

Central Administrative Tribunal, Principal Bench

O.A. No. 2559 of 1994

New Delhi this the 26th day of July, 1999

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HON'BLE MR. JUSTICE D.N. BARUAH, VICE CHAIRMAN
HON'BLE MR. N. SAHU, MEMBER (A)

1. T.R. TRipathi
116/2A, Krishankunj Extn.,
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2. Ram Chandra
C-435, Kidwai Nagar,
New Delhi-110 023.
3. Vinod Kumar Kohli
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Ber Sarai,
New Delhi 110 015.
4. J.P. Nautiyal
B-2843, Naztap Nagar
New Delhi.
5. I.S. Pathania
9/980 R.K. Puram,
New Delhi-110 022.

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12. A.K.Sahni
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13. L.N.Gupta
571/3, Babra Muhalla
Rohtak.
14. Chandan Singh Negi
12-B Sultanpur, Mehroli
New Delhi-110031.
15. Sudesh Bali
E-1667, Netaji Nagar
New Delhi - 110023.
16. S.J.Nair
Sector-4, 1768, R.K.PURAM,
New Delhi.
17. Rameshwar Prasad
EF-655, Sarojani Nagar
New Delhi-110023.
18. C.P.Gupta
A-2551, Netaji Nagar
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19. N.Sivadasan
103/4, Sector-I
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M.B.Road, New Delhi-110017.

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20. Man Mohan Singh
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21. P.D.Sharma
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Katwaria Sarai
New Delhi -110016.
22. Pran Nath Suri
304, Mohalla Mentola
Gali Chandi Wali Paharganj
New Delhi-110055.
23. P.N.Sharma
108, Pratap Nagar, Ph-I
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24. Mrs Sushil Kumari Sahani
BG-7/44, Paschim Vihar
New Delhi-110063.
25. Bimla Manocha
CA-6D, Munirka, DDA Flats
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26. Y.S.Gaur
18-H/ Sector-IV
DIZ Area
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27. O.P. Dhadwal
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New Delhi-110022.
28. Surinder Kumar Dhawan
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29. Saroj Vasudeva
73-E, Pocket-III
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30. Smt. R.D.Sikka
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31. Shri G.S.Verma
52, Garhi Village
Lajpat Nagar
New Delhi -110065.
32. Yogeshwar Kumar Bararia
C-8/300, Yamuna Vihar
Delhi-110053.
33. Kalu Ram
1697, Nai Abadi
Bewari (Haryana).

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34. K.V.Ambodi
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38. Krishan Chand
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New Delhi-110049.
39. Harish Chander
II-C/48, Lajpat Nagar
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40. Mrs. Asha Rani Sachdeva
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47. K.L.Mamiani
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48. R.K.Dhingra
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49. K.S.Shukla
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50. Rajendra Kumar Malhotra
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51. Mrs.S.Tahiliani
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53. Km. Gurnam
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54. Prem Raj
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55. Mahinder Singh
B-31 Brij Vihar
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56. B.S.Chauhan
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Faridabad(Haryana)
57. J.M.Bhandari
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58. Anil Kumar Saxena
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Delhi-110053.
59. Shyama Khanna
24, Kailash Hills
New Delhi-110065.
60. Gulshan Oberoi
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61. Smt. Sudesh Khanna

H-Ist/110

Lajpat Nagar

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62. Smt. Neelam Gosain

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63. Avtar Singh

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64. Kapur Chand

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New Delhi-21.

65. Chaman Lal Suman

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67. D.N.Prashar

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68. Raja Ram Rajpal
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69. Sneh Tuli
12/112, Dev Nagar
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70. S.C. Sehgal
CP-223, Maurya Enclave
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71. Kamlesh Kapoor
F-217, Vikaspuri
New Delhi-110018.
72. Bhim Sen
F-1616, Netaji Nagar
New Delhi-110023.
73. Prem Kumar Kapoor
84, Sharda Niketan
Delhi-110034.
74. Subhash Chander Syal
C-3/395 Janakpuri
New Delhi-110058.

33

75. Ram Prakash
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Delhi-110031.
76. Gurdial Prashar
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77. K.Madhsoodanan
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New Delhi-110022.
78. Chitta Ranjan Bakshi
F-10/4, Andrews Ganj
New Delhi-110049.
79. Hoshlar Singh
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80. Bal Kishan
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81. Chandra Mal
I/808 Gram Khara
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34

82. Shri Ram
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83. Gurdas Ram Mangal
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84. Dharam Pal
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85. M.M. Tiwari
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102. Santosh Lata
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103. K.C.Malhotra
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104. L.R. Mehta
2035/16, Faridabad.
Haryana.
105. C.R.Sharma
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106. Hakim Chand
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117. Mohd. Islam
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119. B.D.Jagga
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123. R.C.Gaur
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124. G.Prajapati

G-571 Sri Niwasपुरी
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125. S.R.Venugopal

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126. Chiman Lal

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127. B.S.Negi,

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129. Smt. Sneh Lata Anand

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Kingsway Camp, Delhi.

130. Smt. A.K. Chandi

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132. Smt. Shantaa Ram
B-120, Jangpura B,
New Delhi-110014.
133. Som Nath Nagpal
8837 Shidi Pura Karol bagh
New Delhi-110005.
134. Thakur Ram Nath
9/286 DDA Flats
Kallaji
New Delhi-110019.
135. Maman Chand
C-3/348 Yamana Vihar
Delhi.
136. C.P.Sharma
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Gandhi Park
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139. Ram Kumar Sharma
H.No.532(Opp. JainMandir)
Jharo Da Kalan
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140. Nandan Singh
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Paschim Vihar
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141. Ram Niwas
591, Vikas Kunj,
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142. Kanhaiya Lal Mamtani
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New Delhi-110066.
143. U.S. Bhindwar
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144. Raghu Nandan Mehta
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145. G.D. Sharma
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146. Rajni Mohan Gupta,
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Delhi-96.
147. Om Dutt Sharma
C-9/112 Yamuna Vihar,
Delhi-53.
148. K.K. VAshistha
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Delhi-92.
149. H.M. Dighe
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New Delhi-29.
150. Natyananda Shastri Potukuchi
S-1/185, R.K. Puram,
N.Delhi-22.

..Applicants

By Advocate: None.

Versus

1. Union of India through
Secretary, Ministry of Defence,
South Block,
New Delhi.
2. The Chief Administrative Officer,
Ministry of Defence, AFHG, DHQ Post Office,
Govt. of India,
New Delhi.

..Respondents

By Advocate Shri P.H. Ramchandani.

ORDER(ORAL)

Hon'ble Mr. Justice D.N. Baruah, Vice Chairman

150 applicants have approached this Tribunal
challenging the seniority list published on 18.8.94.

The Facts are :



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The applicants were working as Assistant in the Armed Force Headquarters. They joined their services during the period from 1960 to 1967. During that period there was no statutory rule regarding their confirmation or determination of the seniority. However, the Ministry of Defence, Government of India issued an Office Memorandum giving guidelines and the principles regarding confirmation and fixation of seniority. Thereafter, the respondents issued Office Memoranda dated 25.9.50, 21.8.59 and 21.12.63 in this regard. On 21.12.63 the Ministry of Defence issued Office Memorandum for regulating the procedure for filling up permanent vacancies that occurred from 1.1.1959 in the grade of LDCs. Similar instructions had been given on two principal points, i.e. (a) the mandatory requirement of passing of typing test conducted by UPSC for the purpose of confirmation; and (b) granting of seniority on the principle of length of service and not on the date of confirmation.

2. According to the applicants, all of them passed the typing test conducted by the UPSC at the first instance itself and therefore their services were confirmed, besides another set of LDCs could not pass the typing test. Later on, however, the condition of passing the typing test was relaxed. As per the then rule the seniority of all those candidates whether they passed typing test or not was to be calculated on the basis of the total length of service. Rules were framed under Article 309 of the Constitution, known as "Armed Force Headquarter Staff Rule 1968" and "the Armed Force Headquarters Clerical Services Rules, 1968". The aforesaid rules came into force with effect from 1.3.68.

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Under the said rules seniority was to be fixed from the date of confirmation in the grade and not on the basis of total length of service. Initially, however, it was prescribed under the above mentioned OM that the type writing test conducted by the UPSC should be passed by each of the LDCs within 4 chances after joining in the service but this period was subsequently extended from time to time before and even after rule 1968 came into force. The respondents determined the seniority of LDC under the "1968" rules i.e. from the date of confirmation. The LDCs who could not pass the type writing test conducted by the UPSC consequently could not be confirmed even at subsequent stage. Feeling aggrieved by the action of the respondents a batch of LDCs approached the Hon'ble Delhi High Court by filing a Writ Petition (W.P. No. 334 of 1975 N.S. Sundram & Others Vs. UOI & Others). Petitioners in the said Writ Petition challenged the action of giving retrospective effect to the "1968" Rules. A Single Bench of the Hon'ble High Court upheld the contention of the petitioners in the aforesaid Writ Petition. In compliance with the decision of the Hon'ble Delhi High Court, seniority of the LDCs/UDCs was refixed. Thereafter another set of LDCs filed a Writ Petition (W.P. No. 423/95 - D.P.Sharma & Others Vs. UOI & Others). The Learned Single Judge followed the earlier decision and held that giving retrospective effect was illegal. The Union of India being aggrieved by the said decision preferred an appeal before the Division Bench of Delhi High Court which was numbered as LPA 125/1981. The Division Bench reversed the said order dated

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8.4.1991 passed by the Learned Single Judge and held that the seniority of the LDCs must be determined on the basis of the date of confirmation as per rule 1968 and not on length of service. Thereafter the applicants filed a Special Leave Petition before the Hon'ble Supreme Court. During the pendency of the said appeal before the Supreme Court the order of the Learned Single Judge was implemented and seniority was fixed to the LDCs and UDCs and the Assistants pursuant to the said decision. According to the Applicants as they passed the mandatory requirement of passing the type writing test conducted by the UPSC there was no reason for assigning the seniority to them afresh. The applicants further state that they got their seniority and due promotions as per the relevant rules from time to time. Meanwhile the respondents issued an Office Memorandum dated 3.7.86 stipulating that the seniority would be determined between direct recruits and promotees, to the extent of number of vacancies for direct recruits and promotees as determined according to the quota for that year. The additional direct recruits selected against carried forward vacancies of previous year would be placed enblock just below the last promotee in the seniority list based on the rotation. Meanwhile the Civil Appeal No. 4133/4134 of 1984 - D.P.Sharma and Others Vs. U.O.I. & Others was decided on 21.2.1989 setting aside the order of the Division Bench of the Delhi High Court and restoring the judgement of the learned Single Judge holding that the retrospective effect of the "1968" rules should not be given effect to and further directed to re-fix the seniority on the basis of length of service

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and not on the date of confirmation. Yet another set of employees filed Writ Petition before the Hon'ble Supreme Court (Writ Petition No. 493/90 - R.K.Khosla Vs. U.O.I & Others). The said Writ Petition was also disposed of by the Supreme Court. We quote the relevant portion of the judgement :

" After hearing both counsel we are of the opinion that there is no difference between the petitioners in the present case and the petitioners whose cases were considered by this Court in CA 4133-34/1984. Those civil appeals were disposed of by the judgement of this court on 21.2.1989. In our opinion the principles set out in that judgement squarely apply to the facts of this case. We also make it clear that that judgement will also apply to persons who are similarly placed to the appellants in CA 4133-34/1984. With these observations, this writ petition is disposed of. There will be no order as to costs.

By the aforesaid judgement also the Supreme Court confirmed the ration of the decision laid down in D.P. Sharma's case (Supra). After the said judgement, the respondents filed an Interlocutory Application No. 1-2 in the Writ Petition No. 493/90. In the said application, the respondents expressed their difficulties to implement the judgement and order passed by the Hon'ble Supreme Court in R.K. Khosla's case as well as D.P. Sharma's case as it would disturb the existing seniority. The application was disposed of by an order dated 8.8.91. We quote the relevant portion :

"Judgement in this case was delivered on 9.1.1991. Union of India did not file any Review Petition but on the plea that while implementing the decision they have been confronted with difficulties, a petition has been filed before this court. We have heard counsel for the Union

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of India and are not satisfied that there is no justification to make any alteration or any modification in the judgement. Interlocutory application of Union of India is dismissed. Consequently, the petition by some persons for intervention is dismissed."

In this present application the applicants have stated that they were not parties to the aforesaid Writ Petition. The seniority list dated 1.6.1991 would show that the Supreme Court simply directed to redraw the seniority list on the basis of the length of service and to extend the benefit of the same to concerned employees. But while redrawing the seniority, the date of appointment of the existing Assistants whose seniority were already fixed had also been changed. The applicants also stated that from the history of the litigation seniority pertaining to LDCs and subsequent promotion, it will be clear that the seniority of the applicant in any grade was never disputed. As this was not done, the applicants have filed this present application.

Today neither the applicants nor their counsel are present. On 23.7.99 also nobody was present on behalf of the applicants. We have heard Mr. Ramchandani, learned counsel appearing on behalf of the respondents. Mr. Ramchandani submits that the Supreme Court in similar case/matters directed not to give retrospective effect to "1968" rules and the seniority ought to be fixed on the length of service and not on the date of confirmation. Learned counsel very fairly informs this

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Tribunal that another set of employees filed an OA 695/93 - Chatter Singh Vs. UOI & Ors before this Tribunal. In the said OA one of the Benches of this Tribunal gave it findings in somewhat different way. According to the said decision the D.P.Sharma's case should be applicable to similarly situated persons and the applicants in the said case were not similar, their case should not be decided on the basis of D.P. Sharma's case. Accordingly, the application is allowed. However, the Union of India filed SLP against the said judgement which is till now pending before the Supreme Court. Supreme Court passed the following order in D.P.Sharma's case (Supra) :

"The general rule is if seniority is to be regulated in a particular manner in a given period, it shall be given effect to, and shall not be varied to disadvantage retrospectively. The view taken by the Division Bench, which is in substance contrary to this principle is not sound and cannot be supported."

In view of the above, we feel that the decision of Chatter Singh's case has not yet been finally decided. The respondents are directed to follow the earlier decision of Hon'ble Supreme Court in D.P.Sharma's case as well as R.K. Khosla's case. The respondents are further directed to follow the judgement of the Supreme Court that may be passed Chatter Singh's case and if the Supreme Court makes modification that shall also be followed.

With the above directions the application is disposed of. No order as to costs.


(N.SAHU)
Member(A)


(D.N.BARUAH)
Vice-Chairman