No.9/3/72-Estt.(D)
Government of India
Cabinet Secretariat,
Department of Personnel

New Delhi, Dated the 22nd July, 1972.

OFFICE MEMORANDUM.


As the Ministry of Finance etc. are aware, under the orders contained in Ministry of Home Affairs O.M. No. 30/44/43-Appts., dated 22.6.1969, (copy enclosed as annexure I), seniority in a grade was to be determined, as a general rule, on the basis of the total length of continuous service in the grade, as well as service in an equivalent grade, the term "service in an equivalent grade" being defined as service on a rate of pay higher than the minimum of the time-scale of the grade concerned, irrespective of whether it was rendered in the Central or Provincial Government in India or Pakistan. Seniority of persons appointed on a permanent or quasi-permanent basis prior to the 1st January, 1944, was, however, not disturbed by the office Memorandum of 22.6.1949. The instructions contained in that O.M. were issued in order to safeguard the interests of displaced Government servants appointed to Central Services after Partition, but as it was not possible to regulate the seniority of only displaced Government servants by giving them credit for previous service, the instructions of 22.6.1949 referred to above were made applicable to other categories of persons also appointed to Central Services. There were, however, certain services/posts which were exempted from the operation of the O.M. of 22.6.1949. In the course of time, displaced Government servants had, by and large, been absorbed in the various Central Services and their seniority fixed with reference to the length of service rendered by them, as provided in the O.M. of 22.6.1949. It was, therefore, felt that it was no longer necessary to apply the instructions of 22.6.1949 in preference to the normal principles for determination of seniority. As a result, revised principles of seniority were issued in December, 1959, in consultation with the Union Public Service Commission, vide Ministry of Home Affairs O.M. No. 9/11/55-RPS, dated 22.12.1959 (copy enclosed as annexure II), which is still in force.
2. As would be seen from para 2 and 3 of the O.M. of 22.12.1959 mentioned above, except as otherwise provided in that O.M. or except for such services and posts for which separate principles of seniority had already been issued or which might be issued thereafter, the seniority of all persons appointed to the various Central Services after the date of the O.M. (viz. 22.12.1959) was to be determined in accordance with the general principles of seniority contained in the Annexure to that O.M. and those general principles were not to apply with retrospective effect. According to para 2 of the Annexure to that O.M., persons appointed in a substantive or officiating capacity to a grade prior to the issue of the general principles of seniority shall retain their relative seniority already assigned to them, or such seniority as may thereafter be assigned to them under the existing orders applicable to their cases and shall en bloc be senior to all others in that grade. However, para 3 of the Annexure provides that permanent officers of each grade shall be ranked senior to persons who are officiating in that grade.

3. Keeping in view the objectives of the revised instructions contained in the O.M. of 22.12.1959, the Ministry of Home Affairs (now Department of Personnel) have all along held that while persons appointed prior to 22.12.1959 will retain their relative seniority already fixed under the then existing orders, with effect from 22.12.1959, permanent employees of a grade, including those confirmed in that grade prior to 22.12.1959, will rank as a bloc senior to non-permanent employees of that grade, irrespective of the fact whether such non-permanent employees were appointed to the grade before, on, or after 22.12.1959. Amongst permanent employees confirmed in the grade prior to 22.12.1959, their relative seniority already fixed according to the then existing orders would be maintained and they will rank senior to those confirmed after 22.12.1959, the relative seniority will be according to the order of confirmation. Similarly, amongst non-permanent employees of a grade, the relative seniority of those appointed prior to 22.12.1959 will be on the basis of the then existing orders, but they will rank en bloc senior to those appointed to that grade after 22.12.1959 but not yet confirmed in the grade.

4. This matter, however, came up for consideration before the Supreme Court in Civil Appeals (1) No. 1845 of 1968 (Union of India and others versus M. Ravi Varma and others), (2) No. 1846 of 1968 (Union of India and others versus S. Ganapathi Kini and others) and (2) No. 50 of 1969 (Union of India and others versus Suresh Kumar and others). In its judgement, dated 4.1.1972 (copy annexure III) in these cases, the Court has not agreed with the view taken by the Ministry of Home Affairs (now Department of Personnel) in this matter, as outlined in para 3 above. The Court, while dismissing
the three appeals has held that, except in certain cases (with which the Court were not concerned), the general principles embodied in the annexure to the O.M. of 22.12.1959 did not have retrospective effect and could not apply to persons appointed to the various Central Services before that date. As a result of the judgement, the question whether and if so, to what extent the seniority of persons appointed on a regular basis prior to 22.12.1959, which had been determined according to the O.M. of 22.6.1949 or Office Memorandum No. 65/23/49-DGS (Appeals), dated the 3rd February, 1950, No. 31/223/50-DGS, dated the 27th April, 1951, or No. 9/58/56-RPS, dated the 4th August, 1956, but which had subsequently been revised according to the view taken in this matter vide para 3 above, should be revised further, has been examined in consultation with the Union Public Service Commission and it has been decided that in services/posts under the Central Government to which the general principles for determining seniority contained in the Office Memorandum of 22.12.1959 apply, seniority of such persons should, with effect from 4th January, 1972 (the date of the judgement of the Supreme Court), be restored as it stood on 21.12.1959 in the grade concerned, irrespective of the fact or date of their confirmation and such persons along with those appointed on a regular basis to the grade prior to 22.12.1959, shall continue to remain en bloc senior to the persons appointed to that grade after 22.12.1959. The revision of seniority in such cases will not, however, affect the confirmations already made in the grade prior to 4th January, 1972 or regular promotions therefrom prior to that date. Confirmations/promotions made on or after 4th January, 1972 shall be reviewed, wherever necessary in the light of the above decision. If any person whose seniority is now revised according to these orders is still not confirmed, though a person junior to him has been confirmed, he may also now be considered, subject to availability of permanent vacancies in the grade, for confirmation in the grade, if he is otherwise eligible for the same and is suitable for it. Similarly, if a person whose seniority is now revised under these orders was not considered for promotion prior to 4.1.1972 for want of the requisite seniority, he may also be considered for such promotion subject to availability of promotion quota vacancies in the higher grade, if he is otherwise eligible for the same. However, on promotion to the higher grade, the seniority of such persons among the promotees in the higher grade would be regulated in accordance with para 5 of the general principles of seniority contained in the Annexure to Ministry of Home Affairs' O.M. of 22nd December, 1959.

5. In this connection, it may also be mentioned that the general principles of seniority contained in Annexure to Ministry of Home Affairs O.M. dated 22.12.1959 were applied to some services/posts from a date subsequent to 22.12.1959. Such a course was permissible, vice para 3 of the O.M. dated 22.12.1959 referred to above. If, in those services/posts, seniority was actually continued to be determined beyond 22.12.1959 in accordance with the instructions laid down in
Ministry of Home Affairs' O.M. of 22.6.1949, seniority of the employees in the service/post concerned might have been revised from the date from which the general principles of seniority contained in the annexure to the O.M. of 22.12.1959 were adopted in respect of those services/posts on the basis of the interpretation of the Ministry of Home Affairs (now Department of Personnel) given in para 3 above. In such cases also, the principle laid down by the Supreme Court would apply, viz. that the seniority of persons appointed to the services/posts referred to above prior to the date of application of the principles contained in the O.M. of 22.12.1959, would continue to be governed by the rules/orders in force before such application. Hence the action suggested in para 4 above would apply pari passu to those cases as well.

6. Ministry of Finance etc. are requested to take action accordingly in respect of Government employees serving in or under that Ministry.

Sd/-

[Harish Chandra]
Under Secretary to the Government of India.

To

All Ministries/Departments of the Government of India (including all Attached and Subordinate Offices under the Department of Personnel).

* with usual number of spare copies.

Commissioner for Linguistic Minorities, Allahabad.
Institute of Secretariat Training and Management, New Delhi.
All Union Territory Governments/Administrations.
All regular Section of Department of Personnel.


*With 10 spare copies. Copy forwarded to the Secretary, Union Public Service Commission with reference to the UPSG's letter No.F.2/14/72-S.II dated 5th May, 1972.

Sd/-

(Harish Chandra)
Under Secretary to the Government of India.
Subject: - Seniority of displaced Government servants who have been absorbed temporarily in service under the Central Government.

The undersigned is directed to say that the Government of India have had under consideration the question of the fixation of seniority of displaced Government servants and temporary employees in the various Grades. Employees of the Central Government who were displaced from their offices in Pakistan have been absorbed in service under the control of the same administrative Ministry or, on nomination by the Transfer Bureau of the Ministry of Home Affairs, in other Offices. The Transfer Bureau has also nominated employees of the Governments of North West Frontier Province, Baluchistan and Sind in various offices though they had no right of option. All these persons have been appointed with a few exceptions, on a temporary basis. It has already been decided (vide this Ministry's Office Memorandum No. 42/49-Appts, dated the 16th May 1949) that the question of confirmation of such persons should be examined with reference to the claims of all categories of persons temporarily employed in the grade concerned and that this examination should be related to the formulation of instructions under Rule 7 of the Central Civil Services (Temporary Services) Rules, 1949. It has now been decided in consultation with the Federal Public Service Commission that the question of seniority in each Grade should also be examined in the same context and specific rules suitable for each service prescribed in framing these instructions.

2. The question of seniority of Assistants in the Secretariat was recently examined very carefully in consultation with all the Ministries and the Federal Public Service Commission and the decisions reached are incorporated in para 8 of the Instructions for the initial constitution of the grade of Assistants, an extract of which is attached. It has been decided that this rules should generally be taken as the model in framing the rules of seniority for other services and in respect of person employed in any particular grade seniority should, as a general rule, be determined on the basis of the length of service in that grade as well as service in an equivalent Grade irrespective of whether the latter was under the central or Provincial Government in India or Pakistan. It has been found difficult to work on the basis of 'comparable' posts or grades and it has, therefore, been decided that 'Service in an equivalent Grade', should generally be defined as service on a date of any higher than the seniority of persons appointed on permanent or quasipermanent basis before the Ist January, 1944, should, however, not be disturbed.
3. It is realised that this rule will upset some of the decisions regarding seniority already made in the various offices but in the extra-ordinary circumstances in which a large number of displaced Government servants had to be absorbed in other offices the usual seniority rules cannot be applied if equitable treatment is to be meted to displaced Government servants. It has been suggested in certain quarters that displaced Government servants having in most cases lost all their property and having had to migrate in difficult circumstances should be given some weightage in the matter of seniority on compassionate grounds. The matter has been considered in all its aspects and the decision conveyed in the previous paragraph is considered to be the most equitable in the circumstances of the case. It is requested that these principles may be borne in mind in determining seniority of Government servants of various categories employed under the Ministry of Finance etc.

INSTRUCTION FOR THE INITIAL CONSTITUTION OF THE ASSISTANTS GRADE OF THE CENTRAL SECRETARIAT SERVICE.

8. Seniority of Assistants in Grade IV as newly constituted. The names of all existing permanent Assistants who are included in the permanent strength of the service and who were confirmed in their posts prior to the 22nd October, 1943, will be arranged in the first instance Ministry-wise in accordance with the rules in force at present. Such permanent Assistants will be considered senior to all others confirmed in pursuance of these instructions in vacancies arising up to the 22nd October, 1950. The order of seniority of the latter group of Assistants, namely, those confirmed after the 22nd October, 1943, which will be arranged in a single list for all Ministries, will be determined inter se on the basis of their length of continuous service, temporary of permanent in the grade of Assistant or in an equivalent grade, provided that any period of service during which the pay actually drawn exceeds Rs. +60 per month should be deemed to be service in a grade equivalent to that of an Assistant.
OFFICE MEMORANDUM

Subject: GENERAL PRINCIPLES FOR DETERMINING SENIORITY OF VARIOUS CATEGORIES OF PERSONS EMPLOYED IN CENTRAL SERVICES.

As the Ministries of the Government are aware, instructions have been issued from time to time regarding the principles to be observed in and the method of determining seniority vice Office Memoranda cited below:

(i) Office Memorandum No. 30/44/48-Apppts., dated the 22nd June, 1949;

(ii) Office Memorandum No. 65/28/49-DGS(Apppts.), dated the 3rd February, 1950 and other subsequent Office Memoranda regarding fixation of seniority of ex-employees of the Government of Burma;

(iii) Office Memorandum No. 31/223/50-DGS, dated the 27th April, 1951; and other subsequent Office Memoranda regarding fixation of seniority of displaced Government Servants;

(iv) Office Memorandum No. 9/59/56-RPS dated 4th August, 1956;

The instructions contained in this Ministry's Office Memorandum No. 30/44/48-Apppts., dated the 22nd June, 1949, were issued in order to safeguard the interests of displaced Government servants appointed to the Central Services after partition. As it was not possible to regulate the seniority of only displaced Government servants by giving them credit for previous service, the instructions were made applicable to all categories of persons appointed to Central Services. The principles contained in the 22nd June, 1949 orders were extended to:

(I) ex-Government servants of Burma appointed to Central Services; and

(II) the employees of former Part 'B' States taken over to the Centre as a result of Federal Financial Integration.
The instructions contained in this Ministry's Office Memorandum No. 32/10/49-CS, dated the 31st March, 1950 and No. 32/49/CS(C) dated the 20th September 1952 similarly regulate Central Service.

2. The question has been raised whether it is necessary to continue to apply the instructions contained in the Office Memoranda cited above. Displaced Government servants have by and large been absorbed in the various Central Services and their seniority has been fixed with reference to the previous service rendered by them. Similarly, the seniority of ex-employees of the Government of Burma and Part 'B' States as well as of candidates with war service has already been determined in accordance with the instructions cited above. As the specific objects underlying the instructions cited above have been achieved, there is no longer any reason to apply these instructions in preference to the normal principles for determination of seniority. It has, therefore, been decided in consultation with the UPSC 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.

3. The instructions contained in the various Office Memorandum cited in para 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.

Sd/-

(VISWANATHAN)
Special Secretary to the Government of India

To

All Ministries of the Government of India etc. etc.
GENERAL PRINCIPLES FOR DETERMINATION OF SENIORITY IN THE CENTRAL SERVICES

1. (i) These principles shall apply to the determination of seniority in Central Civil Services and Civil posts except such services and posts for which separate principles have already been issued. For any may be issued hereafter by Government.

Ministries or Departments which have made separate rules or issued instructions on the basis of instructions contained in the Ministry of Home Affairs, O.M. No. 30/44/48-Apptts, dated 22nd June, 1949, are requested to consider modification of those rules or instructions on the basis of those general principles. However, whenever, it is considered necessary to follow principles different from those laid down in this Memorandum, a specific reference should be made to the Ministry of Home Affairs will consult the UPSC. As regards individual cases, the Ministry of Home Affairs will decide the cases on which the advice of the Commission should be obtained.

(ii) Notwithstanding anything contained in these General Principles, the seniority of persons belonging to the following categories will continue to be determined by the instructions noted against each such category:

(a) Ex-Government servants penalised for their patriotic activities
   M.H.A. OM.No. 6/4/52-S&NG dated 29.5.57.

(b) Central Government employees discharged on account of affliction with T.B., Pleurisy or Leprosy.
   OM No. 37/1/52-DGS, dated 10.7.54 (subsequently extended to Pleurisy/Leprosy patients vide OM.No. 13/4/56-RPS dated 29.9.56 and 13.4.57-R dated 14.7.58.

(c) Permanent displaced Government servants nominated by the Transfer Bureau to purely temporary Organisations, who consequent on their retrenchment, were absorbed in other offices.
   OM.No. 30/44/48-Apptts dated 22.6.49.
2. Subject to the provision of para 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 or such seniority as may hereafter be 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 purpose of these principles (a) persons who are confirmed retrospectively with effect from a date earlier than the issue of these general principles; 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 para 4 below, permanent officers of each grade shall be ranked senior to persons who are of officiating in that grade.

4. Direct Recruits:

Notwithstanding the provisions of para 3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendations of the U.B.S.C. or other selecting authority, persons appointed as a result of subsequent selection;

5. Promotees:

(i) The relative seniority of persons promoted to the various grades shall be determined in the order of their selection for such promotion;

Provide that where persons promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit.

(ii) Where promotions to a grade are made from more than one grade, the eligible persons shall be arranged in separate lists in the order of their relative seniority in their respective grades. Hereafter, the Departmental Promotion Committee shall select persons for promotion from each list up to the prescribed quota and arrange all the candidates selected from different lists in a consolidated order of merit which will determine the seniority of the persons on promotion to the higher grade.
NOTE: Separate quotas for promotion have not already been prescribed in the relevant recruitment rules, the Ministries/Departments may do so now, in consultation with the Commission wherever necessary.


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

7. Transferees:

(i) The relative seniority of persons, appointed by transfer to a Central Service from the Subordinate Offices of the Central Government or other Departments of the Central or State Governments shall be determined in accordance with the order of their selection for such transfer.

(ii) Where such transfers are effected against specific quotas prescribed in the recruitment rules, therefore, the relative seniority of such transferees vis-a-vis direct recruits and promotees shall be determined according to the rotation of vacancies which shall be based on the quotas reserved for transfer, direct recruitment and promotion respectively in the recruitment rules.

(iii) Where a person is appointed by transfer in accordance with a provision in the recruitment rules providing for such transfer in the event of non-availability of a suitable candidate by direct recruitment or promotees, as the case may be, for the purpose of para 6 above. He shall be ranked below all direct recruits or promotees, as the case may be, selected on the same occasion.

8. Persons appointed on adhoc basis to a grade without consultation with the UPSC under Regulation 4 of the U.P.S.C. (Exemption from Consultation) Regulations, 1958, are to be replaced by persons approved for regular appointment by direct recruitment, promotion or transfer, as the case may be. Until they are replaced, such persons will be shown in the order of their adhoc appointments and below all persons regularly appointed to the grade.
General Principle 4: The Union Public Service Commission invariably indicate the order of preference at the time of selection and it will not, therefore, be difficult to determine the relative seniority of persons recruited through the Commission. In order to obviate difficulties in determining the relative seniority of direct recruits recruited otherwise than through the U.P.S.C., the selecting authority should indicate the order of merit at the time of selection.

General Principle 5(i): Where promotions are made on the basis of selection by a D.P.C., the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior, such persons shall not if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.

General Principle 5(ii): Illustration: Where 75% of the vacancies in the grade of Head Clerk are reserved for promotion from the grade of Upper Division Clerk and 25% from the grade of Store-Keeper, the eligible Upper Division Clerks and Store-Keepers shall be arranged in separate lists with reference to their relative seniority in those grades. The D.P.C. will make selection of three candidates from the list of U.D.C. and 1 from the list of Store-Keepers. Thereafter the selected persons from each list shall be arranged in a single list in a consolidated order of merit assessed by the D.P.C. which will determine the seniority of the persons on promotion to the higher grade.

General Principle 6: A roster should be maintained based on the reservation for direct recruitment and promotion in the Recruitment Rules. Where the reservation for each method is 50% the roster will run as follows:

(1) Promotion, (2) Direct recruitment, (3) Promotion, (4) Direct Recruitment and so on. Appointment should be made in accordance with this roster and seniority determined accordingly.

Illustration: Where 75% of the vacancies are reserved for promotion and 25% for direct recruitment, each direct recruit shall be ranked in seniority below 3 promotees. Where the quotas are 50% each, every direct recruit shall be ranked below a promotee. If for any reason, a direct recruit or a promotee ceases to hold the appointment in the grade, the seniority list shall not be re-arranged merely for the purpose of ensuring the promotion referred to above.
General Principle 7 (i): The principle laid down in para 7(i) will not present any difficulty where recruitment by transfer is made singly and at intervals but it will be from different sources on the same occasion and the selection is spread over a number of days. It will, therefore, be necessary for the authorities responsible for approving appointments by transfer to indicate the inter se order of merit of the selected persons in such cases.

General Principle 8: While the seniority of persons appointed on an ad-hoc basis will be determined as indicated in para 8 of the Annexure, the seniority list should clearly show that such persons are not eligible for promotion or confirmation.
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1845 of 1968

Union of India and Ors.  
versus  
M. Ravi Verma and Ors.

CIVIL APPEAL NO. 1846 of 1968

Union of India and Ors.  
versus  
S. Ganapathi Kini and Ors.

CIVIL APPEAL NO. 50 of 1969

Union of India & Ors.  
versus  
Suresh Kumar and Ors.

JUDGMENT

KHANNA J.

Whether the criterion to determine the seniority of Ravi Varma and Ganapathi Kini respondents should be the length of service in accordance with the Office Memorandum dated June 22, 1949 issued by the Ministry of Home Affairs, as claimed by the said respondents, or whether it should be the date of confirmation, as claimed by the appellants, is the main question which arises for decision in civil appeals Nos. 1845 and 1846 of 1968 which have been filed by the Union of India and two others by special leave against the judgment of Mysore High Court. Similar question arises in respect of the seniority of Suresh Kumar and Tara Chand Jain respondents in Civil appeal No. 50 of 1969 which has been filed by the Union of India and two others on a certificate granted by the Punjab and Haryana High Court against the judgment of that Court reversing in Latters Patent appeal the decision of the single judge and issuing a writ in favour of those respondents. The High Court held in all the cases that the seniority of the concerned respondents should be determined on the basis of the length of service in accordance with the above mentioned Office Memorandum.
Before giving the facts of the three cases, it would be pertinent to refer to two Office Memorandums issued by the Ministry of Home Affairs. One of the memoranda is dated June 22, 1949. It was mentioned in this memorandum that the Government of India had under consideration the question of the fixation of seniority of displaced government servants and temporary employees in the various grades. Employees of the Central Government, who were displaced from their Offices in Pakistan, according to the memorandum, had been absorbed in offices under the control of the same administrative Ministry or nomination by the transfer bureau of the Ministry of Home Affairs in other offices. All those persons had been appointed, with a few exceptions, on temporary basis. The Ministry of Home Affairs accordingly conveyed the following decision:

"It has now been decided in consultation with the Federal Public Service Commission that the question of seniority in each grade should also be examined in the same context and specific rules suitable for each service prescribed in framing those instructions. The question of seniority of Assistants in the Secretariat was recently examined very carefully in consultation with all the Ministries and Federal Public Service Commission and the decisions reached are incorporated in para 8 of the Instructions for the initial constitution of the grade of Assistants' an extract of which is attached. It has been decided that this rule should generally be taken as the model in framing the rules of seniority for other services and in respect of persons employed in any particular grade seniority should, as a general rule, be determined on the basis of the length of service in that grade irrespective of whether the latter was under the Central or Provincial Government, in India or Pakistan. It has been found difficult to work on the basis of 'comparable' posts or grades and it has therefore been decided that 'Service in an equivalent Grade' should, generally be defined as service on a rate of pay higher than the minimum of the time scale of the grade concerned. The seniority of persons appointed on permanent or quasi-permanent basis before the Ist January, 1944, should, however, not be disturbed."

Direction was accordingly issued by the Ministry of Home Affairs that the principles given in the Memorandum be borne in mind in determining the seniority of 'Government servants of various categories employed under the Ministry of Finance, etc.' On December 22, 1959 another Office Memorandum was issued by the Ministry of Home Affairs on the subject of the general principles for determining seniority of various categories of persons employed in Central Services. Material part of this memorandum was as under:
The instructions contained in this Ministry's Office Memorandum No.30/44/48-Appts, dated the 22nd June, 1949, were issued in order to safeguard the interests of displaced Government servants appointed to the Central service after partition. As it was not possible to regulate the seniority of only displaced Government servants by giving them credit for previous service, the instructions were made applicable to all categories of persons appointed to Central Services. The principles contained in the 22nd June, 1949, Orders were extended to:

(i) ex-Government servants of Burma appointed to Central Services, and

(ii) the, employees of former part 'B' States taken over to the Centre as a result of Federal Financial Integration.

The instructions contained in this Ministry's Office Memorandum No.32/40/49-CS dated the 31st March, 1950 and No.32/49-CS(c) dated the 20th September, 1952 similarly regulate the seniority of candidates with war service appointed to the Central services.

2. The question has been raised whether it is necessary to continue to apply the instructions contained in the Office Memoranda cited above. Displaced Government servants have by and large been absorbed in the various Central services and their seniority has been fixed with reference to the previous service rendered by them. Similarly, the seniority of ex-employees of the Government of Burma and of Part 'B' States as well as of candidates with war service has already been determined in accordance with the instructions cited above. As the specific objects underlying the instructions cited above have been achieved, there is no longer any reason to apply those instructions in preference to the normal principles for determination of seniority. 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:

3. 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 annex 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.
Relevant parts of paragraphs 2, 3, and 4 of the Annexure to this Memorandum were as under:

2. Subject to the provisions of para 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 or such seniority as may hereafter be assigned to them under the the existing orders applicable to their cases and shall on en bloc be senior to all others in that grade.

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

4. Direct Recruits:

Notwithstanding the provisions of para 3 above, the relative seniority of all direct recruits shall be determined by the Order of merit in which they are selected for such appointment, or the recommendations of the U.P.S.C. or other selecting authority persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

Ravi Verma, respondent No.1 in Civil Appeal No. 1845 of 1968 was appointed as an Inspector in the Central Excise Collectorate in Madras on 27.5.1947 and was confirmed on 7.4.56. Ganapathi Kini, respondent No. 1 in Civil Appeal No. 1846, were appointed as an Inspector in the Central Excise Collectorate in Madras on 28.5.1947. In view of the war service rendered by Ganapathi Kini, his service for purposes of seniority was computed with effect from 1.1.1946 and he was confirmed on 7.4.56. Ganapathi Kini and Ravi Verma were shown at serial Nos. 145 and 147 in accordance with the length of service in seniority list of inspectors prepared in 1959. Subsequently on the directions of the Central Board of Revenue contained in letter dated October 1.1962, a revised seniority list was prepared in 1963 by comparing seniority from the date of confirmation. In the revised list Ganapathi Kini and Ravi Verma were shown as serial Nos. 149 and 150, junior to persons to whom they had been shown senior in the earlier seniority list. Ganapathi Kini and Ravi Verma thereupon filed petitions under article 226 of the Constitution of India praying for quashing the revised seniority list prepared in 1963. The main ground taken in the writ petitions was that the seniority should be determined according to length of service in terms of Office Memorandum dated June 22, 1949 of the Ministry of Home Affairs. Impelled in the writ petitions as respondents were the Union of India, the Central Board of Revenue and Collector of Central Excise as also those inspectors of Central Excise who, according to the petitioners, were junior to them but who on account of
being shown senior to the petitioners in the revised seniority list, had been appointed as Senior Grade Inspectors of Central Excise.

The above-mentioned writ petitions were resisted by the appellants. The learned judges of the Mysore High Court referred to the memoranda dated June 22, 1949 and December 22, 1959 and held that the altered rule embodied in the Memorandum dated December 22, 1959 for the determination of seniority would be inapplicable to persons appointed before June 22, 1949 like Ganapathi Kini. Argument was advanced on behalf of the appellants that on July 3, 1957 the Central Board of Revenue had once again adopted the rule that the date of the confirmation should be the basis for determination of seniority. This argument did not find favour with the learned judges and it was observed:

"But what is however clear is that in the case of a person like the petitioner who was appointed before June 22, 1949 the rule made by the Ministry of Home Affairs on that date was what constituted the basis for the determination of seniority and not the rule which was revived by the Central Board of Revenue on July 3, 1957."

Direction was accordingly issued that Ganapathi Kini's seniority should be determined on the basis of the formula contained in the Office Memorandum dated June 22, 1949 and the revised seniority list be rectified accordingly.

In the petition filed by Shri Ravi Verma the High Court made a short order wherein, after referring to the decision in the case of Ganapathi Kini, the learned Judges granted similar relief to Ravi Verma.

Suresh Kumar, respondent No. 1 and Tara Chand Jain, respondent No. 2 in Civil Appeal No. 50 of 1969 were appointed as Lower Division Clerks in the Medical Stores Depot, Karnal under the Directorate General of Health Services on October 9, 1950 and November 26, 1951 respectively, both of them were confirmed on March 31, 1960. In the seniority list, which was prepared in accordance with Office Memorandum dated June 22, 1949 Suresh Kumar and Tara Chand Jain, respondents were shown at Serial Nos. 32 and 34 in accordance with their length of service. Subsequently Memorandum dated June 19, 1963 was received from the Directorate General of Health Services in which there was a reference to the Ministry of Home Affairs Office Memorandum dated 22, 1959. It was stated in the Memorandum from the Directorate General of Health Service that scheduled castes and scheduled tribes candidates who were confirmed in reserved services would rank senior to temporary, including quasi-temporary persons irrespective of their positions in the seniority list. A revised seniority list was thereafter
prepared and a number of scheduled castes candidates who had been recruited later but had been confirmed earlier than Suresh Kumar and Tara Chand Jain were shown senior. Suresh Kumar and Tara Chand Jain were thus shown at serial Nos. 40 and 42 in the revised seniority list. Suresh Kumar and Tara Chand Jain thereafter filed petition under article 226 and 227 of the Constitution of India for quashing the instructions contained in the Memorandum dated June 19, 1953 issued by the Directorate General of Health Services as well as the revised seniority list and other consequential reliefs. Impressed as respondents in the petition were the Union of India, the Director General of Health Services, The Deputy Assistant Director General Medical Stores, as well as 18 other scheduled castes employees of the Medical Stores Depot Karnal who had been shown senior to the petitioners in the revised seniority list.

The above petitions were resisted by the appellants and were dismissed by the learned single judge. On letters patent appeal the judgment of the single judge was reversed and it was held that Suresh Kumar and Tara Chand Jain having been appointed prior to December 22, 1959 were governed by the rule of seniority contained in the Office Memorandum dated June 22, 1949 issued by the Ministry of Home Affairs. This position, in the opinion of the learned judges, was not affected by the subsequent Office Memorandum issued by the Ministry of Home Affairs. So far as the Memorandum dated June 19, 1953 issued by the Directorate General of Health Services was concerned, it was found to be not in consonance with the Office Memoranda issued by the Ministry of Home Affairs on June 22, 1949 and December 22, 1959. As such, the Memorandum issued by the Directorate General of Health Services, according to the learned Judges, could not affect the seniority of Suresh Kumar and Tara Chand Jain. In the result the revised seniority list was held to be invalid and the Union of India and two other appellants were directed to prepare a revised seniority list in accordance with the Original seniority of Suresh Kumar and Tara Chand Jain.

The learned Solicitor General on behalf of the appellants has at the outset referred to Memoranda dated June 22, 1949 and December 22, 1959 issued by the Ministry of Affairs and has argued that after the issued of the later Memorandum the seniority of all Central Government employees should be determined by the date of their confirmation and not on the basis of the length of service. In this connection, we find that the migration of a large number of Government employees after the partition of the country from areas now forming part of Pakistan, resulted in a situation wherein the Government had to review the rules relating to seniority. As most of those displaced Government servants had been employed on temporary basis and as it was felt that they should be given some weightage in the matter of seniority on compassionate grounds, the rule was evolved that the seniority
should be determined on the basis of the length of service in equivalent grades. The seniority of persons appointed on permanent basis or quasi-permanent basis before January 1, 1944 was, however, left undisturbed. Further, as it was not possible to regulate the seniority of only displaced Government servants by giving them credit for previous service, the instructions were made applicable to all categories of persons appointed to Central Service. Office Memorandum dated June 22, 1949 was consequently issued. The above principles were also extended to other category of Government employees, including those with war service.

The matter was reviewed thereafter in 1959. The Government then found that displaced Government servants had by and large been absorbed in the various Central Services and their seniority had been fixed with reference to the previous service rendered by them. Same was found to be the position of other Government servants who had been given the benefit of the principles contained in Memorandum dated June 22, 1949. As the objects underlying the instructions of June 22, 1949 had been achieved and it was no longer considered necessary to apply those instructions in preference to the normal principle for determination of seniority, it was decided that the seniority of Central Government employees would henceforth be determined in accordance with the general principles contained in Annexure to the Office Memorandum issued by the Ministry of Home Affairs on December 22, 1959. One of those principles was that permanent officers of each grade would be ranked senior to persons who were officiating in that grade. The effect of that, as submitted by the learned Solicitor General, was that the seniority was to be determined by the date of confirmation and not on the basis of length of service as was the rule contained in the Office Memorandum dated June 22, 1949.

The Office Memorandum dated December 22, 1959, however, expressly made it clear that the general principles embodied in the Annexure there to were not to have retrospective effect. In order to put the matter beyond any pale of controversy, it was mentioned that thereafter 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. It is, therefore, manifest that except in certain cases with which we are not concerned, the Office Memorandum dated December 22, 1959 and the provisions laid down in the Annexure thereto could not apply to persons appointed to the various central services before the date of that Memorandum.

It may also be mentioned that while dealing with the above Memorandum, this Court in the case of Mervyn Coutin & Ors. v. Collector of Customs, Bombay & Ors. (1) observed that these principles were not apply retrospectively but were given effect to from the date of their issue, subject to certain reservations with which we are not concerned.
It has next been argued by the learned Solicitor General that whatever might be the position in respect of the employees in other Central Services, so far as the clerks, supervisors and inspectors under the Central Board of Revenue are concerned, a decision was taken that for purposes of promotion, the permanent employees should have precedence before non-permanent employees. Our attention in this connection has been invited to letter dated March 15, 1958 sent by the Central Board of Revenue to all Collectors of Central Excise. In this letter there was a reference to an earlier letter dated July 3, 1957 from the Board and it was mentioned that the instructions contained in the earlier letter that for purposes of promotion from Ministerial grade to inspectors grade, permanent clerks would first be considered before considering persons who were non-permanent, should be followed in respect of promotions to other grades also. The Solicitor General accordingly contends that the directions contained in the Memorandum dated December 22, 1959 that it could not apply to employees appointed before that date would not hold good in the case of clerks, supervisors and inspectors functioning under the Central Board of Revenue. It is, in our opinion, not necessary to go into this aspect of the matter because we find that the Central Board of Revenue in a letter dated August 27, 1971 addressed to all collectors of Central Excise gave fresh instructions regarding the principles of seniority. In this letter there was a reference to the Office Memorandum dated December 22, 1959 issued by the Ministry of Home Affairs and it was stated:

"In supersession of all previous orders on the subject it has now been decided that in so far as the non-gazetted staff in the Central Excise, Customs and Narcotics Departments and other Subordinate Offices are concerned, the seniority of persons appointed to various posts and services after receipt of these orders should be regulated in accordance with the Ministry of Home Affairs O.Ms. referred to above."

It would follow from the above that so far as the non-gazetted staff in the Central Excise, Customs and Narcotics Departments and other subordinate officers of the Central Board of Revenue are concerned, the question of seniority would have to be decided in accordance with the Office Memorandum dated 19.10.1959. As the said Office Memorandum has, except in certain cases with which we are not concerned, applied the rule of seniority contained in the Annexure thereto only to employees appointed after the date of that Memorandum,
there is no escape from the conclusion that the seniority of Ganapathi Kini and Ravi Verma, respondents, who were appointed prior to December 22, 1959, would have to be determined on the basis of their length of service in accordance with office Memorandum dated June 22, 1949 and not on the basis of the date of their confirmation.

In Civil appeal No. 50 of 1969 the learned Solicitor General has referred to office Memoranda dated January 28, 1952, April 20, 1961 and March 27, 1963 issued by the Ministry of Home Affairs to show a departure from the rule of seniority for the benefit of members of scheduled castes and scheduled Tribes. Office Memorandum dated January 28, 1952 makes provision for communal representation in services for candidates belonging to scheduled castes and scheduled tribes as also the Anglo-Indian community. The Memorandum gives a model roster which should be applied in filling the vacancies. Perusal of the Memorandum shows that it relates only to recruitment and has nothing to do with the rule of seniority.

Office Memorandum dated April 20, 1961 deals with the question of seniority of direct recruits who were confirmed in an order different from the original order of merit. According to the Memorandum, it often happens that a scheduled caste or scheduled tribe candidate occupying a lower position in the merit list is appointed permanently to a reserved vacancy, while candidates above him in the merit list are not appointed at that time. If such candidates are appointed in the following years, they are not entitled to a higher seniority on the ground that in the previous year they had obtained a higher position in the merit list. It is plain that the above Office Memorandum did not deal with the question of seniority on the basis of length of service as contained in Office Memorandum dated June 22, 1949 but with the question as to what would be the effect if a direct recruit scheduled caste or scheduled tribe candidate though occupying a lower position in the merit list, is confirmed earlier in a reserved vacancy. We are in the present case not concerned with any merit list nor with any question of seniority based on such a list. As such, Office Memorandum dated April 20, 1961 is also of not any material help to the appellants. It may be stated that the counsel for the appellants in the High Court conceded that the above Memorandum had no direct relevance in the present controversy.

The third Office Memorandum dated March 27, 1963 referred to by the learned Solicitor General deals with the subject of maintenance of roster for giving effect to the reservations provided for scheduled castes and scheduled tribes in Central Government services. The Memorandum has a bearing only on the question of recruitment and provides no guidelines for determining seniority. We, thus, find that none of the three Office Memoranda relied upon by the Solicitor General is of any material assistance to the appellants.
We may now advert to the Memorandum dated June 19, 1963 issued by the Directorate General of Health Services. As mentioned earlier, it was after the receipt employees of the Government Medical Stores Depot, Karnal was revised and the Seniority as was determined on the basis of the date of confirmation and not on the basis of the length of service. The above Memorandum from the Directorate General of Health Services expressly refers to the Office Memorandum dated December 22, 1959 issued by the Ministry of Home Affairs and seeks implementation of that. It is no doubt true that a direction was given in the Memorandum of the Directorate General of Health Services that scheduled caste and scheduled tribe candidates confirmed in reserved vacancies should be ranked senior to temporary, including quasi permanent persons, irrespective of their position in the seniority list, but such a direction went beyond the rule of seniority contained in the Office Memorandum dated December 22, 1959 issued by the Ministry of Home Affairs in respect of employees appointed before that date. As mentioned earlier, office Memorandum dated December 22, 1959 did not disturb the seniority of Central Government employees who had been appointed prior to the date of that Memorandum, except in certain cases with which we are not concerned. It is not disputed that according to the Government of India Allocation of Business Rules, 1961 general questions relating to recruitment, promotion and seniority in Central Services like the one with which we are concerned, have to be dealt with by the Ministry of Home Affairs. As Suresh Kumar and Tara Chand Jain, respondent, were appointed prior to December 22, 1959 their seniority was governed by the rule of length of service as contained in Office Memorandum dated June 22, 1949 and not by the rule based upon date of confirmation as contained in the Annexure to the Memorandum dated December 22, 1959.

Reference was made by the learned Solicitor General to the case of Roshan Lal Tandon v. Union of India (2) wherein it has been laid down that the service rules may be framed and altered unilaterally by the Government. No occasion for invoking the above dictum arises in this case because the learned counsel for the contesting respondents have not questioned the right of the Government to frame and alter unilaterally the service rules.

In the result, all the three appeals fail, and are dismissed with costs.

One hearing fee.

Sd/- J.M. Shelat......J
Sd/- I.D. Dua.......J
Sd/- H.R. Khanna.....J
Sd/- G.K. Mitter.....J

(2) (1968) 1 S.C.R. 185
January 4, 1972