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Central Administrative Tribunal, Principal Bench

O.A.No. 729 of 1998

Date of Decision 9. 3 .2001

Manohar Lal

- Applicant

(By Advocate Shri A.K.Behra)

Versus

Central Social Welfare Board & anr

- Respondents

(Respondent 1 by Advocate Shri P.H.Ramchandani &  
Respondent 2 in person)

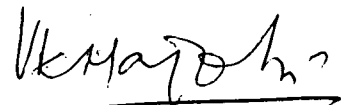
CORAM :

Hon'ble Mr.V.K.Majotra, Member (A)

Hon'ble Mr.Shanker Raju, Member(J)

1. To be referred to the reporter - Yes

2. Whether it needs to be circulated to - No  
other Benches of the Tribunal



(V.K.Majotra)  
Member (Admnv)

rkv.

(3)

Central Administrative Tribunal, Principal Bench

Original Application No.729 of 1998

New Delhi, this the 9th day of March, 2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)  
Hon'ble Mr.Shanker Raju, Member(J)

Manohar Lal, Son of Late Sh. Deep Chand,  
Aged 50 years, R/o Qrs.26-C, DDA Janta  
Flats, Behind Laxmi Bai College, Ashok Vihar  
Ph-III, Delhi-110052.

- Applicant

(By Advocate Shri A.K.Behra)

Versus

1. The Central Social Welfare Board through  
its Executive Director, B-12, Tara  
Crescent, South of IIT, Institutional  
Area, New Delhi-110016

2. Shri R.L.Sharma, Asstt. Director  
Grade-I, Central Social Welfare Board,  
B-12, Tara Crescent, South of IIT,  
Institutional Area, New Delhi-110016

- Respondents

(Respondent 1 by Advocate Shri P.H.Ramchandani and  
Respondent 2 in person)

O R D E R

By V.K.Majotra, Member(Admnv) -

Applicant has challenged order dated  
11.12.1997 (Annexure-A-1) whereby his seniority in the  
grade of Assistant Director Grade-II (for short 'AD  
Gr.II') in the Central Social Welfare Board (for short  
'CSWB') has been revised. He has also assailed  
consequential reversion from the post of Assistant  
Director Grade-I (for short 'AD Gr.I') to AD Gr.II vide  
order dated 12.2.1998 (Annexure-A-2). He has alleged  
that his seniority was revised to his prejudice without  
serving any show cause notice and representation made by  
him against afore-stated revision of seniority was  
rejected vide order dated 23.1.1998 (Annexure-A-3) by a  
non speaking order.

2. According to applicant he was appointed as  
Assistant Gr.II in CSWB vide order dated 2.2.1984  
(Annexure-A-4). His seniority was fixed vide memo dated  
25.7.1985 (Annexure-A-5). He was confirmed as Assistant  
Grade-II vide order dated 29.10.1987 (Annexure-A-6).

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His seniority as Assistant Grade-II was shown at serial no.17 in seniority list issued vide memo dated 19.12.1988 (Annexure-A-7). He was promoted to officiate in the post of Assistant Gr.I vide order dated 7.12.1989 (Annexure-A-8). He was regularised as Assistant Gr.I with effect from 15.6.1990 vide order dated 21.6.1990 (Annexure-A-9). Thereafter he was promoted on adhoc basis as AD Gr.II vide order dated 21.5.1992 (Annexure-A-10). He was regularised on that post with effect from 1.4.1993 vide order dated 13.1.1994 (Annexure-A-11). By the same order respondent no.2 is stated to have been regularised as AD Gr.II from 16.8.1993. Applicant has pointed out that in seniority list dated 17.3.1994 in the grade of AD Gr.II (Annexure-A-12) whereas applicant was shown at serial no.8, Shri Ram Lal Sharma, respondent no.2 is at serial no.11. The seniority position of applicant vis-a-vis other AD Gr.II was confirmed by respondent no.1 again vide seniority list issued on 22.8.1995 (Annexure-A-13) wherein applicant and respondent no.2 have been shown at serial no. 4 & 7 respectively. Applicant was promoted as AD Gr.I with effect from 1.1.1997 (Annexure-A-14) on adhoc basis on the recommendations of a duly constituted DPC. Applicant has alleged that suddenly and arbitrarily vide office order dated 11.12.1997 (Annexure-A-1) a revised seniority list of AD Gr.I/ AD Gr.II as on 5.12.1997 has been issued inviting objections to the said seniority list. According to applicant, whereas in all earlier seniority lists both respondent 2 Shri Ram Lal Sharma and Smt.T.A.Jayalakshmi were shown junior to applicant, in seniority list of 5.12.1997 applicant was shown junior than the above named persons without any show cause notice to him. His representation dated 12.12.1997 (Annexure-A-15) was

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disposed of vide memo dated 23.1.1998 wherein mistake of showing Smt.T.A.Jayalakshmi had been admitted by respondent no.1. However, Shri Ram Lal Sharma, respondent no.2 was kept senior to applicant without assigning any reason though Shri Sharma had never challenged his seniority position vis-a-vis that of applicant. Consequently, applicant was reverted to the post of AD Gr.II from 12.2.1998. Applicant has sought quashing and setting aside of seniority list dated 23.1.1998 to the extent that applicant is shown at serial no.2 and respondent no.2 has been shown at serial no.1. He has also sought a direction to respondent no.1 to restore his seniority position vis-a-vis respondent no.2 by assigning seniority to applicant against serial no.1. He has also sought quashing and setting aside of memo dated 23.1.1998 rejecting his representation and also office order dated 12.2.1998 (Annexure-A-2) reverting him to the post of AD Gr.II.

3. In their counter respondent 1 has stated that vide seniority list of Assistant Gr.II circulated on 25.7.1985 (Annexure-R-I/A-5) whereas name of respondent 2 was at serial no.3, applicant's name was at serial no.20. In the seniority list of Assistant Gr.II circulated on 19.12.1988 (Annexure-R-II/A-7) whereas name of respondent 2 is at serial no.4, applicant's name is at serial no.17. Applicant a scheduled caste candidate, was promoted as Assistant Gr.I on adhoc basis on 17.12.1989 as per recommendations of DPC held on 1.12.1989 (Annexure-R-III). As no scheduled caste candidate was available within the normal zone, applicant was recommended from extended zone of consideration. In seniority list of Assistant Gr.I circulated on 7.2.1992, name of respondent 2 was at serial no.4 and applicant's name was at serial no.7.

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Applicant was regularised as Assistant Gr.I with effect from 15.6.1990 (Annexure-R-IV). A DPC was held for the post of AD Gr.II on 6.5.1992 in which applicant was considered for promotion against backlog of two reserved SC quota posts arisen between 1987 and 1990 (Annexure-R-V). According to respondent 1, applicant was empanelled against carried forward backlog of SC reserved point at serial no.1 and respondent 2 Shri Ram Lal Sharma against unreserved post at serial no.4. On the basis of this empanelment applicant was regularised with effect from 1.4.1993 and respondent 2 with effect from 16.8.1993 vide order dated 13.1.1994 (Annexure-R-VI). In seniority list of AD Gr.II circulated on 17.3.1994 whereas applicant's name was at serial no.8, name of respondent 2 was at serial no.11. In the seniority list of AD Gr.II of 8.8.1995 applicant's name was at serial no.4 and respondent 2 was at serial no.7. Respondent 1 has submitted that post of AD Gr.II is a selection post as per the recruitment rules of CSWB and as per instructions on reservation, reserved vacancies cannot be carried forward. Thus, according to respondent 1, empanelment of applicant against carried forward vacancy of AD Gr.II was irregular. Similarly, seniority accorded to him vis-a-vis respondent 2 by DPC of 6.5.1992 was also irregular. A DPC for the post of AD Gr.I was held on 30.12.1996 and a panel of 5 persons was made. Applicant was also empanelled against a SC point and was promoted on adhoc basis with effect from 1.1.1997. Respondent 1 has admitted that in seniority list for AD Gr.I/II circulated on 11.12.1997 whereas respondent 2 was shown at serial no.1, Smt.T.A.Jayalakshmi at serial no.2, applicant was shown at serial no.3 (Annexure-R-VII). According to respondent 1, this had been necessitated on

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a thorough review of reservation roster and seniority list based on representations by several members including respondent 2 against a wrong application of reservation roster. This review was made in consultation with National Commission for SC/ST during November, 1997. The commonly found mistakes were (i) seniority was fixed as per reservation roster whereas reservation roster is only meant for determination and consummation of reserved points; and (ii) reserved posts were wrongly carried forward for year to year even in selection posts against the reservation rules. In the review it was found that applicant had been promoted as AD Gr.II against point no.22 of 1987 in April, 1993 treating the point as backlog of SC which should not have been done - the post of AD Gr.II being a selection post. The review required revision in seniority list in which a representative of DOPT was also associated. In the revised draft seniority list for the post of AD II/AD I, seniority position of applicant was also changed. Applicant submitted his representation which was replied vide memo dated 23.1.1998 explaining that Smt.T.A.Jayalakshmi was shown senior to applicant due to a typographical error. Regarding revised seniority list dated 23.1.1998 (Annexure-R-VIII) it was finalised on the basis of a review DPC held on 22.1.1998 for the post of AD-Gr.II in which mistakes of DPC of 6.5.1992 were rectified. On examination of representation of applicant challenging seniority in the revised seniority list, it was found that while inclusion of respondent 2 above applicant was justified as stated earlier, name of Smt.T.A.Jayalakshmi was included at serial no.2 above applicant due to a typographical error. According to respondent 1, their action in revising seniority of

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applicant and reverting him to the post of AD-Gr.II were taken after affording due opportunity to applicant as his representations were duly considered and replied.

4. In their additional reply respondent 1 has clarified that they had taken action in allotting superior seniority to respondent 2 on the basis of his representation and review of erroneous procedure followed in promoting applicant by carry forward of reserved vacancies in a selection post.

5. On 7.8.1998 respondent 2 had stated in the court that he had filed his affidavit in the Registry but the Registry vide their report dated 20.8.1998 intimated that respondent 2 had not filed any affidavit. Thereafter, too, respondent 2 did not provide any copy of the counter to the applicant/ court despite Court's direction.

6. Applicant has filed a rejoinder also.

7. We have heard Shri A.K.Behra, learned counsel of applicant as well as Shri P.H.Ramchandani, learned counsel of respondent 1. Respondent 2 Shri R.L.Sharma, who was present in person, was also heard. We have also perused the official records relating to the DPCs/ Review DPCs.

8. Shri Behra, learned counsel of applicant, contended that the post of AD Gr.II is a selection post under the Recruitment Rules. 75% of such posts have to be filled by promotion/ deputation on the basis of merit. The applicant was promoted to the post of AD Gr.II on the recommendations of the DPC held on 6.5.1992. He was placed at serial no.1 in the panel on merit and was not promoted against any vacancies reserved for SC. However, learned counsel stated that it was quite in order for the authorities to have carried forward two reserved posts of AD Gr.II as per

Govt. of India's instructions. Thus, when two SC posts had been carried forward and the applicant had been placed in the panel on the basis of merit, the question of holding a review DPC and reverting the applicant would not arise at all.

9. Shri Ramchandani, learned counsel of respondent 1, took the plea that the post of AD Gr.II is a selection post and the principle of carry forward of reserved vacancies does not apply to selection posts. As in the DPC held on 6.5.1992 applicant and Jagdish Chand both SC candidates had been empanelled not on the basis of their merit a review DPC was required to be held for the post of AD Gr.II in view of various infirmities. The said review DPC was held on 22.1.1998. The applicant had been earlier vide DPC held on 30.12.1996 for the post of AD Gr.I promoted on adhoc basis as AD Gr.I. A review DPC was also held on 23.1.1998 to review proceedings of DPC held on 30.12.1996 for promotion to the cadre of AD Gr.I.

10. From the records relating to the DPC meetings, we find that so far as the post of AD Gr.II is concerned DPC held on 6.5.1992 was informed that there were 9 posts likely to fall vacant during the year 1992-93 two of which were to be filled by direct recruits. Against the remaining 7 vacancies of AD Gr.II, two posts were meant for SC as backlog exchange vacancies for the years 1987-90 and one for ST for the year 1992. The DPC was also informed that 'one post was anticipated for SC during the current year 1992-93'. In this manner, there were 8 vacancies. On going through the CR dossier of the eligible officers a panel of 12 officers was recommended as follows:-

1. Shri Manohar Lal - S.C.
2. Shri Jagdish Chand - S.C.
3. Shri K.L. Sehgal
4. Shri Ram Lal Sharma



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5. Smt.T.Jayalakshmi
6. Smt. Padma Gopalakrishnan
7. Smt.Chandra Prabha Sharma
8. Smt.Saraswati Nair
9. Shri S.S.Verma
- 10.Smt.Satya Devi
- 11.Shri S.P.Bhatia
- 12.Shri Sudershan Kumar"

We find that as against the applicant's claim this panel was not made on the basis of respective merit of the candidates. It was prepared on the basis of the bench mark 'good' and respective seniority of the candidates. However, the applicant and Shri Jagdish Chand, both SC candidates, who were considered against SC vacancies were mentioned at the top of the panel. On perusing the records, we find that mention of the applicant and Shri Jagdish Chand SC candidates on top of the panel is not on the basis of their merit but because they had been considered against carried forward SC vacancies.

11. We are not in agreement with the learned counsel of the applicant that the post of AD Gr.II is filled on the basis of promotion in order of merit. The basis for selection on the post of AD Gr.II as mentioned in the rules circulated vide memo dated 11.8.1967 is 'seniority-cum-merit'; though the post has been classified as a 'selection post'. As per the records a DPC for the post of AD Gr.I was held on 30.12.1996 and a panel of five persons was made. The applicant was also empanelled against a SC point and was promoted on adhoc basis with effect from 1.1.1997. In the seniority list for AD Gr.II and AD Gr.I circulated on 11.12.1997 whereas respondent 2 was shown at serial no.1 and Smt.T.A.Jayalakshmi at serial no.2, applicant was shown at serial no.3 (Annexure-R-VII). The respondents decided to review the reservation roster and seniority list based on representations including that of respondent 2 against the wrong application of reservation roster. This review was made in

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consultation with Department of Personnel & Training, and National Commission for SC/ST during November, 1997. It was discovered that there were mistakes in application of reservation rules and improper fixation of seniority position. The mistakes found were - (i) seniority was fixed as per reservation roster wrongly made and (ii) reserved posts were wrongly carried forward from year to year even in selection posts. This review DPC was held on 23.1.1998 to review the proceedings of DPC held on 30.12.1996 for the cadre of AD Gr.I. The DPC noticed that the seniority position submitted to DPC dated 30.12.1996 had changed after the review of reservation roster and seniority position in the feeder category. The seniority list in the feeder cadre as on 30.12.1996 had already undergone a change after the review DPC conducted for promotion made to AD Gr.II category. The revised seniority list had been circulated to all concerned. The review DPC decided to take into consideration vacancies arisen up to March, 1997 only i.e. for financial year 1996-97. Only three vacancies had arisen up to March, 1997. Whereas the first two points were unreserved, the third was reserved for SC candidate as per the 40 point reservation roster. On the basis of the CR the DPC recommended the names of Shri J.K.Jain, Smt.T.A.Jayalakshmi and Shri Jagdish Chand (SC). The DPC considered that as per seniority and promotion rules whenever promotions are made for induction to Group 'A', the bench mark grading would continue to be 'good'. However, the officers graded as 'outstanding' would rank enbloc senior to those graded as 'very good' and those graded as 'very good' would rank enbloc senior to those who are graded as 'good' and placed in the select panel. Shri Jagdish Chand, who was considered against the SC

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point against adhoc vacancy of 1996 was empanelled in view of his superior ACRs as compared to those of the applicant.

12. The learned counsel of applicant has stated that whereas the applicant had been regularised as AD Gr.II on 1.4.1993 and respondent no.2 was regularised on 16.8.1993 (Annexure-A-11), respondent 2 did not challenge applicant's earlier promotion and regularisation in the post of AD Gr.II as on 1.3.1994 showing applicant at serial no.8 and Shri Jagdish Chand, SC at serial no.9 and respondent 2 at serial no.11. According to applicant's counsel assignment of superior position to the applicant was not challenged by respondent 2 since 1993. Superior seniority of applicant was maintained in seniority list of AD Gr.II as on 8.8.1995 (Annexure-A-13) wherein applicant is shown at serial no.4 and respondent 2 at serial no.7. The learned counsel has stated that applicant's seniority vis-a-vis respondent 2, and promotion to the post of AD Gr.II and AD Gr.I prior to respondent 2 are settled matters which cannot be disturbed in view of the fact that respondent 2 has caused inordinate delay in challenging them. The learned counsel also pointed out that respondents had not issued any show cause notice to the applicant for changing his seniority or reverting him thereby they had violated principles of natural justice and denied him reasonable opportunity of defence.

13. On the other hand the learned counsel of the respondents had maintained that as per Annexure-R-VII dated 11.12.1997 on review of reservation roster and the existing seniority list it was found necessary to revise both. The provisional revised seniority list of AD Gr.II and AD Gr.I as on 5.12.1997 was prepared in which

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the reasons for changing the <sup>applicant</sup> seniority were recorded such as he was promoted as AD Gr.II against pt no.22 of 1987 in April 1993 treating the point as backlog of SC whereas as per rule no such carry forward of vacancy on year to year is permissible for selection post under reservation rules. Objections were invited by 18.12.1997. After considering the objections, the final seniority list was issued on 23.1.1998 (Annexure-R-VIII). The learned counsel maintained that the applicant had been provided full opportunity of objecting to the change in his seniority.

14. Referring to Govt.of India's instructions dated 25.2.1976 on reservations in posts filled by promotion by selection to Class-II, within Class-II and upto the lowest rung of Class-I, it was brought to our notice by the learned counsel of the respondents that there cannot be any carry forward of reservation in selection posts. The relevant instructions read as follows:-

"There will, however, be no carry forward of reservations from year to year in the event of an adequate number of Scheduled Caste/ Scheduled Tribe candidates not being available in any particular year"

The learned counsel of applicant stated that it is wrong to maintain that carry forward of reservation in selection posts is against the rules. According to him there are circumstances when carry forward of reservation of posts filled by promotion has been made possible. To illustrate he referred to instructions dated 30.11.1981 on the subject of single vacancy in recruitment year against SC/ST point. It is stated therein that "if a single vacancy falls at a reserved point for SC/ST and is filled by SC/ST candidate on the basis of his own merit or seniority, it need not be treated as unreserved and reservation should not be

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carried forward". He also referred to instructions dated 22.1.1977 stating that after reserved vacancy is dereserved the reservation is to be carried forward to subsequent three recruitment years. The carry forward of reservation means that in the subsequent year an equal number of vacancies will be reserved in addition to the normal reservations becoming due in that year according to the roster. In our view whereas the former instructions relate to a single vacancy falling at the reserved point the latter instructions have not been issued in supersession of 1976 instructions pertaining to non-provision of carry forward of reservation in selection posts on year to year basis. The present case is not covered by these instructions. The instructions referred to by the learned counsel of the respondents do cover the present case and we hold that the respondents could not have carried forward two posts of AD Gr.II as they were to be filled by promotion by selection and carrying forward of reservation for such post is prohibited under these instructions.

15. On the basis of the records we have concluded above that the post of AD Gr.II being a selection post, whereas two posts reserved for SC during the period 1987-90 could not have been carried forward, the applicant had been empanelled on the basis of the bench mark and his individual seniority and not on the basis of his merit. We have also discovered, as stated above, from the record that a third post reserved for SC was also anticipated which was not taken into consideration by the DPC.

16. Having regard to the instructions relating to reservation for selection posts carry forward of two posts during 1992-93 was certainly erroneous but as the third reserved post was also anticipated the promotion

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of the applicant could not have been faulted. However, for various discrepancies brought out in respect of the DPC held on 6.5.1992 such as requirement of empanelment of 8 vacancies up to the period 11.9.1993 and erroneous carrying forward of reserved vacancies, although other additional points for holding the review DPC are not fully proved; holding of DPC on 22.1.1998 for reviewing the proceedings of DPC held on 6.5.1992 for the cadre of AD Gr.II is quite in order.

17. The panel recommended by the DPC on 22.1.1998 is as follows:-

1. Shri K.L.Sehgal
2. Shri R. L. Sharma
3. Sh Manohar Lal
4. Smt.T.A.Jayalakshmi
5. Smt. Padma Gopalakrishnan
6. Smt.C. P. Sharma
7. Smt.Saraswati Nair
8. Sh Jagdish Chand

The DPC also took a view that Shri S.S.Verma and Smt.Satya Devi who had already been promoted on the basis of their empanelment at serial nos.9 and 10 by the DPC held on 6.5.1992 should be retained after Shri Jagdish Chand as they are the senior most eligible candidates already promoted to the post of AD Gr.II after Shri Jagdish Chand. It implies that Shri S.S.Verma and Smt.Satya Devi were not reverted although they were retained as AD Gr.II beyond the available number of vacancies for 1992-93. From the new panel of 22.1.1998 it is also clear that all those empanelled in the earlier DPC were empanelled with changed position keeping in view the seniority of the concerned officials.

18. The learned counsel of the applicant has taken strong exception to Annexure-A-1 dated 11.12.1997 whereby a provisional revised seniority list of AD Gr.I/ AD Gr.II as on 5.12.1997 has been prepared and circulated in which respondent 2 has been shown at

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serial no.1 and applicant at serial no.3. Reasons for change in the seniority position of the applicant vis-a-vis respondent 2 has been communicated as review of the reservation rosters and the existing seniority lists. The learned counsel has contended that whereas the review DPC, intended to set right the infirmities of DPC held on 6.5.1992, was held on 22.1.1998 Annexure-A-1 is dated 11.12.1997, which was certainly issued in anticipation of the holding of the review DPC. According to the learned counsel Annexure-A-1 was issued without any basis and seniority of the applicant, which had been settled for a long time as AD Gr.II, could not have been unsettled without issuing a show cause notice. From the records it is clear that whereas the review DPC was held on 22.1.1998 the provisional revised seniority list was issued earlier than that i.e. on 11.12.1997.

19. As regards the DPC held on 23.1.1998 to review proceedings of DPC held on 30.12.1996 for the cadre of AD Gr.I, the reasons for resorting to review are almost the same as for the review of the DPC meeting held on 6.5.1992 for the cadre of AD Gr.II. The reasons are that representations were received from some staff against reservation rosters and in consultation with DOPT and SC/ST Commission the rosters were recast. It was found that some promotions in the past were made on wrong application of roster rules and improper fixation of seniority position on the basis of the rosters. As in the case of the DPC held on 6.5.1992 for promotion to the post of AD Gr.II, in our view, there is no infirmity in reviewing the proceedings of the DPC held on 30.12.1996 for the cadre of AD Gr.I. Therefore, the review DPC meeting <sup>was</sup> held on 23.1.1998. From the records relating to DPC dated 30.12.1996 and the review DPC held on 23.1.1998 for promotion to the Grade of AD Gr.I, it

is clear that whereas the earlier DPC had considered 5 vacancies including existing and those arisen up to December 1997, the review DPC took into consideration the vacancies arisen up to March, 1997 for which period there were only 3 vacancies. The third point was reserved for SC candidate as per 40 point reservation roster. After considering the CRs of the officers including the applicant in the zone of consideration, it empanelled Shri J.K.Jain, Smt. T.A. Jayalakshmi and Shri Jagdish Chand (SC). As per seniority and promotion rules for induction to AD Gr.I - a Group 'A' post - the bench mark grading though continues to be good, however, officers graded as 'outstanding' have to be ranked enbloc senior to those graded as 'very good' and officers graded as 'very good' would rank enbloc senior to those graded as 'good' and placed in the select panel accordingly up to the number of vacancies; officers in the same grading maintaining their inter se seniority in the feeder post. Applicant's candidature for AD Gr.I had to be considered vis-a-vis that of Shri Jagdish Chand for the SC point. The review DPC found Shri Jagdish Chand a better candidate in view of his superior grading as compared to those of the applicant. Accordingly, the panel recommended by the review DPC for the cadre of AD Gr.I is quite proper in our view.

20. Shri Behra relied on the case of K.R.Mudgal and others Vs. R.P.Singh and others, (1986) 4 SCC 531 in which it was held that promotions and seniority should not be disturbed after a long lapse of time. Courts should not entertain petitions challenging promotion/seniority after inordinate delay. He next relied on the case of Rabindranath Bose and others Vs. Union of India and others, (1970) 1 SCC 84 in which it was held that justice should be administered in accordance with law



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and principle of equity justice and good conscience. "It would be unjust to deprive the respondents of the rights which have accrued to them. Each persons ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years". He then drew support from the case of Ramvir Singh Vs. Union of India and others, (1993) 24 ATC 255. In this case an appointment was antedated after 10 years on the ground that appointment was denied earlier to the employee because he was wrongly considered as not possessing requisite educational qualifications and consequently his seniority was stepped up. It was held that ante-dating of appointment and consequent stepping up of seniority is not permissible. The case of B.S.Bajwa and another Vs. State of Punjab and others, (1998) 2 SCC 523 was referred to by the learned counsel as in that case also seniority dispute had been raised after a long time when in the meantime promotions had also taken place. It was held that the question of seniority should not be reopened in such situation after a lapse of <sup>an</sup> reasonable period because that results in disturbing the settled position which is not justifiable. Interference was declined in view of the inordinate delay in seeking reopening of the seniority dispute. The learned counsel further raised the issue that since the applicant had been promoted to the post of AD Gr.II in 1992 and as AD Gr.I in 1997 he had developed civil rights and changing his seniority or reverting him to the post of AD Gr.II are prejudicial to his civil rights. He pointed out that change in his seniority and reversion to the post of AD Gr.II have been made without putting him to a show cause notice. He placed reliance on the case of P.Joel Karunakaran Vs.

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Chairman, Railway Board, New Delhi and others, (1987) 2 ATC 862 wherein Madras Bench of this Tribunal has held that modification in seniority and promotion to the prejudice of an employee without affording him an opportunity was violative of principles of natural justice. Shri Behra, learned counsel further referred to the case of Rathi Alloys and Steel Pvt.Ltd., Alwar Vs. Collector, Central Excise Jaipur, (1990) 2 SCC 324 wherein it was held that matters already taken to have been settled by Government's action in favour of a class of person cannot be re-opened by Government even though such action was not strictly in terms of statutory provisions.

21. In the present case, applicant had been promoted as AD Gr.II on 21.5.1992 on adhoc basis on the basis of DPC held on 6.5.1992. He was regularised on that post with effect from 1.4.1993. He was shown at serial no.8 in the seniority list dated 17.3.1994 vis-a-vis respondent no.2 at serial no.11 (Annexure-A-12). This seniority position of applicant vis-a-vis respondent 2 was confirmed again vide seniority list issued on 22.8.1995 (Annexure-A-13) wherein applicant and respondent 2 were shown at serial nos.4 & 7 respectively. The question is whether through the type of action that respondent 1 had taken applicant's seniority vis-a-vis respondent 2 can be changed. In Annexure A-1 issued on 11.12.1997 it is stated that on review of reservation rosters and existing seniority lists it was found necessary to revise them. Provisional seniority list of AD Gr.I and AD Gr.II as on 5.12. 1997 was prepared. In this seniority list, position of respondent 2 Shri R.L.Sharma has been shown at serial no.1 and applicant has been lowered to position 3. The reason mentioned for

*[Signature]*

lowering seniority of applicant is that he was promoted as AD Gr.I on adhoc basis with effect from 1.1.1997 and he was promoted as AD Gr.II against point no.22 of 1987 in April,1993 treating the point as backlog of SC whereas as per rule such carry forward of vacancy on year to year basis is impermissible for a selection post under reservation rules. Whereas the DPC for review of DPC dated 6.5.1992 for the post of AD Gr.II was held on 22.1.1998 action for issuing Annexure-A-1 dated 11.12.1997 had already been taken. Respondents have not contended that any show cause notice for changing seniority position was issued to applicant. Obviously, respondents had resorted to changing applicant's seniority as AD Gr.II after a lapse of approximately 4 years, the earlier seniority list having been issued on 17.3.1994 when respondent 2 never challenged applicant's promotion and seniority. In this background when the applicant had been promoted as AD Gr.II and accorded higher seniority than respondent 2 since 1992 and respondent 2 had never challenged them and respondent 1 had not issued even a show cause notice before issuing impugned order dated 11.12.1997 and reversion order from the post of AD Gr.I to AD Gr.II dated 12.2.1998 (Annexure-A-2), can action of respondents in disturbing settled position of promotion and seniority of applicant be considered to be in order. The various case law adduced by learned counsel of applicant holds that settled position whereby civil rights had accrued to a person should not be disturbed after reasonable period.

22. We have already held above that the panel recommended for the post of AD Gr.II by the DPC meeting held on 6.5.1992 was not actually in order of merit for promotion. The names of the applicant and Shri Jagdish Chand were kept on top considering that two SC posts

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were to be filled up as backlog. In this background, normally respondent 2 Shri R.L.Sharma who had a better confidential record than the applicant would have certainly been accorded higher seniority than the applicant in the light of the ratio in the case of Union of India Vs. Virpal Singh Chauhan, JT 1995 (7) SC 231 in which it was held as follows:

"Even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/ roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/ Scheduled Tribe candidate. The earlier promotion of the Scheduled Caste/ Scheduled Tribe candidate in such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to that category".

The policy of fixing seniority on promotion was modified accordingly vide DOPT OM No.20011/1/96-Estt.((D) dated the 30th January,1997.

23. It is true that respondent 2 had not challenged seniority and promotion of the applicant as AD Gr.II, however, as already held there was no infirmity in reviewing the panels of AD Gr.II and AD Gr.I constituted in the earlier DPCs in view of the good reasons described above for doing so. In accordance with the panel for AD Gr.II which was not made on the basis of individual merit but seniority-cum-bench mark of 'good' respondent 2 Shri R.L.Sharma who was senior to the applicant in the post of Assistant Grade-I was required to be restored his seniority over the applicant. The question, however, is whether the seniority of respondent 2 and the applicant could be changed without putting the applicant on notice. The respondents have contended that ~~that~~ the applicant's representation after the issuance of the draft seniority list of AD Gr.II (Annexure-A-1) had been considered and

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partly conceded which amounts to affording full opportunity to the applicant for change in his seniority position. In our view the principle of natural justice warrants that the seniority list could have been revised to the disadvantage of the applicant only after he was granted an opportunity to show cause against downward revision of his seniority. The kind of opportunity provided to the applicant which the respondents rely on is in the nature of post-decisional opportunity which is violative of the principles of natural justice. However, even if a show cause notice <sup>lb</sup> were issued to the applicant before revision of seniority, the applicant would not have got any relief as the seniority in the grade of AD Gr.II would have to be revised in view of the decision in the case of Virpal Singh Chouhan (supra). We are also of the view that we are not impressed by the views of the learned counsel of the applicant that changing applicant's seniority even after issuing a show cause notice to him would amount to disturbing the settled position. As stated earlier we find that the applicant had been accorded higher seniority than respondent 2 in the grade of AD Gr.-I about four years ago which period as per the case law discussed above is not held to be unreasonable for effecting a change in the seniority on the basis of revision in the panels for promotion to the ranks of AD Gr.II/ AD Gr.I.

24. The respondents have reverted the applicant to the post of AD Gr.II vide order dated 12.2.1998 (Annexure-A-2). In this regard since the applicant had been earlier on, on the basis of DPC held on 30.12.1996 for the cadre of AD Gr.I, was promoted on adhoc basis <sup>only</sup> <sup>lb</sup> regular promotions for the post of AD Gr.I on the basis

<sup>lb</sup>

of the review DPC would not require putting the applicant on notice before reverting him to the post of AD Gr.II. In this view of the matter, we are not in a position to fault with Annexure-A-2 dated 12.2.1998 reverting the applicant to the post of AD Gr.II.

25. Having regard to what has been stated above this OA is liable to be dismissed and it is accordingly dismissed, however, without any order as to costs.

S. Raju  
(Shanker Raju)  
Member (J)

rkv

V.K. Majotra  
(V.K. Majotra)  
Member (Admin)