

rota quota rule

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The findings of the High Court :

The High Court framed three points for consideration. It held on the first point that promotion to the post in the Gazetted cadre required consultation with the Commission on the question of promotion/transfer from one service to another and also on the suitability of the candidates for appointment, promotion and transfer; that under the J.K. Service Commission, Regulation 4(d)(ii), officiating promotion or transfer to any service or post, should not be for more than six months, unless the Commission was consulted and that the orders for such ad hoc continuance beyond six months and till regularisation, without consultation, were ineffective. It held that the **quota rule** and not broken down. The posts were advertised in 1987, but it was only in 1993, 1994 and in 1998 that the direct recruits were appointed in the three wings, and that in the Civil Mechanical and Electrical Wings 7, 16 and 20 posts were under excess occupation by the promotees and these posts were not filled by direct recruitment because the Government directed advertisement of only 10% and not 20% for direct recruits. It was held that in SWP 824-B/94 filed by direct recruits, Government filed a reply stating that there was '**quota rota**' rule and therefore the said **Rule** applied. The seniority list dated 28.4.94 in the Mechanical Wing - which was sought to be quashed in SWP 705/94 by the promotees showed that the **quota rule** had not broken down. The State had not placed before the Court any material to show why it could not make direct recruitment. The excess promotees had to be pushed down and had to be fitted in subsequent vacancies in their **quota** in later years. On the second point, the High Court held that ad hoc promotions could be made for three months and not more than 9 months under **rule** 14(1) of the J & K Civil Service (Classification Control and Appeal) **Rules**, 1956 (read with Regulation 4(d)(ii) of the J & K Public Service Commission (Limitation of Functions) Regulation 1997). Ad hoc service beyond 6 months could not have been continued. But, in view of Regulation 4(d)(ii), "if the exercise of selection of candidates has not been done by the Commission for regularisation" the promotees were not entitled to seniority. Under **Rule** 8 of the Recruitment Regulations, 1978 probation was to be for 2 years. Hence, ad hoc promotee could not be a 'member' of the service. To claim seniority the promotion could not be de hors the **Rules**. Conditions of service could be relaxed but **rules** of recruitment could not be relaxed. The order of blanket regularisation of the promoted Assistant Engineers dated 2.1.98 for the Electrical Wing passed by the Government was in violation of Regulation 4(d)(ii) was bad. Such orders passed under executive powers were outside the **Rules** and were invalid. On the third point, the High Court held that seniority under **Rule** 11 of the 1978 **Rules** was to be determined in accordance with **Rule** 24 of the 1956 **Rules** on the basis of 'date of first appointment' i.e. date of "substantive appointment or date of permanent appointment or date of first appointment on probation against a clear vacancy". In as much as regularisation of ad hoc promotions by the Government on 2.1.98 was illegal, the promotees were not members of the service. The order dated 2.1.98 could not have the effect of regularising the entire ad hoc service. The direct recruits could however count their seniority from the date of their substantive appointment within their **quota**. However, the claims of the promotees whose stop gap promotion exceeded six months without consultation of the Commission should be referred to the Commission "for determining their suitability". The seniority was to be fixed for direct recruits and promotees in terms of the **quota-rota rule**, within their respective **quota** in the particular year.

Point 2 :

This point concerns the question as to whether the **quota rules** has broken down and whether there is a **quota-rota rule**. The High Court held it did not.

Reliance is placed by the promotees on the decision of the Constitution Bench in [Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra](#), [1990] 2 SCC 715. It laid down in proposition D & E as follows :

(D) If it becomes impossible to adhere to the existing **quota rule**, it should be substituted by an appropriate **rule** to meet the needs of the situation. In case, however, the **quota rule** is not followed continuously for a number of years because it is impossible to do so, the inference is irresistible that the **quota rule** had broken down.

One other significant fact is that the Cabinet note dated 19.12.1997 only States that cases of the ad hoc promotees" if referred to PSC, will take a long time for getting the necessary recommendation. But nowhere it is said that direct recruitment was not possible nor that direct recruits were not available or such recruitment had become impracticable. For the aforesaid reasons, we hold that the **quota rule** has not broken down.

Rota : no express **rota rule** :

We shall next refer to the contention for the direct recruits that "**rota- quota**" **rule** is to be applied. Before us, it is not disputed by the learned counsel for the direct recruits that in the Recruitment **Rules**, 1978, there is only a **quota rule** and that no **rota rule** has been expressly prescribed.

Question is whether '**rota**' can be implied?

The direct recruits contend that **rota** is to be implied or read into the '**quota**' **rule**. It is also argued that there has been a previous practice of applying a **rota** and that this fact stands conceded in the counter-affidavit filed by the Government in SWP. 824-B/94. Reliance is also placed on Cabinet note of December, 1997 where the view of the Law Department that **quota-rota rule** is to be applied, is referred to.

In our opinion, in view of the admission before us by all parties that there is no express **rota rule**, the decision of the High Court that '**rota**' principle applied cannot be upheld. As held in [N.K. Chauhan v. State of Gujarat](#), [1977] 1 SCC 308, by Krishna Iyer, J. there is no question of a **quota** being necessarily 'inter-locked' with **rota**. It is not necessarily inscribed within every **quota rule**. Again in [B.S. Yadav v. State of Haryana](#), [1991] 1 SCR 1024. Chandrachud, CJ held that a '**quota**' does not imply a **rota**. The first part of the contention of the direct recruits is without any substance.