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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 690/1997

New Delhi this th 19th day of April, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

1. Shri A.K. Saxena,
S/o Shri K.P. Saxena
2. Shri S. Farukh Hamid,
S/O Late Sh. A. Sahul Hamid
3. Shri Chandan Singh,
S/O late Shri Durga Prasad

(All Directors, Directorate
General of Supplies and
Disposals, Jeevatarra Building,
5, Sansad Marg, New Delhi-1

... Applicants

(By Advocate Shri K.C. Mittal, learned
counsel with Shri Harvir Singh)

VERSUS

1. Union of India,
Through Secretary,
Department of Supply,
Ministry of Commerce, Nirman
Bhawan, New Delhi.
2. Director General,
Directorate General of Supplies
and Disposals, Jeevantara Building,
5, Sansad Marg, New Delhi.
3. Shri Girdhari Lal
4. Shri Surjit Lal
5. Shri N. Haldar
Director Supplies and Disposal
Office Director General of
Supplies and Disposal 6 Explanate
East, Calcutta (WB).
6. Shri Bansil Lal
7. Shri Harbans Lal

(Respondents No. 2 to 7
All Directors, Directorate General
of Supplies and Disposals,
Jeevantara Building, Sansad Marg,
New Delhi).

... Respondents

(By Advocate Sh.N.S.Mehta, learned Senior
counsel with Shri P.Baruha, Assistant-
Departmental representative for R-1-2)
(By Advocate Sh.H.C.Premi with
Shri R.P.Shahi for Respondents 3-7)

O R D E R (ORAL)

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

The applicants in this case have challenged the action taken by respondents 1-2, with regard to assigning their seniority and promotion ^{given} to respondents 3-7 to the post of Directors, on the basis of what they claim, ^{is an} erroneous seniority list prepared by them in the post of Deputy Directors. They have submitted that the action taken by the official respondents is contrary to the service Rules as well as the law laid down by the Hon'ble Supreme Court in Indira Sawhney Vs. Union of India (JT 1992(6)SC 273 ; Union of India Vs. Veer Pal Singh (JT 1995(7)SC 231) and Union of India Vs. Tushar Ranjan Mohanty (JT 1994(4)SC 397).

2. At the outset, when the case was taken up for final hearing, learned counsel for the applicants Shri K.C.Mittal, as well as Shri N.S.Mehta, learned senior counsel have submitted that on the same issue raised by the applicants in this case, a judgement of the Tribunal has been given on 29.2.2000 in I.S.Garg and Others Vs. UOI and others (OA 1631/1996), copy placed on record. It is noted that neither of the parties in that case were represented by the learned counsel and the order was passed on the merits of the case. However, in the present application, the learned counsel for the private respondents 3-7 have raised a preliminary objection that the OA is barred by limitation. Shri N.S.Mehta, learned senior counsel for

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respondents 1-2 has submitted O.M. dated 4.1.2001 on the subject of changed seniority pattern of officers belonging to Deputy Directors, Indian Supply Service (ISS), for promotion to the posts of Directors, in terms of the directions of the Tribunal in the case of I.S. Garg's case (supra). The applicants in the present application are shown at Serial Nos. 28-30. It was also submitted by Shri K.C. Mittal, learned counsel for the applicants, that the present applicants are senior to the applicants in OA 1631/1996 and it is noticed that they are shown senior to the other applicants, as well as the respondents, excepting respondent No. 3 i.e. Sh. Girdhari Lal (SC) in the present application. According to the learned counsel for the applicants, respondent 3 is also senior to the applicants in I.S. Garg's case (Supra). It was noticed in the Annexure, annexed to the O.M. dated 4.1.2001, that the name of Shri Girdhari Lal, respondent 3 does not figure. Shri N.S. Mehta, learned senior counsel, on instructions from the departmental representative who is present in Court has submitted that this is due to ^{an error} over-sight which would be corrected shortly.

3. With regard to the preliminary objection taken by the learned counsel for respondents 3-7, we have heard Shri K.C. Mittal, learned counsel. He has referred to the averments made, in particular Paragraphs 18-23 of the OA, together with the annexures. He has also relied on the judgement of the Hon'ble Supreme Court in Dinakaranna Patil and another Vs. State Of Maharashtra and others (1999)(1) SCC 354. Learned counsel has submitted that in the present case, after respondents 1-2 have informed the applicants

that their case has been forwarded to the Department of Supply for due consideration as late as December, 1994, they have circulated the seniority list later on without considering and disposing of their representations. He has, therefore, submitted that the plea of limitation cannot be sustained in the present case as the promotion order passed by the official respondents based on what they claim is an erroneous seniority list which has been prepared by them de hors the provisions of Rule 9(4) of the Indian Supply Service Rules, 1961 and the relevant judgements of the Apex Court, cannot be sustained in law. On the other hand, learned counsel for the private respondents have submitted that the orders promoting them have been passed in accordance with the DOP&T instructions dated 27.11.1972 on reservation for SC and ST candidates. They have, therefore, vehemently submitted that the action taken by the respondents in promoting respondents 3-7 in the years 1975-1979 cannot be agitated by the applicants at this belated stage. As mentioned above, it is noticed that the Tribunal in its order dated 29.2.2000 on similar issues of assigning seniority to almost the same class of parties, namely, the applicants in that case who are juniors to the applicants in the present case and who also belong to the general category, had obtained an order in their favour on the merits of the case. Following this order, it is also relevant to note that the official respondents have issued a revised seniority list by OM dated 4.1.2001. Taking into

account the facts and circumstances of the case we see force in the submissions made by Shri K.C.Mittal, learned counsel for the applicants that the judgement of the Hon'ble Supreme Court in **Dinkaranna Patil and Anr.'s case(Supra)** would be applicable to the facts in the present case. It is seen from the documents on record that the respondents while informing the applicants that their representation against the seniority list was under consideration, they subsequently issued a seniority list on the basis of which they had taken further action regarding promotion of officers to the rank of Directors which has been done as late as 25.4.1996. It is also relevant to mention that respondents 1-2 have implemented the order of the Tribunal in **I.S.Garg's case(supra)** by issuing O.M.dated 4.1.2001, excepting for the omission of the name of respondent 3 i.e. Shri Girdhari Lal. It is further noted that they have submitted that this error would be rectified in accordance with the relevant provisions of law, instructions and in the light of the judgement of the Tribunal dated 29.2.2000. In the facts and circumstances of the case, therefore, we do not consider that it would be justified at this stage to reject the present application on the plea of limitation.

4. During the hearing, Shri K.C.Mittal, learned counsel has submitted that in view of the OM issued by the respondents dated 4.1.2001, the main grievance of the applicants may not survive at this stage. He has, however, submitted that as respondent 3, i.e. Shri Girdhari Lal was shown senior to the applicants

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in the impugned seniority list and his name has been omitted in the changed seniority pattern as issued by respondents 1-2, liberty may be given to the applicants to agitate the matter further in case any grievance survives after the inclusion of the name of respondent 3 by respondents 1-2 in the revised list.

5. In the facts and circumstances of the case we are in respectful agreement with the reasoning and conclusions arrived at by the Co-ordinate Bench of the Tribunal in its order dated 29.2.2000 in I.S.Garg's case(Supra). Noting the submissions made by the learned counsel for the parties, including the prayer of the applicants' counsel as mentioned above, the OA is disposed of with the following directions to the respondents :-

Further to the OM issued by respondents 1-2 dated 4.1.2001, they shall issue necessary order/ corrigendum with regard to the position in the seniority list of respondent 3. This shall be done within one month from the date of receipt of a copy of this order.

No order as to costs.

(Govindan S.Tampi)
Member(A)

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(Smt. Lakshmi Swaminathan)
Vice Chairmn(J)