

(72)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1981/96

New Delhi this the 3rd day of June, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri M.P. Singh, Member(A).

1. Shri Surinder Singh,
S/o Shri Jagir Singh,
R/o 96, Defence Apartment,
Delhi-110041.
2. Shri Ram Kanwar Joon,
S/o Shri Sri Ram,
R/o G&J (U), 16-B, Pitampura,
Delhi-110034.
3. Shri B.R. Khanna,
S/o Shri S.M. Khanna,
R/o WZ-53, Raj Nagar,
Palam Colony,
New Delhi-110045.

... Applicants.

(Applicants present in person)

Versus

1. Union of India through
the Secretary,
Ministry of Defence,
South Block, New Delhi.
 2. Director General of Ordnance Services,
MGO's Branch, Army Headquarters,
DHQ PO, New Delhi.
 3. Officer in Charge,
AOC Records,
Secunderabad, Andhra Pradesh.
 4. Sri Hari Om Upadhyay,
Presently OCC (S),
C/o Commandant, COD, Agra.
 5. Sri R.D. Vera,
Sr. Store Superintendent,
C/o Commandant, COD, Agra, UP.
 6. Shri Sajawal Singh,
Presently OCC (S),
Ammunition Depot,
Pune, Maharashtra.
 7. Shri J.S. Yaduraj,
working as OCC (S),
C/o 1, Advance Base Stationary Depot,
Guwahati, Assam.
 8. Shri Ram Kumar,
Presently Sr. Store Superintendent,
C/o Commandant, COD, Agra, U.P.
- B.C.

73

9. Shri N.C. Gupta,
Presently OOC (S),
C/o Commandant, COD, Pune,
Maharashtra.
10. Shri K.P. Joshi,
Presently OOC (S),
C/o Commandant, COD,
Delhi Cantt.
11. Shri Shiv Charan,
Presently OOC (S),
C/o Commandant, Ordnance Depot,
Shakurbaasti Ordnance Depot,
Delhi.
12. Shri Son Pal Sharma,
Presently OOC (S),
C/o Commandant, CVD,
Delhi Cantt.
13. Shri Manager Singh,
Presently OOC (S),
C/o Commandant,
COD, Jabalpur, M.P.
14. Shri Ram Rattan,
Presently OOC (S),
C/o Commandant, A.D. Bharatpur,
Rajasthan.
15. Shri Phool Singh,
Presently OOC (S),
C/o Commandant, COD,
Delhi Cantt.
16. Shri S.K. Shukla,
Presently OOC (S),
Stationery Depot,
Lucknow.
17. Shri Birender Kumar,
Presently OOC (S),
C/o Shri CA, FVD, Kirkee,
Pune, Maharashtra.
18. Shri V.P. Shukla,
Presently OOC (S),
Eastern Command,
Stationery Depot,
Calcutta.
19. Shri R.K. Gupta,
Presently Sr. Store Keeper,
C/o Commandant, COD,
Jabalpur.
20. Shri V. Natesan,
formerly Sr. Store Keeper,
C/o Commandant, COD,
Jabalpur, M.P.

..Respondents.

(By Advocates - Shri S.M. Arif for Respondents 1-3.
Shri K.R. Nagaraja for Respondents 4-20)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

This application has been filed by three applicants, in which they have prayed for the reliefs as set out in Paragraph 8. They have impleaded private respondents 4-20 who admittedly were in the service of the official respondents as Civilian School Masters (CSMs) who were later declared surplus and re-deployed as Store Keepers (SKs) on different dates. The prayers can be summarised as, for a declaration that the ex-CSMs who were re-deployed are not entitled to count their seniority in the posts of Senior Store Keepers (SSKs). They have also submitted that the claim of the private respondents is barred by limitation as well as jurisdiction. Consequently, they have prayed that all the orders issued by the respondents granting them promotions from an ante-date should be quashed and set aside.

2. The Tribunal had earlier disposed of the O.A. by order dated 4.2.2000, after hearing the learned counsel for the applicants and learned counsel for the official respondents noting that none had appeared for respondents 4-20. The official respondents had filed MA 2813/1999, wherein they had prayed that the O.A. may be disposed of on similar basis as the orders of the Tribunal dated 8.7.1996 in **Mohinder Singh Vs. Union of India and Ors.** (OA 2317/95). The Tribunal had allowed the MA and directed the official respondents to cancel the orders by which respondents 4-20 were given seniority over the applicants and to restore their seniority in their respective grades and grant them consequential benefits flowing from it.

Y.S.

3. The private respondents 4-20 through learned counsel, Shri K.R. Nagaraja, had filed CWP No. 390/2001 before the Hon'ble Delhi High Court. The High Court has observed that the matter has a chequered history and all that remains to be examined was whether petitioners' past service as Civilian School Masters (CSMs) in the Defence establishment was liable to be counted towards their seniority, after their absorption/re-deployment/promotion in the new posts. The Court had further observed that the issue had gone through bouts of litigation even upto the Apex Court several times but petitioners complain that they had gone unheard and were denied the opportunity to distinguish their case and prove their point. The Hon'ble High Court has further noted as follows:

"We have examined the Tribunal's judgement dated 8.7.96 passed in OA No.2317/95 which lies at the root of the controversy and which indeed stands affirmed by the Supreme Court as a result of dismissal of a series of SLPs against it. We have also noticed the manner in which the Tribunal had dealt with CSMs plea that their absorption/re-deployment/transfer was in public interest and how it had conversely traced it to compassionate grounds. We refrain from commenting upon all this. Be that so but it can't be disputed that petitioners had gone unheard in the matter and that Tribunal had passed the impugned orders disposing of OA No.1981/96 at their back and without affording them a chance of hearing. It is a different matter whether they could have succeeded in their claim. But they had surely a right to be heard and make distinction of their case from the other one. They could not be denied this right of making out their case and to show that it stood on a different footing. But that was not to be because Tribunal had disposed of the matter on the concession of counsel for respondents 4 to 6 without adequately dealing with the plea whether their case could be held to be covered by the Tribunal judgement in OA No.2317/95. This, in our view, would render impugned Tribunal order unsustainable".

YB

For the reasons given above, the High Court set aside the impugned order dated 4.2.2000 passed in MA 2813/99 in this O.A. They have ordered that the MA shall revive and be re-considered by the Tribunal after hearing the parties, granting time upto 30.6.2002 to pass appropriate orders.

4. In the light of the aforesaid order of the Hon'ble High Court, we have heard Shri K.R. Nagaraja, learned counsel at great length, the applicant, Shri Surinder Singh, who has also submitted his written submissions by way of rejoinder and Shri S.M. Arif, learned counsel for official respondents 1-3. We would like to record our appreciation of the valuable assistance given by Shri K.R. Nagaraja, learned counsel and Shri S.M. Arif, learned counsel for the parties in dealing with this matter, which as also observed by the Hon'ble High Court, has indeed a chequered history. Learned counsel for the parties have submitted compilations, written submissions and additional written submissions which have been referred to by them extensively during the course of arguments and they have also been placed on record. In order to deal with the issues in question, it would be necessary to give the brief relevant facts, the conflicting judgements which have been repeatedly cited and relied upon by the learned counsel as well as the applicant during their arguments.

5. The brief relevant facts are that the respondents had issued Special Army Order (SAO) 4/S/53 on the subject of disposal of surplus and deficiencies in Civilian Establishments under the Ministry of Defence. Under Para 18 of this order, a reference has been made to certain earlier O.Ms. issued by the Ministry of Finance

dated 4.7.1947 and the Ministry of Defence dated 15.11.1947 and 30.11.1948. While Shri K.R. Nagaraja, learned counsel, in his compilation read with the list of dates submitted by him, has very forcefully stressed and relied on the provisions of the order - SAO 4/S/53, in particular Para 2 (Appendix 'D'); on the other hand, Shri S.M. Arif, learned counsel, has very strenuously argued on Paragraph 18 of the same order. Para 2 of Appendix 'D' to SAO 4/S/53 reads as follows:

"2. Where the transfer is not in the public interest, but in the interest of the individual Government servant the past service rendered by him will not count for seniority in the new office and seniority in the new office will be reckoned only from the date of joining, where, however, the transfer is made in the public interest, past continuous service will count for seniority under the relevant rules and orders".

(emphasis added)

Para 18 of SAO 4/S/53 reads as follows:

"All postings/transfers effected in accordance with the above orders will be deemed to be in the public interest. This fact will be mentioned in all the posting/movement orders and the individuals will be entitled to TA, joining time and joining time pay under Ministry of Finance O.M. No.F.5(57)-Ests-IV-47 dated 4-7-47, the provisions of which were extended to civilians paid from Defence Services Estimates vide Ministry of Defence letter No.173360/1/PP-Coord dated 15-11-47 and 12934/D-11 dated 30-11-48 (reproduced as Appendices 'C', 'D' & 'E')".

(emphasis added)

6. The applicants have also submitted that the postings/transfers effected in accordance with the above Order are to be deemed in public interest only for the limited purpose of posting/movement i.e. for entitling the individuals to be given Transfer Allowance and joining time and pay under the aforesaid Ministry of Finance O.M. dated 4.7.1947 and the letters of the Ministry of Defence issued on 15.11.1947 and 30.11.1948. Learned counsel for

the official respondents has also stressed on Paragraphs 1 and 2 of the SAO that individuals rendered surplus in an establishment will first be considered for absorption in other equivalent or lower appointments in the same establishment, for which they have also been asked to give their willingness whether they agree or not. He has, therefore, drawn a distinction between an appointment and a transfer/re-deployment of surplus staff. Shri K.R. Nagaraja, learned counsel, on the other hand, equally vehemently submits that these are special orders issued by the Ministry of Defence and even if other general orders are there not to count seniority of redeployed staff who have been declared surplus, for example, orders issued by the Government of India, Ministry of Home Affairs from 1966, as amended from time to time, that will not be binding on the private respondents who are governed by these special orders.

7. A plain reading of Paragraph 18 of SAO 4/S/53, shows that what was intended by the Order was that a CSM who has been declared surplus and re-deployed in another service/unit of the Army, was entitled for Travelling Allowance (TA) and joining time. These issues have also been dealt with in **Mohinder Singh's** case (supra), after hearing the necessary parties in the order dated 8.7.1996 and we are in respectful agreement with those observations. Incidentally, the general provisions on the subject as laid down in the Ministry of Home Affairs/ DOP&T Instructions in 1966, as amended from time to time, dealing with the issues pertaining to surplus staff on re-deployment in the same or on other Department which Instruction applies to all Departments of the Government of India, do not provide for counting of past services for

B.

seniority in the new cadre or service, where the surplus staff is re-deployed. The judgements of the Full Bench of the Tribunal in **P.K. Das Vs. Union of India & Ors.** (O.A.826/88) and the Hon'ble Supreme Court in **Union of India & Ors. Vs. K. Savitri & Ors.** (JT 1998 (2) SC 347) and **Joyachan M. Sebastian Vs. The Director General and Ors.** (JT 1996(9) SC 538) are relevant. In the circumstances, the emphasis placed by Shri K.R. Nagaraja, learned counsel, on the provisions of Para 2 of Appendix 'D' to SAO 4/S/53 read with the O.Ms dated 4.7.1947, 15.11.1947 and 30.11.1948 will not assist him. Besides, we also see force in the submissions made by Shri S.M.Arif, learned counsel that the staff who have been declared surplus and are normally to be sent home but are re-deployed in other services, units, etc. are done on compassionate or humanitarian considerations and not in "public interest", except for the limited purposes of T.A. and leave granted for joining the post as provided in Para 18 of the aforesaid SAO. Therefore, the contentions of the private respondents that they are governed by a special law which overrides the general provision is not sustainable and is rejected.

8. Learned counsel for the private respondents has taken us through various judgements and, in particular, the judgement of the Allahabad Bench of the Tribunal in **Shyam Lal Dubey Vs. President of India and Ors.** (OA 434/1986) which was decided on 17.8.1990. The Tribunal had noted that the official respondents had given certain benefits of service to one Shri K.V. Rao in similar circumstances and, therefore, the O.A. was allowed. Accordingly a direction was given that the applicant's seniority as UDC shall be counted w.e.f.

18.

1.10.1963 with all consequential promotions and benefits. Thereafter, a series of judgements have been delivered by the Allahabad Bench of the Tribunal, copies of which have been placed in his compilation (**A.M. Upadhyay and Ors. Vs. Union of India & Ors.** (OA 1640/92), decided on 3.8.1994, **Hari Om Upadhyay & Ors. Vs. Union of India & Ors.** (OA 1232/1991), decided on 4.12.1993 and **Jagdish Kumar Vs. Union of India** (OA 916/91), decided on 18.7.1994. These judgements have followed the decision in **Shyam Lal Dubey's** case (supra). Learned counsel has also referred to another series of judgements, for example, **Bharat Kumar Rai Vs. Union of India and Ors.** (OA 634/96 - Calcutta Bench), decided on 1.9.1997 which in turn refers to a judgement of the Jabalpur Bench of the Tribunal dated 27.3.1996. He has emphasised that in the present case also, although most of the private respondents had been re-deployed after being absorbed prior to 1.7.1973, some of them have also been absorbed after that date. Similarly, he has tried to show that there are other judgements of the Tribunal which have followed the decision of Allahabad Bench of the Tribunal in **Shyam Lal Dubey's** case (supra). His contention is that after the directions of the Hon'ble Supreme Court in **K.K. Kathuria and Ors. Vs. Union of India** (SLP 6276/95) against the judgement and order of the Allahabad Bench dated 24.12.1993 in **Hari Om Upadhyay's** case (supra), as this Bench is now hearing the case of the applicants as well as the private respondents, all the issues are open for fresh adjudication. Shri K.R.Nagaraja, learned counsel has contented that the submissions made by the applicants as well as Shri S.M. Arif, learned counsel for official respondents, that the decision of the Tribunal in **Mohinder Singh's** case (supra) dated 8.7.1996 on which

18

three Special Leave Petitions have been dismissed, cannot be held to be binding on the Tribunal or as a declaration of law which has to be followed by the Tribunal. He has relied on a recent judgement of the Hon'ble Supreme Court in **Kunhay Ahmed and Ors. State of Kerala** (2000 (6) SCC 359) which has been followed in a subsequent judgement in **K. Rajamouli Vs. A.V.K.N. Swamy** (2001 (5) SCC 37).

9. On the other hand, Shri S.M. Arif, learned counsel, has submitted that, excepting for the aforesaid judgement of the Calcutta Bench of the Tribunal in **Bharat Kumar Rai's** case (supra), all the other judgements of the Tribunal following **Shyam Lal Dubey's** case (supra) were prior to the judgement of the Tribunal in **Mohinder Singh's** case (supra) which was decided on 8.7.1996. Learned counsel for the official respondents has submitted that **Mohinder Singh's** case (supra) was not, however, brought to the notice of the Tribunal in **Bharat Kumar Rai's** case (supra).

10. Shri K.R. Nagaraja, learned counsel has also very forcefully submitted that the judgement of the Tribunal in **Mohinder Singh's** case (supra) is on the face of it unacceptable because the Division Bench had committed many jurisdictional errors. He has emphasised that if the Bench was disagreeing with the co-ordinate Benches of the Tribunal which had repeatedly followed the earlier Division Bench judgement of the Allahabad Bench in **Shyam Lal Dubey's** case (supra), the only proper and legal course that was open to that Division Bench was to place the case before a Larger Bench. This was not done. He has, therefore, submitted that at present, in pursuance of the orders of the Hon'ble Supreme Court in **K.K.**

Y.S.

(82)

Kathuria's case (supra), the present applicants have reopened the issues and are trying to distinguish **Shyam Lal Dubey's** case (supra) which, according to him, is the correct decision based on the SAO of 1953 and the rules applicable to the facts of the case. He has accordingly urged that the proper course open to the Tribunal is to have the matter referred to a Larger Bench to take a final decision in the matter as there are admittedly conflicting decisions of various Benches of the Tribunal. References have been made to the judgements of the Tribunal of the Principal Bench, Chandigarh Bench, Mumbai Bench, Jabalpur Bench, etc. which are given in the compilation and have been referred to by him.

11. In **K.K. Kathuria's** case (supra), an SLP had been filed by the petitioners to challenge the order passed by the Tribunal (Allahabad Bench) dated 24.12.1993 in **Hari Om Upadhyay's** case (supra). The Hon'ble Supreme Court had observed that this order of the Allahabad Bench was based on the earlier order of the same Bench in **Shyam Lal Dubey's** case (supra). It was also observed that the impugned judgement had been passed affecting the future prospects of the petitioners and some others who were not even impleaded as parties before the Tribunal (Allahabad Bench). It may incidentally be observed that in the judgement of the Allahabad Bench of the Tribunal in **Shyam Lal Dubey's** case (supra) and subsequent judgements which followed that order, persons who were already in the cadre of SSKs like the applicants in the present case, had not been impleaded before them. The Hon'ble Supreme Court had held as follows:

"In our opinion, the submission of the learned counsel for the petitioners requires consideration on merits. It is true that the

8.

impugned order of the Tribunal cannot be held to bind persons who were not made parties before the Tribunal. In view of the fact that the matter has to be examined in the manner urged by learned counsel for the petitioners before it can bind persons who were not impleaded as parties, since the impugned decision or the earlier decision in S.L. Dubey's case is not on that basis, the effect of the impugned decision cannot be to adversely effect the interest of persons who were not impleaded therein. If, therefore, there be any person whose future service prospects are likely to be adversely affected by the impugned order made in favour of some of the respondents, it would be open to such persons to approach the Tribunal even in an appropriate Original Application seeking appropriate relief therein to safeguard their interest on the basis of the relevant provisions and the terms and conditions of absorption of the ex-Civilian School Masters in other Government departments on disbandment of their Unit. The claim made by such persons has to be adjudicated on merits and it cannot be deemed to be concluded by the impugned order or the earlier order made in Shyam Lal Dubey's case referred therein".

Following the above order, the present applicants who were similarly placed as K.K. Kathuria and others have filed the present Original Application on 16.9.1996. A persistent contention had been raised by Shri K.R. Nagaraja, learned counsel that the present application should be dismissed only on the ground of limitation. We are unable to agree with this contention in the light of the order of Hon'ble Supreme Court in **K.K. Kathuria's** case (supra). Respondents 4-8 in that O.A. were the applicants before the Allahabad Bench in Original Applications which have been allowed on the basis of **Shyam Lal Dubey's** case (supra). It is also relevant to note that private respondents 4-20 in the present Original Application were also applicants in some of the O.As filed before the Allahabad Bench of the Tribunal. In **Mohinder Singh's** case (supra), the Tribunal has heard all the parties, including the learned counsel for the private respondents and the Tribunal allowed the O.A. The relevant portion of that order reads as follows:

13.

"13. In the conspectus of the facts and circumstances and the legal position as discussed above, we find that there is considerable merit in the application and that the application is entitled to the relief prayed for by him. The application is, therefore, allowed. It is declared that the Civilian School Masters who were redeployed as Store Keepers are not entitled to count their past services as CSMS for seniority in the grade of Senior Store Keeper. We, therefore, direct the respondents to cancel all the orders by which the respondents 4 to 8 were given seniority over the applicant and to restore the applicant's seniority over the respondents 4 to 8 and to grant him the consequent benefits. Action in the above lines should be completed and orders issued within a period of 2 months from the date of receipt of this order".

12. In the facts and circumstances of the case and having regard also to the fact that the concerned parties have been heard by the Tribunal, following the judgement and order of the Hon'ble Supreme Court in **K.K. Kathuria's** case (supra) dated 2.11.1995, we are unable to agree with the repeated contentions of Shri K.R. Nagaraja, learned counsel that there are several jurisdictional errors committed by the Tribunal in **Mohinder Singh's** case (supra). According to him, this is also one of the reasons that the matter ought to be placed before a Larger Bench for adjudication of the issues. We are unable to agree with this contention also because as per the order of the Hon'ble Supreme Court dated 2.11.1995, the claims by the persons have to be adjudicated on merits and cannot be deemed to be concluded by the earlier order passed in **Shyam Lal Dubey's** case (supra). The matter was left for adjudication on merits in the manner indicated by the Hon'ble Apex Court and had been so adjudicated by the Tribunal's order dated 8.7.1996 in **Mohinder Singh's** case (supra).

js

13. Against the order of the Tribunal, the private respondents filed SLP No.16966/1966 (B.P. Singh & Ors. Vs. Union of India & Ors.) which was dismissed on 30.9.1996. This order reads as follows:

"The Tribunal, in the impugned order, has proceeded upon the basis that the transfer of respondent nos. 4-8 before the Tribunal was made on compassionate grounds and not in public interest. It is stated before us by counsel for the petitioners to the SLP that this is an incorrect statement. If so, the Special Leave Petition is dismissed".

Another Special Leave Petition filed by the Union of India against the judgement of the Tribunal in **Mohinder Singh's** case (supra) was also dismissed by the Hon'ble Supreme Court after condoning the delay vide order dated 19.8.1997. The private respondents in OA 2317/95 had filed RA 208/96. This RA was dismissed by the order dated 3.9.1997 in which one of us (Mrs. Lakshmi Swaminathan) was also a Member. Thereafter, another SLP was filed by Shri K.R. Nagaraja, learned counsel for the private respondents before the Hon'ble Supreme Court in which the following order has been passed on 23.3.1998:

"On 30.9.96, on the SLP of the petitioners, the following order was passed.

The Tribunal, in the impugned order, has proceeded upon the basis that the transfer of respondent nos. 4-8 before the Tribunal was made on compassionate grounds and not in public interest. It is stated before us by counsel for the petitioners to the SP that this is an incorrect statement. If so, the petitioners to be SLP may move the Tribunal in review. The Special Leave Petition is dismissed.

On 19.8.97, on the SLP of the Union of India against the very same judgement and order of the Tribunal, the following order has been passed:

"Delay condoned. The SLP is dismissed".

The petitioners moved the Tribunal in review. The Tribunal declined to entertain the review petition in view of the fact that an SLP against the same judgement and order had been dismissed. The petitioners impugn the correctness of this order.

Y.S.

The Tribunal was in error in saying that "it is a fact that in the order of the Hon'ble Supreme Court dated 30.9.96 liberty had been granted to the petitioners to move the Tribunal in review...." No such liberty had been given. Learned counsel for the petitioners submitted that the petitioners have been asked by the court to go to the Tribunal. This is incorrect.

This court, by the order dated 30.9.96 recorded the submission of counsel that the Tribunal had proceeded on an incorrect statement and it said that if that was so the petitioners may move the Tribunal in review. The SLP was dismissed. No liberty was given nor were the petitioners 'asked' to go to the Tribunal. What was the proper remedy was indicated. The Tribunal was right in holding that once an SLP against the same judgement and order had been dismissed (regardless of the fact that the petitioners were not a party to that SLP) it could not entertain any review application there against.

The SLP is dismissed".

(Emphasis added)

14. It is seen from the aforesaid order of the Hon'ble Supreme Court that their Lordships had held that the Tribunal's order in RA dated 3.9.1997 was "right". On the other hand, learned counsel for the private respondents has very emphatically submitted that the Tribunal's aforesaid order in the Review Application is an erroneous one, in the light of the later judgement of the Supreme Court in **Kunhay Ahmed's** case (supra). This has been disputed by the learned counsel for the official respondents as well as the applicants who have submitted that as **Mohinder Singh's** case (supra) is itself a fall out of the directions of the Supreme Court in **K.K. Kathuria's** case (supra) wherein all the affected parties have been ^{B. duly} heard, that decision is final and binding on the Tribunal.

15. We have given our very anxious considerations to the rival contentions advanced by the learned counsel for the parties and the applicants. We find force in the

B.

submissions made by Shri S.M. Arif, learned counsel that the applicants in the present O.A are similarly situated as Shri Mohinder Singh who had also approached the Tribunal, following the directions of the Hon'ble Supreme Court in the order dated 2.11.1995. In the circumstances of the case, the further contentions of Shri K.R. Nagaraja, learned counsel that the Tribunal in its order dated 8.7.1996 in **Mohinder Singh's** case (supra) had made jurisdictional errors and had made certain comments on the judgement of the Allahabad Bench in **Shyam Lal Dubey's** case (supra) which ought not to have been made but the same should have been referred to the Larger Bench cannot be agreed to, in the light of the judgements and orders of the Hon'ble Supreme Court dated 2.11.1995, 30.9.1996 and 23.3.1998. In this view of the matter, we are unable to agree with the submissions made by learned counsel for private respondents 4-20 that the matter should be referred to a Larger Bench at this stage.

16. The later judgements of the Tribunal (Principal Bench) in **S.S. Rathore and 14 others Vs. Union of India** (OA 1503/96), decided on 27.1.2000 and **Tara Chand Pandey's** case (who was Respondent No.8 in **Mohinder Singh's** case) (OA 836/99 with connected cases) decided by the Allahabad Bench of the Tribunal dated 7.9.2000 are also relevant to the facts of this case. The applicants in the other Original Applications dealt together with O.A. 836/99 were also respondents in **Mohinder Singh's** case (supra). In **S.S. Rathore's** case (supra), the Tribunal had observed that the applicants seek relief similar to the one which has been granted by the Tribunal in **Shyam Lal Dubey's** case (supra). It was also observed that the prayer cannot be granted for more than one reason

83

as the aforesaid orders passed by the Allahabad Bench have, for all practical purposes, been set aside by the Hon'ble Supreme Court on 2.11.1995 in SLP 6276/95. Moreover, it was held the Tribunal had allowed the application vide its order dated 8.7.1996 filed by Mohinder Singh who was similarly placed like the applicants in that O.A., as also the private respondents in the present O.A. Similarly, in **Tara Chand Pandey's** case (supra) in which one of us (Shri M.P. Singh was a Member), Allahabad Bench has held that the impugned order dated 30.9.1999 has been passed towards the implementation of the order of the Principal Bench dated 8.7.1996 in **Mohinder Singh's** case (supra) which has been passed after hearing the applicants and cannot be termed as an order of punishment. In the circumstances, the O.As were accordingly dismissed as without any merit. We have been informed that against the order of the Tribunal dated 7.9.2000, the aggrieved parties have gone to the Hon'ble Allahabad High Court which has granted stay against this order. However, learned counsel for official respondents has submitted that the issues raised in the present applications have been decided in **Mohinder Singh's** case (supra) which has the approval of the Hon'ble Supreme Court and, therefore, that issue has been settled. None of the parties have produced a copy of the Hon'ble High Court's order. However, it is clear from a perusal of the Tribunal (Allahabad Bench) order dated 7.9.2000 that they have held that they have followed the orders of the Tribunal and Supreme Court in **Mohinder Singh's** case (supra) and have not interfered with the order passed by the official respondents in implementation of the orders of the Principal Bench dated 8.7.1996. A similar view has been taken by another Bench of the Tribunal in **K.R.**

Y.P.

Madhavan Pillai and Anr. Vs. Union of India and Ors. (OA 703/97 - Mumbai Bench, decided on 2.11.2001) and **V.V. Shinde & Anr. Vs. Union of India & Anr.** (OA 500/97 - Mumbai Bench, decided on 8.11.2001). In these cases also, the cases of the applicants who have been redeployed after being declared surplus have been rejected for counting their past service after noting the aforesaid relevant judgements of the Principal Bench and the Hon'ble Supreme Court.

17. Learned counsel for the private respondents has also submitted that the judgements of various Benches of the Tribunal following the Full Bench Judgement in **P.K. Dass (not R.D. Gupta) Vs. Union of India** (OA 826/88) decided on 21.8.1991 are also erroneous which also cannot be accepted. Further, in our view, that will not assist the private respondents as the judgement of the Tribunal in **Mohinder Singh's** case (supra) has been pronounced after hearing all the parties with which we find absolutely no good grounds to disagree, particularly so after the Hon'ble Supreme Court has also dismissed the aforesaid SLPs. In this view of the matter, the view expressed in **Shyam Lal Dubey's** case (supra) followed by other judgements of the Allahabad Bench is no longer good law. The same view has been expressed by the Chandigarh Bench in **Prem Sagar Vs. Union of India & Ors.** (OA 1020-CH/94) decided on 17.7.1995, where it has been held as under:

"In view of what has been stated above, we are convinced that the view expressed by the Allahabad Bench of the Tribunal in the cases of Shyam Lal Dubey, Satbir Singh and V.P. Shukla is no longer good law, as the Full Bench of the Tribunal and the Apex Court have expressed a contrary view which view binds us".

18.

18. In the facts and circumstances of the case and the aforesaid judgement in **Mohinder Singh's** case (supra), the other judgements of the Tribunal in the compilation submitted by Shri K.R. Nagaraja, learned counsel will not support his case. The action of the respondents in implementing the judgement - orders in **Mohinder Singh's** case (supra) cannot also be faulted. In the particular facts of the case, the later pronouncement of the Hon'ble Supreme Court in **Kunhya Ahmed's** case (supra) on which much reliance has been placed by the learned counsel for respondents 4-20 will not avail him, as the present case is in all fours with **Mohinder Singh's** case (supra), which has itself followed the directions and observations of the Supreme Court in **K.K. Kathuria's** case (supra). The Hon'ble Supreme Court has had not once or twice but three occasions to see the order in **Mohinder Singh's** case (supra) in Special Leave Petitions filed by the parties. So we are of the view that in the facts of the case, those orders of the Hon'ble Apex Court on the same facts and issues between parties similarly placed as those before us are fully binding on us and we respectfully follow those orders. Therefore, the elaborate arguments of Shri K.R. Nagaraja, learned counsel that the Supreme Court has merely "touched" the case of **Mohinder Singh** (supra) and has not laid down any binding law or precedent for us to follow is something with which we are unable to agree.

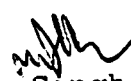
19. In the series of judgements of the Allahabad Bench of the Tribunal starting from **Shyam Lal Dubey's** case (supra), it is not denied that all the affected parties, like the persons who were already in the cadre of SKs and SSKs, i.e. persons like the applicants in the present

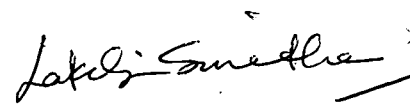
case, were not impleaded by the applicants/CSMs who had been declared surplus and then re-deployed and they were necessary parties. Hence, the order of the Hon'ble Apex Court dated 2.11.1995 in K.K. Kathuria's case (supra), was passed, following which both Shri Mohinder Singh and the present applicants Shri Surinder Singh and others filed O.A. 2317/95 and present O.A. 1981/96 on 08.12.95 and 16.9.1996, respectively. Therefore, all the necessary parties who are likely to be affected have been heard in detail in the present case and we do not find any good grounds to differ from the judgement of the Tribunal in Mohinder Singh's case (supra) decided on 8.7.1996 read with the orders passed by the Hon'ble Supreme Court in the SLPs referred to above. Accordingly, the contention of Shri K.R. Nagaraja, learned counsel that as the SAO of 1953 is a complete code and, therefore, the official respondents cannot deny the respondents their seniority or benefit of past service as CSMs after they were declared surplus and re-deployed, is rejected.

20. We have also carefully considered the other arguments advanced by Shri K.R. Nagaraja, learned counsel. However, in the facts and circumstances of the case and the discussions and reasons given above, we are unable to persuade ourselves to agree with him and they are rejected.

21. In the result, for the reasons given above, the O.A. succeeds and is allowed. Therefore, it is declared that Civilian School Masters who are deployed as Store Keepers are not entitled to count their past service for seniority in the grade of Senior Store Keepers. In other words, it is clarified that the reliefs given to the

similarly placed persons like Mohinder Singh in the aforesaid case, should also be given to the applicants in the present case by the official respondents with all consequential benefits. Necessary orders shall be passed by the official respondents within three months from the date of receipt of a copy of this order. We have been informed by the respondents that some of the Civilian School Masters who had been earlier re-deployed as Store Keepers have since retired from service. Therefore, while passing the appropriate orders, respondents 1-3 should keep in view this fact and the relevant law, rules and instructions, including the pronouncements of the Hon'ble Supreme Court in this regard. Parties to bear their own costs.


(M.P. Singh)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'