2020 INSC 660

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO (S). 3832-3833 OF 2020
(ARISING OUT OF SLP (C) NO(S). 26669-26670/2018)

MANOHAR LAL JAT & ORS. ETC. ...APPELLANT(S)

VERSUS

THE STATE OF RAJASTHAN & ORS. ETC. ...RESPONDENT(S)

WITH
CIVIL APPEAL NO. 3834 OF 2020
(ARISING OUT OF SLP (C) NO. 26671/2018)

J U D G M E N T

S. RAVINDRA BHAT, J.

1. Leave granted. With consent of all the counsel for parties, the appeals were heard finally and judgement was reserved on 24th January 2020. These appeals challenge the common judgement of the Rajasthan High Court[1]. The Division Bench of the High Court by the impugned judgement set aside an order made by the learned single judge of that court and held that the present Appellants (hereafter referred to as "direct recruits" or "DRs") were not entitled to claim seniority over and above the respondents, hereafter called departmental promotes" or "DPs"). The DRs had approached the High Court in

[1]Sitting at its Jaipur Bench, in DB Special Appeal Writ Number 1053/2017 and DB Special Appeal Writ No. 1250/2017

the first instance, claiming that the seniority list, showing the DPs in earlier positions, was untenable; the single judge allowed that petition. The Division Bench has, however, allowed the appellants to question the eligibility of DPs to be recruited.

2. The relevant facts are that on 01.09.2009, the Finance Department of the Government of Rajasthan granted approval for creation of 531 posts of Tax Assistants. This newly created post was augmented by further 23 posts, which were added to the cadre; the final tally of such newly created posts of Tax Assistants became 554. Amendments to the Rajasthan Commercial Taxes Subordinate Services General Branch Rules, 1975, made with effect from 01.12.2010, prescribed the manner of filling of posts of Tax Assistants. Schedule-I of the Amendment Rules defined the manner of filling of the posts in the following terms:

> *"100% by direct recruitment:*
> *(a) 80% by the appointing authority in accordance with Schedule III*
> *(b) 20% by selection from amongst ministerial staff of the commercial taxes department that by way of departmental examination in accordance Schedule II"*

3. On 4th October 2010, a Departmental Selection Committee was constituted for recruitment of both categories and proceedings were initiated soon filling all the for 554 posts of Tax Assistants. In accordance with the rules, it was proposed to fill the 80% quota of direct recruits to the extent of 443 vacancies and 111 from amongst DPs. Accordingly, on 25.01.2011 and advertisement was issued for recruitment of DRs. The written examination, stipulated under the rules was conducted for recruitment of DR's; thereafter a typing test was conducted on 15.05.2011. 356 candidates participated in this typing test. On 16.05.2011, provisional results were declared for the test held for DRs. Thereafter letters were apparently written by the Commissioner, Department of Commercial Taxes enclosing a list of successful candidates, to

the police authorities for due verification of their character and antecedents. On 24.05.2011, the department advertised for filling up of the 20% quota for DPs. Earlier the proposal was to hold the written examination for the DPs on 24.06.2011; however, it was held earlier on 11.06.2011 and 12.06.2011. The results of these tests for the DPs were announced on 14.06.2011 and the department issued promotion letters on 23.06.2011. On 24.06.2011 the appellants were issued with letters for police verification and medical test. By this time however the DPs had already been promoted, and had taken charge of their posts. The appointment orders of the DRs were issued subsequently; on 04-07-2011.

4. On 5th June, 2013, the Commercial Taxes Department of the State of Rajasthan published a seniority list in which those appointed as DPs, in the 20% quota were shown as senior to the DR/the appellants. Apparently, some of the DRs – including the appellants objected to this placement and sought for correction of the seniority list[2]. Another provisional/tentative seniority list was issued on 15-05-2014, in which the position was no different inasmuch as the DPs were shown above the DRs. The appellants again objected; nevertheless on 18-09-2015 the Department substantially confirmed their previous positions in the final list published by it.

5. The Direct Recruits (DRs) filed one set of Writ Petitions[3] contending that the seniority lists were contrary to law. Yet another seniority list was issued by the Department on 30.05.2016 in which the previous position of the DPs was left undisturbed. This became the subject matter of challenge before another proceeding[4]. Though the two writ proceedings had challenged the seniority position allotted to the DRs except the few DPs and official respondents, no

[2]The third appellant, Ankur Kumar Bansal objected through a representation dated 27.06.2013, in effect stating that the placement of DPs above the DRs was unjustified and contrary to the rules.

[3] Manohar Lal Jat & Ors. vs. State of Rajasthan &Ors.

[4] Gajendra Singh & Ors. vs. State of Rajasthan &Ors. CWP Np. 4630 of 2017

others were impleaded. The prominent grounds of attack in the writ petition, were that the recruitments of the DRs and DPs took place simultaneously and that the departmental candidates were *mala fide* issued with appointment letters earlier, for no reason except to ensure that their dates of entry into the cadre of tax inspectors were earlier, in order to favour their further career progression.

6. A learned Single Judge of the High Court by Judgment dated 25.05.2017 considered Rule 27 of the concerned Rules (hereafter called the "Seniority Rules")[5].

7. The Single Judge took particular notice of Rule 27(2) which stated that those who undergo recruitment process in an earlier selection will be placed at senior positions to those who undergo recruitment in a selection by a later process. The Single Judge concluded as follows:

> *"16. A glance of Rule 2 (1) would reveal that the advertisement dated 25th January, 2011, was issued with reference to the vacancies of the year 2010-2011. Obviously, the advertisement dated 24th May, 2011, would be a recruitment process with reference to the vacancies of the subsequent year 2011-2012. The respondents are curiously silent on this aspect in their counter affidavits as well as during the arguments.*
>
> *17. A conjoint reading of Rule 2(1) and 27 of the Rules of 1975, would leave no room of any doubt that the persons selected and appointed as a result of a selection process, which is not subject matter to review and revision, shall rank senior to the persons who are selected and appointed as a result of subsequent selection. Thus, the phrase 'subsequent selection' under Rule 27 read with Section 2(1) leads to logical conclusion that the petitioners are employees who were appointed in a previous selection and the private respondents (departmental employees), are the persons who were accorded appointment in a 'subsequent selection'. Hence, those departmental candidates cannot be allowed to march over and above in the seniority to the petitioners, who are the successful selected candidates of a previous selection process."*

[5] Rajasthan Commercial Taxes Subordinate Services (General Branch) Rules, 1975

8. The DRs aggrieved by the Judgment of the learned Single Judge preferred appeals to the Division Bench Special Appeal Writ No. 1053 of 2017 and Special Appeal Writ No. 1250 of 2017.

9. Since all the Departmental Promotees (DPs) were not represented before the Single Judge, many of them preferred third party appeals. The Division Bench by its impugned Judgment allowed these appeals by DPs after noticing that Rule 27 which had been relied upon by the Single Judge had been amended. The Division Bench took note of the fact that after amendment with the amendment provisos have been added.

10. The Court held that the main provision of the Rule 27 was amended on 10.10.2002 which added a second proviso and that the proviso would operate when two selections are for one and the same category. The relevant observations of the Division Bench are as follows:

> *"In our opinion, there is conflict between the main provision of rule 27 and second proviso. If proviso is applied taking into consideration the earlier and subsequent selection followed by appointment then, in a given case, where a selection was started earlier to subsequent but the appointment is given first to those selected pursuant to subsequent selection, the relevance of the date of appointment gets nullified. It is because of appointment of the candidates pursuant to the subsequent selection prior to the appointment of the candidates out of earlier selection. They would not get seniority despite earlier appointment and, thereby, significance to the date of appointment given in Rule 27 would be violated. The proviso cannot nullify the main provision and, in those circumstances, consideration of two provisions has to be made. The proviso would operate when two selections are for one and the same category."*

11. According to the Division Bench thus the two categories DPs and DRs were different and it was not open to the DRs especially after a long lapse of time, to question the placement in the seniority list of the DPs. However, since the DRs/Original Writ Petitioners had argued before the Division Bench about

the ineligibility of DPs (or some of them) to participate in the selection –(which was held in 2011) that issue was kept open.

Arguments of parties

12. Mrs. Aishwarya Bhati, learned Senior Counsel and Mr. Prashant Bhushan appearing on behalf of the appellants argued that the Division Bench ignored the fact that recruitments in this case were conducted with two different advertisements for the same post, the appellants who were from open category against 80% quota were selected earlier and the other set of departmental employees were recruited later. In terms, the DR, answered the description of having been selected earlier, and having participated in an earlier recruitment process. On the other hand, the DPS responded to a different advertisement issued later, and underwent a separate selection process. Plainly, having regard to the express terms of the rule, i.e. Rule 27, the seniority of the direct recruits (i.e. the appellants and others like them) had to be determined at posts earlier than or senior to the DPs who were selected later.

13. It was argued that the mere incidence of issuance of earlier appointment letters could not have resulted in an undue and unfair advantage to the DPs as to deprive the DRs of earlier slots of the common seniority lists. Elaborating on this aspect, learned counsel relied upon the observations of the Single Judge and stated that selection or recruitment for the DR quota were advertised on 25.01.2011; the test was conducted on 17.04.2011 and on 16.05.2011 the select list for the DR category was published. However, the Commercial Taxes Department deliberately withheld issuing appointment letters and released another advertisement to fill up the DP 20% quota of the ministerial employees who were working in the same department. The departmental examination for the DP quota was conducted on two successive dates i.e. 11.06.2011 and 12.06.2011. The learned counsel highlighted that this was despite the fact that

the departmental test was originally scheduled later. Having proceeded to schedule the test earlier the state proceeded with unusual speed and published the results of the DP category candidates for the 20% quota on 14.06.2011 and hastily issued appointment letters on 23.06.2011. It was only thereafter that the appointment letters of DR category candidates (for the 80% open quota) were issued. It was submitted that these circumstances *ipso facto* established malice against DRs and advertisement on the part of the State and its officers, to grant undue and unfair advantage to the DP category of candidates.

14. Learned counsel highlighted that the representation/letter by the General Secretary of the Departmental Employees Association had pressurised the Commercial Tax Department to recruit DPs earlier and relied upon a letter dated 19.05.2011. The conduct and action of the State in speeding up the process of selection of the DP quota to the utter disadvantage of the DR recruits, was thus established from the record. The department in fact given unprecedented priority, to select candidates for the 20% departmental quota.

15. Learned counsel also argued that the explanation given by the State for the delay that occurred in issuing appointment letters to the DR quota candidates (which was that sometime was taken in police verification and medical check up) has to be considered in the light of these established facts. The learned counsel emphasised that it was only after the appointment letters were issued to the DP candidates in the 20% category on 24.06.2011 that a mere 10 days later, i.e. 14.07.2011, appointment letters were issued to the DR candidates.

16. It was lastly argued that the Division Bench while ignoring the facts of the case, interpreted the rules (Rules 27 of the Rajasthan Commercial Taxes Subordinate Service (General Branch) Rules, 1975 (in short, the Rules of 1975) incorrectly. The original Rule 27 which was amended by notification dated 10.10.2002, which reckoned the seniority from the date of appointment. However, the proviso (2) of the Rules 27 was retained, which clearly *stipulates*

"that the persons selected and appointed as a result of selection, which is not subjected to review and revision, shall rank senior to the persons who are selected and appointed as a result of subsequent selection. Seniority inter-se of persons selected on the basis of seniority-cum-merit and on the basis of merit in the same selection shall be same as in the next below grade".

17. It is argued that pertinently the intent of the rule, in retaining the proviso (2) of the said rule, was to avoid ambiguity in reckoning seniority, in the cases wherein the selection for the same post i.e. "Tax Assistants' is done through two different sources, wherein the date of advertisements and selection processes are different. The proviso carves out an exception to the main provision, and the function of the proviso is to limit the main part of the provision and carve out something which but for the proviso would have been within the operative part. This Court in various judgments such as *S. Sundaram Pillai and others Vs. V. R. Pattabiraman and Others*[6]*; J.K. Industries Ltd. and & Ors Chief inspector of Factories and Boilers & Ors*[7], held *"proviso is an exception to the main part of the section; but it is recognized that in exceptional cases a proviso may be substantive provision itself."*

18. It is urged that the amended rule 27, only speaks about the seniority on the basis of date of appointment; however, the proviso (2) clarifies the rule for reckoning seniority when there are two advertisements for the same post, filled through different categories (sources) of candidates. Therefore, the main rule will only apply when the recruitment is through the same advertisement. It cannot be applied in a case where another advertisement is issued for the same post after the release of the results of the first advertisement and appointment order is given in the later case. This process of arbitrary recruitment will always deprive of the candidates in their order of seniority in their whole service tenure which is against the principles of Article 14.

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[6](1985) 1 SCC 591
[7]1996) 6 SCC 665

19. Dr. Manish Singhvi, the learned Additional Advocate General, appearing on behalf of the State of Rajasthan and Mr. R. Venkatramani, learned Senior Counsel appearing on behalf of the contesting respondents, i.e. the Departmental Promotee (DP) candidates, made their submissions. It was argued on behalf of the State respondents that the permission for creation of 531 posts was given on 01.09.2009 and later 23 posts were added. The recruitments in question resorted to in 2011, through the two advertisements issued (one for the 80% quota of DRs and other to fill up 20% quota of DPs) was the first recruitment drive to fill up these newly created posts which had hitherto not existed. It was urged on behalf of the State that these circumstances of the case are to be kept in mind from an important perspective i.e. the first attempt of the State to fill up a large number of posts after they were encadred and were lying unfilled for nearly two years. Learned counsel submitted that no doubt advertisements to fill up the DR vacancies were issued prior in point of time i.e. in January 201, however in response to this advertisement for the 80% vacancies (i.e. 443 vacancies) no less than 15,352 applications were received; these has to be screened to determine eligibility of the candidates; thereafter the written examination was conducted on 17.04.2011. A typing test was also conducted on 15.05.2011 for 356 candidates. A provisional result was declared on 16.05.2011. The learned Additional Advocate General emphasized that the police verification and medical examination processes took a little while for such a large number of candidates and was eventually completed on 01.07.2011.

20. It was urged that two months period for completing this process cannot be considered unreasonable for any stretch of imagination – since Rajasthan is the largest State geographically and has about 35 districts. The advertisement for departmental candidates was in the meanwhile issued on 24.05.2011. For filling 111 vacancies, 232 applications were received, written test was held on two dates i.e. 11th and 12th June, 2011. The DPs were not required to undergo any typing test nor require police verification and medical examination since they

were working with the Government for a considerable period of time. The process for final appointment thus was relatively easy. In these circumstances their results were compiled and published on 14.06.2011 but having regard to the simplified and shortened nature of the selection process they were appointed on 24.06.2011.

21. The learned Additional Advocate General and Senior Counsel for the contesting respondents submitted that the Division Bench correctly concluded that the underlying idea behind Rule 27 and the principle of seniority indicated by it which is that those selected earlier would rank earlier to those selected later, would apply in the case of recruits in the same category. Thus, for instance, if within the DR quota there are two sets of selections, the Rule enunciated in Rule 27, squarely applied, however that principle would be inapplicable where the recruits are appointed from different categories such as promotees and direct recruits. In such cases the main part of the Rule i.e. seniority based upon the entry into the cadre would squarely applied.

22. Learned senior counsel highlighted that the consistent view of this Court in several decisions has been to confine the proviso within the field of its operation and not allow it to supplant the main or enacted portion contained in the provision of which the proviso relates to. It is thus urged that the proviso cannot be interpreted as nullifying the enactment or taking away something conferred by the main section or provision. Learned counsel relied upon certain decisions in this regard[8]. The learned AAG emphasized that the facts on record show that the entire cadre was created for the first time by the single notification dated 01.12.2010. The recruitment to the two categories occurred as a first time measure. That advertisements were issued on different dates – one for direct recruits (DRs) and the other for direct promotees (DPs) did not make them separate recruitment processes. They were contemporaneous in that the State

[8] *Casio India Pvt. Ltd. v. State of Haryana* (2016) 6 SCC 209 & *Rohitash Kumar v. Om Prakash Sharma and Ors.* (2013) 11 SCC 451.

intended the selected candidates to man the same post. Thus, it could not be argued that appointments made in the 80% quota for DR candidates was for a previous year (having regard to the definition of "Year" under the recruitment rules[9].

23. It was highlighted in this regard that the decision to conduct the recruitment and selection process was a composite one – though advertisements were issued on separate dates. If one kept this in mind, it was clear that the entire recruitment process was a composite one. Given that the 80% quota earmarked for DRs was available to candidates with different eligibility criteria, of necessity, a separate advertisement was issued. Similarly, having regard to the fact that the 20% departmental promotion quota could be filled only by those working within the Commercial Tax Department (and which could not be filled by DRs), a different kind of advertisement with relevant eligibility conditions was issued. This did not mean that separate selection processes were held; since the department had vacancies in a new post for the first time, recruitment had to be considered common.

Relevant rules:

24. Rule 27 of the Rajasthan Commercial Taxes Subordinate Services (General Branch) Rules, 1975 was taken note of by the learned Single Judge. The relevant extract of that Rule is reproduced below:

> *"27. Seniority "Seniority of persons appointed to the lowest post of the Service or lowest categories of posts in each of the Group/Sections of the Service, as the case may be, shall be determined from the date but in respect of persons appointed by promotion to other higher posts*

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[9] Rule 2 reads as follows:
*"**Definition** –* 2.In these rules, unless the context otherwise requires:
(a)……..
(b)……
xxxxxx xxxxxx xxxxxx
(l) Year "means financial year".

in the Service or other higher categories of posts in each of the Groups/Sections in the Service, as the case may be, shall be determined from the date of their regular selection to such posts.

Provided

(1) That the seniority inter-se of the persons appointed to the Service before the commencement of the rules, and/or in process of integration of the Services of the pre-reorganisation of States of Rajasthan or the Services of the new State of Rajasthan established by the State Re-organisation Act, 1956, shall be determined, modified or altered by the Appointing Authority on an ad hoc basis;

(2) That the persons selected and appointed as a result of a selection, which is not subject to review and revision, shall rank senior to the persons who are selected and appointed as a result of subsequent selection. Seniority inter se of persons selected on the basis of seniority-cum-merit and on the basis of merit in the same selection shall be the same as in the next below grade;"

25. With effect from 10.10.2002, the main provision of Rule 27 was amended even while maintaining the two provisos below it. This was referred to by the Division Bench in its impugned judgment. The amendment to the Rule is extracted below:

"AMENDMENT: In the column of the Schedule attached herewith, following words shall be substituted in place of every Service Rule Col. No.4 with regard to substantial provisions (except their provisions) which means:-

'Seniority in respect of persons appointed on the posts included in the cadre of service shall be as per the provisions of these rules and shall be fixed from the date of their appointment. Those appointed on ad hoc or urgent temporary basis, they shall not be considered after their regular selection."

26. The following provisos to the above main provision (i.e. Rule 27 [1]) were left intact:

> "*Provided that*
>
> *(1) That the seniority inter-se of the persons appointed to the Service before the commencement of the rules, and/or in process of integration of the Services of the pre-reorganisation of States of Rajasthan or the Services of the new State of Rajasthan established by the State Re-organisation Act, 1956, shall be determined, modified or altered by the Appointing Authority on an ad hoc basis;*
>
> *(2) That the persons selected and appointed as a result of a selection, which is not subject to review and revision, shall rank senior to the persons who are selected and appointed as a result of subsequent selection. Seniority inter se of persons selected on the basis of seniority-cum-merit and on the basis of merit in the same selection shall be the same as in the next below grade;"*

27. Thus, the main provision was amended as to clearly provide that seniority in the cadre would be fixed from the *dates* of appointment of the employees, or officers, to the cadre.

28. The question to be decided here is having regard to the fact that the DPs were concededly appointed prior to the DRs, where the latter, as is argued by them appointed on the basis of merit *"in the same selection"*[10] The DRs argument is that their appointment, later than the DPs is the result of manipulation by the department (or, rather some officers in the department) who wished to favor the DPs; and that since their selections began *before* that of the DPs, the second proviso is attracted, for determination of *inter se seniority.* They also argue that the selection- in terms of the rules, *"subsequent selection"* necessarily refers to a chronologically later event; in the present case, the recruitment of the DRs began with the advertisement in January, 2011 (and

[10]Second proviso to Rule 27 (1)

thus, in the earlier financial year, having regard to Rule 2 (l)) whereas the selection process for DPs began in May, 2011.

29. On a plain reading of the entire rule (Rule 27 [1] and the two provisos) what is evident is that (a) before the amendment of 2002, seniority of personnel appointed to the *"lowest categories of posts"* in any department was to be determined as from the date of appointment; however, for promotees, it was to be from the date of selection; (b) *after the amendment of 2002,* seniority has to be fixed (by reason of Rule 27 (1)) as on the date of appointment to the post or service; (c) however, in the case of pre-state integration of state (of Rajasthan) or pre-integration of services, seniority could be *"modified or altered by the Appointing Authority on an ad hoc basis"*- this clearly was meant to be a "sunset" clause, i.e. operative for a limited period; (d) the second proviso,- which is the one pressed into service by the DRs, states that seniority of those selected earlier will be determined over those selected latter.

30. Plainly, the principal mandate of the rule is that seniority is determined on the basis of *date of appointment* (*"shall be fixed from the date of their appointment"*). Proviso (2) lists out two rules. The first is that those selected *and appointed* through a prior selection would rank senior to those selected and appointed through a later selection process. The High Court, in this case, was of the opinion that this rule (i.e. proviso) applied to selections *from the same source,* i.e. where two sets of direct recruits were appointed, those selected through a previous recruitment process, would rank senior to those recruited through a later recruitment process. This interpretation is, in this court's opinion, salutary. There may be various reasons why the ultimate appointment of one batch of recruits may be delayed: challenges to some part of the recruitment process (such as shortlisting, calling of candidates for interviews etc.), during which period, a subsequent recruitment may be undertaken. To forestall any apprehensions as to which of the appointees would be senior, and

if those from the earlier process are *appointed* later, the proviso clarifies that candidates from the earlier process would rank senior, despite the main rule speaking of a date of appointment based seniority. The same logic would apply to departmental promotees, as well, if two batches of promotees are appointed, through selection. The second limb of the second proviso clarifies that when merit based, or seniority based promotions are resorted to, the applicable norm would be seniority in the feeder cadre, to forestall any debate about the rule of merit (in the selection) being the guiding principle.

31. In *Prem Kumar Verma v. Union of India*[11] this court had to consider Rule 303 of the Railway Establishment Manual, which was phrased like Rule 27 in the present case. The extract of the relevant discussion is as follows:

> *"**4.** In view of the rival submissions at the Bar the first question that would arise for consideration is which Rule would govern the inter se seniority. It is undisputed that vacancies arose prior to July 1989 and advertisement for the said post had been issued earlier to July 1989 and finally the Railway Recruitment Board concluded its selection process and selected 29 candidates on 11-7-1989. Therefore, the relevant Rules, as existed then, would govern the inter se seniority. The next question that arises for consideration is which is the relevant Rule that was in force in July 1989. From the materials produced before us it appears that para 303 of the Manual, as it stood in July 1989 is to the following effect:*
>
> > *"303. The seniority of candidates recruited through the Railway Service Commission or by any other recruiting authority should be determined as under:*
> > *(a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts.*
> > *(b) Candidates who do not have to undergo any training, the seniority should be determined on the basis of the merit order assigned by the Railway Service Commission or other recruiting authority."*

[11] (1998) 5 SCC 457

Later on sometime in the year 1990 Rule 303(a) was amended by inserting the following expression:

> *"Those who joined the subsequent course for any reasons whatsoever and those who passed the examination in the subsequent chance will rank junior to those who had passed the examination in earlier courses."*

The aforesaid Rule stood further amended in 1993 which reads thus:

> *"In case however persons belonging to the same RRB panel are sent for initial training in batches due to administrative reasons and not because of reasons attributable to the candidates, the inter se seniority will be regulated batchwise provided persons higher up in the panel of RRB not sent for training in the appropriate batch (as per seniority) due to administrative reasons shall be clubbed along with the candidates who took the training in the appropriate batch for the purpose of regularising the inter se seniority provided such persons pass the examination at the end of the training in the first attempt."*

5. *In view of our conclusion that the posts fell vacant prior to July 1989 and the process of selection was completed and the Recruitment Board selected the candidates on 11-7-1989 the amendment that was introduced on 5-5-1990 and the further amendment of 1993 will have no application and it is the unamended Rule 303(a), as it stood on 11-7-1989, that would govern the case of inter se seniority. The analysis of the provisions of para 303 indicates that where candidates are required to undergo some training after being selected through Railway Service Commission or any other recruiting authority, their seniority is determined on the basis of their respective merit in the examination held at the end of the training period and where candidates do not have to undergo any training, the seniority is determined on the basis of the merit assigned by the Railway Service Commission or other recruiting authority. In the present case the candidates had to undergo training and in fact they had undergone training in batches, as already stated. In that view of the matter their seniority had rightly been determined by the Railway authority on the basis of their respective merit obtained in the examination held at the end of the training*

period. The Tribunal committed error by altering the said seniority on the basis of a rule which was not in existence on the date the vacancy arose and, on the date, when the selection was completed."

32. Keeping in mind that the advertisements (for filling the entire cadre, in both the quotas or streams of recruitment) were issued one after the other, and more importantly, that this was the first selection and recruitment to a newly created cadre, the delay which occurred on account of administrative exigencies (and also the completion of procedure, such as verification of antecedents) the seniority of the promotees given on the basis of their dates of appointment, is justified by Rule 27 in this case. The impugned judgment, in the opinion of this court, is not erroneous; it does not call for interference.

33. In view of the above discussion, the appeals are dismissed, without order on costs.

.....J
[INDIRA BANERJEE]

.....J
[S. RAVINDRA BHAT]

New Delhi,
November 26, 2020.