

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 2485/94

New Delhi, this 9th the day of *November*, 1998

Hon'ble Shri T. N. Bhat, Member (J)
Hon'ble Shri R.K. Ahoja, Member (A)

IN THE MATTER OF:

1. Shri SP Rastogi
s/o Sh. Raj Krishna Rastogi,
F-12, Nauroji Nagar,
New Delhi - 110 029.
2. Shri S.L. Arora
s/o Sh. Chothu Ram,
A-26, (Double Storey),
Kalkaji,
New Delhi.
3. Shri Murhar Sharma
s/o Shri R.L. Sharma,
B-6, Nanakpura,
New Delhi.
4. Shri Jaipal Singh
s/o Shri Chandra Mal,
Block No. 17, Qtr. No. 882,
Lodhi Road,
New Delhi.
5. Shri M.S. Rastogi,
s/o Shri Shadi Lal,
64/3C, Kalibari Marg,
New Delhi.
6. Shri Ashok Saigal,
s/o late Shri C.L. Saigal,
B-53/1, Naraina Vihar,
New Delhi.Applicants

(By Advocate: Shri G.D.Chopra with Sh. O.P.Kshatriya)

Versus

Union of India through:

1. Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. The Director Intelligence Bureau,
Ministry of Home Affairs,
North Block,
New Delhi.

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3. The Secretary,
Department of Personnel, Grievances and
Training,
Ministry of Home Affairs,
North Block,
New Delhi.
4. Shri S.P. Dhamija,
Section Officer,
Intelligence Bureau,
North Block,
New Delhi.
5. Shri T.R. Batra,
Section Officer,
Intelligence Bureau,
North Block,
New Delhi.
6. Shri Sita Ram Singh,
Section Officer,
Intelligence Bureau,
North Block,
New Delhi.
7. Shri Jag Mohan Sayal,
Section Officer,
Intelligence Bureau,
North Block,
New Delhi.
8. Shri S.K. Nandi,
Section Officer,
Subsidiary Intelligence Bureau,
9/1 Gariahat Road,
Calcutta.
9. Shri Daya Nand Pandey,
Section Officer,
Intelligence Bureau,
North Block,
New Delhi.
10. Shri Sanjay Sen Gupta,
Section Officer,
Subsidiary Intelligence Bureau,
9/1 Gariahat Road,
Calcutta.

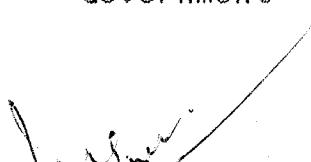
... Respondents

(By Advocate: Shri P.H. Ramchandani)

O R D E R

delivered by Hon'bl Shri T.N. Bhat, Member (J) -

1. The applicants are working as Section Officers in the Intelligence Bureau, Ministry of Home Affairs, Government of India and are aggrieved by the alleged wrong



fixation of their seniority by the respondents. According to the applicants while implementing the judgement of this Tribunal in OA Nos 1675/87 and 31/88, the respondents have given a wrong interpretation to the directions contained in the judgement. It appears that the respondents have issued seniority list in two parts and the applicants had made representation against it but the same has been rejected by the respondents by the impugned order dated 3.5.1994 (Annexure A-I).

2. The applicants had been working as Assistants in the aforesaid Bureau and were promoted against seniority-cum-fitness quota as provided in the recruitment rules of 1955. Their promotions were, however, subject to the decision of the Hon'ble Supreme Court in SLP No. 5027 of 1981. According to the applicants in the Intelligence Bureau there is no direct recruitment to the level of Section Officers and all posts of Section Officers are filled departmentally from amongst Assistants and Stenographers. Some promotions are made on the basis of seniority-cum-fitness while other promotions are made on the basis of limited departmental competitive examination. The recruitment rules of the said department were revised on 25.11.1988 and according to these rules 50% of the posts were to be filled up on the basis of seniority-cum-fitness while the remaining 50% through limited departmental competitive examination held by the Union Public Service Commission from time to time. This method of promotion seems to have given rise to the dispute between the promotees from the two streams, namely, promotees on the basis of seniority-cum-fitness and those promoted on the basis of their merit in the limited departmental competitive examination. Since the promotion to the post of

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Section Officers was mainly from the Assistants grade, the determination of seniority in the grade of Assistants became important. Initially, seniority was determined on the basis of length of continuous service. However, subsequently the seniority was required to be fixed on the basis of confirmation. However, following the decision of the Hon'ble Supreme Court in UOI & ORS. VS. RAVI VERMA & ORS. seniority was fixed according to the length of continuous service and not on the basis of confirmation. In the case of the Assistants in the Intelligence Bureau the Andhra Pradesh High Court in Writ Petition No. 7060 of 1973 directed the department to restore the original seniority of the petitioners in that Writ Petition on the basis of continuous officiations and in pursuance to that judgement the department issued a revised seniority list of Assistants on 28.1.1976.

3. That seniority list, however, came to be challenged in the Delhi High Court in Civil Writ Petition No. 638/76 which was dismissed by the Single Bench of that High Court. However, the judgement of the Single Bench was reversed by the Division Bench by its judgement dated 19.12.1980 and it was held that the seniority list issued on 28.1.1976 should be modified and revised. The judgement of the Division Bench dated 19.12.1980 was challenged in the Hon'ble Supreme Court which allowed the appeal, set aside the judgement of the Division Bench and by its judgement dated 30.9.1986 directed that all promotions made in the Intelligence Bureau shall be reviewed/fixed in accordance with the seniority list dated 28.1.1976.

Verma

4. Following the judgement of the Hon'ble Supreme Court the Department reviewed all promotions to the grade of Section Officers (seniority-cum-fitness quota) from 1970 to 31.7.1987 and issued a revised seniority list of Section Officers by its Memo dated 8.8.1987. The said seniority list, according to the applicants, was based upon the rota-quota principle and the same was challenged by two groups of Section Officers who had been promoted on the basis of seniority-cum-fitness by filing OA Nos. 1675/87 and 31/88. The applicants in both the OAs sought re-determination of their seniority according to the length of service in the grade and they also challenged the application of the principle of rota-quota. Both the OAs were allowed by a common judgement dated 26.4.1989 by this Tribunal. The operative part of the judgement may be quoted as follows:-

"In view of the above discussion, both the applications are allowed with the directions that the impugned seniority list issued in August 1987 is quashed to the extent that it assigns the applicants in OA 1675/87 notional seniority of years later than the date when they were actually promoted to the posts of Sections Officers and further to the extent that it assigns seniority to the examinee respondents above the applicants in both the OAs on the rotational principle. The respondents who were promoted on the basis of the Limited Departmental Competitive Examinations shall be assigned seniority with reference to the applicants on the basis of the dates of their actual appointment/promotion. A fresh seniority

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list of Section Officers shall be issued within a period of three months from the date of this judgement keeping in view the above directions. There shall be no order as to costs."

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5. S.L.P. was filed before the Hon'ble Supreme Court against the aforesaid judgement of the Tribunal but the Apex Court dismissed the SLP and directed the Government to implement the order of the Tribunal faithfully.

In pursuance to the judgement order dated 26.4.1989 passed by the Tribunal the respondents issued the seniority list but the same was done in parts. Part-I of the seniority list contained the names of Section Officers who had been promoted upto 4th March, 1986. The departmental examines and promotees on the basis of seniority-cum-fitness were rotated in the ratio of 1:1 when, according to the applicants, there was no justification for rotation of the posts of Section Officers in that manner. In this regard the applicants rely upon paras 10 and 22 of the Tribunal's judgement dated 26.4.1989. According to the applicants, the operative part of the aforesaid judgement should have been read alongwith observations made in paras 10 and 22 and had that been done the respondents would have drawn the seniority list correctly in accordance with the length of service of the Section Officers. The applicants seem to be particularly aggrieved by the fact that while assigning seniority the respondents have granted notional promotions to the applicants and other similarly situated persons from dates later than the dates of their actual promotion.

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7. The impugned seniority list is assailed by the applicants on the following grounds:-

- a) that the seniority list is not based on correct principles.
- b) that the seniority has not been granted from the date of officiation in some cases.
- c) that some of the Section Officers who had been officiating in leave vacancies have been granted seniority from the date of their officiation in such vacancies which is wrong.
- d) that a large number of retired Section Officers have been omitted from the seniority list.

8. The applicants have further referred to the Contempt Petitions filed by the applicants in OA 31/88 which were, however, dismissed; but while dismissing the same it was observed that although substantial compliance with the directions contained in the judgement had been established yet the directions had not been carried out fully. The Tribunal directed the petitioners to make representations to the authorities, if they are aggrieved. Thereafter Shri H.C.Guru and Ors. represented to the Ministry of Home Affairs in 1990.

9. It is admitted by the applicants that they were promoted as Section Officers between September 1986 and October, 1986 while according to the instructions issued by the Department of Personnel & Training dated 7.2.1986 the vacancies were to be rotated for the promotees and examinees

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w.e.f. 1.3.1986. However, it is the case of the applicants that the aforesaid instructions were wrong, in as much as, the rotation should have been done w.e.f. 25.11.88.

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10. The applicants have sought the following reliefs:

- i. Grant of orders striking down and setting aside the seniority list of Section Officers Part II issued under IB's Memo No. 4/Seniority (CC)/89(3) dtd 31.12.1991 and setting aside IB's three order Nos. 16/C.III/87(5) dated 31.7.1987/3.8.1987 regarding review off promotion from 1970 to 1987 which were all issued in pursuance of decision of Supreme Court in SLP No. 5027/1981 dated 30.9.1986 and Hon'ble Tribunal in the case of OA 1675/87 and connected OAs.
- ii. Consequently, further, to direct the respondents to assign to the applicants seniority as shown in Annexure A-29 to this O.A., or correct seniority as may be determined by the Hon'ble Tribunal.
- iii. Consequently, grant of orders directing the respondent nos. 1 and 2 to review promotions of Section Officers w.e.f. 28.1.1976 to 1987 and redetermine the seniority between the promotee and examinee Section Officers on the principle of continuous officiation in the grade without rotation of examinee and promotee Section Officers.
- iv. Consequently, grant of orders directing the respondents to consider the applicants for further promotion to the post of Assistant Director on the basis of redetermined seniority. The applicants may be granted all financial and other benefits from the dates of promotions as Assistant Directors on the basis of redetermined / correct seniority.
- v. Grant of any other relief considered appropriate and necessary in the facts of the case.

11. The respondents have resisted the claims of the applicants mainly on the ground that the judgements of the Apex Court and the Tribunal have been correctly implemented and that the applicants could not be allowed to raise such pleas as had already been adjudicated upon in the aforesaid

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judgements. Giving a history of the service of the applicant Shri S.P. Rastogi, the respondents have stated that applicant no. 1 was initially promoted as Section Officer on 20.6.1986 with the stipulation that his promotion was subject to review on receipt of the judgement of the Hon'ble Supreme Court and that on receipt of the said judgement pronounced on 30th September, 1986 the promotion of all the Section Officers made from 1970 onwards was reviewed, with the result that the promotion of the said applicant was regularised w.e.f. 31.7.1987 and the earlier period of service put in by him between 20.9.1986 to 30.7.87 was treated as adhoc. It is further revealed that the applicant has rightly been assigned seniority in the year 1987 by rotating vacancies between promotees and examines in that year in terms of the DOP&T O.M. dated 7.2.1986 ibid which governs the fixation of seniority of officials appointed/promoted w.e.f. 1.3.1986 onwards. According to respondents if in a particular year sufficient number of promotees or direct recruits were not available their slots were to be kept vacant, to be filled up by the promotees or the examines, as the case may be, in the subsequent years. It is further stated that whatever promotions were made during the pendency of the SLP before the Supreme Court were based upon the 1982 seniority list which was, however, made subject to the judgement of the Supreme Court. The promotion of Shri S.P. Rastogi applicant was accordingly subject to the judgement of the Apex Court but was based upon the seniority list of 1982. Since the Supreme Court quashed the order of the Delhi High Court and directed the department to review all promotions made on the basis of the seniority list of Assistants issued in 1976, the seniority list of 1976 was restored and all the promotions were reviewed by the department on the basis of that seniority list. In

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this process the turn of the said applicant for promotion came in 1987 and his seniority has been determined alongwith other promotees and direct recruits of 1987 in terms of the OM dated 7.2.1986. The respondents have further contended that the contention of the applicants that the principle applicable to promotees and direct recruits (those promoted on the basis of Limited departmental competitive examination) appointed before 1.3.1986 should also be applied to them is not legally tenable.

12. Another plea raised by the respondents is that the judgements relied upon by the applicants do not support their claim and that they being appointees/promotees of a period subsequent to 1.3.1986 they cannot claim seniority on the basis of continuous officiation. In this regard emphasis has been laid on the point that the Tribunal had in its judgement quashed the seniority list of 1987 mainly on the ground that the quota rule not having been rightly observed the seniority ought to have been fixed according to date of continuous officiation and not on the basis of rotation but that this principle would not apply to those promotees who had been appointed/promoted after 1.3.1986.

13. The respondents have further raised the plea of limitation.

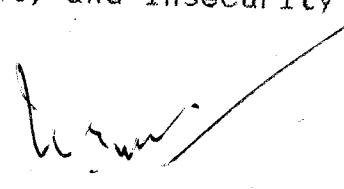
14. Applicants have filed rejoinder to the counter filed by the respondents and the contentions raised in the OA have been reiterated in the rejoinder.

15. We have heard at length the learned counsel for the parties and have perused the material on record.

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16. As already indicated, the Tribunal in its judgement dated 26.4.1989 in OA Nos 1675/87 and 31/88 gave a direction to the respondents to assign seniority to the private respondents in those OAs who had been promoted on the basis of limited departmental competitive examination on the basis of their dates of actual appointment/promotion. While issuing these directions the Tribunal quashed the seniority list of August, 1987 to the extent that it assigned the applicants in OA 1675/87 a notional seniority of years later than the dates on which they were actually promoted to the post of Section Officers and further to the extent that it assigned seniority to the examinee respondents above the applicants in both the OAs on the rotational principle. The Tribunal accordingly directed the respondents to issue a fresh seniority list of Section Officers keeping in view the above directions. Learned counsel for the respondents referred to the operative part of the judgement of the Hon'ble Supreme court in the SLP against the judgement of the Division Bench of Delhi High Court according to which the writ petition filed before that High Court was dismissed and the Apex Court directed that all promotions made in the Intelligence Bureau shall be reviewed in accordance with the impugned seniority list dated 28.1.1976. When the matter came up before the Tribunal in OAs 1675/87 and 31/88 it was urged before the Tribunal that according to the judgement of the Apex court (supra) all the promotions made prior to 1986 were to be reviewed and as a result the respondents had reviewed all the promotions from the very inception. The Tribunal rejected this contention and referred to the observations made in the body of the judgement of the Hon'ble Supreme Court wherein it was emphasized that uncertainty and insecurity in the matter



of service should not be allowed to linger on indefinitely and that such matters should be given a quietus after lapse of some time. The Tribunal further held the view that according to the judgement of the Apex Court (Supra) the writ petition filed in the Delhi High Court against the impugned seniority list of 1976 should have been dismissed on the ground of laches alone and, therefore, promotions which might have been made prior to January, 1976 could not be disturbed.

17. The other point made in the aforesaid judgement is that the appointment of the applicants in those OAs and the third party respondents were not made from a combined list as envisaged under the relevant scheme. The promotions so made were, therefore, to be considered as having been made in relaxation of the provision of the Scheme. It was in these circumstances held that the only just and fair principle of determining seniority would be the date of continuous officiation in the post of Section Officers.

18. Learned counsel for the applicants has been at great pains to emphasise these observations made by the Tribunal and has urged before us that these observations would apply with equal force to the case of the applicants as well. According to the learned counsel for the applicants the seniority of the applicants also ought to have been fixed on the basis of their dates of continuous officiation.

19. After giving our careful consideration to the rival contentions of the learned counsel for the parties we find ourselves unable to agree with the learned counsel for the applicants. The reason is quite simple. Earlier the conditions of service of the Assistants and Section Officers

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in the Intelligence Bureau were governed by a Scheme which also provided for rotation of the vacancies according to quota. Since that particular provision had not been faithfully followed the Supreme Court as also this Tribunal held that so far as the matters before them were concerned the only appropriate course would be to fix seniority according to the date of continuous officiation. But there was no further finding that for all times to come the same method should apply. The respondents later framed a fresh Scheme by way of issuing the office memorandum dated 7.2.1986. This Scheme again provided for rotation of the vacancies between promotees and the examinees. It would, therefore, follow that all promotions after 1.3.1986 which is the date from which the Office Memorandum dated 7.2.1986 was to operate would be according to the rota quota rule. There is nothing to indicate that even after 1.3.1986 the rota quota rule had failed. All that the applicants state is that since the Apex Court and this Tribunal had held that since the earlier Scheme so far as it related to the principle of rota-quota had failed the promotion /seniority should be based upon continuous officiation and the same principle should have been applied even after coming into force of the fresh Scheme contained in the OM dated 7.2.1986. This contention cannot be accepted. As already indicated, the applicants had been promoted on the basis of seniority list issued in 1982 with a specific condition that those promotions would be subject to the decision of the Supreme Court in the SLP already pending before it. The Apex Court struck down the aforesaid seniority list. That being so the respondents rightly reviewed all the promotions and while doing so the turn of the applicant No. 1 came only in the year 1987, taking into account the number of vacancies falling to the share of promotees and based upon the

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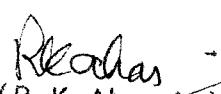
rota quota rule. Therefore, there is no legal justification for holding the view that applicants also should have been granted seniority according to the dates of their continuous officiation.

20. It appears that in pursuance to the direction of the Tribunal in OA 31/88 and 1675/87 Shri H.C.Guru and others had made representations which did not find favour with the respondents. Those persons, therefore, filed OA No. 1581/91 which was finally disposed of by the judgement order dated 10.9.1997. The respondents had also in their counter made a mention of the fact that Sh. H.C.Guru and others had filed an OA which was still pending. The learned counsel for the applicants has now filed a copy of the judgement in that OA and seeks to draw support for the contentions raised by the applicants in the instant OA. We have carefully gone through that judgement and find that it has no application to the facts of the instant case as that OA related to the seniority list issued on 8.8.1987. In that seniority list the names of the present applicants were not mentioned as they had been promoted sometime in 1987 itself though one of them, namely, applicant no. 1 had been promoted on ad hoc basis in the year 1986. In that case the OM dated 19.7.1986 was not at all considered nor did the respondents in that OA raise any plea based upon that OM. Even so, the Bench of this Tribunal, of which one of us (Hon'ble Shri S.P.Biswas) was a member, declined to quash the seniority list impugned in that OA or to set aside the promotions made during the pendency of that O.A. The Bench specifically made the judgement order only prospective. In this view of the matter the judgement in OA 1581/91 has no application whatsoever to the facts of the instant case.

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21. To sum up, the applicants have failed to disclose or establish any good grounds for setting aside or in any manner interfering with the seniority list impugned in the instant OA which is rightly based upon the OM dated 7.2.1986 issued by the Department of Personnel & Training. In the event, this OA is dismissed as being devoid of any force. The parties to bear their own costs.


(R.K. Ahuja)
Member (A)

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(T.N. Bhat)
Member (J)

11/9/98