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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-960/97
MA-1021/97

New Delhi this the 28th day of July, 1997.

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Sh. S.P. Biswas, Member(A)

1. Sh. K.K. Katiyar,
D-519, Pragati Vihar Hostel,
Lodhi Road Complex,
New Delhi.
2. Sh. Anuj Bhardwaj,
S/o Major Prithmi Chand (Retd.)
R/o A-701, Curzon Road,
M.A. Apartments,
K.G. Marg, New Delhi-1. Applicants.

(through Sh. VSR Krishna, advocate)

versus

Union of India through

1. Secretary,
Deptt. of Cabinet Affairs,
Cabinet Secretariat,
Govt. of India,
New Delhi-11.
2. Director,
Aviation Research Centre,
Directorate General of Security,
Cabinet Secretariat,
East Block V, R.K. Puram,
New Delhi-66.
3. Wg. Comm.(Retd) T.V. Ranganathan,
Directorate General of Security,
Cabinet Secretariat,
East Block-V, R.K. Puram,
New Delhi.
4. Wg. Comm.(Retd) H.C. Dutta,
Directorate General of Security,
Cabinet Secretariat, East Block-V,
R.K. Puram, New Delhi. Respondents

(through Sh. Madhav Panikar for official respondents
and Sh. C. Hari Shankar for private respondents)

ORDER(ORAL)

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)

The two applicants in this case were
holding the substantive post of Sqn. Ldr. in Indian
Air Force and Major in Army w.e.f. 13.7.85 and

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21.12.86 respectively. The applicants were appointed as Senior Photo Interpretation Officer in the grade of Rs.3700-5000/- w.e.f. 15.6.93. The grievance of the applicants is that according to the Recruitment Rules, they should have been absorbed as Sr. Photo Interpretation Officer not w.e.f 15.6.93 but w.e.f. 13.7.90 and 21.12.91 respectively. Their contention is that the absorption being done under the Recruitment Rules, the Rule 6 of the RRs provide for initial constitution and the case of the petitioners is governed by Column 12(ii)(a) of the Schedule II under which the Defence Services commissioned officers holding on regular basis, the rank of wing commander and equivalent rank for atleast five years or higher rank and having undergone institutionalised training in military Photo Interpretation are eligible for absorption after the initial constitution of the service. Admittedly both the applicants completed the said requirement of five years by 13.7.90 and 21.12.90 respectively. It was also contended by the learned counsel for the applicants that the said RRs which for the first time notified under Article 309 of the Constitution of India does not have a provision applying the same retrospectively and the said rule will have to be now considered after the initial constitution. He also relied upon a letter of the respondents dated 15.6.93 according to which the service rendered by the applicants in their parent

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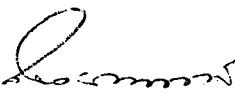
organisation will be counted as qualifying service for the purpose of pensionary benefits, seniority, promotions and other purposes.


2. The learned counsel for the respondents on the other hand submitted that the said letter dt. 15.6.93 is only a letter signed by the Desk Officer and at the most it can be viewed as an internal communication or as a guideline issued for the purpose and the rules that are applicable will be those that are published by Department of Personnel & Training. According to him, the condition prescribed in this letter will be subject to the guidelines issued by DOPT. We cannot agree with the said contention for the reasons that the opening words in the letter dated 15.6.93 states that "I am directed to convey the sanction of the President to the transfer services of Defence Service Personnel to the above mentioned organisation subject to the following conditions." In view of this opening words, we are of the view that the Desk Officer is only conveying the sanction of the President who is presumed to have seen the conditions attached to such absorption and appointment. Accordingly we have no hesitation to hold that the guidelines of DOPT over-ride the condition which the President has sanctioned, and the guidelines of the DOPT will be enforceable subject to the conditions stated in this letter only.

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3. It was stated on behalf of the private respondents that the seniority of private respondents as it stands today is unassailable. The learned counsel for the applicants on the other had confined his relief to absorption from the date on which he completed the five years service as Sqn. Ldr. and Major respectively and in the circumstances he is claiming no relief of seniority against the respondents.

4. After going through the case and hearing the arguments of the parties, we are of the opinion that the applicants are entitled to absorption in the view of the Schedule to the Recruitment Rules, w.e.f. 13.7.90 and 21.12.91 respectively to the post of Sr. Photo Interpretation Officer and to that extent the orders of the respondents dated 22.9.95 and 29.6.95 are quashed. The respondents are directed to consider absorption of the applicants as Sr. Photo Interpretation Officer from the date on which they were entitled to be considered under the rules. The applicants will be entitled to all consequential benefits from the date of absorption except seniority, as stated above. No order as to costs.


(S.P. Biswas)
Member(A)


(Dr. Jose P. Verghese)
Vice-Chairman(J)

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