

Before S. S. Nijjar and S. S. Saron, JJ  
NAWAB SINGH AND OTHERS,—Petitioners

*versus*

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. No.10668 of 1996

31st August, 2005

*Constitution of India, 1950-Arts.14,16 and 226—Punjab Superior Judicial Service Rules, 1963 (as adopted by State of Haryana)—Rl.12-Appointment of petitioners to Haryana Superior Judicial Service—Dispute with regard to fixation of inter se seniority of petitioners, direct recruits and respondent 3, promotee Judicial Officer—No opportunity of hearing to petitioners before changing the seniority to their detriment—Violation of principles of natural justice—Valuable rights with regard to fixation of seniority could not be adversely affected without complying with rules of natural justice—Petition allowed while quashing the notification affecting seniority of the petitioners—However, respondents granted liberty to pass fresh orders after complying with the principles of natural justice.*

*Held*, that seniority of a public servant is a cherished right. It has been declared to be a condition of service and “an important one at that”. The petitioners were not heard before their seniority was adversely affected by notification dated 11th December, 1995. We allow the writ petition and quash the Notification dated 11th December, 1995. The respondents are at liberty to pass fresh orders, after complying with rules of natural justice and hearing the affected parties.

(Paras 15, 17 and 18)

P.S. Patwalia, Senior Advocate with T.P.S. Chawla, Advocate,  
for the petitioners.

Randhir Singh, Senior DAG, Haryana for respondent No. 1.

Jaswant Singh, Advocate for respondent No. 2.

Rajive Atma Ram, Senior Advocate with Ms. Madhu Dayal,  
Advocate for respondent No. 3.

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**JUDGMENT****S.S. NIJJAR. J.**

(1) The petitioners and respondent No. 3 are all Members of the Haryana Superior Judicial Services (hereinafter referred to as "the HSJS"). All of them are presently occupying the posts of District and Sessions Judges within the State of Haryana. The service conditions of the petitioners are governed by the Punjab Superior Judicial Service Rules, 1963, as adopted for the state of Haryana and amended from time to time (hereinafter referred to as "1963 Rules"). The petitioners were appointed to HSJS by direct recruitment. Respondent No. 3 was initially appointed in the Haryana Civil Services (Judicial Branch) [hereinafter referred to as "the HCS (Judicial)"]. Rule 8 of the aforesaid 1963 Rules provides that recruitment to the service shall be made by promotion amongst the members of the HCS (Judicial) who have completed not less than 10 years continuous service as such or by direct recruitment. Rule 8 (ii) provides that out of the total number of cadre posts, 2/3<sup>rd</sup> shall be manned by promotee officers and 1/3<sup>rd</sup> by direct recruits. The Rule further provides that a promotee officer may be given officiating appointment on any post which is to be filled up by direct recruitment till direct recruit is appointed. Seniority of the members of the service shall be determined by the length of continuous service, on a post in the service irrespective of the date of continuation. Under rule 2 (1), "appointment to service" means "an appointment to a cadre post whether on permanent, temporary or officiating basis or on probation". "Cadre post" means "a post whether permanent or temporary in the service". "Member of the service" is defined under Rule 5 to mean "a person who holds a cadre post whether on permanent, temporary or officiating basis or on probation" or "a person who is appointed to a cadre post" in accordance with the provisions of the Rules. "Promoted Officers" is defined under Rule 6 to mean "a person who is a direct recruit and is holding a cadre post". Further under Rule 6 (b), "a promoted officer" means "a person who is appointed to a service by promotion in HCS (Judicial Branch)". "Service" under Rule 7 is defined as "the Haryana Superior Judicial Service". For

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the purposes of ready reference, the extract of the aforesaid Rules may be reproduced as under.—

### RULES

1. **Short title and Commencement.**— (1) These rules may be called the Punjab Superior Judicial Service Rules, 1963.

(2) They shall come into force from the date of their publication in the official gazette.

2. **Definition .**—In these rules, unless the context otherwise requires:

- (1) 'appointment to service' means an appointment to a cadre post, whether on permanent, temporary or officiating basis, or on probation ;
- (2) 'cadre post' means (a post, whether permanent or temporary in the service).
- (3) 'direct recruit' with its grammatical variations and cognate expressions means a person,—

3A. Omitted.

- (a) who at the time of his appointment to the service was not already in Judicial service; or
  - (b) who is appointed to the service in accordance with the provisions of Rule 9 ;
- (4) 'High Court' means the High Court for the State of Punjab and Haryana.
- (5) 'Member of the Service' means a person.—
- (a) who, immediately before the commencement of these rules holds a cadre post, whether on permanent, temporary or officiating basis or on probation; or
  - (b) who is appointed to a cadre post in accordance with the provisions of these rules.
- (6) 'Promoted Officer' means a person,—
- (a) who is not a direct recruit and is holding a cadre post whether on permanent, temporary or officiating basis or on probation, immediately before the commencement of these rules ; or

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(b) who is appointed to the service by promotion from the Haryana Civil Service (Judicial Branch).

(7) 'Service' means the Haryana Superior Judicial Service.

**3. Constitution of service .—**The service shall consist of—

- (a) members of the Indian Civil Service permanently allotted to the Judiciary ;
- (b) persons holding cadre posts, whether on permanent, temporary or officiating basis or on probation, immediately before the commencement of these rules; and
- (c) persons appointed to the service in accordance with the provisions of these rules.

**4. Appointing Authority .—**All appointments to the Service shall be made by the Governor in consultation with the High Court.

5—7      xx                      xx                      xx                      xx

**8. Recruitment to Service .—**Recruitment to the Service shall be made :-

(i) by promotion from amongst the members of the Haryana Civil Service (Judicial Branch) who have completed not less than ten years continuous service as such and have held for an aggregate period of one year or more, any one or more of the following posts during that period of ten years :—

- (a) Senior Sub-Judge,
- (b) Additional Senior Sub-Judge,
- (c) Chief Judicial Magistrate,
- (d) Additional Chief Judicial Magistrate, or
- (e) Judge of a small causes Court :

Provided that the High court may give to a member of the Haryana Civil Service (Judicial Branch) working outside the ordinary line of service proforma, appointment as Senior Subordinate-Judge, if considered suitable and on such

appointment being made such member shall for the purpose of this clause, be deemed to have held the said post for the period for which appointment continues, or.

(ii) by direct recruitment.

2. Of the total number of cadre posts, two thirds, shall be manned by promoted officers and one third by direct recruits:

Provided that nothing in this sub-rule shall prevent the officiating appointment of a member of the Haryana Civil Service (Judicial Branch) on any post which is to be filled up by direct recruitment, till a direct recruit is appointed.

9-11.                   xx                   xx                   xx                   xx

12. **Seniority.**— The seniority inter se of the members of the service, whether direct recruits or promoted officers, shall be determined by the length of continuous service, on a post in the service irrespective of the date of confirmation .

Provided that in the case of two members appointed on the same date, their seniority shall be determined as following :—

- (i) In the case of direct recruitments, the members older in age shall be senior to the younger;
- (ii) In the case of members appointed by promotion seniority of such members in the appointments from which they were promoted; and
- (iii) A member recruited by direct appointment shall be senior to a member recruited otherwise.

(2) We may now notice the relevant facts with regard to the service history of the parties and some previous litigation. The three petitioners were appointed to the service by way of direct recruitment on 23rd August, 1989. On 3rd May, 1988, 12 Officers belonging to H.C.S. (Judicial Branch) were promoted as Officiating Additional District and Sessions Judges. Officers mentioned the list of Promotee Officers (Anexure P-2) at Sr. Nos. 1 to 4 were promoted against existing vacancies. One Subhash Chander Dureja was mentioned at

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Sr. No. 2 of the list of Promotee Officers (Annexure P-2). The name of respondent No. 3 figures at Sr. No. 8 of the order with the remarks "against the vacancy caused by deputation of Shri S.B. Ahuja, Additional District and Sessions Judge as Presiding Officer, Industrial Tribunal, Faridabad. The order (Annexure P-2) further mentions as follows:—

"2. The above promotions are subject to the condition that in the ACRs for the years 1986-87 and 1987-88 in respect of the promotees their integrity is not doubted and these are not less than "B" Plus (Good)."

(3) The promotions were made under Rule 4 read with Rule 8 of the Rules. From this order, it becomes apparent that the Ist Four Officers, namely, P.L. Khanduja, Subhash Chander Dureja, Jai Dev Chandna and Ved Parkash Aggarwal were appointed against the vacancies meant for promotee officers. The other 8 Officers, including respondent No. 3 were promoted not against the vacancies falling to the promotee quota, but against short term vacancies arising due to deputation of certain members of the H.S.J.S to various other posts. Subsequently, three more vacancies arose which fell to the share of promotee. The first vacancy arose again in the year 1988 when Mr. A.P. Chawdhri was elevated as a Judge of the High Court. Two more vacancies arose on 30th November, 1988 and 20th May, 1989, respectively, on retirement of R.N. Batra, Additional District and Sessions Judge and R.K. Gupta, District and Sessions Judge. On the availability of these vacancies, three more persons mentioned in the order dated 3rd May, 1988 (Annexure P-2) were considered to have been promoted against these vacancies. According to the petitioners, the seniority of the Haryana Superior Judicial Service Officers was fixed on 6th March, 1992. Notification No. 101/Gaz.1/IV. P. 10 dated 6th March, 1992 (Annexure P-3) was issued in continuation of the High Court's Notification No. 447 Gaz. 1/VI.P.10 dated 15th October, 1987, fixing the *inter-se* seniority of the Officers of the H.S.J.S, in the order as it was given therein. In this Notification, petitioners' names figure at Sr. No. 7, 8, and 9. Respondent No. 3 figures at Sr. No. 10, in accordance with the ratio of 2/3<sup>rd</sup> and 1/3<sup>rd</sup> between the promotees and direct recruits, Officers at Sr. Nos. 1 to 6 are promotees, 7 to 9 are direct recruits, 10 to 15 are promotees. As noticed earlier, Subhash Chander Dureja belonging to H.C.S. (Judicial Branch) had

been promoted as Additional District and Sessions Judge on 3rd May, 1988 (Annexure P-2). He continued to work as such upto 20th November, 1990 on which date he was reverted. Subhash Chander Dureja challenged his reversion by filing CWP No. 2061 of 1991. This writ petition was dismissed on 17th November, 1993 by a learned Single Judge. The Letters Patent Appeal filed against the aforesaid judgment was dismissed. Thereafter, Special Leave petition filed against the aforesaid Judgment of the Division Bench had also been dismissed by the Supreme Court. During the pendency of Subhash Chander Dureja's writ petition, in a Full Court meeting of this Court held on 4th February, 1992, it was decided as under:—

“The matter regarding confirmation and fixation of seniority of the officers of the Haryana Superior Judicial Service was considered alongwith the note of the Registrar and it was decided that a place be kept reserved for Shri S.C. Dureja at the appropriate place and Sarvshri/Smt. Nirmal Yadav, Arvind Kumar, Surinder Singh, D.D. Yadav, C.R. Goel, S.D. Anand, K.K. Chopra, P.L. Khanduja, J.D. Chandna, V.P. Aggarwal, P.P. Chhabra, S.S.S. Dahiya, B.K. Gupta, Nawab Singh, S.K. Sardana, M.S. Sullar, L.N. Mittal, B.L. Singal, P.L. Goyal, B.S. Sharma, T.C. Gupta, N.C. Nahata, M.L. Sharma, G.L. Goyal, R.C. Gupta, be confirmed with effect from the dates to be worked out by the office”.

(4) Accordingly, a post was kept reserved for Dureja at the appropriate place in the quota of promotee officers. A notification was issued on 6th March, 1992 (Annexure P-3) fixing the inter-se seniority of the direct recruits and promotees. Respondent No.3 filed a representation on 24th April, 1992 claiming seniority over and above the petitioner. The aforesaid representation was rejected by Hon'ble the Chief Justice by his order dated 2nd June, 1992. He again filed a representation on 9th February, 1993 claiming the same relief. The representation was again rejected. In reply to paragraphs 7 to 9 of the writ petition, respondent No.2-Registrar of the High Court has stated that since the writ petition filed by Dureja challenging his reversion was pending on the judicial side and a post in the quota of promotee officers was kept reserved for him at the appropriate place, the request made by respondent No. 3 as contained in representations dated 24th April, 1992 and 9th February 1993 was not accepted by the High Court at that time. Thereafter, respondent No. 3 filed CWP No.1148 of 1995.

He had stated in the writ petition that there was no final decision on his representation dated 9th February, 1993, even though he had been heard personally on 15th March, 1993. According to the petitioners, respondent No. 3 had taken a wholly untenable stand only in a bid to get over the delay of two years during which he had accepted the fact that his representation had been rejected and had accepted the seniority as reflected in Notification dated 6th March, 1992 (Annexure P-3). The writ petition was disposed of by a Division Bench of this Court on 30th March, 1995 with the following order :—

**“ORDER :—**

Mr. Surya Kant, Advocate (with Mr. C.B. Goel, Advocate)

After hearing learned counsel for the petitioner, we dispose of the writ petitioner, with a direction to the Registrar of this Court to intimate to the petitioner the result to the hearing which was granted to the petitioner by the Hon'ble the Chief Justice on March 15, 1993, within fifteen days from the date of receipt of a copy of this order. If the petitioner feels aggrieved by the order, it will be open to him to have his remedy according to law.

Sd/A.P. Chawdhri, Judge

March 30, 1995

Sd/H.S. Brar, Judge”

(5) In accordance with the aforesaid directions of the Division Bench, respondent No. 3 was conveyed the orders passed by the Chief Justice on 16th March, 1993 by letter dated 1st April, 1995 (Annexure P-5). The order conveyed to respondent No.3 was as follows :—

“Civil Writ Petition No.1148 of 1995 titled as L.N.Mittal *versus* State of Haryana and others.

In compliance with the decision, dated 30th March, 1995 of Division Bench of this Court consisting of Hon'ble Justice A.P. Chowdhri and Hon'ble Justice H.S. Brar, in the above noted writ petition, you are hereby informed that after hearing you, the following orders passed on 16th March, 1993 and not on 15th March, 1993 by the Hon'ble Chief Justice on your representation *inter-se* seniority of the members of Haryana Superior Judicial Service.

“Heard. Rejected.”

Sd/— Registrar”



(6) Respondent No. 3 challenged the aforesaid order by filing CWP No. 6975 of 1995. He pleaded that the promotion of the officers in the Notification dated 25th April, 1988 were subject to the condition that in the ACRs for the year 1986-87 and 1987-88 in respect of the promotees, their integrity is not doubted and these are not less than B+ (Good). This condition was imposed by the State Government as the Officers had been considered for promotion in the absence of ACRs for the years 1986-87, 1987-88. When the ACRs for the year 1986-87 and 1987-88 were recorded, Dureja failed to secure B+ or above ACRs. Therefore, Dureja was held to be ineligible for promotion. Dureja was ordered to be reverted. As noticed earlier, the aforesaid order of reversion was challenged by Dureja by filing CWP No. 206 of 1991. He lost the case up to the Supreme Court. Subsequently, Dureja retired from service. Respondent No. 3, therefore, claimed in the writ petition that Dureja is deemed to have never occupied the post in the Superior Judicial Service pursuant to the order dated 25th April, 1983. Respondent No. 3, therefore, claimed the post which was held by Dureja from the date of his reversion on 4th May, 1988 and permanently with effect from 1st June, 1989. According to respondent No. 3, since the petitioners had been recruited with effect from August 23/24, 1989, they would rank junior to him. In this writ petition, the petitioners were impleaded as respondents No. 3 to 5. The High Court filed an affidavit in response to the Notice of Motion in which it was stated as follows:—

“8. That with the dismissal of S.L.P. of Shri S.C. Dureja by the Apex Court, the vacancy/post which was kept reserved for him at the appropriate place, in pursuance to the decision of the Hon'ble Judges dated 4th February, 1992 will now go to next promotee officer and in this way Sarvshri P.L. Khanduja, J.D. Chandna, V.P. Aggarwal, P.P. Chhabra, S.S.S. Dahiya and B.K. Gupta will now be adjusted in the cadre posts on 3rd May, 1988, 3rd May, 1988, 3rd May, 1988, 3rd May, 1988, 5th May, 1988 and 1st December, 1988 respectively and the vacancy available on the retirement of Shri R.K. Gupta with effect from 31st May, 1989 will now go to Shri L.N. Mittal and now Shri Mittal will be adjusted against the cadre post with effect from 1st June, 1989 and will claim his *inter se* seniority above the 3 direct recruits namely Sarvshri Nawab Singh,

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S.K. Sardana and M.S. Sullar, who have been adjusted in the cadre posts on 24th August, 1989, 23rd August, 1989 and 24th August, 1989 respectively.”

(7) On the basis of the aforesaid, the writ petition was disposed of with the following orders:—

“Learned counsel for the petitioners has stated at the bar that the writ petition be dismissed as withdrawn in view of para No. 8 of the written statement filed by the Registrar. We order accordingly.”

(8) The notification No. 366 and 367 Gaz.I/VI.F.10 dated 11th December, 1995 was issued in partial modification of the earlier notifications Nos. 100 and 101 Gaz.I/VI.F.8, dated 6th March and No. 283 Gaz.I/VI.F.10, dated 17th August, 1994. In these notifications dated 11th December, 1995, respondent No. 3 has been shown senior to the petitioners. It is this Notification which is challenged by the petitioners in this writ petition under Articles 226/227 of the Constitution of India seeking the issuance of a writ in the nature of Certiorari quashing the Notification dated 11th December, 1995 (Annexure P-8) by which the petitioners had been made junior to respondent No. 3.

(9) It is the pleaded case of the petitioner in Ground No. 13 (i) that before changing the seniority to the detriment, no opportunity of hearing had been granted to them. In reply to this ground, it is stated by the High Court-respondent No. 2 that the petitioners had been impleaded as respondents in CWP No. 6975 of 1995 filed by respondent No. 3. The petitioners were represented through counsel when the order was passed by the High Court on 6th October, 1995. Therefore, it was not necessary to grant any opportunity of hearing to the petitioners. In Ground No. 13 (iii), it is pleaded by the petitioner that in the writ petition filed by Dureja, no controversy has been raised regarding the fixation of the seniority between the petitioners and respondent No. 3. It is also pleaded that even in the writ petition filed by respondent No. 3, there was no determination of any question of fact or law. The petitioners who had been arrayed as respondent were very much contesting the claim of respondent No. 3. However, the writ petition was disposed of even before petitioner No. 1 could be served and petitioners No. 2 and 3 could file their replies. The High

Court by conceding the case, denied the opportunity to the petitioners to controvert the claim put forward by respondent No. 3. The petitioners claim that respondent No. 3 cannot be made senior to them. The decisions of earlier two writ petitions are not binding on the petitioners as no decisions were rendered on merits with regard to the controversy raised between the petitioners and respondent No. 3. On merits, it is pleaded that Dureja was actually promoted in the year 1988. He held the post up to November, 1990. He drew the salary and discharged the duties against the post. At the time when the petitioners joined the service, he was very much discharging his duties in the Haryana Superior Judicial Service. His name figured in the gradation lists circulated by the State of Haryana. One such gradation list had been attached by the petitioners as Annexure P-9. Therefore, for the first time, the post held by Dureja fell vacant when he was reverted in November, 1990. Since there was no post available up to November, 1990, he cannot be given seniority before that date. The clock cannot be turned back. The petitioners claim that the action of the High Court is violative of Articles 14 and 16 of the Constitution of India. Respondent No. 2, however, has controverted the aforesaid plea on the ground that the post was kept reserved for Dureja till after the dismissal of the SLP which he had filed against the judgments of this Court. The petitioners further claim that the rights of the promotees as well as direct recruits crystalized on 23rd August, 1989 when the petitioners were recruited to the service. At that time, the promotees as well as the direct recruits were holding exactly the number of posts meant for their respective quotas. This vested right of the petitioner cannot be adversely affected by making any person a member of the service with retrospective effect from the date prior to the appointment of the petitioners.

(10) Respondent No. 3 has filed a separate written statement. The pleadings of respondent No. 2 had been reiterated by respondent No. 3. It is stated that the rights of respondent No. 3 who came to occupy the permanent vacancy in the Superior Judicial Service with effect from 1st June, 1989 crystalize on that date for the purpose of determination of *inter-se* seniority amongst the members of the Superior Judicial Service. Since the petitioners were recruited with effect from 23rd/24th August, 1989 could not affect the seniority of respondent No. 3. Respondent No. 3 had been officiating continuously as a Member

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of the Superior Judicial Service as a result of the promotion orders with effect from 25th April, 1988/4th May, 1988. Since the seniority is to be determined on the basis of the continuous length of service on a post, respondent No. 3 is even otherwise entitled for determination of the seniority with effect from 1st June, 1989. It is further stated that promotion of 12 Officers, including four against the permanent vacancies by orders dated 22nd/25th April, 1988 was subject to certain conditions which Dureja did not fulfil and hence he cannot be said to have been validly promoted. Therefore, respondent No. 3 who had been placed at Sr. No. 8 of the order, came to occupy the permanent vacancy falling within the promotee quota with effect from the occurrence of the vacancies i.e. 1st June, 1989. Since the length of service on a post is to determine the seniority, respondent No. 3 is clearly senior to the petitioners. Respondent no. 3 also further pleaded that the vacancies which were caused by the Officers going on deputation, were not short term vacancies, but the permanent in nature and are always occupied by members of the Haryana Superior Judicial Service. These posts are, therefore, permanent addition to the total cadre strength and promotion against the vacancies and has to be counted towards length of service for determining seniority. With regard to the rejection of the representations, it is stated by respondent No. 3 that the same had been rejected summarily, without disclosing any reason. When the representation of respondent No. 3 dated 9th February, 1993 was being considered, he had requested for affording an opportunity of personal hearing, however, the same was rejected without affording any personal hearing to him. Therefore in the second representation dated 9th February, 1993, he had only prayed for personal hearing which was accordingly granted to him on 15th March, 1993, but the decision of the aforesaid personal hearing was never conveyed to him. He was, therefore, constrained to file CWP No. 1148 of 1995. It was only then that respondent No. 2 had conveyed the decision on the personal hearing by letter dated 1st April, 1995. Therefore, respondent No. 3 was not in any manner trying to cover up the delay before filing the writ petition. It is further stated that respondent No. 3 had been erroneously placed below the petitioners. In the reply filed in CWP No. 697 of 1995, the High Court conceded the claim of respondent No. 3. Since the petitioners had been impleaded as parties in the aforesaid writ petition, there is no violation of principles of natural justice.

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(11) We have heard the learned counsel for the parties at length and perused the paper-book.

(12) The pleadings as noticed above by us have been reiterated by the learned counsel for the parties by way of oral submissions.

(13) Mr. Patwalia, learned Sr. Counsel appearing for the petitioners submits that the seniority list had been finalised on 6th March, 1992. Dureja had already been reverted by order dated 6th November, 1980. Therefore, it is not now open to the respondents to contend that the post was, not occupied by Dureja till his reversion on 6th November, 1990. Factually, it has been emphasized by Mr. Patwalia that the promotion of Dureja cannot be said to be non est till it is finally set aside. It was for this reason that the representation submitted by respondent No. 3 had been rejected by Hon'ble the Chief Justice on two occasions. Respondent No. 3 had even been given an opportunity of personal hearing. Learned Sr. Counsel further submits that the orders passed in favour of respondent No. 3 on the concession of the High Court are not binding on the petitioners. In fact, no decision was taken by the High Court on merits. In the writ petition filed by Dureja, no controversy was raised with regard to *inter-se* seniority of the petitioners qua Dureja. He had merely challenged the order of his reversion and prayed for reinstatement. Therefore, no benefit could possibly be given to respondent No. 3. Learned Sr. Counsel further argued that if the vacancy caused by reversion of Dureja is sought to be given to respondent No. 3, the promotees would be in excess of their quota. Therefore, officiating service of respondent No. 3 against the posts which was held by Dureja, cannot be taken into consideration. The concession made by the High Court in the written statement filed in CWP No. 6975 of 1995 cannot bind the petitioners. In any event, the learned Sr. Counsel submitted that the Notification dated 11th December, 1995 is liable to be quashed on the short ground that seniority of the petitioners had been adversely affected, without complying with rules of natural justice. In support of the various submissions, the learned Sr. Counsel relied on numerous judgments. Learned Sr. Counsel relies on **Union of India and others versus Durga Dass and others (1)**, in support of the submission that the

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vacancy having been consumed by Dureja could not now be given to respondent no. 3 with retrospective effect. He relies on the judgment rendered in the case of **S.S. Grewal versus State of Punjab and others (2)**, in support of the submission that there can be no promotion with retrospective effect. Learned Sr. Counsel relies on the judgments rendered in the cases of **State of Bihar and others versus Shri Akhouri Sachindra Nath and others, (3)** **Virendra Chawla versus The Chandigarh Administration and another, (4)** **Canara Bank versus V.K. Awasthy, (5)** **S.L. Kapoor versus Jagmohan and others, (6)** **Vinod Kumar Sharma versus State of U.P. and another, (7)** and **Vijay Kumar Shortriya versus State of U.P. and others, (8)**, in support of the submission that valuable rights of the petitioners with regard to fixation of seniority could not be adversely affected without complying with rules of natural justice.

(14) Mr. Rajive Atma Ram, learned Sr. Counsel appearing on behalf of respondent no. 3 submits that the vacancy had been wrongly reserved for Dureja in the Full Court meeting whilst fixing the seniority of the officers. Had this mistake not been made in the Full Court Meeting, respondent no. 3 would have been entitled to seniority with effect from the date he started officiating on the post, which was occupied by Dureja. No right would have been created in favour of Dureja, as his promotion was de hors the rules. His promotion was, therefore, wholly meaningless. Mr. Atma Ram further submitted that in view of the undisputed facts, it was not necessary to grant any opportunity of hearing to the petitioners. Even if an opportunity of hearing had been granted to the petitioners, the results would have remained the same and respondent no. 3 would have been entitled to the seniority duly assigned to him. Therefore, hearing the petitioners would have been an exercise in futility. In such circumstances, this Court would not issue a writ in the nature of Mandamus directing the respondents to pass fresh orders, after hearing the petitioners. In

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- (2) 1993 (2) S.L.R. 798
  - (3) JT 1991 (2) S.C. 279
  - (4) 1984 (1) S.L.R. 452
  - (5) 2005 (3) S.L.R. 421
  - (6) AIR 1981 S.C. 136
  - (7) (2001) 4 S.C.C. 675
  - (8) (1998) 3 S.C.C. 397

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support of the aforesaid submission, the learned Sr. Counsel has relied on various judgments rendered in the case of **M.C. Mehta versus Union of India and others**, (9) **M. Vemkateswarlu versus The Government of Andhra Pradesh and others etc**, (10) **A.K. Sharma and another. versus Union of India and another**. (11), **Aligarh Muslim University and others versus Mansoor Ali Khan**, (12) and **S.L. Kapoor versus Jagmohan and others**, (supra). Learned counsel further relies on **Union of India and others V. Dr. S. Krishna Murthy**, (13) in support of the submission that there is no vested right to any particular place in the seniority. Therefore, no opportunity of hearing was required to be given to the petitioners. Learned Sr. Counsel further submits that the promotion of Dureja was conditional. Dureja has been held to be not "validly promoted" as his promotion was in violation of the Rules/Instructions. He therefore, submitted that promotions not in accordance with law have been held to be *void-ab-initio*. In support of his submission, learned Sr. counsel relied on the judgments rendered in the case of **Bhupinder Singh versus State of Haryana and others**, (14) and **Bijender Singh versus The State of Haryana and others**, (15). Learned Sr. counsel has further submitted that the quota position has been wrongly worked out as vacancies on account of deputation of District Judges against posts of permanent nature viz. Presiding Officer, Labour Court and Industrial Tribunal have not been taken into account in violation of settled law and that such vacancies are to count towards cadre strength/quota. In support of his submission, learned counsel has relied on the judgments rendered in the cases of **Rudra Kumar Sain and others versus Union of India and others**, (16) and **S.N. Dhingra and others versus Union of India and others**, (17). Learned Sr. Counsel further submitted that the promotion of respondent no. 3 was in accordance with the rules and not in violation

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(9) JT 1999 (5) S.C. 114

(10) JT 1996 (3) S.C. 439

(11) JT 1991 (1) S.C. 113

(12) AIR 2000 S.C. 2783

(13) (1989) 4 S.C.C. 689

(14) 2005 P.L.R. 385

(15) 2005 P.L.R. 559

(16) AIR 2000 S.C. 2808

(17) AIR 2001 S.C. 1535

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of any Rule. The service of respondent no. 3 is continuous and without any break. It, therefore, has to be counted in totality for determination of seniority. In support of his submission, learned Sr. Counsel has relied on the judgments rendered in the case of **State of West Bengal and others versus Aghore Nath Dey and others (18)**, **The Direct Recruit Class II Engineering Officer's Association and others versus State of Maharashtra and others, (19)** and **Swapn Kumar Pal and others versus Samitabhar Chakraborty and others, (20)**. Learned Sr. Counsel further submitted that it is a well settled principle of law that persons promoted/appointed in excess of the quota have to be pushed down in seniority to be placed within their quota. In support of this submission, learned Sr. counsel has relied on the judgment rendered in the case of **A.K. Subraman and others versus Union of India and others, (21)**.

(15) We have noted in extenso the facts as well as the submission made by the learned counsel for the parties, only to highlight the complicated questions of fact as well as law which had to be considered by the appropriate authority before the seniority of the petitioners could be altered to their detriment. It is a settled proposition of law that seniority of a public servant is a cherished right. It has been declared to be a condition of service and "an important one at that". This principle was laid down in the year 1980 by the Supreme Court in the case of **B.S. Yadav and others versus State of Haryana and others, (22)**. In that case, the Supreme Court was dealing with a two fold controversy : first with regard to the seniority between direct recruits and promotees appointed to the Superior Judicial Services of Punjab and Haryana; and second about which the authority had control over district courts and subordinate courts. That is to say the conflict between the power vested in the High Court by Article 235 and the power conferred upon the Governor by the proviso to Art. 309 of the Constitution to make rules regulating the recruitment and conditions of service of persons appointed, *inter alia*, to the Judicial Service of the State. In the context of the aforesaid controversy, in paragraph 47 of the aforesaid judgment, the Supreme Court observed that "seniority is a condition of service and an important one at that". It is for this reason, it has been repeatedly held by the Supreme Court

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(18) 1993 (2) S.L.R. 528

(19) 1990 (2) S.L.R. 769

(20) (2001) 5 S.C.C. 581

(21) 1975 (1) S.L.R. 380

(22) AIR 1981 S.C. 561



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as well as by the High Courts that officer whose seniority is to be adversely affected, should be heard before any order altering seniority of the officer is passed. We may make a reference only to some of the decided cases which are **The General Manager, Northern Railway, Baroda House, New Delhi and another. versus Madan Lal Chopra, (23)** **Mrs. S. Bhan, Head Mistress versus Director, Public Instruction, Haryana and others, (24)**, **Union of India and others versus Madan Lal, Head Clerk, Rajindra Hospital, Patiala, (25)**, **Virender Chawla versus The Chandigarh Administration and another, (supra)** and **Teja Singh and others versus The State of Punjab and others (26)**. We may, however, notice the observations made by the Division Bench of this Court. In the case of **Madan Lal, Head Clerk (supra)**. In paragraphs 4, 6 and 7, it has been observed as under :—

“4. It is undisputed that the respondent was neither heard by the State Advisory Committee nor by the Central Government before his seniority in the said list was changed from No. 19 to 87. Four Clerks, namely, Inder Singh, Suraj Parkash, Krishan Kumar and Raj Kumar Kundra, made representations against the fixing of respondent's seniority and it was on the basis of their representations that the impugned order had been made by the Central Government. The respondent was never informed about the contents of the representations either by the Central Government or by the State Advisory Committee. After referring to two authorities of the Supreme Court, the learned Single Judge observed :—

“I have not the slightest hesitation in holding that while deciding the question of seniority of the petitioner which is likely to affect not only his future chances of promotion but also the holding of his present job from which he has been reverted as a result of the decision of the Central Government, it was obligatory on the Government to either directly or through the Advisory Committee afford an opportunity to the petitioner in such a manner as it was considered proper to make

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(23) 1971 (1) S.L.R. 629

(24) 1982 (2) S.L.R. 782

(25) 1971 (2) S.L.R. 51

(26) 1983 (1) S.L.R. 730

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his representation or submit his explanation in respect of the representation of the four Clerks which they had preferred against the assignment of their respective places in the joint seniority list. The petitioner admittedly was not afforded any such opportunity and it is not possible to understand how his omission to ask for a hearing would affect the matter in as much as there is nothing to show that he was even informed of the existence of any such representation against him. The orders which have been impugned in the matter of the fixation of his seniority in the joint seniority list would have to be quashed for the aforesaid reason.”

6. Now it has been held by the Supreme Court that even in purely administrative orders, which involve civil consequences, the rules of natural justice should be followed and an opportunity granted to the person, who is going to be adversely affected by them. In *State of Orissa versus Dr. (Miss) Binapani Dei*, 1967 SLR 465, it was held—

“It is true that the order is administrative in character, but even an administrative order which involves Civil Consequences as already stated must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State.”

7. Undoubtedly, fixing the seniority of a Government servant to his disadvantage would seriously affect his future chances of promotion in service. Under the principles of natural justice, he must be given notice before revising his seniority in the list to his detriment. In the present case, no such opportunity was given to the respondent either by the State Advisory Committee or the Central Government and he was not even informed about the representations made against him by the four Clerks mentioned above. Thus, the order passed by the learned Single Judge is unassailable.”

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(16) Similarly, in the case of **Virender Chawla** (*supra*), it has been held as follows :—

- “4. It was argued on behalf of the respondents that even if the appellant had been afforded an opportunity of hearing, he could say no more than what he said in this Court, and therefore, it would be utterly futile to quash the impugned order and requires the respondent to go through the formality of giving a hearing to the appellant and then pass the same order.
5. In our view there is no merit in this contention. Their Lordships in **S.L. Kapoor versus Jagmohan**, AIR 1981 SC 136 approvingly quoted the decision in *R. versus Thames Magistrate's Court ex. P. Polemis*, (1974) 1 W.L.R. 1371 in which the applicant obtained an order of certiorari to quash his conviction by a stipendiary Magistrate on the ground that he had not sufficient time to prepare his defence and the Divisional Court rejected the argument that in its discretion, it ought to refuse relief because the applicant had no defence to the charge. We may further quote in this regard the following significant observation of O. Chinnappa Reddy, J., who delivered the opinion for the Bench :

“In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who had denied justice that the person who has been denied justice is not prejudiced.”

(17) From the facts narrated above, it becomes evident that the petitioners were not heard before their seniority was adversely affected by Notification dated 11th December, 1995 (Annexure P-8).

(18) In view of the above, we allow the writ petition and quash the Notification dated 11th December, 1995 (Annexure P-8). The respondents are at liberty to pass fresh orders, after complying with rules of natural justice and hearing the affected parties, if so advised. No costs.