicable to the direct recruits in the present controversy. The direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year.

34. In view of the above, the Civil Appeals, the Transferred Case, as well as, the Transfer Case (filed by the direct recruits and the Union of India) are hereby allowed. The claim of the promotees, that the direct recruit Income Tax Inspectors, in the instant case should be assigned seniority with reference to the date of their actual appointment in the Income Tax Department is declined.

K.K.T. Appeals & transferred Cases allowed.