The Indian Law Reports

LETTERS PATENT APPEAL

Before Mehar Singh, C.J., and R. S. Narula, J.

SURESH KUMAR AND ANOTHER,—*Appellants.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 181 of 1966

March 6, 1968.

Constitution of India (1950)—*Article* 309—*Conditions of service of persons appointed to public services—How regulated—Right accrued to a Government servant under pre-existing executive or administrative instructions—Whether can be taken away by the Government with retrospective effect by another executive instruction—Administrative instructions—When are statutory—Article* 226—*Power of the High Court under—Civil right of a citizen taken away by executive instructions—High Court—Whether can interfere.*

Held, that conditions of service of persons appointed to public services can be regulated by (i) Acts of the appropriate Legislature; (ii) until provision is made by or under an Act of the appropriate Legislature, and in so far as no such provision has been made, by rules framed by the President of India or his delegate in connection with the services of the Union and by the Governor of the relevant State or his delegate in connection with the services of the State; and (iii) by valid executive instructions and administrative directions issued by the Central Government or the State Government as the case may be.

[Para 28].

Held, that Government has no lawful authority to prejudicially affect the civil rights of a Government servant retrospectively by a mere executive fiat otherwise than by his consent unless the Government is authorised to do so by the express provision of some valid law. Rights which have already accrued to a Government servant and the benefits which he might already have enjoyed under or by virtue of a pre-existing executive instructions or administrative direction cannot be taken away with retrospective effect by another executive instruction or a mere administrative direction.

[Para 31].

Held, that the State can give administrative instructions to its servants how to act in certain circumstances, but that will not make such instructions statutory rules which are justiciable in certain circumstances, and that in order that such executive instructions have the power of statutory rules, it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under the provisions of the Constitution provided therefor.

[Para 39].

Held, that if the Government orders contain merely executive or administrative direction, their breach even if patent would not justify the issue of a writ of Certiorari. The executive orders properly so-called do not confer any legally enforceable rights on any persons and impose no legal obligations on the subordinate authorities for whose guidance they are issued. But if an existing right of a citizen is taken away and the only reason pleaded for depriving a citizen of the said right is the supposed executive instructions which either do not exist or do not apply to the person concerned, there appears to be no bar in the arms of the High Court being extended to this category of cases to undo injustice caused to the person concerned under Article 226 of the Constitution of India.

[Paras 37 and 38].

Letters Patent Appeal, under Clause 10 *of the Letters Patent against the judgment, dated* 19*th April*, 1966, *of the Hon'ble Mr. Justice P. C. Pandit, passed in Civil Writ No.* 2983 *of* 1965.

PRITAM SINGH JAIN & N. C. JAIN, ADVOCATES, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, HARYANA, S. S. DEWAN AND RAJINDER SACHAR, ADVOCATES, for the Respondents.

ORDER

NARULA, J.—The relevant facts leading to the filing of this Letters Patent Appeal against the dismissal of the appellants' writ petition by a learned Single Judge of this Court may first be noticed.

(2) In pursuance of and in accordance with paragraph 8 of instructions, dated June 22, 1949 (Annexure 'R-2') for the initial constitution of the Assistants Grade of the Central Secretariat Service, circular No. 30/49-R of the same date (Annexure 'A' to the writ petition), was issued by the Ministry of Home Affairs, Government of India, New Delhi, to all the Ministries of the Government of India directing *inter alia* that the seniority of all temporary and permanent Lower Division Clerks in the Government of India and in the attached offices,

appointed or nominated after January 1, 1944, shall be arranged in in a single list and fixed on the basis of the length of continuous service of the incumbents concerned in the clerks' grade. The other directions in the circular do not concern us for deciding this appeal.

(3) Suresh Kumar appellant, No. 1 and Tara Chand Jain, appellant, No. 2 were appointed Lower Division Clerks on October 9, 1950, and November 26, 1951; respectively. They were in due course posted in the Central Government Medical Stores Depot, Karnal, under the administrative control of the Director-General of Health Services, New Delhi. Their names were brought in the common seniority list of Lower Division Clerks according to the circular, dated June 22, 1949 (hereinafter referred to as the 1949 Circular).

(4) One O. P. Anand serving in the Medical Stores Depot, Karnal, appears to have represented against the fixation of his seniority according to mere length of service. On his representation having been forwarded to the Central Government, the following decision of the Directorate of Health Services was communicated in its memorandum, dated September 6, 1952 (Annexure 'C' to the writ petition) for the information of Mr. Anand:—

> "Mr. O. P. Anand, may please be informed that in accordance with the principle laid down by the Government of India that seniority in a grade should, as a general rule, be determined on the basis of length of continuous service in the grade or in an equivalent grade, it has been finally decided by this Directorate that a combined single seniority list should be maintained in respect of office clerks, store assistants and store clerks (who are drawing the same scale of pay from January 1, 1947) based on the length of continuous service in those grades. In this connection it may be stated that an identical scale for all these posts has been prescribed by the Government of India in consideration of the fact that their duties and responsibilities carry equal weight."

(5) Respondents Nos. 4 to 13 were appointed as Lower Division Clerks on different dates between June, 1953 and November, 1959. Their seniority was fixed in terms of the 1949 circular far below that

of the appellants. On a reference made by the Government Medical Stores Depot, Calcultta, regarding the confirmation of some minority community candidates in reserved posts and regarding the fixation of *inter se* seniority of minority and other communities employees, the New Delhi Directorate replied in its letter, dated October 15, 1959 (Annexure 'E' to the writ petition) as under:—

> "In services/grades in which seniority is fixed in accordance with the orders contained in the Government of India, Ministry of Home Affairs O.M. No. 30/44/48-Appts., dated June 22, 1949, only those persons, who were appointed on a permanent or quasi-permanent basis before the 1st January, 1944, are to be treated as en-bloc senior to others. Persons appointed on or after that date have to be grouped together, irrespective of any consideration whether they are permanent, quasi-permanent or temporary and arranged the seniority list with reference to the total length of continuous service in the grade or in an equivalent grade. It would thus be clear that under the orders, dated June 22, 1949, referred to above, the date of confirmation is not the criterion for determining *inter se* seniority of those appointed to a particular grade on or after January 1, 1944; nor do those orders specify that except in the case of pre-1944 employees, persons confirmed earlier in a particular grade will be senior to those confirmed later in that grade.
>
> In the circumstances explained above, the *inter se* seniority of the other community and minority community employees appointed in a grade on or after January 1, 1944, should be fixed on the basis of length of continuous service in the grade or an equivalent grade, irrespective of any consideration whether they are permanent, quasi-permanent or temporary. The list received under your memorandum No. PE-2/2345/(III)/21992, dated January 5, 1959 has been rearranged according and is enclosed for information and guidance."

(6) Coming back to the case before us, what happened was this. On acount of reservation of some vacancies for backward classes etc., to which classes respondents Nos. 4 to 11 belonged, they were confirmed on various dates before December 22, 1959. Before the appellants

(who had been longer in service than respondents Nos. 4 to 11, and who were ranking senior to the contesting respondents) could be confirmed, circular letter No. 9/11/55-RPS, dated December 22, 1959 (Annexure 'R-6') was issued by the Government of India in the Ministry of Home Affairs, saying that the specific objects underlying the instructions contained in the 1949 circular having been achieved "there is no longer any reason to apply those instructions in preference to the normal principles for determination of seniority." The circular then proceeded to provide as below:—

"It has, therefore, been decided in consultation with the Union Public Service Commission, that *hereafter* the seniority of all persons *appointed* to the various Central Services *after the date of these* instructions should be determined in accordance with the general principles annexed hereto.

"The instructions contained in the various office memoranda cited in paragraph 1, above *are hereby cancelled, except* in regard to determination of seniority of persons *appointed* to the various Central Services *prior* to the date of this office memorandum. The revised General Principles embodied in the Annexure *will not apply with retrospective effect,* but will come into force with effect from the date of issue of these orders, unless a different date in respect of any particular service/grade from which these revised principles are to be adopted for purposes of determining seniority has already been or is hereafter agreed to by this Ministry."

Those included the 1949 circular.

(Underlining by me—italicised herein).

(7) Paragraphs 2 and 3 of the "General Principles annexed" to the 1959 circular read as follows:—

"2. Subject to the provision of paragraph 3 below, persons appointed in a substantive or officiating capacity to a grade prior to the issue of these general principles shall retain the relative seniority already assigned to them under the existing orders applicable to their cases and shall *en-bloc* be senior to all others in that grade.

Explanation.—For the purposes of these principles (a) persons who are confirmed retrospectively with effect from a date earlier than the issue of these general principles; and (b) persons appointed on probation to a permanent post substantively vacant in a grade prior to the issue of these general principles, shall be considered to be permanent officers of the grade.

3. Subject to the provisions of paragraph 4 below, permanent officers of each grade shall be ranked senior to persons who are officiating in that grade."

(8) Both the appellants were confirmed on March 31, 1960. By virtue of their seniority determined on tne basis of length of service in accordance with the 1949 circular, each of the appellants was promoted to the next higher rank, i.e., as officiating Upper Division Clerks on and with effect from September 12, 1962.

(9) The seniority list of Lower Division Clerks serving in the Government Medical Stores Depot, Park Town, Madras, was returned by the Directorate-General of Health Services, New Delhi, with their letter, dated March 5, 1963, as the said list did not conform to instructions annexed to the Government of India letter, dated December 22, 1959, in relation to persons appointed after that date. Relating to the clerks appointed after that date, it was reiterated in the said letter (dated, March 5, 1963) as follows:—

"In respect of persons appointed after December 22, 1959, seniority should be fixed in accordance with the provision of the O.M., dated December 22, 1959, as amended and clarified from time to time."

(copy of this communication was filed by the respondents with their index, dated January 24, 1968, in pursuance of our order, dated December 4, 1967.) Certain doubts having arisen about the legal position regarding fixation of *inter se* seniority of direct recruits of some central services in the Health Ministry, a reference was made by U.O. note by that Ministry to the Ministry of Home Affairs. The case was returned by the Home Ministry with its note, dated March 20, 1963, under U.O. despatch endorsement, dated March 31, 1963, in paragraph 2 of which note clarifications were made; which are not

relevant for our purposes, and paragraph 3 of which note read as follows:—

> "Incidentally it may be mentioned that in accordance with the seniority principles contained in our O.M., dated December 22, 1959, persons confirmed before December 22, 1959, should be treated *en bloc* senior to others confirmed after that date. The seniority list at slip 'A', therefore, requires revision. Before revising the list the reason why persons at serial Nos. 1, 3, 8 and 18 were confirmed after December 22, 1959, in spite of their high seniority on the basis of length of service may also be looked into. *If they were confirmed late because they were not declared fit for confirmation, they will not regain their seniority.*
>
> Ministry of Health may please see. If there is still any doubt about the interpretation of our orders, the matter may be discussed by the representatives of the Ministry of Health on a convenient date to be fixed on telephone."

(10) The case of the respondents is that on receipt of a copy of the U.O. note, dated March 31, 1963, from the Home Ministry, the Directorate issued circular letter, dated June 19, 1963 (Annexure 'G' to the writ petition). The said communication was issued in continuation of Health Directorate's letter, dated March 5, 1963 (already referred to) and contained a verbatim copy of some of the contents of Home Ministry's note, dated March 20/31, 1963, but omitted from the paragraph of the said note quoted above, the following sentence:—

> "If they were confirmed late because they were not declared fit for confirmation, they will not regain their seniority."

(11) The Government Medical Stores Depot, Karnal, understood from the instructions received from the Directorate that the seniority of the Lower Division Clerks had to be refixed in accordance with the dates of their confirmation and not based solely on length of service. A revised seniority list was, therefore, prepared according to which the contesting respondents were made senior to

the appellants. Suresh Kumar appellant submitted a written representation, dated July 20, 1963 (Annexure 'J'), wherein he emphasised that his seniority in the cadre of Lower Division Clerks based on length of service had already been established and approved, and that effecting any change therein would be contrary to the conditions of service applicable to him. He further represented that the instructions contained in paragraphs 2 and 3 of the annexure to the circular letter of 1959 were applicable only to persons appointed after December 22, 1959, and not to persons like the appellants who had joined the service in question before that date. Appellant No. 1, therefore, requested that the revised principles for determining seniority should not be made applicable to him, and he should not be reverted from the post of an Upper Division Clerk on that account. Similar representations were submitted by Tara Chand Jain, appellant No. 2 and some other affected employees who apprehended reversion on account of the change in the seniority list of Lower Division Clerks. The Directorate-General of Health Services in its memorandum, dated October 22, 1963 (Annexure 'K' to the writ petition) wrote to the Karnal authority that the course adopted by promoting the appellants and some other persons on September 12, 1962 "on the basis of wrong seniority" had affected the interest of senior persons, and, therefore, the said course was not desirable. It was then added in the memorandum:—

> "It has, therefore, been decided that if the senior persons could be accommodated in the higher grade within a reasonable period (say six months), no reversions need be made. Otherwise the claims of senior persons will have to be protected, if they are otherwise considered suitable for promotion.
>
> The above decision has been arrived at in consultation with the Ministry of Home Affairs and should be treated as final."

(12) In a subseqpent communication, dated December 3, 1965, (Annexure 'L' to the writ petition), regarding fixation of seniority of the concerned employees, the Directorate-General of Health Services directed the Government Medical Stores Depot, Karnal, to draw up the seniority list of employees in the different grades in accordance with the provisions of the 1959, circular, and to furnish a copy of the seniority list to the Directorate

for its record and also to examine and confirm that no promotions had till then been given in contravention of the said 1959 circular. In consequence of the abovesaid correspondence, a revised seniority list was prepared in which the names of Suresh Kumar and Tara Chand Jain appellants were shown at serial Nos. 40 and 42 respectively, and the names of respondents Nos. 4 to 11 were shown at serial Nos. 32, 33, 36, 37, 34, 39 and 38 respectively. Copy of the said revised seniority list is Annexure 'H-1' to the writ petition. In consequence of the appellants having become junior, they were reduced in rank and were brought back to their substantive posts of Lower Division Clerks with effect from December 4, 1965. It was in these circumstances that the writ petition from which the present appeal has arisen was filed by both the appellants in this Court on December 8, 1965, for getting annulled and quashed the communications, dated June 19, 1963 (Annexure 'G'), and December 3, 1965 (Annexure 'L'), and the revised seniority list (Annexure 'H-1') and for directing the respondents Nos. 1 to 3 (Union of India, Director-General of Health Services, and Deputy Assistant Director-General, Medical Stores, Karnal) not to implement the said instructions resulting in the reversion of the appellants, and for such other suitable writ, order or direction as may be deemed fit under the circumstances of the case. Respondents Nos. 4 to 13, out of which respondents Nos. 4 to 11 alone are now likely to be affected in their senicrity by the decision of this case, were not initially impleaded in the writ petition. They were, however, subsequently added to the array of respondents during the pendency of the case before the Single Judge.

(13) In contesting the writ petition, written statement in the form of affidavit of Shri Amar Nath Verma, Under Secretary to the Government of India, Ministry of Health, dated February 14, 1966, was filed. The material facts were not disputed. The legal position on the relevant issue was explained in paragraph 3 of the return of the respondents in the following words:—

"Prior to December 22, 1959, all the permanent and temporary employees of the grade were required to be arranged in a single seniority list with reference to their total length of the continuous service in the grade or in an equivalent grade in accordance with the provisions of the Government of India, Ministry of Home Affairs Office Memorandum No. 30/44/48-Apptts, dated June 22, 1949, referred to

in paragraph 2 above. However, the seniority list so arranged was required to be revised on December 22, 1959, placing all those confirmed in the grade including Scheduled Castes and Scheduled Tribes candidates en-bloc senior to those not confirmed in that grade in accordance with paragraph 2 of the annexure to Government of India, Ministry of Home Affairs, Office Memorandum No. 9/11/55-RPS, dated December 22, 1959. Accordingly, the petitioners who were not confirmed in the grade of Lower Division Clerks on December 22, 1959, became junior to those who were already confirmed on that date. Due to incorrect interpretation of the office memorandum, dated December 22, 1959, however, the petitioners were treated as senior to those already permanent on December 22, 1959, in the grade of Lower Division Clerks, and were promoted as Upper Division Clerks on that basis. However, when the incorrect interpretation of the Office Memorandum of December 22, 1959, came to the notice of the authorities, they rightly reverted the petitioners to the posts of Lower Division Clerks, and instead promoted the senior persons viz. Sarvshri Sita Ram, Wasti Ram and Gurdyal Singh, thus rectifying the error. But the promotions so ordered have not yet been given effect to because of the pendency of this petition. The position taken by the petitioners is not correct."

14. Again, it was stated, *inter alia,* in paragraphs 5 to 9 of the written statement as follow:—

"It may be mentioned that clarification of Ministry of Home Affairs, Office Memorandum No. 9/11/55-RPS, dated December 22, 1959, was received from the Ministry of Home Affairs by the Directorate-General of Health Services on December 20, 1963. The contention of the petitioners that the revised orders for determining seniority issued in the Ministry of Home Affairs Office Memorandum No. 9/11/55-RPS, dated the 22nd December, 1959, were intended to determine the seniority of the persons recruited after the date of this Office Memorandum is not correct. It is quite clear from paragraph 2 of the general principles that it refers to two categories of persons—those appointed

before December 22, 1959, and those appointed on or after that date. The paragraph further clarified that those, who have been appointed in a substantive or officiating (which includes temporary) capacity to a grade prior to the issue of the general principles shall retain the relative seniority already assigned to them and shall *en bloc* be senior to all others in that grade. It is, therefore, clear that the general principles do provide for regulating the seniority of persons appointed before December 22, 1959. Taking into account the fact that the provisions of paragrph 2 of the general principles are subject to those of paragraph 3 thereof, it follows that in the case of persons appointed before December 22, 1959, all permanent persons will be *en bloc* senior to officiating/temporary employees in the grade and that the relative seniority amongst such permanent employees and officiating/temporary employees in their respective categories, as determined before December 22, 1959, would remain undisturbed. In fact in view of paragraph 3 of the general principles, persons confirmed from a date after December 22, 1959, will also be senior to persons who are officiating or temporary in a grade, on the date of confirmation, even if such officiating or temporary persons were appointed before December 22, 1959.

The last sentence of paragraph 2 of the Office Memorandum, dated December 22, 1959, says 'it has, therefore, been decided in consultation with the Union Public Service Commission that hereafter the seniority of all persons appointed to the various Central Services after the date of these instructions shall be determined in accordance with the general principles annexed hereto.' This sentence does not affect the position indicated in paragraph 1 above. All that this sentence says is that any person appointed after December 22, 1959, will be governed by these general principles of seniority.

The second sentence of paragraph 3 of the Office Memorandum states 'the revised general principles embodied in the Annexure will not apply with retrospective effect, but will come into force with effect from the date of issue of these orders, unless a different date in respect of any particular

service/grade from which these revised principles are to be adopted for the purpose of determining seniority has already been or in hereafter agreed to by the Ministry of Home Affairs.' It may be noted that the revised principles do include a provision for regulating the seniority of persons appointed before December 22, 1959, as explained in paragraph (1) above.

In view of what is stated above, it is clear that the Ministry of Home Affairs Office Memorandum, dated December 22, 1959, not only regulates the seniority of persons appointed on or after December 22, 1959, but also regulates, with effect from December 22, 1959, the seniority of those appointed before that date. A perusal of the further clarificatory orders issued under the Ministry of Home Affairs Office Memorandum No. 9/45/60-Ests. (D), dated April 20, 1961, will make the position clear in this respect. A copy of the letter, dated April 20, 1961, is attached—Annexure 'R-9'. The assertion made by the petitioners in these paragraphs thus does not represent the entire position."

(15) In paragraph 23(g) it was stated that the petitioners (appellants before us) had been "reverted in accordance with the general principles of 1959."

(16) The learned Single Judge dismissed the writ petition by his judgment, dated April 19, 1966, on the following findings:—

(1) The Government can unilaterally change the conditions of service of its employees even though the change may be to the disadvantage of all or some of them;

(2) If the writ petitioners could base their claim on the 1949 instructions (Annexure R-2). respondents Nos. 4 to 13 who had now been made senior to the writ petitioners on account of their earlier confirmation could also rely for their defence on similar Government instructions, dated December 22, 1959, (Annexure 'F' to the writ petition corresponding to Annexure 'R-6' attached to the return of the State);

(3) Even if the contention of the writ petitioners to the effect that the 1959 instructions had expressly saved the rights of the petitioners and that the Home Ministry had subsequently wrongly interpreted the said Annexure, in the Ministry's subsequent instructions, dated June 19, 1963 (Annexure 'G') which had been issued by respondent No. 2 was correct, there were on record a number of office memoranda issued by the Ministry of Home Affairs which made the position unambiguously clear that from December 22, 1959, the seniority of all the employees-past or present—had to be governed by the date of their confirmation and not by the length of their service. Reliance for this finding was placed on Annexure 'R-9', dated April 20, 1961, and on Annexure 'G' to the writ petition, dated June 19, 1963. Inasmuch as the said two instructions (Annexures 'R-9' and 'G') were also issued by the Ministry of Home Affairs which had issued the 1959 circular (Annexure 'R-2') on which the writ petitioners were basing their claim, they could not contest the authority of the Home Ministry to issue the subsequent instructions.

(4) It is not necessary to determine whether the interpretation placed by the Government on the 1959, instructions (Annexure R-6) or that placed on those instructions by the writ petitioners was correct, because in the circumstances of the case it is the interpretation of the Ministry of Home Affairs which has to prevail as the Ministry can change the conditions of service even by issuing a fresh office memorandum;

(5) The contention of the writ petitioners to the effect that the change in the conditions of their service was violative of Article 14 or 16 of the Constitution, was devoid of any permit;

(6) The instructions of the Government contained in the 1949 circular (Annexure 'R-2') do not have the status of "law" as defined in Article 13 of the Constitution; and

(7) It is needless to discuss the contention raised by the respondents to the effect that the 1949, circular and the 1959

instructions were merely administrative in nature and conferred no legal right on the writ petitioners of which infringement could be coplained of.

(17) At the hearing of the appeal before us Mr. Pitam Singh Jain, the learned counsel for the appellants, did not seriously contest the finding of the learned Single Judge to the effect that the service rules could be changed unilaterally to the disadvantage of the existing incumbents, and that the 1949 circular as well as the 1959 circular may be treated as containing merely administrative instructions with the qualification that those instructions were such as would have affected the civil rights of the appellants. He, however, pressed only the following points in this appeal:—

(i) The 1959 circular specifically and unequivocally maintained the *inter se* seniority of all the employees—temporary, permanent or officiating—who had entered service prior to December 22, 1959, and does not even purport to affect them or their seniority in any manner;

(ii) Even if the Annexure to the 1959 circular could be made applicable to the pre-December, 1959, entrants, paragraph 2 of the said Annexure saves their *inter se* seniority *en bloc* and paragraph 3 thereof does not apply to them;

(iii) The contents of Annexure 'R-9', dated April 20, 1961, are not at all relevant, and have no effect on the appellants;

(iv) The circular letter, dated June 19, 1963 (Annexure 'G') does not contain any new instructions or policy, and does not even purport to supersede the 1949 circular as amended by the 1959 one, and does not in any manner change the situation regarding the *inter se* seniority of the pre—1959 circular entrants. Annexure 'G' was only way of clarification. If the clarification is capable of conveying anything which is incompatible with the 1959 circular, the clarification is liable to be struck down;

(v) If the circular letter, dated June 19, 1963 (Annexure 'G') is deemed to contain a new administrative instruction or service rule, the same cannot be given retrospective effect and would operate only from June 19, 1963;

(vi) Inasmuch as each of the appellants had not only been confirmed prior to June 19, 1963, but had also been promoted as Upper Division Clerks, the alleged new instructions could not affect their rights as the Central Government had no power either by way of administrative instructions or even by framing a rule under the proviso to Article 309 of the Constitution to affect the right of any Government servant retrospectiveiy;

(vii) If all the above said points are decided against the appellants, their seniority still could not be affected by the latest instructions contained in paragraph 3 of the Home Ministry's U.O. note forwarded to the Health Ministry on March 31, 1963, according to which it was incumbent on the authorities to see at the time of revising the list under the new rules that the *inter se* seniority of the pre-December, 1959, entrants, who had been confirmed after December 22, 1959, was to be affected only if "they were confirmed late because they were not declared fit for confirmation" failing which they would despite the new instructions "regain their (original) seniority." The omission of the relevant sentence in the circular letter issued by the Directorate of Health Services (Annexure 'G') on June 19, 1963, while copying the contents of paragraph 3 of the abovesaid U.O. note, was *mala fide* and appears to have been done by someone with ulterior motive.

(18) On the other hand, it was argued by Mr. C. D. Dewan, the learned Deputy Advocate-General for the State of Haryana, who was appearing in this case for respondents Nos. 1 to 3, that :—

(i) the body of the 1959 circular (Anexxure 'R-6') has to be read subject to the general provisions contained in the Annexure thereto;

(ii) the opening words of paragraph of the Annexure to the 1959 circular clearly show that the contents of the said paragrph are subject to what is stated in paragraph 3 thereof, and that according to the correct interpretation of paragraphs 2 and 3 read together, the seniority of all those persons who had not been confirmed till December 22,

1959, had to be refixed on the basis of their date of confirmation irrespective of their length of service. The 1949 rules were saved only for those who had already been confirmed before December 22, 1959;

(iii) the sentence from the Home Ministry's U.O. note omitted in the circular letter, dated June 19, 1963, had relevance only for the particular persons to whom reference was made in that paragraph and the omission of the sentence in dispute was unintentional and in any case *bona fide;*

(iv) appropriate Government can frame rules as well as give administrative instructions affecting the rights of Government servants retrospectively and such a power is inherent in the rule-making authority conferred on the Government under the proviso to Article 309 of the Constitution; and

(v) in any case, no petition under Article 226 of the Constitution lies for rectifying any mistake in the fixation of the seniority of a Government servant even if it has been wrongly fixed particularly when the alleged erroneous fixation of seniority of any Government servant is based on executive instructions as the Government has the absolute right to fix the seniority of its employees in any manner it likes from time to time. No interference can be made by the Court in a matter like this unless it is found that Article 14 or 16 of the Constitution has been infringed by the impunged order.

(19) I will now deal with each of the above mentioned contentions seriatim, and will, therefore, take up Mr. Pitam Singh Jain's submissions first. I agree with the first contention of Mr. Jain. It is not disputed that the 1959 circular applied to all the employees irrespective of whether they were temporary, permanent or officiating. It appears to be impossible to spell out from the 1959 circular any provision or sanction for disturbing or changing the seniority of any Lower Division Clerk appointed to the service after January 1, 1944, but before December 22, 1959, which seniority might have been fixed in accordence with the rules contained in the admitted 1949 circular. The Home Ministry did not leave the matter in any doubt. The relevant passage from the 1959 circular has already been quoted

in this judgment. In the face of the following statements made therein (partly underlined in the quotation from the circular) it cannot be said that the reversion to the pre—1944 rule was intended to affect even those persons who had been appointed prior to December 22, 1959:—

(i) That there was "no longer any reason to apply" the 1949 instructions in preference to the normal principles for determination of seniority. This by itself indicated that the persons whose seniority had already been fixed on the basis of the 1949 circular, i.e., the persons, who had been appointed before December 22, 1959, were not to be affected by the new rules unless it was clearly indicated to the contrary ;

(ii) The use of the expression "hereafter" in paragraph 2 of the 1959 circular. The category of persons for determining whose seniority the principles contained in the annexure to the 1959 circular had to be followed, was described in paragraph 2 of the communication in question as "all persons appointed to the various Central Services after the date of these instructions".

(iii) The Annexure to the 1959 circular has been specifically and exclusively referred to in the main communication only for the purposes of determining the seniority of persons appointed after the date of those instructions. Things might have been otherwise if the general principles annexed to the circular letter were the main thing and they were merely forwarded with a covering letter for necessary action, but this was admittedly not so;

(iv) The very first out of the four communications mentioned in paragraph 1 of the 1959, letter which were cancelled by paragraph 3 of the 1959 letter was the 1949 circular. Paragraph 3 of the disputed communication stated that the instructions contained in the various memoranda cited in paragraph 1 thereof were being cancelled "except in regard to determination of seniority of persons appointed to the various Central Services prior to the date

of" the December, 1959, memorandum. The only interpretation which the abovesaid sentence is susceptible of is that for persons who fell in the excepted category, i.e., for persons appointed to the various Central Services prior to December 22, 1959, the 1949 circular was not cancelled. This means that for the said excepted category of people in which clearly both the appellants fall, the 1949 circular continued to be in force.

(v) It was again stated that "the revised general principles embodied in the Annexure will not apply with retrospective effect" but would come into force only with effect from December 22, 1959. This is the second place where reference is made to the Annexure.

(20) It is thus obvious that if things had rested with the 1959 circular, there would have been no difficulty whatever in holding straightway that the appellants who were admittedly appointed prior to December 22, 1959, were not affected by the change and for all such persons the 1949 rule was deemed to continue in force. It is admitted that if this were so, the impugned upsetting of the seniority of the appellants, and their consequent reversion could not have been justified. So far as the interpretation of the 1959 circular in regard to its retrospectivity is concerned, the matter also appears to be concluded by the following observations in paragraph 4 of the judgemnt of their Lordships of the Supreme Court (while referring to the very same document) in *Mervyn Continho and others* v. *Collector of Customs, Bombay and others* (1): —

"It appears that by 1959, the circular of 1949 for absorption of displaced Government servants, etc., had worked itself out. Therefore, on December 12, 1959, the Government of India issued another circular containing general principles for determining seniority of various categories of persons employed in central services. By this circular, the circular of 1949 and certain other circulars issued to deal with special types of recruitment like war service candidates were cancelled, and thereafter seniority was to be determined by the circular of 1959, which states that instructions

(1) A.I.R. 1967 S.C. 52.

contained in the said circulars had achieved their object and there was no longer any reason to apply those instructions in preference to the normal principles for determining seniority in future. For the future certain general principles were laid down for fixing seniority in the circular of 1959. These principles were not to apply retrospectively, but were given effect to from the date of their issue, subject to certain reservations with which we are not concerned."

(21) It is, therefore, clear that it is useless to read the annexure to the letter, dated December 22, 1959, as the contents of the annexure have been expressly made applicable only to those persons who were appointed after December 22, 1959, and not to those who had been appointed before the said crucial date. According to the submission of Mr. C. D. Dewan, which was also adopted by Mr. Rajinder Sachar, the learned counsel for respondents Nos. 4 to 11, the 1959 circular had not to be applied only to those persons who had already been confirmed before that date. In short counsel for the respondents want to read for the word "appointed" the word "confirmed" in paragraphs 2 and 3 of the 1959 circular. There appears to be no warrant whatsoever for so doing. In this situation, I have no hesitation in holding that the circular letter of the Government of India, dated December 22, 1959, expressly saved the Central Government servants who had been appointed prior to December 22, 1959, from their seniority being affected by the date of confirmation, and that their seniority had to be determined on the basis of length of service only.

(22) I do not, however, find any force in the second submission of Mr. Pitam Singh Jain. If the annexure to the Government of India letter, dated December 22, 1959, could be held to govern the case of persons like the appellants who had been appointed to the Central Services in question prior to the date of that letter, the appellants could not, in my opinion, escape the effect of paragraph 3 thereof. The first thing which paragraph 2 of the annexure provides for is that the persons who had been appointed prior to December 22, 1959 (whether in substantive or officiating capacity, the latter capacity has been admitted to have included temporary capacity also) were to retain their relevant seniority already assigned to them, or such seniority which might be assigned to them under the existing orders applicable to their cases. But this is expressly made "subject to the provisions

of paragraph 3 below," which means that in case of conflict between paragraphs 2 and 3 in the abovementioned respect it is the third paragraph which would prevail, because the second one is subject thereto. The only other thing provided for in paragraph 2 is that those appointed prior to December 22, 1959, shall *"en bloc* be senior to all others in that grade". The effect of second part of paragraph 2 is that in no case would anybody appointed after December 22, 1959, be entitled to be senior to any member of the bloc of persons appointed before that date. But this again is "subject to the provisions of paragraph 3". Paragraph 3 is subject only to paragraph 4, and it is admited that paragraph 4 has no effect on our case. According to paragraph 3 "permanent officers of each grade shall be ranked senior to persons who are officiating in that grade." The whole of paragraph 2 being subject to paragraph 3 in the matter of seniority, the date of confirmation alone would be relevant for determining *inter se* seniority of persons in any of the two blocs, i.e., pre and post-December, 1959, appointees. I would, therefore, hold that if the annexure to the 1959 letter was applicable to the appellants, and had not been expressly excluded by the circular letter itself, the appellants could make no grievance whatsover, regarding the refixation of their seniority and their consequent reversion to the lower rank.

(23) Once again Mr. Jain, appears to be correct in stating that the Government of India letter, dated April 20, 1961 (Annexure 'R-9') is not relevant for deciding this case. The expressed subject with which that letter deals has been mentioned at the top of the letter in the following language:—

> "Subject.—General principles for determining seniority of various categories of persons employed in Central Services, interpretation of—relating to seniority of direct recruits who are confirmed in an order different from the original order of merit, including those belonging to Scheduled Castes/Tribes."

(24) We have been taken through the contents of the said communication and all the counsel were agreed that nothing contained therein is directly relevant for our purposes.

(25) This takes us to Annexure 'G', dated June 19, 1963. The communication does not even purport to abrogate the 1959 letter or

anything contained therein. In paragraph 1 of the communication it is expressly stated that seniority of certain categories is to be determined according to annexure to the letter, dated December 22, 1959. Confusion appears to have arisen because of the reference having been made only to the annexure and not to the body of the impugned communication, dated December 22, 1959. Paragraph 1(iii) of the said letter which has created the whole difficulty is in the following terms:—

> "Further, in accordance with the seniority principles contained in the Office Memorandum, dated December 22, 1959, persons *confirmed* before December 22, 1959, should be treated *en bloc* senior to others confirmed after that date".

(26) The confusion appears to have occurred because of the erroneous use of the word "confirmed" in place of the word "appointed" used in the original document, i.e., in the 1959 circular. Somebody seems to have mixed up the contents of paragraphs 2 and 3 of the circular on the one hand, and the contents of paragraphs 2 and 3 of the annexure on the other. Again it has been stated in paragraph 2 of the letter, dated June 19, 1963, that the seniority lists of employees confirmed before December 22, 1959, and those confirmed after that date, should be revised in accordance with the decision contained in letter, dated March 5, 1963 (already referred to in this judgment). Annexure 'G' was not issued by the Ministry of Home Affairs which according to all concerned was competent to issue instructions on the subject in dispute. It is stated to have been based on the U.O. note, dated March 20/31, 1963, received by the Ministry of Health from the Ministry of Home Affairs. In that view of the matter, it cannot possibly be argued that if anything is contained in Annexure 'G' which is contrary to the 1949 circular, the rule of seniority may to that extent be deemed to have been amended. But even if such an amendment could be assumed, it would be deemed to be in accordance with what the Home Ministry wrote to the Ministry of Health, and not according to the discrepant version thereof contained in Annexure 'G'. The discrepancy in this respect is dealt with while disposing of the seventh contention of Mr. Jain.

(27) The fifth and sixth points raised by Mr. Pitam Singh Jain are based on the assumption that the letter, dated June 19, 1963, and

the U.O. note of the Home Ministry on which it was based, contained a new rule for determination of seniority based on the date of confirmation as compared to the 1949 rule under which seniority had to be fixed on the basis of length of service alone. If this were so, the new rule would be deemed to be as contained in the Home Ministry's U.O. note. But the question that straightaway crops up in these circumstances is whether the change in the rule, if any, effected in May or June, 1963, could affect the appellants, who had been confirmed in March, 1960.

(28) Conditions of service of persons appointed to public services can be regulated by (i) Acts of the appropriate Legislature; (ii) until provision is made by or under an Act of the appropriate Legislature, and in so far as no such provision has been made, by rules framed by the President of India or his delegate in connection with the services of the Union and by the Governor of the relevant State or his delegate in connection with the services of the State; and (iii) by valid executive instructions and administrative directions issued by the Central Government or the State Governments as the case may be.

(29) So far as legislative enactments are concerned, it is well recognised that in the absence of any constitutional inhibition, a competent Legislature may give retrospective operation to any provision of law enacted by it either expressly or by necessary intendment. Whether this general principle of interpretation of statutes from the point of view of their retrospectivity applies to rules made under the purview of Article 309 of the Constitution or under any other enabling provision or not, need not detain us in this judgment, as that question does not arise in this case. Nor are we directly concerned with the rules framed by the President of India or the Governor of a State under the proviso to Article 309 of the Constitution. It may, however, be mentioned that two Full Benches of the Kerala High Court have held, relying on the Full Bench judgment of the Allahabad High Court in *Ram Autar Pandey v. State of Uttar Pradesh and another* (2), that the rule-making power conferred by Article 309 on the Governor of a State or his nominee is not confined to prospective rule-making only and appears

(2) A.I.R. 1962 All. 328 (F.B.).

to be wide enough to include the making of rules with retrospective effect *C. K. Madhayan Nair* v. *Registrar, High Court of Kerala, and others* (3), and V. *Hari Haran Pillai* v. *State of Kerala* (4). When this question arose before their Lordships of the Supreme Court in *State of Mysore* v. *Padmanabhacharya and others* (5), in connection with the validity of notification, dated March 25, 1959, issued by the Governor of the State of Mysore in exercise of his rule-making power under proviso to Article 309 whereby the illegal retirements of persons at the age of 55 between two particular dates was sought to be validated by the Governor, the Supreme Court struck down the notification on the grounds; (i) that such a rule was not contemplated under the proviso to Article 309 as the rule could not be said to be for governing the conditions of service of persons appointed to services; (ii) that the power of validating an order which was invalid when it was made did not flow from the power conferred on the Governor to make rules regulating recruitment and conditions of service; and (iii) that if effect were to be given to the impugned notification, it would contravene Article 311 of the Constitution. Regarding the attack on the validity of the notification on the ground of its retrospectivity the Supreme Court after holding that the notification issued by the Governor could not in any sense be regarded as a rule made under the proviso to Article 309, observed as under:—

> "In this view of the matter, it is not necessary to decide whether a rule of this kind which is purely retrospective could be made as a rule governing conditions of service of persons appointed in connection with the affairs of the State."

(30) It may be possible to argue that retrospective effect can be given to Service Rules if the power to make such rules is conferred on the rule-making authority by a statute.

(31) Whatever may be the position regarding statutory rules, there appears to me to be absolutely no doubt that Government has no lawful authority to prejudicially affect the civil rights of a

(3) 1967 S.L.R. 298 (F.B.).
(4) 1967 S.L.R. 553 (F.B.).
(5) 1967 S.L.R. 8.

Government servant retrospectively by a mere executive fiat otherwise than by his consent unless the Government is authorised to do so by the express provision of some valid law. Rights which have already accrued to a Government servant and the benefits which he might already have enjoyed under or by virtue of a pre-existing executive instruction or administrative direction cannot be taken away with retrospective effect by another executive instruction or a mere administrative direction. If this is the law, and indeed I think it is so, the saving in favour of the seniority of the pre-December, 1959 appointees, who had been confirmed before June, 1963, could not be affected by Annexure 'G' which was issued in that month (in June, 1963). Each of the appellants was confirmed in March, 1960. The question of refixation of their seniority with retrospective effect by virtue of the change supposed to have been effected in May or June, 1963, could not, therefore, arise.

(32) This brings me to the last submission of Mr. Jain. I find force in the same. If it could be held that either the appellants were not saved from the effect of the annexure to the 1959 circular or that the withdrawal of the concession contained in the 1949 rule effected in May or June, 1963, could also have retrospective effect, I would have held that the Government is bound by its own interpretation of the rule contained in the Home Ministry's U.O. note to the effect that if persons were confirmed later than their juniors in spite of their high seniority on the basis of length of service, their seniority according to the 1949 rule would not be affected if they were confirmed late for any reason other than the one that they were not declared fit for confirmation. No such allegation has been made by the respondents that the confirmation of the appellants was postponed till after the confirmation of respondents Nos. 4 to 11, because of their not having been found to be fit for confirmation. On the other hand, the admitted case of the parties is that the confirmation of the appellants was delayed because the first vacancies which occurred were reserved for the particular communities or classes in which respondents Nos. 4 to 11 who were junior in service to the appellants had to be confirmed.

(33) The first point raised by Mr. C. D. Dewan has already been disposed of by me and I have held that according to the clear language of the 1959 circular, there is no occasion for reading the annexure thereto for fixing the seniority of persons to whom its

reference has been expressly barred by the body of the circular letter. Similarly I have already accepted the second argument of Mr. Dewan, while dealing with the second contention of Mr. Pitam Singh Jain. I have held that if the annexure to the 1959 circular were to apply to the appellants, they could make no grievance of their having been made junior to respondents Nos. 4 to 11. The stand taken by the State counsel about the effect of the portion from the Government of India's U.O. note omitted from the circular letter being restricted to the persons mentioned in that paragraph of the note, is misconceived. There is no reason to apply different interpretation of the relevant rule to different persons, and what was applicable to the persons referred to in paragraph 3 of the U.O. note in question must be equally applied to all persons similarly situated. The adoption of any other course would result in infringement of the fundamental rights guaranteed to the appellants under Article 16 of the Constitution.

(34) Regarding the third submission of the Deputy Advocate-General, it appears to me to make no difference whether the omission of the relevant sentence occurring in the Home Ministry's note from the circular letter Annexure 'G' was intentional or not. This being admitted that the circular letter was based on the said note and the Home Ministry being the only competent authority to give such a direction, the rule will be deemed to be, as already held above, as contained in U.O. note of the Home Ministry.

(35) In view of what I have held in connection with the sixth contention of the appellants, the fourth submission of Mr. Dewan does not call for any separate answer. For the reasons already recorded, I would hold that the Government has no such inherent power to make changes in the service conditions of its personnel with retrospective effect by mere executive instructions.

(36) The only other argument which remains to be dealt with relates to the scope of the authority of this Court to interfere in a case of this type under Article 226 of the Constitution. Mr. Dewan has relied upon certain observations made in two judgments of the Supreme Court; namely, in *Nagendra Nath Bora and another* v. *Commissioner of Hills Division and Appeals, Assam and others* (6), at

(6) A.I.R. 1958 S.C. 398.

page 413, and in *R. Abdulla Rowther* v. *The State Transport Appellate Tribunal, Madras, and others* (7). *Nagendra Nath Bora's case* (supra) related to settlement of country spirit shops. The writ petitioners in that case had gone to the Assam High Court against the order of the second Excise Appellate Authority settling the liquor shop in question on Nagendra Nath Bora. The High Court quashed the order chiefly on the ground that the Appellate Authority had been illegally constituted. When the matter was brought by special leave to the Supreme Court, the order of the High Court was reversed. During the pendency of the appeal in the Supreme Court, the Excise Commissioner concerned had carried out the order of the High Court but on the disposal of the Supreme Court judgment the possession of the shop was restored to Nagendra Nath, who could enjoy its fruit for a few months after which the next financial year started for which the shop was again settled on the contesting respondents. The Excise Commissioner ultimately settled the shop on Nagendra Nath. The writ petition filed by the other side was then allowed by the Assam High Court which directed the reconsideration of all the tenders. The order of the Excise Appellate Authority had been set aside by the High Court on the ground that it had acted in excess of its jurisdiction and that its order was vitiated by errors apparent on the face of the record. It was in that context that the Supreme Court observed in its judgment that the utmost that had been suggested was that the Appellate Authority had not carried out certain executive instructions, and that even assuming, though it was not clear that certain instructions had been disregarded, the non-observance of those instructions could not affect the power of the Appellate Authority to make its own selection or affect the validity of the order passed by it. B. P. Sinha, J., who spoke for the Court, then proceeded to observe as follows:—

> "The jurisdiction under Article 226 of the Constitution is limited to seeing that the judicial or quasi-judicial tribunals or administrative bodies exercising quasi-judicial powers, do not exercise their powers in excess of their statutory jurisdiction, but correctly administer the law within the ambit of the statute creating them or entrusting those functions to them. The Act has created its own hierarchy of officers and Appellate Authorities, as indicated above, to administer the law. So long as those

(7) A.I.R. 1959 S.C. 896.

> Authorities function within the letter and spirit of the law, the High Court has no concern with the manner in which those powers has been exercised. In the instant cases, the High Court appears to have gone beyond the limits of its powers under Articles 226 and 227 of the Constitution."

(37) The law laid down in *Nagendra Nath Bora's case* does not appear to affect the right of the appellants in the present proceedings. What their Lordships of the Supreme Court were observing in *Nagendra Nath Bora's case* related to the issue of writs in the nature of *certiorari* which alone are concerned with seeing that judicial and quasi-judicial tribunals or administrative bodies exercising quasi-judicial powers do not exercise their authority in excess of their statutory jurisdiction. The grievance in the case before us is not of the Government having failed to obey some executive instructions of a superior authority, but of having taken away a civil right of the appellants on the basis of an executive instruction which is not applicable to them. Nor do the observations of the Supreme Court in the case of *R. Abdulla Rowther* (supra) appear to serve the respondents. Rowther's appeal in the Supreme Court was directed against the order of the High Court of Madras dismissing his application for a writ of *certiorari* in the matter of grant of stage carriage permits by the Regional Transport Authority. It was in that context that it was observed that if the Government orders contained merely executive or administrative direction, their breach, even if patent, would not justify the issue of a writ of *certiorari,* and that the executive orders properly so-called do not confer any legally enforceable rights on any persons and impose no legal obligations on the subordinate authorities for whose guidance they are issued. Reliance was placed on the earlier judgment of their Lordships in *Nagendra Nath Bora's case* (supra). In the present case there is no question of issuing a writ in the nature of *certiorari* nor do the appellants seek to enforce any executive instructions. They had already received the benefit of the admittedly binding executive instructions, if they could be so-called, issued in 1949. The grievance with which they came to Court was that the civil rights already conferred on them in the matter of their seniority in service were being affected under the guise of the supposed executive instructions which either did not exist or had no application to them. Such a grievance of the appellant having been found to have been justified, it does not appear to

us that the Supreme Court ever held that in spite of a situation like this, the High Court would have no jurisdiction to grant any relief to the persons concerned. So far as the powers of this Court under Article 226 of the Constitution are concerned, it was observed by K. Subba Rao, J. (as he then was) in *Dwarka Nath* v. *Income-tax Officer,, Special Circle, D Ward, Kanpur and another* (8), as follows: —

> "Article 226 is couched in comprehensive phraseology and it *ex facie* confers a power on the High Court to reach injustice wherever it is found. A wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution. The High Court can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression 'nature', which expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country. To equate the scope of the power of the High Court under Article 226 with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction would defeat the purpose of the Article itself."

(38) It is also significant that the very same circular of December, 1959, was referred to and interpreted in paragraph 4 of the judgment of their Lordships of the Supreme Court in the case of *Meryyn Continho and others* v. *Collector of Customs, Bombay and others* (9). If the Deputy Advocate-General is right in asking us not

(8) A.I.R. 1966 S.C. 81.
(9) A.I.R. 1967 S.C. 52.

to take notice of and to enforce any executive instructions, then he cannot ask us to look to either the communication of May or June, 1963, or even to Annexure 'R6' of December, 1959, on the basis of which alone, the impugned orders have been passed. If those instructions cannot be looked into, the upsetting of the seniority of the appellants resulting in their reversion from the higher rank to the lower rank without being justified by any rule, law or valid instructions would be clearly violative of Article 16(1) of the Constitution. There is some difference between a case where somebody comes to the Court with a grievance that he has not received a transport permit or a licence for a country liquor shop on account of non-compliance with certain executive instructions, and the case in which an existing right of a citizen is taken away and the only reason pleaded for depriving a citizen of the said right is the supposed executive instructions which either do not exist or do not apply to the person concerned. Whereas in the earlier case the pronouncement of the Supreme Court would apply, there appears to be no bar in the arms of this Court being extended to the latter category of cases to undo injustice caused to the person concerned.

(39) In a recent unreported judgment of the Supreme Court in *G. J. Fernandez v. The State of Mysore and others* (10), it was held that in exercise of its executive power, the State can give administrative instructions to its servants how to act in certain circumstances, but that will not make such instructions statutory rules which are justiciable in certain circumstances, and that in order that such executive instructions have the power of statutory rules, it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under the provisions of the Constitution provided therefor. Though appellants have not been able to show any statutory rule under which the 1949 circular, the 1959 instructions and the subsequent communications were issued, the matter appears to make no difference as the appellants are not claiming any relief based on any of those instructions, but are merely resisting the impugned orders and assailing the impugned revised seniority list which have been passed and prepared to their prejudice on the basis of supposed executive instructions.. The appellants are not seeking to enforce

(10) C.A. 218 of 1967.

any such instructions, but are merely trying to avoid the effect of their misreading.

(40) For the foregoing reasons this appeal is allowed, the order of the learned Single Judge is set aside, and the impugned orders held to be not applicable to the appellants. Consequently the revised seniority list (Annexure 'H-I') is deemed to be invalid and the respondents Nos. 1 to 3 are directed to prepare a revised seniority list so as to restore to the appelants their original seniority as it existed prior to their promotion as Upper Division Clerks. If as a result of the restoration of their original seniority, they are entitled to promotion as Upper Division Clerks, the Central Government will not deny the same to them. In the circumstances of the case the parties are left to bear their own costs.

MEHAR SINGH, C. J.—I agree.

R.N.M.

FULL BENCH

Before Shamsher Bahadur, R. S. Narula and Gopal Singh, JJ.

BHAIYA RAM,—*Petitioner.*

versus

MAHAVIR PARSHAD,—*Respondent.*

Civil Revision No. 913 of 1967

October 3rd, 1968.

East Punjab Urban Rent Restriction Act (*III of* 1949)—*S.* 13—*Transfer of Property Act* (*IV of* 1882)—*S.* 106 *and* 111—*Contractual monthly tenancy—Application for ejectment from—Whether can succeed without notice under section* 106, *Transfer of Property Act—Such notice—Whether necessary in case of statutory tenancy or of contractual tenancy where there is express stipulation to the contrary in the contract—Defence of want of notice—Whether available despite enforcement of East Punjab Urban Rent Restriction Act—Period of notice in Punjab—Whether to be of fifteen days, necessarily terminating at the end of the month—Objection regarding non-issue or validity of notice—Whether can be waived.*