

Central Administrative Tribunal  
Principal Bench

O.A. No. 820 of 1996

New Delhi, dated this the 22<sup>nd</sup> March, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

1. Shri K.Purushotama,  
Director,  
S/o Shri K. Krishnamurthy,  
R/o 1279, Sector 12, R.K. Puram,  
New Delhi-110022.
2. Smt. Dayal Ray,  
Director,  
D/o Shri D.P. Octania,  
R/o D-408, Gurzon Road Apartments,  
New Delhi-110001.
3. Kum. P. Gupta,  
Director,  
D/o Shri Shanti Swarup,  
R/o B-308, Curzon Road Apartments,  
New Delhi-110001. .. Applicants

(Applicant No.1 Shri Purushotama on  
behalf of other applicants in person)

Versus

1. Union of India through  
the Secretary,  
Ministry of Defence, South Block,,  
New Delhi.
2. Union of India through  
the Chairman,  
U.P.S.C., Dholpur House,  
New Delhi.
3. Jt. Secretary (Trg) &  
Chief Administrative Officer,  
Ministry of Defence,  
Dalhousie Road,  
New Delhi-110011. .. Respondents

(By Advocate: Shri K.R. Sachdeva)

ORDER

MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicants impugn Annexure A/1 order dated  
12.3.96 and seek consideration for promotion to the  
grade of Civilian Staff Officer (C.S.O.) in the

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D.P.C. (Review) for 1977-78, in accordance with the rules as they existed on 1.10.77, without taking into consideration the amendment effected vide SRO No. 155 dated 27.4.78.

2. Applicant No.1 joined the Armed Forces Headquarters Civil Services (AFHQSC) as a direct recruit ACSO on 22.5.75 and was promoted as CSO in April, 1980, SCSO in October, 1985 and was thereafter put to officiate as Director in October, 1994. Applicants No.2 & 3 joined that service as direct recruit ACSOs on 1.5.74, were promoted as CSOs in August 1977, as SCSO in November, 1982; and as Director on 1.1.91. It is their case that consequent to the implementation of the C.A.T., P.B. order dated 20.11.92 in T.A. No. 356/85 Shri M.G. Bansal and others Vs. Union of India & Others, the seniority of ACSOs in AFHQ Civil Service underwent a change, and a revised seniority list of ACSOs as on 1.10.77 was prepared vide Memo dated 8.6.94 (Annexure A-III) in which their names figured at Sl. No. 129, 86 and 92 respectively.

3. It is further their case that as per AFHQ Civil Service Rules 1968, as amended upto 31.1.78 (Annexure A-VIII), ACSOs etc. with a minimum of 10 years approved service were eligible to be considered for promotion as CSO, provided that if any person was promoted to the grade of CSO, all those senior to him in that grade would also be considered, notwithstanding that they may not have put in 10 years service in the grade. Applicants further aver that pursuant to Bansal's case (supra), respondents by impugned order dated 12.3.96, circulated a revised select list of ACSOs/Stenographers Grade 'A' for promotion to the

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grade of CSO for the year 1977-78. Officers upto Serial No. 138 of the list dated 8.6.94 were eligible for consideration, for promotion as CSO, from which respondents by impugned order dated 12.3.96 empanelled 73 names, but illegally excluded applicants' names from consideration for promotion as CSOs, by arbitrarily applying an amendment to the Recruitment Rules brought about by SRO 155 dated 27.4.78 (Annexure VI), which provided that

"If any person in the grade of ACSO is considered for promotion to the grade of CSO all persons senior to him in that grade who have rendered not less than 6 years of service in that grade, shall also be considered, notwithstanding that they may not have rendered 10 years approved service in that grade; provided that the aforesaid consideration of 6 years shall not apply to a person belonging to SC/ST.

4. Applicants aver that as per Paragraph 1(2) of that SRO, the amended provisions took effect from the date of its publication in the official gazetted i.e. 6.5.78. It is further averred that as per Regulation 2(a) AFHQCS (Promotion to Sr. CSO; CSO & Supdt.) Regulations, 1968 (Annexure IV) the crucial date for determining eligibility of officers for promotion is 1st October of the year in which the select list is prepared, i.e. 1.10.77 in the present case. Hence an amendment brought about on 6.5.78 could not be legally invoked to deny applicants their consideration for promotion as CSOs on 1.10.77.

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5. Respondents in their reply challenge the O.A. on grounds of limitation, delay and laches, Res Judicata as well as on merits.

6. They state that panels to the grade of CSO were drawn by DPCs for the year upto 1976-77 by following eligibility criteria as per the unamended rules, and applicants No.2 & 3 were promoted under the said rules as CSO as they were included in the 1976-77 select list on consideration by the original DPC for that year. However, before the original DPC for 1977-78 could be convened in August, 1978, the Recruitment Rules were amended vide SRO No. 155 dated 27.4.78 modifying the eligibility criteria w.e.f 6.5.78. Respondents state that after obtaining advice of the nodal agencies UPSC held the original DPC for 1977-78 in August, 1978 by restricting its consideration only to such officials who fulfilled the eligibility criteria as per the amended rules, and as applicants did not have the minimum of 6 years service as ACSO in August, 78, they were not found eligible for consideration for promotion as CSO. Meanwhile some officers aggrieved by the amendments moved writ petitions No. 4348-4354/78 in the Hon'ble Supreme Court challenging the amendments. Rule Nisi was issued on the same on 18.10.78 (Annexure RIV), but subsequently they were dismissed for default on 12.11.86 (Annexure RV).

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7. Respondents further state that the manner of fixing of inter se seniority between direct recruits and promotees had also become a matter of dispute. In 1978, 3 promotee ACSOs had filed CWP No. 3/78 in the Delhi High Court against the 1977 ACSOs seniority list. That CWP was transferred to the C.A.T., P.B. who disposed of the case vide order dated 2.6.89. Against that order, respondents moved the Hon'ble Supreme Court, upon which the case was referred back to C.A.T., P.B. for fresh decision. The case was finally decided by C.A.T., P.B. in T.A. No. 356/85 (M.G. Bansal & Others Vs. Union of India & Others) vide order dated 20.11.92 (Annexure R-VI) in the context of which, revised seniority list of ACSOs as on 1.10.77 was published and review DpCs for promotion as CSOs were being held on the basis of the revised seniority list.

8. Respondents assert that applicants' main grievance is the applicability of the amendment to the Recruitment Rules brought about by SRO No. 155 dated 27.4.78, but as the review DPC held in 1996 had gone by the same criteria adopted by the original DPC held in August, 1978 the same cannot give rise to a new cause of action. It is asserted that applicants are in effect challenging the decision/order of Respondents made as far back as 1978 which is beyond the Tribunal's jurisdiction, and the O.A. is hit by limitation and laches. It is also asserted that the O.A. is hit by Res Judicata in view of WPs No. 4348-4354/78 which were considered by the Hon'ble Supreme Court, in which applicant No.1 was a party.

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9. As regards the merits of applicants' contentions, Respondents assert that the original DPC held in August, 1978 for promotion to the grade of CSO for the year 1977-78 was held in accordance with the rules as applicable on the date of the DPC, and they were duty bound to conduct the review DPC also based on the same provision of rule and eligibility criteria. In this connection they deny that the eligibility for inclusion in the panel for 1977-78 was required to be decided as on 1.10.77. They assert that as per Paragraph 2(a) of the regulations, eligibility is to be determined as on 1st October of the year in which the select list is prepared, and as the select list was prepared only on August, 1978, the eligibility was to be with reference to 1.10.78.

10. In this connection respondents in Paragraph 4.13 of their reply admit that they had been legally advised to hold separate DPCs for pre amendment and post amendment vacancies, but assert that the same was not considered feasible owing to the following reasons:

"(1) the Hon'ble Supreme Courts's ruling in Y.V. Rangaiah Vs. Srinivas & Others AIR 1983 SC 852 was pronounced in 1983 i.e. after the original DPC for 1977-78 was held and old settled cases should not be disturbed on the basis of subsequent judgments.

(ii) the concept of preparation of yearwise panels was not in existence before 1980. Therefore, bifurcation of the panel in question pertaining to the year 1977-78 based on the date of occurrence of vacancies into pre amendment and post amendment periods was not possible at that time.

(iii) it would not be in order to introduce any change in the DPC procedure

other than the one mandated by the C.A.T., P.B. order dated 20.11.92 in Bansal's case (supra).

(iv) the provision for considering of seniors for promotion when their juniors were considered was not strictly a condition of eligibility, but could be considered to be only an enabling provision, and would become invokable only when a DPC actually met. Since by the time the DPC for 1977-78 met in August, 1978 the enabling provision made use of the amended enabling condition as was available at the time of the holding of the original DPC.

11. Applicants have filed rejoinder in which they have denied respondents' contentions and broadly reiterated their own. Particular attention has been focussed on Paragraph 4.13 of respondents' reply wherein it has been conceded that on a reference made to it the Law Ministry had advised respondents that separate DPCs for pre amendment and post amendment vacancies be held. Applicants assert that the legal point having been ruled in their favour by respondents' own nodal agency, respondents were legally bound to fill up vacancies prior to the amendments as per prescribed rules, and denial of consideration of their case in the select list (review) for 1977-78 and resulted in sperrcession of applicants No.2 & 3.

12. We have heard applicant No.1 Shri Purshottama who argued on behalf of applicants, and Shri Sachdeva for respondents. We have perused the materials on record and given the matter our careful consideration.

13. Regulation 4(1) AFHQCS Regulations 1968 (Annexure IV) lays down that select list for promotion to the grades of SCSO, CSO and Supdt. shall be prepared atleast once every year if on the 1st October of the year the number of officers included in the select list of the respective grade is below the strength determined under Sub-Regulation (2). Regulation 2(1)(a) defines an eligible officer to mean an officer eligible to be considered for appointment to the grade of SCSO, CSO or Supdt. as on the 1st October of the year in which the select is prepared. There is, therefore, merit in applicants' contention that the select list for the year 1977-78 was to be drawn up to fill the vacancies occurring between 1st October, 1977 and 30th September, 1978, and as the DPC met in August, 1978 the eligibility was to be determined w.e.f. 1.10.77 (i.e. well before the rules were amended w.e.f. 6.5.78) and not w.e.f. 1.10.78 as contended by respondents. Respondents contend that the Hon'ble Supreme Court's ruling in Rangaiah's case (supra) which was pronounced in 1983, much after the 1977-78 DPC would not require the opening up of cases prior to 1983, but as far back as in 1975 the Hon'ble Supreme Court in Government of India & Anr. Vs. C.A. Balakrishnan & Others 1975 (3) SCC 256 had upheld the principle that posts should be filled up as per Recruitment Rules in ~~force~~ on the date of occurrence of the

vacancies and not as per amendments to the rules effected subsequently. In the present case, the officers approved for promotion in select list for 1976-77 having all been promoted prior to 30.9.77, the posts which were lying vacant on that date, as well as vacancies arising upto 6.5.78 were required to be filled up by officers who were eligible for consideration as on 1.10.77 as per pre-revised rules, and indeed respondents had also issued a seniority list as on 1.10.77 (Annexure A-III).

14. Further applicants have submitted in their rejoinder dated 16.8.96, which has not been denied by respondents in their additional affidavit dated 27.8.96 that the original DPC which met in August, 1978, as also the review DPC considered ACRs upto 1976 clearly indicating that the panel was drawn up as if drawn in 1977, because if the eligibility was to be as on 1.10.78, ACRs upto 1977 would have been considered.

15. What in our view clinches the case in applicants' favour is the fact that respondents' own law officers had advised them to hold separate DPCs for pre amendment and post amendment vacancies but respondents did not do so, for reasons contained in paragraph 10 above, which are not tenable. We have already noticed that even before Rangaiah's case (supra) the Hon'ble supreme Court in 1975 in Balakrishnan's case (supra) had approved the principle that posts should be filled up as per Recruitment Rules in full on the date of

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of occurrence of the vacancies. Even if the concept of preparation of yearwise panels was not in existence before 1980, there is no adequate explanation why respondents did not follow the advice of their own law officers and separate the vacancies into pre-amendment and post amendment ones. As regards Paragraph 10(iii) above, the C.A.T., P.B. order dated 20.11.92 did not mandate any particular DPC procedure, and with respect to Paragraph 10(iv), the provision for considering seniors when their juniors were considered was a mandatory condition which respondents were required to follow, and could not be dispensed with by arguing that it was merely an enabling provision.

16. In this background, it is clear that applicants had a vested right to be considered in the original DPC held in August, 1978 for preparation of the 1977-78 select list prior to the 27.4.78 amendment, and by the same token had a right to be considered in the 1977-78 review DPC, which resulted in impugned order dated 12.3.96. This right cannot be sought to be defeated by respondents' plea of limitation or delay and laches. Furthermore as WP Nos. 4348-4354/78 were dismissed for default, Res Judicata is also not attracted.

17. Respondents' counsel ~~has~~ relied upon the rulings in 1972 (20) ATC 75 Union of India Vs. A.M. Bhisoo and Paragraph 5 of AISL :1999 (3) 202 T. Dominic Vs. Secretary, Government of India & Others, but a persual of the same makes it clear that neither of those rulings assist respondents.

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18. In the result this O.A. succeeds and is allowed to the extent that respondents are directed to consider the case of applicants for promotion to the grade of CSO w.e.f. the date their immediate juniors were so considered pursuant to the review DPC held for 1977-78. Such consideration shall be in accordance with the rules as they existed on 1.10.77 without taking into consideration the amendments effected by SRO No. 155 dated 27.4.78 and in case applicants are so promoted, they shall be entitled to all consequential benefits, including arrears of pay and allowances, seniority as well as consideration for further consequential promotions. These directions should be implemented as expeditiously as possible and preferably within six months from the date of receipt of a copy<sup>1</sup> of this order. No costs.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)  
Member (J)

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(S.R. Adige)  
Vice Chairman (A)

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