

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

(Jammu cases taken up through virtual mode)

Reserved on 03.01.2025

Pronounced on 03.04.2025

WP(C) No. 2774/2023

c/w

WP(C) No. 895/2023

WP(C) No. 1182/2023

Union Territory of J&K and anr.

.....Appellant(s)/Petitioner(s)

Through: Mr. Mohsin Qadri, Sr. AAG with
Ms. Nadia Abdullah, Assistant Counsel
Mr. T. M. Shamsi, DSGI

vs

Ghulam Nabi Itoo and others

..... Respondent(s)

Through: Mr. Jehangir Iqbal Ganie, Sr. Adv.

WP(C) No. 865/2021

c/w

WP(C) No. 784/2021

WP(C) No. 905/2021

WP(C) No. 949/2021

WP(C) No. 1073/2021

WP(C) No. 1973/2021

WP(C) No. 2720/2022

WP(C) No. 941/2023

WP(C) No. 942/2023

WP(C) No. 961/2023

WP(C) No. 962/2023

Mukhtar Ahmed Choudhary and
another

.....Appellant(s)/Petitioner(s)

Through: Mr. Z. A. Shah, Sr. Adv. with
Mr. A. Hanan, Adv.
Mr. Sunil Sethi, Sr. Adv. with
Mr. Parimoksh Seth, Adv.
Mr. Abhinav Sharma, Sr. Adv. with
Mr. Abhirash Sharma, Adv.
Mr. R. A. Jan, Sr. Adv. With
Mr. Suhail Mehraj and Mr. Syed Mohd Yahya,
Advocates

WP(C) No. 2774/2023
a/w connected matters

Mr. M. Y. Bhat, Sr. Adv. with
Mr. Sajid Ahmed Bhat, Adv.
Mr. Javid Iqbal Balwan, Adv.
Mr. Dheeraj Choudhary, Adv.

vs

Union Territory of J&K and others

..... Respondent(s)

Through: Mr. Mohsin Qadri, Sr. AAG with
Ms. Nadia Abdullah, Assistant Counsel
Mr. Raman Sharma, AAG
in WP(C) No. 905/2021
Mr. Amit Gupta, AAG
Mr. Ravinder Gupta, AAG
Mr. T. M. Shamsi, DSGI

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

Per Oswal-J

1. There are mainly two groups of petitioners before this Court. One group comprises the petitioners in WP(C) 905/2021 & WP(C) 1973/2021, who are the appointees of the year 1992, though they entered the feeding services of the Jammu and Kashmir Administrative Service (JKAS) through Combined Competitive Examination held between 1980-1982. The other group comprises the petitioners in WP(C) No. 865/2021, WP(C) No. 941/2023, WP(C) No. 784/2021, WP(C) No. 2720/2022, WP(C) No. 942/2023, WP(C) No. 962/2023, WP(C) No. 1073/2021 and WP(C) No. 961/2023, who are the appointees of the feeding services of JKAS of the year 1999. The learned Central Administrative Tribunal has decided all the application/petitions filed by the appointees of the years 1992 & 1999

by a common judgment dated 30.02.2021 even though the appointees of the year 1992 had raised additional grounds other than the ones urged by the appointees of the year 1999 that were not considered by the learned Tribunal.

2. WP(C) No.1973/2021 has been filed by the petitioner, who was inducted in JKAS by selection from officers of Technical Services in the year 2012. Though the subject matter of this writ petition is the order dated 15.04.2021 but the order dated 30.03.2021 has formed the basis for passing of order dated 15.04.2021.
3. In all these petitions, the petitioners are aggrieved of the order dated 30.03.2021 passed by the learned Central Administrative Tribunal (CAT) Jammu Bench, whereby the applications/petitions filed by the petitioners challenging the Final Seniority list dated 24.06.2011, were dismissed and Rule 15(4) of the Jammu and Kashmir Administrative Service Rules (for short the 'Rules of 2008') and Clause(i) of Proviso thereto, were held to be illegal and contrary to law.
4. In the writ petitions bearing Nos. WP(C) No. 2774/2023, WP(C) No. 895/2023 and WP(C) No. 1182/2023, impugned is the order dated 25.01.2023 passed by the learned Tribunal, whereby the application filed by the private respondents was allowed and seniority list dated 07.04.2021 issued by the official respondents was quashed and the seniority of the private respondents as fixed in the seniority list dated 24.06.2011 was restored.

5. We propose to dispose of all these connected petitions by a common judgment though we will be dealing with the additional grounds urged by the petitioners who are the appointees of the year 1992 separately.

Factual matrix:

6. The petitioners have sought quashing of order dated 30.03.2021 and also quashing of the subsequent orders issued by the official respondents from time to time including SO No. 133 dated 15.04.2021 by virtue of which Rule 15(4) of the Rules of 2008 has been omitted. A further relief has also been sought by the petitioners to direct the official respondents to maintain the seniority of all the officers strictly in accordance with the tentative seniority list of 2010 issued vide order dated 485-GAD of 2010 dated 21.04.2010. The petitioners have also sought a direction upon the official respondents to review the omission of Rule 15(4) of the Rule of 2008 and further that the official respondents be directed to enforce the said rule.
7. The grievance projected by the petitioners in these petitions is that vacancies to the Time Scale posts of JKAS from the year 2004 to 2007 were available but were filled up only in the year 2008 through the medium of various orders. After those orders were issued, the Government issued SRO 386 of GAD dated 01.12.2008 nomenclated as the Jammu and Kashmir Administrative Service Rules, 2008, thereby repealing the Rules of 1979. After the New Rules came into force, the respondent Nos. 1 and 2 vide Government order No.485-GAD of 2010 dated 21.04.2010 issued the tentative seniority

list of Time Scale Officers of JKAS appointed to the services against the vacancies, which were available with effect from 01.04.2004 till 31.12.2008. The said tentative seniority list was objected to by some of the members of the Time Scale of JKAS and the Government vide order No. 1076-GAD of 2010 constituted a committee of three officers to examine the issue and consider the representations. The said Committee submitted its report on 15.02.2011 and on 24.06.2011 the Government issued the final seniority list vide order No. 743-GAD of 2011 dated 24.06.2011. Some of the members including the petitioners herein assailed the seniority list issued vide order No. 743-GAD of 2011 dated 24.06.2011 through the medium of various writ petitions which were transferred to the learned Central Administrative Tribunal. When SRO 386 of 2008 was issued by the Government, some members of the service also assailed the said SRO through the medium of other writ petitions. Ultimately, all the writ petitions were transferred to the Tribunal and the learned Tribunal vide its judgment dated 30.03.2021 disposed of all the petitions in the manner as mentioned above.

8. Precisely, the contentions of the petitioners are that the Rule 15(4) of the Rules of 2008 was provided to undo the injustice meted out to them by not filling the vacancies, which arose in the year 2004-2008 and further that they are entitled to be inducted into Time Scale of JKAS from the date, the vacancies were available, meaning thereby

that they are entitled to retrospective promotion from the date, vacancies arose for their services.

9. The petitioners/appointees of 1992 Batch, besides raising the grounds as narrated above, have also submitted that in terms of Rules of 1979, the petitioners had completed their five years' service in the relevant pay scale and had thus acquired eligibility for induction into the Time Scale of JKAS between the years 1997 to 2008. Induction from the Revenue Service (one of the feeding services) into JKAS took place in the year 1997 and thereafter in the year, 2008. No officer from the Revenue Gazetted Service, though eligible under Rules, was inducted into Administrative Service after 1997 and before 2008. During that period, the Selection Committee constituted under Rule 6 of the Rules of 1979 met during the years, 2000, 2002, 2003, 2004, 2005, 2006 and 2007 but it did not consider any of the members of the Revenue Gazetted Service for appointment to the JKAS. In the year, 2004, many officers of the other feeding services came to be inducted in the Time Scale of JKAS vide Government order dated 24.01.2004 but the petitioners were not considered for induction into Administrative Service though all the petitioners were eligible, and slots were also available in the Administrative Service. It is also stated that in the year 2002, the counsel for the Government on 30.06.2002 had submitted before the Division Bench of this Court in LPA No. 412/2001 that 120 vacancies were available in the Administrative Service out of which 18 posts fell to the share of Revenue Gazetted Service and the

Division Bench after taking note of the submissions made by the Government counsel, permitted the official respondents to go ahead with the induction into JKAS and to consider the appellants therein irrespective of their seniority but on their own merit and it was also directed that the consideration of the Revenue Gazetted Service be kept in a sealed cover till further orders. The official respondents did not bother to comply the order of the Court and as such, no consideration was accorded to the members of Revenue Gazetted Service. The petitioners were ultimately considered and appointed in the Time Scale of JKAS vide Government order dated 22.07.2008. It is also urged by the petitioners that they were sanctioned to hold the charge of Assistant Commissioners, SDMs and Collectors etc. which posts fall in the cadre of JKAS and they were holding the charge of these posts from 2004/2005 and as such, in any case, they are entitled to claim their seniority from the date they were holding the charge of cadre posts.

10. The official respondents have filed the response stating therein that the validity of the seniority list issued by the official respondents has rightly been determined by the Central Administrative Tribunal and the same has been implemented by the Government in letter and spirit, as such, the present petitions are not maintainable. It is stated that the petitioners were appointed in terms of Rules of 1979. The Government initiated the process of induction of eligible officers of 15 services to the JKAS in respect of the appointees of 1999 Batch as per

availability of slots earmarked for each feeding service and as per their eligibility. Rules 5(3) and 6 of the 1979 Rules provide for selection committee to prepare a select list for appointment to the Time Scale on the basis of merit and suitability as provided under Rule 8 of the Rules of 1979. During the years 2005, 2006 and 2007, the induction of officers of the various departmental feedings services of the year 1999 against the slots which became available from 2004 onwards could not be considered on account of various reasons mostly procedural in nature and during that period, neither the officers of the 1999 Batch nor the officers from subsequent Batch of 2001, though they had acquired eligibility in the year 2006, were inducted in to Time Scale of JKAS. The Government after following due procedure and recommendations of the Selection Committee appointed the officers of 1999 Batch to the Time Scale of JKAS in terms of 1979 Rules, however, the Government issued orders with regard to the promotion of some of the officers of the 1999 Batch, even though enough vacancies/slots were not available at the relevant point of time. This was done to protect the interests of those officers, who would have otherwise become junior to the officers of the subsequent batches of the feeding services and the Government decided to utilise the leave/reserve vacancies/slots and some anticipated slots, which would have accrued in the year 2008 i.e. till 01.01.2009. The decision was taken to avoid “lag behind class of officers of 1999 Batch”, otherwise juniors would have taken march over the senior officers being eligible

against the vacancies. A tentative seniority list of 239 officers appointed to the Time Scale of the JKAS between 01.01.2004 to 31.12.2008 was notified vide Government order dated 21.04.2010. 110 representations were received against the said tentative seniority list wherein substantial issues were raised. The Government appointed three members committee headed by Sh. Samuel Varghese IAS vide Government order dated 24.09.2010. The said Committee submitted its report alongwith recommendations to the Government on 15.02.2011. While the issue of finalising the seniority list was under active consideration with the General Administrative Department, some officers approached this Court through SWP No. 1215/2011, wherein an interim order was passed, and the respondents therein were directed to consider the case of the petitioners therein for fixation of their seniority in terms of Rule 15(4) of the Rules of 2008. In compliance to the aforesaid directions of this Court, it was decided that the petitioners, who were appointed to the Time Scale of JKAS under the Rules of 1979 and not under the Rules of 2008, would be entitled to seniority in terms of Rules of 1979 and not in terms of Rules of 2008. Thereafter, a final seniority list of officers was issued vide Government order No. 743-GAD of 2011 dated 24.06.2011, which was issued without prejudice to the cases of the officer/officers pending in any court of law.

11. The official respondents have given the details of litigations which may not be relevant for the purpose of consideration of the present

controversy. It is also the stand of the official respondents that it is not mandatory for the Government to set up a selection committee for each calendar year for preparing a select list for promotion to the Time Scale level post. As per Rule 6 of the Rules of 1979, it is for the Government to constitute a selection committee on every occasion/every time whenever it deems fit. The discretion is always with the Government to constitute a selection committee whenever an occasion arises, but whenever the selection committee is constituted and meets, it will prepare a select list of all vacancies available on the day of its meeting. Occasion arose in the year, 2008 when the selection committee met. The selected candidate cannot have any plea of retrospective promotion from the date on which the slots/vacancies were available for their feeding cadre in the earlier /preceding calendar years and it is the discretion of the Government to fill up the vacancies occurred in any preceding or earlier calendar year. The promoted member shall have the claim for the post on the date when he joins the said post and not from the date on which the said vacancy arose for their feeding service.

12. The official respondents have objected the claim of the petitioners, who are appointees of 1992, on the ground that the petitioners were appointed in the year 1992 after the judgment was passed by the Hon'ble Apex Court and thereafter the appointees of 1992 including the petitioners initiated the second round of litigation for fixation of their seniority retrospectively i.e. the date from which the candidates who qualified the

Combined Competitive Examination 1981 were appointed to service. The Division Bench of this Court on 02.06.1999 decided the aforesaid controversy by a common judgment and the petitioners were held entitled to claim notional seniority with effect from the date the other direct recruits came to be appointed i.e. 24.09.1984. The aforesaid judgment of the Division Bench was assailed before Hon'ble the Apex Court and Hon'ble the Apex Court vide its judgment dated 26.02.2003 upheld the judgment of the Division Bench and in compliance to the same, the seniority of the petitioners was fixed with effect from 24.09.1984. The Hon'ble Supreme Court in its judgment dated 26.02.2003 had also ordered that no such seniority shall disturb the promotions effected in the service with effect from 14.09.1984 till the issuance of the order including the promotions made to JKAS. Thereafter, a third round of litigation was initiated by the direct recruits of the Revenue Gazetted Service challenging the grant of notional seniority with effect from 24.09.1984 to the petitioners and all the petitions and appeals related to the matter were clubbed by the Division Bench of this Court and finally disposed of on 21.09.2006, whereby various directions were issued thereby upholding the claim of the direct recruits to the substantive seniority with all consequential benefits with effect from 24.09.1984. The said judgment was assailed by the Government before the Hon'ble Apex Court and the Hon'ble Apex Court set aside the directions issued by the Division Bench and observed that though the dispute of seniority was confined mainly to J&K

Revenue (Gazetted) Service but directions of the High Court would unsettle the long settled positions and cause dislocation across the board in all services, even when there was no controversy earlier and the Hon'ble Apex Court upheld the decision of the Government *qua* the seniority of the direct recruits and promotees as settled in terms of order dated 04.09.2003. The seniority of the direct recruits including the petitioners in the J&K Revenue (Gazetted) Service was under adjudication, as such, they could not be considered for induction into the Time Scale of JKAS but was lastly settled by the Hon'ble Supreme Court. It is stand of the official respondents that once the issue of seniority at the level of J&K Revenue Gazetted Service stands settled by the Supreme Court, the reference to any claim on that aspect is thus misconceived. The official respondents have stated that as required in terms of Rule 7 of JKAS Rules of 1979, the proposal of the eligible member of the service for appointment by promotion to Time Scale of the JKAS was not received from the Revenue Department considering the seniority dispute between the members of the service, however, in the year, 2008, a proposal on the basis of the seniority issued in year 2007 vide Government order dated 18.04.2007 was received and accordingly, the members of the service were included in the select list by the selection committee. It is also stated that pending disposal of the writ petitions filed by the two groups of the petitioners, High Court on 30.09.2000 passed an interim direction allowing the Government to make appointments/promotions on officiating basis in order to run the

administration and Government offices. All the writ petitions were disposed of by the learned Single Judge on 08.11.2013 and liberty was granted to the petitioners claiming induction against the slots of years 2004, 2005, 2006 and 2007 to seek review of their appointments by filing formal review petitions before the concerned authorities in terms of proviso (i) of sub-rule (4) of Rule 15 of the Rules of 2008 with a direction to the Government to consider their review petitions and dispose of the same in light of the observations made by the learned Single Judge in its judgment. The Government filed Letters Patent Appeal bearing No. 20/2014 against the judgment, as did the 49 persons inducted against leave/training reserve, who were also aggrieved of the judgment and appeals were finally decided by the Division Bench vide judgment dated 18.04.2016 whereby the judgment of the Single Judge was set aside, and the matter was remanded back for fresh adjudication. When the matter was pending consideration before the Court, the Government constituted a committee vide Government order No. 203-GAD of 2017 dated 20.02.2017 for suggesting a road map for resolving the seniority issue of the members of JKAS. The Committee submitted a report on 31.03.2017 which was found to be inconclusive and accordingly, a new Committee was constituted vide Government order dated 01.04.2020 to examine the seniority issue of the members of the JKAS appointed to the Time Scale of the service between 01.01.2004 to 01.12.2008. The Committee submitted its report on 16.05.2020 which was accepted by the competent authority. The final seniority list was placed before the Establishment-

cum-Selection Committee in its meeting on 22.06.2020 for consideration and for making recommendations in the matter. Establishment-cum-Selection Committee accordingly considered and recommended the redrawn seniority of the members of JKAS appointed between 01.01.2004 to 01.12.2008. The recommendations of the Establishment-cum-Selection Committee were approved by the competent authority for notification of draft/redrawn seniority list of the members of the JKAS appointed to the service between 01.04.2004 to 01.12.2008. Various objections were received against the draft of redrawn seniority and while the process of examining the representation was under consideration, the aforesaid seniority list was also challenged before the learned Tribunal in OA 94/2020 and OA No. 95/2020 and in TA No. 3481/2020, wherein the validity of Rule 15(4) of the Rules of 2008 was also challenged. It is stand of the officials respondents that the seniority list of 2011 issued vide Government order No. 743-GAD of 2011 dated 24.06.2011 is in accordance with the rules as well as general principles of reckoning of the seniority, except to the extent of modifying the seniority for placing the appointees/promotes against leave and training vacancies/anticipated vacancies etc. below those who were promoted/appointed against regular vacancies.

13. The petitioners who are the appointees of year 1992 batch have filed the rejoinder stating therein that the petitioners for the first time were placed in the Time Scale of JKAS under Rules of 1979 in the year, 2008 and thereafter placed in the Selection Scale in the year, 2011 and 2013. The

petitioners have mentioned the pensionary benefits being received by them and have stated that the candidates who were offered employment in the year 1984 are receiving pensionary benefits either in Super Time Scale of JKAS or as IAS retirees and their pensionary benefits are much higher than what is being paid to the petitioners. It is further stated that in order to do justice, supernumerary posts will have to be created in various scales in recognition of the rights of the petitioners and the placement of the petitioners be accordingly made so that no benefit legally available to the petitioners and enforceable in law is denied there to.

ARGUMENTS:

14. Mr. Z. A. Shah, learned Senior Counsel appearing for petitioners, who are the appointees of 1992, has argued that the Rule 15(4) of the Rules of 2008 was meant to do justice with the petitioners as despite eligibility and availability of vacancies/slots for their respective feeding departmental services, they were not inducted to the Time Scale of JKAS with effect from the years 2004-2007. He has further argued that the official respondents did not comply with the directions issued by the Division Bench in the year, 2002 for keeping the seniority in a sealed cover and further that the petitioners of 1992 Batch had been working against the posts meant for the JKAS from the years 2004-2005 and even if the Rule 15 (4) of the Rules of 2008 is ignored, still the petitioners can be granted the benefit of seniority from the date they were working on cadre posts, though on incharge

basis. Mr. Shah has also placed much reliance upon the judgments of the Hon'ble Supreme Court of India in cases of **State of J&K v. Javed Iqbal Balwan¹, and Suraj Prakash Gupta and others v State of J&K and others²**.

15. Mr. R. A. Jan, learned Senior Counsel appearing for some of the petitioners, who are the appointees of 1992, has argued that the fault, if any, was of the official respondents that they did not make any induction into the Time Scale of JKAS and the petitioners, who are similarly situated to their counterparts of other feeding services to the JKAS and were selected pursuant to the same selection process, have been discriminated and the discrimination is writ large in the pensionary benefits being received by them. He has placed reliance upon the judgment of the Hon'ble Supreme Court of India in **P.N. Premachandran v. State of Kerala³**.
16. Mr. M. Y. Bhat learned Senior Counsel appearing for some of the petitioners, besides reiterating the submissions made by Mr. Shah, learned Senior Counsel, has drawn the attention of this Court towards the minutes of the meetings of the various meetings to demonstrate that the vacancies were available for the petitioners right from the years 2004-2007 and the petitioners were eligible for induction to the Time Scale of JKAS from the date of acquiring of their eligibility but the official respondents did not make any induction for the years 2004

¹(2009) 4 SCC 529

²(2000) 7 SCC561

³(2004) 1 SCC 245

to 2007, as a result of which, the petitioners have been deprived of their valuable right to a higher post when they were possessing the requisite eligibility and the slots for their respective feeder services were also available. Mr. Bhat has relied upon the judgment of the Hon'ble Supreme Court in case '**Vijay Singh Charak v. Union of India**'⁴ to substantiate that the official respondents could not have clubbed the vacancies for the various years for the purpose of issuance of common seniority list and the seniority of the petitioners is to be reckoned from the date when the vacancy had arisen subject to the fulfilment of other eligibility conditions. Mr. Bhat has further argued that the private respondents, namely, Dr. Ghulam Nabi and Mr. Tarik Ahmed Ganie have no *locus* to question the entitlement of the seniority of the petitioners, namely, Mukhtar Ahmed and Rajesh Kumar Shawan with effect from the year 2006 and 2007 respectively as both the private respondents had not acquired the eligibility for induction into the Time Scale of JKAS in the year 2006 and 2007. He has further argued that Mohd. Issac Shah and Pankaj Mangotra also have no *locus standi* to question the validity of Rule 15(4) of the Rules of 2008 as their quota in the Time Scale of JKAS stood already exhausted.

17. Mr. Sunil Sethi, learned Senior Counsel for some of the petitioners and other counsels have also argued on similar lines.

⁴(2007) 9 SCC 743

18. *Per contra*, Mr. Amit Gupta, learned AAG appearing for the official respondents has argued that the benefit of seniority cannot be granted to the petitioners retrospectively in absence of any such Rule in the Rules of 1979 and so far as Rule 15(4) of the Rules of 2008 is concerned, it stands omitted vide SO. No.13 dated 15.04.2021. He has further argued that the Government has accepted the judgment of the learned CAT. He has placed reliance upon the judgment of the Hon'ble Supreme Court of India in **State of Uttranchal and another v Dinesh Kumar Sharma**⁵.
19. Mr. Ravinder Gupta, learned AAG has argued that in case of the petitioners, who are the appointees of 1992 batch, the controversy stands already settled by the Hon'ble Supreme Court of India and now, the petitioners cannot raise the issue of discrimination vis-a-vis their counterparts from other feeding services.
20. Mr. Jahangir Iqbal Ganie, learned Senior Counsel appearing for the private respondents has argued that the Rules of 2008 were put into operation with effect from 01.12.2008 and the petitioners as well as private respondents were inducted into Time Scale of JKAS prior to 01.12.2008 and by operation of the Rules of 2008, the rights which had vested with private respondents were taken away by Rule 15(4) of the Rules of 2008 and proviso (i) to the said Rule, which vested the power with the Government to grant the benefit of seniority to the eligible members of the service from the date of availability of the

⁵(2007) 1SCC 683

vacancies. He has placed reliance upon the judgment of the Hon'ble Supreme Court of India in "**Sunaina Sharma and others v State of J&K and others**"⁶.

21. Heard learned counsel for the parties and perused the record.

ANALYSIS:

22. The Jammu and Kashmir Administrative Service Rules of 1979 (for short 'the Rules of 1979') provide that Jammu and Kashmir Administrative Service (for short 'the JKAS') shall comprise of following scales of pay:

- (i) Super time Scale
- (ii) Special Scale
- (iii) Selection Grade
- (iv) Time Scale
- (v) Junior Scale

23. In terms of Rule 5(3) of the Rules of 1979, out of total vacancies to Time Scale posts occurring in a calendar year, 65% of the vacancies are required to be filled by promotion from departmental feeding services, 10% of the vacancies are to be filled up by a selection from amongst the persons of outstanding ability and merit serving in connection with the affairs of the State, in departments/services but not from amongst the members of the feeding services and remaining 25% of the vacancies are required to be filled up by promotion of the Junior Scale JKAS officers, subject to their eligibility after completion of 4 years of service.

⁶2017 AIR SC 5101

24. The petitioners before this Court are the members of the feeding services, who were promoted to the Time Scale of JKAS on various dates. The petitioner in WP(C) No.1973/2021 has been selected from the service other than the feeding services in terms of 10% vacancies as mentioned above. A member of Junior Scale of JKAS is to be appointed by the direct recruitment. In terms of Rule 3(4) of the Rules of 1979, a member of the junior scale of JKAS and a member from feeding services can be promoted to the Time Scale of the JKAS, subject to the various conditions including the one that the post in the Time Scale of the JKAS for the relevant service is available. There are 16 feeding services, the members of which are eligible to be promoted to the Time Scale in terms of Rule 3 (4) of the Rules of the 1979.
25. The main common grievance projected by the petitioners in the present petitions is that after rendering the requisite period of service in the feeding services to the Time Scale of JKAS, the petitioners became eligible for promotion to the Time Scale of JKAS and despite the availability of the slots for their respective services in the Time Scale of JKAS, the petitioners were not promoted and to undo the injustice meted out to the petitioners, the Government came up with the Rules of 2008 more particularly the Rule 15(4) of the Rules of 2008 and Clause-(i) of proviso thereof.
26. A perusal of the impugned order reveals that the learned Tribunal had framed the following issues for its adjudication:

- (i) Whether the final seniority list dated 24.06.2011, suffers from any legal or factual infirmity;
- (ii) Whether the KAS 2008 Rules, would cover the State of affairs that existed before they came into force;
- (iii) Whether Rule 15(4) and clause(i) of the proviso thereof are legally valid; or whether they are liable to be set aside;
- (iv) Whether the exercise undertaken by the Government in constituting a committee and publishing a further separate seniority list in 2020 is valid and legal; or
- (v) Whether leave vacancies can be treated as Part of cadre.

27. The learned Tribunal while upholding the validity of final seniority list of 2011 held that the Rules of 2008 will apply only to the inductions made into the JKAS after 01.12.2008 and declared Rule 15(4) of Rules of 2008 and Clause-(i) of the proviso thereof as illegal and contrary to law. So far as issue No. (v) is concerned, the learned Tribunal observed that Rules of 1979 did not provide for inclusion of any leave or training vacancy for the purpose of promotion, but the promotions/appointments so made cannot be treated as invalid and as such, appointees/promotees cannot be placed above those who were appointed/promoted against regular vacancies.

Common issues for adjudication:

28. First, we propose to deal with the common issues involved in these petitions filed by the petitioners who are appointees of the year 1999 and 1992.

Issue No. 1:

Whether rule 15(4) of the Rules of 2008 and Clause-(i) of the proviso thereof is illegal as it snatches away the vested right in favour of some

members of the service vis-a-vis other members who were inducted into JKAS against the vacancies of the years 2004, 2005, 2006 and 2007?

Issue No. 2:

If the answer to issue No. 1 is not in affirmative, whether the petitioners can be granted the benefit of promotion from the date when the vacancy had arisen for their respective departmental feeding services in the Time Scale of JKAS?

Issue No. 1

29. **Whether rule 15(4) of the Rules of 2008 and Clause-(i) of the proviso thereof is illegal as it snatches away the vested right in favour of some members of the service vis-a-vis other members who were inducted into JKAS against the vacancies of the years 2004, 2005, 2006 and 2007?**

It would be proper to extract the Rule 15(4) and Clause (i) of proviso of Rules of 2008, which are as under:

“15(4) Where select list cannot be prepared for the members of any departmental feeding service in any particular calendar year despite availability of vacancies owing to the procedural delay, such members, when finally included in the select list at any later date, shall be appointed to the service from the date on which the vacancy was allocated to such feeding service.

Provided that

(i) cases of persons appointed against the vacancies of 2004, 2005, 2006 and 2007 shall be reviewed in terms of sub-rule (4) above if their appointment has taken place at a subsequent date.”

30. This is an admitted fact that the petitioners as well as the private respondents were inducted into the Time Scale of JKAS prior to 01.12.2008, when the Rules of 2008 were put into operation thereby repealing the Rules of 1979, meaning thereby that the petitioners were

inducted into Time Scale of JKAS under the Rules of 1979. It is the case of the petitioners that they were eligible for induction to the Time Scale of JKAS for the vacancies in the year 2004 to 2007 as per the slots available for their services but the petitioners were not inducted into the Time Scale of JKAS and were inducted into the Time Scale of JKAS only in the year 2008. So far as Rules of 1979 are concerned, there is absolutely no provision prescribing the reckoning of date of induction/promotion to the Time Scale of JKAS from the date of availability of vacancy in the Time Scale of JKAS for the relevant feeding departmental services, when the candidate is promoted in any year subsequent to the availability of vacancy where select list in any calendar year could not be prepared due to procedural delay. Clause (i) of proviso to Rule 15(4) of Rules of 2008 provided that the cases of persons appointed against the vacancies of the years 2004, 2005, 2006 and 2007 shall be reviewed in terms of sub-rule (4) if their appointments have taken place at a subsequent date. In fact, this provision vests the power with the Government to review the appointment of the petitioners in the Time Scale of JKAS, if they are inducted in the Time Scale of JKAS against the vacancies for the years 2004, 2005, 2006 and 2007 but from a date subsequent to the availability of vacancies for their respective feeding services in the Time Scale of JKAS. The practical effect of this sub-rule and proviso thereof is that some appointees of 1999 Batch inducted/promoted against the vacancies/slots of the year-2004, 2005, 2006 and

2007 would figure higher in the seniority list of Time Scale posts of JKAS than the others, who were inducted against the vacancies of the year-2008, though all of them got inducted in to Time Scale of JKAS in same calendar year. But for this sub-rule and proviso thereof, some members of time scale of JKAS, who though are inducted against the vacancies of 2004, 2005, 2006 and 2007 may figure below the other members appointed against the vacancies of 2008. The operation of Rules of 2008 provides the benefit of appointment to the members of the Time Scale of JKAS, who were inducted into the JKAS for the vacancies of the years 2004, 2005, 2006 and 2007 vis-a-vis the members of Time Scale of JKAS appointed against the vacancies of 2008, from the date of availability of vacancies and not from the date of order of appointment. In absence of this sub-rule and proviso thereof, they would not get any benefit, and they may figure lower in the seniority list against the other members of the service inducted into JKAS even against the vacancies for the year, 2008. All the orders of the promotions of the petitioners into Time Scale of JKAS were issued in the year, 2008 but prior to 01.12.2008. In this view of the matter, Rule 15(4) of the Rules of 2008 and Clause (i) of the proviso to the above Rule would snatch away the vested right in favour of the private respondents. This Court is of the considered view that as the petitioners were appointed/inducted in to Time Scale posts of JKAS under the Rules of 1979, so they were required to be governed by the Rules of 1979 only. Rule 15(4) of the Rules of 2008

and Clause (i) of the proviso, in fact had the effect of taking away the vested right of some of the members of the service and as such, the same is illegal.

31. In the above context, it would be beneficial to take note of the observations of the Hon'ble Supreme Court of India in '**V. Vincent Velankanni v. Union of India**'⁷, which are as under:

“43. If a Government Order is treated to be in the nature of a clarification of an earlier Government Order, it may be made applicable retrospectively. Conversely, if a subsequent Government Order is held to be a modification/amendment of the earlier Government Order, its application would be prospective as retrospective application thereof would result in withdrawal of vested rights which is impermissible in law and the same may also entail recoveries to be made. The principles in this regard were culled out by this Court in a recent judgment of *Sree Sankaracharya University of Sanskrit v. Dr. Manu*, in the following terms:—

“52. From the aforesaid authorities, the following principles could be culled out:

i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.

ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.

iii) An explanation/clarification may not expand or alter the scope of the original provision.

iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.”

(emphasis added)

In view of the aforesaid discussion, we hold that the learned Tribunal is right in striking down Rule 15(4) of the Rules of 2008. As a matter of

⁷2024 SCC OnLine SC 2642

fact, the Government too realised its folly and vide S.O. No.133 dated 15.04.2021 notified the deletion of Rule 15 (4) of the Rules of 2008. The issue is answered accordingly.

Issue No. 2:

32 **If the answer to issue No. 1 is not in affirmative, whether the petitioners can be granted the benefit of promotion from the date when the vacancy had arisen for their respective departmental feeding services in the Time Scale of JKAS?**

The petitioners were inducted into Time Scale of JKAS in the year-2008 only and there is no provision in the Rules of 1979 which provides for grant of benefit of appointment/seniority to a member of a JKAS service anterior to the date of his induction into Time Scale of JKAS. It was contended by Mr. M.Y Bhat, learned Senior Counsel appearing for some of the petitioners that it is obligatory for the selection committee to make selections/inductions for the calendar year and as such seniority of inducted officers is to be determined on the basis of year of vacancy as shown in the select list of that year in terms of Rule 16(4) of the Rules of 1979. A perusal of Rule 16 (4) of the Rules of 1979 would reveal that the *inter se* seniority of the direct recruits on their promotion to the Time Scale, vis-a-vis those appointed by promotion/selection shall be determined in the manner in which the senior scale posts have to be allocated for promotion/selection/direct recruitment as prescribed in the rules. For this purpose, a calendar year shall be taken as a unit for determination

of the seniority. In case appointment of any group does not take place in a particular calendar year, such a group shall have no claim for relating its seniority with those appointed to the Time Scale in the previous year/years. This rule determines the *inter se* seniority of the direct recruits vis-à-vis those appointed on promotion/selection. Rather the Rule 16(1) of the Rules of 1979 would reveal that *inter se* seniority of the persons appointed to the service is to be determined on the basis of order in which names are arranged in the select list prepared under Rule 8 of these Rules. Rule 8 of the Rules of 1979 provides that the selection committee shall classify officers as 'outstanding', 'very good' and 'good' or 'unfit', on overall relative assessment of their service records and those classified as 'outstanding', 'very good' and 'good' shall be included in the select list in the same order, meaning thereby that those classified as 'outstanding' will appear first and the remaining thereafter according to respective classification. It needs to be noted that Rule 6 of the Rules of 1979 provides that the Government shall on every occasion on which selection has to be made for appointment to the services set up a selection committee for making selections and Rule 7 provides that Secretary of the Administrative Department concerned shall submit a list of all eligible officers for selection against the vacancies in the time scale of the service, of course, proportionate to their share in the Time Scale Posts. It is only when the select list is prepared that the Government has to appoint the selected candidates to the service

in the order in which their names appear in the select list. There is no rule that provides for the mandatory appointment/selection of the candidates to the Time Scale posts for every calendar year. Only mandate is that 65% of the Time Scale posts occurring in a calendar year are to be filled up by promotion from the departmental feeding services. In this context, it would be appropriate to take note of the observations of the Hon'ble Apex Court in **Deepak Agarwal v. State of U.P**⁸, which are as under:

“18. The short question that arises for consideration is as to whether the appellants were entitled to be considered for promotion on the post of Deputy Excise Commissioner under the 1983 Rules, on the vacancies, which occurred prior to the amendment in the 1983 Rules on 17-5-1999.

19. Under the un-amended 1983 Rules, the petitioners would be eligible to be considered for promotion by virtue of Rule 5(2). By virtue of the Note to Rule 8, a combined eligibility list has to be prepared by arranging the names of Assistant Excise Commissioners and Technical Officers in order of seniority as determined by the date of their substantive appointment. The appellants were, therefore, clearly in the feeder cadre of the post for promotion to the post of Deputy Excise Commissioner. **Rule 7 provides that the appointing authority shall determine the vacancies to be filled during the course of the year and the number of vacancies. There is no statutory duty cast upon the State to complete the selection process within a prescribed period. Nor is there a mandate to fill up the posts within a particular time.** Rather the proviso to Rule 2 [*sic* Rule 4(2)] enables the State to leave a particular post unfilled.

(emphasis added)

33. In **State of Uttaranchal v. Dinesh Kumar Sharma**⁹, the Hon'ble Apex Court has observed as under:

34. Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-96 he should be given promotion and seniority from that year and not from 1999, when his actual appointment

⁸(2011) 6 SCC 725

⁹(2007) 1 SCC 683

letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in *Jagdish Ch. Patnaik v. State of Orissa*.

34. The Hon'ble Apex Court, after taking note of its various earlier pronouncements, in **Pawan Pratap Singh v. Reevan Singh**¹⁰, has held as under:

“From the above, the legal position with regard to determination of seniority in service can be summarised as follows:

(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) **Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.**

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) **The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”**

(emphasis added)

35 In **Ganga Vishan Gujrati v. State of Rajasthan**¹¹, the Hon'ble Supreme Court of India has held that a consistent line of precedent of this Court follows the principle that retrospective seniority cannot be

¹⁰(2011) 3 SCC 267

¹¹(2019) 16 SCC 28

granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade.

36. From the above judicial pronouncements, it becomes crystal clear that in absence of any rule providing for the benefit of promotion/seniority from the date anterior to substantive appointment by promotion, the benefit of retrospective seniority/promotion cannot be granted. As such, this Court is of the considered view that the petitioners cannot be granted the benefit of induction/promotion to the post of Time Scale of JKAS for the vacancies of the years-2004, 2005, 2006 and 2007, from the date anterior to their promotion/induction. The issue No.2 is answered accordingly.
37. It is also contended by Mr. M.Y Bhat, learned senior counsel for the petitioners that the official respondents have clubbed the vacancies for the years 2004, 2005, 2006 and 2007, which is not permissible. In support of his submissions, he has placed reliance upon the judgment of the Hon'ble Supreme Court of India in '**Vijay Singh Charak v. Union of India** (supra). In this case, the vacancies for the years 1991-1995 were clubbed resulting into the situation that the candidates, who were not even eligible in the year 1991, were selected in the select list of 1995, ousting the appellant therein, who claimed himself to be eligible for induction in the IFS in the year 1991. So far as the present case is concerned, all the candidates except those 49 candidates, who were inducted against leave/training vacancies, were inducted into

Time Scale of JKAS in accordance with the year wise vacancies. This is not a case where private respondents have been promoted against the vacancies belonging to the feeding services of the petitioners. It is worthwhile to mention here that even in **Vijay Singh Charak's** case, the Hon'ble Apex Court made the following observations:

“We have carefully considered the aforesaid decisions and we are of the opinion that the decisions in **H. R. Kasturi Rangan**¹² and **Nepal Singh Tanwar**¹³ only lay down that it is not an absolutely mandatory requirement of the regulation that a select list must be prepared every year. Normally that should be done, but if for some good reasons such a select list was not prepared every year, that by itself would not invalidate the select list for that year”.

38 In view of the above, there is no force in the aforesaid submission made by the learned Senior Counsel and as such, the same is rejected.

Additional grounds raised by the petitioners, who are the appointees of the year 1992:

39. These additional grounds, being considered by this court, were in fact urged by the petitioners in their petitions/applications but have not been taken note of by the learned Tribunal. In fact, Mr. Z.A Shah, learned Senior Counsel for the petitioners has submitted that instead of remanding the matter back to learned Tribunal for adjudication, these issues be decided by this Court.

40 The petitioners, who are the appointees of the year 1992 Batch have submitted that they had held cadre posts of Administrative Services from the years 2004 to 2005 and as such, the petitioners were entitled to claim seniority at least from the date they were holding the charge

¹²[(1998) 1 Scale (SP) 11]

¹³[(1998) 1 Scale (SP) 7]

of cadre post in accordance with Rule 23 of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956. The petitioners have placed reliance upon the order dated 26.10.2005 to demonstrate that they were posted as In-charge Assistant Commissioners /SDMs /Collectors, the posts which they held till they were inducted in Time Scale of JKAS in the year 2008. All these posts were JKAS cadre posts. They have further submitted that from the years 2002 to 2007 many officers of other feeding services junior to them came to be inducted in JKAS but the petitioners were not considered in the years 2003, 2004, 2005, 2006 and 2007 for induction into the JKAS for none of their fault and the act of the Government in not according any consideration to the members of the Revenue Gazetted Service is nothing but discriminatory, despite the fact that the Division Bench of this Court had directed the Government to accord consideration to the eligible members of the Revenue Gazetted Service irrespective of their seniority in the feeding service and to follow sealed cover procedure but the Government did not bother to comply with the said direction. Their counterparts in other feeding services retired from the posts at higher scale and some of them retired as IAS officers but they were discriminated as they were not considered for induction from the date, they were entitled to and because of that they are getting very meagre pension as compared to their counterparts, as such, the directions are required to be issued to the respondents for creation of supernumerary posts, so that the injustice meted out to the petitioners is undone and

they get the pensionary benefits, they were entitled to, had they been considered in time for induction in to JKAS.

41. In **Sunaina Sharma (supra)**, it has been held that the promotees can be granted the benefit of seniority with retrospective effect, provided they have been working on temporary/officiating/ad hoc or any other basis to work against the post for which he has been promoted. In **Suraj Prakash Gupta (supra)** it has been held that once a promotee/recruitee by transfer is appointed on probation, it is permissible to appoint him under Rule 23 of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956 as a member of the service from an anterior date when a substantive vacancy existed in his quota. It was further held that the stop gap/ad hoc/temporary service of a person appointed by transfer as an Assistant Engineer or by promotion as an Assistant Executive Engineer can be regularized through PSC/DPC from an anterior date in a clear vacancy in his quota, if he is eligible and found suitable for such transfer or promotion, as the case may be and his seniority will count from that date.
42. Now, it is to be seen whether the petitioners can be granted benefit of seniority with effect from the date they had been working as Assistant Commissioners/Collectors/SDMs or not, in terms of Rule 23 of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956.
43. In order to adjudicate the above-mentioned contention of the petitioners, first of all it is to be determined as to whether Rule 23 of

J&K Civil Services (Classification, Control and Appeal) Rules, 1956 is applicable in the case of the petitioners or not. So far as **Sunaina Sharma's case(supra)** is concerned, there was Rule No. 13 of the Excise Rules, which provided that seniority of the members of the service shall be regulated under the Civil Services Rules and likewise in **Suraj Prakash's case (supra)**, Rule 11 of the Jammu and Kashmir Engineer (Gazetted) Service Recruitment Rules 1978, provided that the seniority of the members of the service shall be regulated under the provisions of J&K Civil Services (Classification, Control and Appeal) Rules, 1956. The Rule 23 of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956 provides for granting the benefit of seniority retrospectively from the date when the promotee or transferee has been working on adhoc/officiating/temporary basis on the post in respect of which he has been promoted. So far as Rules of 1979 are concerned, Rule Nos. 9, 10 and 16 of the Rules of 1979 are relevant and the same are extracted as under:

“9. Appointment to the service

(1) The Government shall on the occurrence of vacancies appoint the selected candidates to the service in the order in which their names appear in the Select List.

(2) the Government may make appointments in temporary or officiating vacancies from among persons included in the Select List referred to in [(sub-rule (4)] of rule 8 of these rules and shall not appoint an officer not included in the said list.

10. Period of probation

(1) All officers appointed to the service under rule 9 of these rules shall be placed on probation or trial for a period of two years.

(2) if it appears at any time during or at the end of the period of probation or trial, as the case may be, that an officer has not made sufficient use of his opportunities or if he has failed to

give satisfaction, he may be reverted to the post/service from which he was appointed to the service.

(3) The Government may in the case of any person extend the period of probation or trial up to a maximum of four years.

Explanation- Appointments on probation will be made against substantive vacancies only. All other appointments will be on trial; provided that any period of officiating appointment shall be reckoned as period spent on probation when a person appointed on trial is given regular appointment to the service.

(4) A probationer will be confirmed in the service at the end of his probation if he has completed his period of probation to the satisfaction of Government; provided that a substantive vacancy is available for the purpose.

16. Seniority

(1) The relative seniority inter se of persons appointed to the service shall be determined on the basis of the order in which names are arranged in the select list prepared under rule 8 of these rules.

(2) The inter se seniority of those belonging to one and the same feeding service and who have been classified under rule 8 in the same category shall be determined by reference to their seniority in the feeding service.

(3) The inter se seniority of those who belong to different service but have been grouped in one class by the selection committee under rule 8 shall be determined by reference to the service rendered at the time scale level of the feeding service. Wherever, the dates of appointment to the Time Scale are the same, the persons higher in age would be given seniority over the younger persons.

(4) The inter se seniority of the direct recruits on their promotion to the Time Scale, vis a vis those appointed by promotion/selection shall be determined in the manner in which the senior scale posts have to be allocated for promotion/selection/direct recruitment as prescribed in the rules. For this purpose a calendar year shall be taken as a unit for determination of the seniority. In case appointment of any group does not take place in a particular calendar year, such a group shall have no claim for relating its seniority with those appointed to the Time Scale in the previous year/years.

(5) Seniority of the members of the service appointed to at its junior scale through competitive examination shall be regulated under the Jammu and Kashmir Civil Service (Classification, Control and Appeal) Rules 1956.”

44. Rule 9 of Rules of 1979 vests the power with the Government to appoint the selected candidates to the service in the order in which their names appear in the select list. It also empowers the Government to make appointments on temporary or officiating basis from amongst the persons included in the select list referred in sub-rule (4) of Rule 8

of the Rules of 1979 and no officer can be appointed whose name does not appear in the select list. Explanation in Rule 10 of the Rules of 1979 provides that any period of officiating appointment shall be reckoned as a period spent on probation when a person appointed on trial is given regular appointment to the service. Thus, only in a case where the appointment is made on trial from the persons whose names appear in the select list, period spent on officiating appointment can be considered as period spent on probation, when the said person is given regular appointment to the service. This is admitted fact that when the petitioners, who are the appointees of 1992 batch, were tasked to work as In-charge Assistant Commissioners/Collectors/SDMs, no select list in terms of in sub-rule (4) of Rule 8 of the Rules of 1979 was prepared. Rule 16 of the Rules of 1979 deals with the seniority of the persons appointed to the service. In terms of sub-rule 5 of Rule 16 of the Rules of 1979, seniority of the member of the service appointed at its junior scale through competitive examination is regulated under the J&K Civil Services (Classification, Control and Appeal) Rules, 1956 and J&K Civil Services (Classification, Control and Appeal) Rules, 1956 have not been made applicable for the purpose of determining seniority in the present case, unlike in **Suraj Parkash** and **Sunaina Sharma** cases (supra). Rule 18 of the Rules of 1979 provides that the matters not specifically covered by the Rules of 1979 shall be governed by rules, regulations and orders applicable to State Civil Services in general. Residuary power can be exercised only when

there is no provision in the general rules. Also Rule 18 dealing with residuary matters cannot be pressed into service, as Rule 16 of the Rules of 1979 deals with the seniority and Select List in terms of Rules of 1979 was never prepared, which is sine qua non even for making appointments in temporary or officiating vacancies in terms of Rule 9(2) of Rules 1979. In **P.N. Premachandran** (supra), the Hon'ble Supreme Court upheld the decision of the Government in granting benefit of retrospective promotion as the said power was traceable in the Rules, which is not so in the case of petitioners.

45. In view of the rule position as mentioned above, the contention of the appointees of 1992 batch for grant of seniority with effect from the date they had been working as In-charge Assistant Commissioners/SDMs/Collectors from the year, 2004/2005 cannot be accepted.
46. In order to buttress their submissions that the petitioners of 1992 batch have been discriminated qua their counterparts, who were selected in the same competitive examination Mr. Shah and Mr Jan, learned Senior Counsel for the petitioners have laid much stress on the interim order passed on 13.06.2002 in case titled as '**Javed Iqbal Balwan and others vs State of J&K and others**' bearing **LPA No. 412/200**, whereby the Government was directed to go ahead with the induction into the KAS and during that process, the Government was directed to consider the appellant therein i.e. petitioners herein irrespective of their seniority but on their own merit. The respondent therein was directed to keep the said consideration of Revenue Gazetted in sealed

cover till further orders, but the official respondent did not comply the said directions.

47. The above-mentioned LPA titled '**State of J&K vs. Javed Iqbal Balwan**¹⁴' came to be decided by the Division Bench vide judgment dated 21.09.2006, ' wherein following directions were issued:

"I. The official respondents shall undertake a fresh exercise to fix the seniority of the promotees and the direct recruits. While doing so due regard shall be given to the judgments of the Court which have attained finality, by means of which seniority has been fixed/confirmed by the Court in individual cases.

II. Out of the total posts available/falling vacant 50% posts shall go to the direct recruits and 50% posts to the promotees;

III. Stop gap/adhoc promotion accorded to the promotees cannot be treated as non-est merely because they were promoted directly as Tehsildars from the post of Nai Tehsildars without first being posted as Additional Tehsildars or without clearance by the Public Service Commission.

IV. Services of the promotees, which have duly been regularized as indicated above, shall be counted with retrospective effect from the date a clear vacancy occurred in the promotional quota.

V. Temporary, Adhoc and stop gap appointments of other promotees may be regularized in accordance with the rules and the law laid down as has been cited above;

VI. On such regularization the promotees shall be deemed to have been regularly adjusted against the posts falling within their quota only;

VII. Where in a particular year appointment of both the direct recruits and promotees has taken place, their placement in the seniority list shall be made in accordance with their quota but where appointment is only from one category, the candidates will occupy the posts of their quota only.

VIII. In case there is any excess appointment from a particular category, such appointments shall be valid only till candidates from the other source became available. The period spent against the other category post shall not count for seniority;

IX. Once the persons from other source became available, the persons holding the excess posts shall stand pushed down. They shall be adjusted against the available vacancies within their quota in the subsequent years;

¹⁴2006(3) JKJ 533[HC],

X. As far as practicable the persons appointed/promoted shall not be ousted and shall be assigned to and adjusted against the posts falling within their quota in the subsequent years;

XI. Direct recruits (Petitioners (DR)) shall be placed in the seniority list immediately after the last direct recruit appointed in the year 1984 namely Mohd Ismail Baji, as per the availability of posts within their quota. This shall be notwithstanding the promotions granted to the promotees during the period.

XII. Those of the petitioners (DR) who have not so far passed the departmental Tehsildars examination shall do so without further delay. Such petitioners shall be entitled to further promotions only after qualifying such examination unless exempted by the Government if permissible under the rules.

XIII. Those petitioners who have qualified such examination and possess the requisite qualification, eligibility and other requirements of the rules shall be, subject to availability of the posts be considered for promotion and also for induction into the KAS in accordance with the rules from the date their immediate junior, got such promotion/induction.

XIV. While according consideration and granting such promotion or induction into the KAS, as far as, possible, grant of grade and promotion to the promotes or their induction into the KAS, shall not be disturbed. In case posts are not available for the qualified petitioners (DR), the Government may consider sanctioning of supernumerary posts for them till the posts become available.

XV. Direct recruits who are promoted or inducted into the KAS as a result of this exercise shall be given the same seniority position vis-a vis the promotees as they are entitled to as a result of their notional seniority w.e.f. 24.9.1984.”

48. A perusal of the direction Nos. XIII and XIV would reveal that the Government was directed to consider the petitioners therein for induction into JKAS in accordance with the rules from the date their immediate juniors got such promotion/induction and while according consideration and granting such promotion or induction into KAS, as far as possible, grant of grade and promotion to the promotees or their induction into JKAS was not to be disturbed and in case of non-

availability of the posts for qualified petitioners, the Government was to consider sanctioning of supernumerary posts for them till the posts become available. The Government assailed the judgment before Hon'ble Supreme Court and the Hon'ble Supreme Court vide its judgment in case titled '**State of J&K v. Javed Iqbal Balwan** (supra) set aside the directions Nos. XIII and XIV, meaning thereby that the relief granted to the petitioners for promotion/induction into KAS in accordance with the rules from the date their immediate juniors got such promotion/induction and for creation of supernumerary posts for them in the event of non-availability of posts, was denied.

49. There is no force in the submissions made by the learned Senior Counsels that the official respondents did not comply with the order dated 13.06.2002, as the said order had merged in the final order dated 21.09.2006. Though the Division Bench directed the official respondents to consider the case of the petitioners for their induction into KAS in accordance with rules from the date their immediate junior got such promotion/induction and if necessary to create supernumerary posts but both these directions were set aside by the Hon'ble the Supreme Court. It appears that after having failed before the Hon'ble Supreme Court in getting the benefit of induction into JKAS w.e.f. the date their counterparts were inducted into JKAS, the petitioners intend to reopen the controversy which stands already settled by the Supreme Court of India. Therefore, there is no merit in this contention raised by the petitioners, as such the same is rejected.

**WP(C) No. 2774/2023,
WP(C) No. 895/2023 &
WP(C) No. 1182/2023**

40. In writ petitions bearing Nos. WP(C) No. 2774/2023, WP(C) No. 895/2023 and WP(C) No. 1182/2023, the petitioners are aggrieved of the order dated 25.01.2023 passed by the learned Tribunal, whereby the seniority of the private respondents was restored in terms of seniority list dated 24.06.2011.
51. As a matter of fact, after the order dated 30.03.2021 was passed by the Jammu Bench of Central Administrative Tribunal, the official respondents issued a seniority list, whereby the private respondents Dr. Ghulam Nabi Itoo and Tariq Hussain Ganai were placed at Serial No. 200 & 202, respectively. Both the private respondents challenged the seniority list dated 07.04.2021 on the grounds that only option open before the official respondents was either to file a writ petition against order dated 30.03.2021 passed by the learned Tribunal or to file a review application before the learned Tribunal and once the seniority list was upheld by the Tribunal, the issuing Authority had become *functus officio*. It was also contended that fixation of cut off had nothing to do with the existence of vacancy and otherwise also, fixing of 01.01.2008 for considering vacancy position is contrary to Rules of 1979. It was also contended that Rules of 1979 do not provide for year wise preparation of select list.
52. The petitioners objected to the writ petition by stating that the private respondents were appointed against the leave vacancies as there were

no clear vacancies available on 01.01.2008, as such, seniority position was changed subsequently. It was also contended that the Rules of 1979 provide for preparation of year wise select list for the vacancies which occurred in a calendar year.

53. The learned Tribunal vide order dated 25.01.2023 upheld the contentions of the private respondents and quashed the seniority list dated 07.04.2021. The order dated 25.01.2023 has been impugned on the ground that private respondents were inducted to time scale of JKAS against anticipated vacancies of the year 2008 and they were required to be considered only in the year 2009, as vacancies till 01.01.2008 only were to be filled.
54. Rule 6 of Rules of 1979 envisages that the Government on every occasion on which selection has to be made for appointment to the service, shall set up a Selection Committee for making selection under Rules and further Rule 5 (3) (a) of Rules 1979 provides filling up vacancies of time scale posts, occurring in calendar year. The learned Tribunal has come to conclusion that the vacancies for the private respondents were available in the year 2008 as is evident from the minutes of meetings of Establishment Committee dated 29.05.2008 and further that the Rules of 1979 do not provide that Selection Committee will meet on a particular date(s), month(s) or year.
55. Mr. Abhinav Sharma, learned Senior Counsel for some of the petitioners also contended that once the private respondents have accepted order dated 13.08.2021, whereby the selection grade was

released in favour of contesting parties and have not challenged the same, the private respondents cannot assail the seniority list dated 07.04.2021. It needs to be noted that the grievance of the private respondents was only to the extent that they were placed lower in the seniority list dated 07.04.2021 as against their placement in the seniority list dated 26.04.2011, which was upheld by the learned Tribunal vide its judgment dated 30.03.2021. If the seniority list dated 07.04.2021 is quashed to the extent of private respondents, then as a natural consequence, the seniority list dated 26.04.2011 except to the extent of placing 49 members, adjusted against training and leave vacancies, at the bottom, would govern the seniority. Therefore, this contention of the petitioners is not sustainable in the eyes of law.

56. The petitioners have not been able to demonstrate that the private respondents were empanelled for the anticipated vacancies. In fact, the minutes of the meeting dated 29.05.2008 clearly establish that the private respondents were considered against the vacancies of the year 2008. Apart from this, it was not open to the Government to alter the seniority list to the detriment of the afore-named respondents, without hearing them and once the Government accepted the judgment of the Tribunal, whereby order dated 24.06.2011 was upheld, it could not have altered the seniority list without challenging the judgment by way of appropriate proceedings.

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57. In view of the above, we do not find any legal infirmity in the impugned order passed by the Tribunal, so as to warrant any interference at the end of this Court.

CONCLUSION:

58 For all what has been said and discussed above, there is no merit in these writ petitions, as such, the same are dismissed, however, no order as to costs.

59. Record of the Tribunal be sent back forthwith.

(SANJAY DHAR)
JUDGE

(RAJNESH OSWAL)
JUDGE

JAMMU:
03.04.2025
Rakesh PS

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No