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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.266 of 1994 decided on 24.9.1998.

Name of Applicant : Shri A.K.Singhal

By Advocate : None

Versus

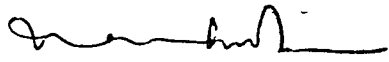
Name of respondent/s Union of India & others

By Departmental representatives -S/Shri
U.Viswanandan, S.C.Sharma, SOs & Praveen Kumar
Assistant.

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A.Vedavalli, Member(J)

1. To be referred to the reporter - Yes/~~No~~
2. Whether to be circulated to the other Benches of the Tribunal. -~~Yes~~/No


(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Applications Nos. 266 & 267 of 1994

New Delhi, this the 24th day of September, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A. Vedavalli, Member (J)

O.A. No. 266 of 1994

Shri A.K. Singhal, S/o Shri Baijnath Prasad,
Executive Engineer, Northern Regional
Electricity Board, Katwaria Sarai, New
Delhi-110016 r/o A-3, WREB Colony, Katwaria
Sarai, New Delhi-16
-APPLICANT

(By Advocate -None)

Versus

1. Union of India through the Secretary,
Ministry of Power, Shramshakti Bhawan,
New Delhi.
2. The Chairman, Central Electricity
Authority, Sewa Bhawan, R.K. Puram, New
Delhi.
3. Mr. Tara Chand, Appraiser (Non-Expert)
Office of Collector of Customs, Madras.
4. Mr. R.K. Verma, Executive Engineer,
Northern Regional Electricity Board,
Katwaria Sarai, New Delhi - 110 016.
5. Mr. Mahipal Singh, Deputy Director,
HEDP Directorate Central Electricity
Authority, Sewa Bhawan, R.K. Puram, New
Delhi.
6. Mr. Manoj Sikdar, Executive Engineer,
Northern Regional Electricity Board,
Katwaria Sarai, New Delhi-110016.
7. Mr. Murari Lal, Deputy Director, G.D.A.
Directorate Central Electricity
Authority, Sewa Bhawan, R.K. Puram, New
Delhi.
8. Mr. K. R. Nagdeve, Deputy Director,
Training & Manpower Directorate Central
Electricity Authority, 41, Community
Centre, Vasant Vihar, New Delhi.
9. Mr. S.G.R. Tenpe, Executive Engineer,
Western Regional Electricity Board, Plot
No. F-3, MIDC Area, Marol, Andheri
(East), Bombay.
-RESPONDENTS

(Official Respondents -
By Shri U. Viswanandan, Sh. S.C. Sharma,
SOs, and Sh. Praveen Kumar, Assistant,
Departmental Representatives)

(26)

1. Shri Prabhat Mohan S/o Shri Hari Mohan, Executive Engineer, Northern Regional Electricity Board, Katwaria Sarai, New Delhi-110016. r/o c-317, Pragati Vihar, New Delhi-110003.
2. R.K. Bansal, son of Shri Basheshar Nath, Executive Engineer, Northern Regional Electricity Board, Katwaria Sarai, New Delhi-110016. r/o C-273, Surajmal Vihar, Delhi-110092
3. Mr. Ramesh Kumar, S/o Shri Bhanu Prakash, Executive Engineer, Northern Regional Electricity Board, Katwaria Sarai, New Delhi-110016. r/o 308, Minto Road Hostel, New Delhi-110002. -APPLICANTS

(By Advocate - None)

Versus

1. Union of India through the Secretary, Ministry of Power, Shramshakti Bhawan, New Delhi.
2. The Chairman, Central Electricity Authority, Sewa Bhawan, R.K.Puram, New Delhi.
3. Mr. S.D., Taksande, Executive Engineer, Western Regional Electricity Board, Plot No.F-3, MIDC Area, Marol, Andheri, Bombay (East).
4. Mr. Manohar G. Rao, Executive Engineer, Western Regional Electricity Board, Plot No.F-3, MIDC Area, Marol, Andheri, East, Bombay.
5. Mr. T.K. Barai, Deputy Director, HEPR Directorate, Central Electricity Authority, Sewa Bhawan, R.K.Puram, New Delhi.
6. Mr. Bhim Rai, Deputy Director, Switch yard Directorate, Central Electricity Authority, Sewa Bhawan, R.K.Puram, New Delhi.
7. Mr. Malay, Mitra, Deputy Director, RPSO, 201, MSO Building, Salt Lake, Calcutta.
8. Mr. Tara Chand, Appraiser (Non-Expert) Office of Collector of Customs, Madras.
9. Mr. R.K.Verma, Executive Engineer, Northern Regional Electricity Board, Katwaria Sarai, New Delhi-110016.



10. Mr. Mahipal Singh, Deputy Director, HEDP—Directorate Central Electricity Authority, Sewa Bhawan, R.K.Puram, New Delhi.
 11. Mr. Manoj Sikdar, Executive Engineer, Northern Regional Electricity Board, Katwaria Saria, New Delhi-110016.
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 13. Mr. K. R. Nagdeve, Deputy Director, Training & Manpower Directorate Central Electricity Authority, 41, Community Centre, Vasant Vihar, New Delhi..
 14. Mr. S.G.R. Tenpe, Executive Engineer, Western Regional Electricity Board, Plot No.F-3, MIDC Area, Marol, Andheri (East), Bombay.
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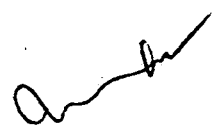
O R D E R

By Mr. N. Sahu, Member (Admnv) -

Common grounds and identical issues are involved in these Original Applications (in short 'OAs') and, therefore, they are disposed of together in this consolidated order.

2. The reliefs claimed in both the OAs are somewhat common. We are extracting hereunder the reliefs claimed in OA 266/94 -

- (i) quash the seniority lists bearing no.3/3/86-ADM-I (B) dated 25.8.86 (Annex. A-4) No. 3/5/91-Adm. I(CEA) dated 26.9.91 (Annexure-A-7) and the Seniority List bearing No.3/1/93-Adm.I (CEA) dt. 4.2.1993 (Annexure-A-10), in so far as it pertains to the applicants and respondents 3 to 9 and restore his inter-se seniority in line with their original seniority assigned to him by virtue of his position in merit at the time of his initial appointment batch i.e. restore the



position as is reflected by the Seniority List No. 3/85/ADM.I (B) dt. Nil May, 1985 (Annexure-A-3).

(ii) declare that the applicant continued to maintain his seniority which he originally enjoyed vis-a-bis(sic) respondents 3 to 9 notwithstanding the out of turn confirmation/ ad-hoc promotion as DD of Respondents 3 to 9;

(iii) declare that the out-of-turn confirmation as AEE's/ promotion on ad-hoc basis as Deputy Directors of respondents 3 to 9 will not confer to them any claim of seniority over the applicant;

(iv) declare that the regularisation of the promotion of the Deputy Director of the applicant and respondents 3 to 9 shall be in the order of their original seniority reflected in the seniority list of 1985 (Annexure-A-3)"

3. The facts leading to the present OAs are in a brief compass. The applicants belong to the Central Power Engineering Services Group-A (hereinafter referred to as "the Service"). The brief facts in the case of OA 266/94 are as follows - the applicant as well as respondents 3 to 7 belong to the same batch i.e. 1979 batch. Respondents 8 and 9 belong to 1980 batch. The applicant was senior at serial no.17 in the UPSC merit list and respondents 3 to 7 are placed at 51, 55, 57, 58 and 59 respectively. The applicant completed his probation on 15.12.1982 and was declared to be quasi permanent by an order dated 16.12.1983. The respondents issued a seniority list during May, 1985 and showed the applicant at serial no.251 and the other respondents impleaded in this OA as junior to him. On 25.8.1986 a provisional seniority list was issued wherein respondents 3 to 9 were shown at serial no.132 to 138 whereas the applicant was shown at serial no.254. This list of 1986 further showed that respondents 3

to 9 were confirmed during 1983-84. Other seniority lists followed thereafter between 1986 and 1991 but the applicant reacted only to the seniority list dated 26.9.91 wherein the applicant was shown at serial no.60 and the respondents 3 to 9 at serial no.9 to 15. He states that his representation dated 25.6.1992 did not elicit any response. At the time of filing this O.A., both the applicant and private respondents were promoted as Deputy Directors. Respondent no.1 published a seniority list dated 24.2.1993 which reflected materially the same position as the 1986 and 1991 seniority lists.

4. The grievance of the applicant is that at the time of confirmation, respondent no.1 chose to confirm against the purported reserved vacancies only the directly recruited officer though there were senior promotee SC/ST officers promoted from Group B waiting. The result was that respondents 6 to 9 got their confirmation against reserved vacancies earlier than the applicant.


5. The respondents claim that the O.A. is barred by limitation. Because, the applicant did not agitate the seniority fixed for him in the 1986 seniority list. The other four seniority lists, namely, those in the 1989, 1990, 1991 and 1993, have nowhere materially altered the position of the applicant vis-a-vis respondents. The representation purportedly filed in 1986 could not be traced. At any rate successive representations do not prolong the period of limitation. The second basic point

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taken by the respondents is that in accordance with the O.Ms. dated 20.4.1961 and 12.9.1968 of the Ministry of Home Affairs which envisaged applicability of reservation even at the stage of confirmation, the respondents allotted out of turn vacancies to respondents 3 to 9 against carried forward reserved vacancies with effect from the date such vacancies arose. Thus, in accordance with Ministry of Home Affairs OM dated 22.12.1959 the confirmed employees have been made senior to the applicants who had been confirmed only w.e.f. 1.4.1988.

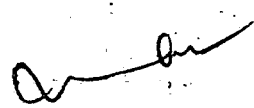
6. The applicants relied on a decision of the Hon'ble Supreme Court in S.B.Patwardhan Vs. State of Maharashtra, AIR 1977 SC 2051 for the proposition that the date of confirmation cannot be the sole basis of granting or regulating seniority of Government servants. It is laid down in Patwardhan's case (supra) that seniority cannot be determined on the sole test of confirmation because "confirmation is one of the inglorious uncertainties of Government services depending neither on efficiency of the incumbent nor on the availability of substantive vacancies". The applicants further relied on a decision of the Calcutta Bench of this Tribunal in the case of S.N.Chakraborty Vs. Union of India, 1992(2) SLR 548. The Calcutta Bench held that seniority has to be fixed from the date of initial appointment as Overseers and not from the date of confirmation. The argument before the Calcutta Bench was that the respondents in that case belonging to

the reserved category can have the benefit of reservation at the time of their initial recruitment and placement in the seniority list of Overseers. They cannot have the double benefit of higher seniority due to early confirmation. Patwardhan's case (supra) was relied upon by the Bench because confirmation cannot be a criterion for determination of seniority between direct recruits and promotees. The law laid down by Patwardhan's case (supra) was held to be applicable in determining seniority. All other factors being similar, continuous officiation in a non-fortuitous vacancy should be considered in determining seniority. The principle in Patwardhan's case is confirmed by a Constitution Bench of the Hon'ble Supreme Court in Direct Recruit Class-II Engineering Officers Association Vs. State of Maharashtra, 1990(2) SLR 769 (SC). In Union of India Vs. Ravi Verma, AIR 1972 SC 670 the point to be decided was whether the criteria to determine seniority should be length of service in accordance with Ministry of Home Affairs OM dated 22.6.1949 or it should be the date of confirmation in terms of O.M. dated 22.12.1959. The rules dated 22.12.1959 were stated to be not retrospective and did not apply to persons appointed before that date. Ravi Verma's case would not apply to the present O.A. but the Direct Recruit's case (supra) is an authority for the proposition that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The established position now is that confirmation has no



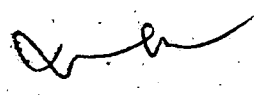
bearing on seniority. Seniority is now determined from the date of initial appointment/promotion to a particular rank. The three OMs issued by the Ministry of Home Affairs on 22.12.1959, 20.4.1961 and 12.9.1968 on the basis of which the official respondents fixed the seniority list in the case of S.N.Chakraborty(supra) are held to be no longer valid in view of the Hon'ble Supreme Court's decision in the case of Patwardhan (supra) and Direct Recruit's case (supra).

7. The second line of argument of the applicant is that even if the respondents secured out-of-turn seniority over the applicant on account of confirmation; the applicant shall also regain his original seniority when he was confirmed on 1.4.1988. For this purpose the applicant relied on the decision of the Hon'ble Supreme Court in Union of India & others Vs. Virpal Singh Chouhan JT 1995(7) S.C.231: (1995)6 SCC 484 and Ajit Singh Januja & others Vs. State of Punjab & others JT 1996 (2)S.C.727. Although these decisions restore the position of a superseded general candidate once he secures promotion vis-a-vis the reserved candidate who got promotion earlier, the applicant's claim is that this principle is equally applicable in the matter of out of turn confirmation. The principle in Virpal Singh Chouhan's case (supra) has been accepted by the Government by its letter dated 30.1.1997. The applicant also cites the decision of the Hon'ble Supreme Court in A.Janardhana Vs. Union of India, AIR 1983 SC 769 = (1983)3 SCC601 = 1983 SCC (L&S)467.



to the effect that retrospective seniority cannot be granted to a later incumbent against a carried forward vacancy. It is urged by the applicants that where the initial appointment was adhoc or temporary but following the recruitment procedure their uninterrupted service is confirmed then the original appointees shall be deemed to be on regular basis. It is submitted that where initial appointment by way of direct recruitment was made against substantive vacancy they need not wait for permanent vacancy to occur and are to be confirmed after successful completion of probation. In terms of para 4 of the Department of Personnel and Training's O.M. No.36011/28/83-Estt(SCT) dated 12.3.1984, it is stated that seniority is determined on the basis of the merit list prepared at the time of initial appointment and such seniority will not depend on fresh reservations at the time of confirmation. As the applicants were appointed against substantive vacancies there was no point in disturbing their seniority.

8. In support of their stand that the OA is barred by limitation, the respondents relied on a decision of the Hon'ble Supreme Court in K.R.Mudgal Vs. R.P.Singh, (1986)4 SCC531. That was a case where validity of certain appointments were challenged after a lapse of 18 years. Their Lordships observed that seniority should not be questioned after a certain period. Rebutting the claim laches and limitation, the applicant relied on the following decisions -

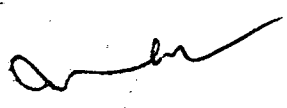


(i) G.P. Doval Vs. Chief Secretary, Govt. of U.P., 1984(2) SLR 555. In that case a provisional seniority list was drawn during March 71 and challenge was made in 1983. Rejecting the contention of the respondents to throw out the petition on the ground of delay, laches and acquiescence, the Hon'ble Supreme Court held that the impugned list operated to the disadvantage of the petitioners and their representations did not yield any response and limitation should not come in the way of rendering substantial justice.

(ii) Kuldip Chand Vs. Union of India, (1985) 5 SCC 680, a delay of 9 years was condoned. An extract of relevant paragraphs is as under -

"4. It is next contended by Mr. M.M.Kashyap, learned counsel for the appellant, that Ashok Kumar disputed the correctness of the seniority list made on 23.12.1982 in his representations dated 10.1.1983 and 1.8.1983 which were duly considered and rejected. He allowed it to become final as he did not challenge the same till post of accountant became vacant. When it was rejected, he filed the writ petition in the High Court. There is a considerable delay in claiming his seniority over the appellant. It is true that the seniority list was prepared as early as on 23.12.1982 but no vacancy had arisen thereafter and, therefore, the mere rejection of the claim for seniority does not disentitle him to claim his seniority over the appellant for consideration by the respondent- Union.

5. When the aforesaid facts are taken into consideration, it would be obvious that the preparation of seniority list per se was illegal. Therefore, the mere fact that he did not challenge the seniority list, which was illegally prepared, till he was aggrieved for non-consideration of the claim to the post of accountant, his legitimate right to be considered cannot be denied. Under these circumstances, the



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delay is of no consequence for considering the claims of Ashok Kumar for the post of accountant."

(iii) R.M. Ramual Vs. State of H.P., AIR

1989 SC 357 wherein delay of 11 years was condoned.

Relevant paragraph is extracted as under -

" 19. It is true that the seniority list was prepared in 1971, but no prejudice was caused to the appellant by the seniority list, as he was holding the position of District Public Relations Officer all through. Moreover, the appellant was given proforma promotion by the Government on or about August 7, 1973. It is only by the impugned order dated April 28, 1982 that the Government accepted the representation of the respondents Nos. 4 and 5 and directed that the inter-se seniority of the appellant and of the said respondents was to be determined on the basis of their substantive ranks on November 1, 1966 and further directed that the respondents Nos. 4 and 5 would rank senior to the appellant. The cause of action really arose to the appellant for moving the writ petition after he was communicated with the impugned order dated April 28, 1982. In our opinion, therefore, there has been no unreasonable delay on the part of the appellant to challenge the impugned order and, consequently the final seniority list."

(iv) Jai Prakash Poddar Vs. Union of India,

(1994) 26 ATC 429.

9. In the instant case the reason for the delay was stated to be attributable to respondent no.1 who neither gave any opportunity to be heard to the applicant before disturbing his seniority nor responded to his representation of 1986 and 1992. It is urged that period of one year / one & half years under Section 20(2) of the Administrative Tribunals

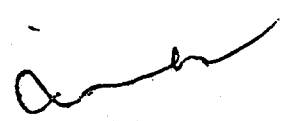
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Act, 1985 applies to cases where the rules prescribe a representation. When there is no such prescribed rule, there is no period of limitation at all.

10. A provision of limitation has to be construed no doubt strictly but the legitimate claim of a citizen should not be defeated by the Government under a specious plea of having come late and a meritorious claim should not be denied on a technical ground. The applicant relies on Sharat Kumar Rana Vs. Union of India 1994 (3) SLR 692 wherein the above propositions have derived support from the decision of the Hon'ble Supreme Court in State of Karnataka Vs. Kappuswamy Gownder, AIR 1987 SC 1353. The guidelines laid down by the Hon'ble Supreme Court are extracted hereunder :

"It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted in principle as it is realised that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other cause of substantial justice deserves to be preferred for the other



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side cannot claim to have vested right in justice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence or on account of mala fide. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

11. As the applicants were reduced in seniority drastically in 1986 without giving them an opportunity, it is submitted that the principles of natural justice were violated as laid down in K.L. Shephard and others Vs. Union of India, AIR 1988 SC 686 and Swadeshi Cotton Mills Vs. Union of India, AIR 1970 2042. As the O.A. has been admitted, it is submitted that the ground of limitation cannot be gone into at this stage. The 1986 seniority list was stated to be a provisional list. The applicants can challenge the final list of seniority which was issued only in 1993. These are the rival submissions on limitation.

12. On merits the claims are as under :-

We have to carefully examine the Central Power Engineering (Group A) Service Rules, 1965 (hereinafter referred to as "the 1965 Rules"). Every person appointed to the Group A service shall be on probation for a period of two years. On the expiration of the period of probation if the Government considers their candidate unfit for permanent appointment, they may discharge him.

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During the course of probation the candidates may be required by the Government to undergo such course of training as are prescribed and pass such examination and tests as it may think fit. Rule 9 of the 1965 Rules is extremely important ~~is which~~ ^{is} extracted hereunder -

"9(1) Subject to the provisions of rule 31, on the successful completion of the period of probation under rule 8 and subject to the availability of permanent vacancies, an officer appointed to the Service shall be eligible to be considered in his turn for confirmation in the Service.

(2) Till he is confirmed, an officer who holds a lien on a permanent post under the Central Government or any State Government, will continue to officiate in the Service and an officer who holds no lien on any State Government will be governed by the provisions of the Central Civil Service (Temporary Service) Rules, 1965."

13. Rule 12 states that nothing in the rules shall affect reservations, relaxation of age limits, and other concessions required to be provided for Scheduled Castes, the Scheduled Tribes and other special categories of persons. 60% of the posts in the grade of Assistant Directors/ Assistant Executive Engineers were to be filled by direct recruitment; 25% by promotion of departmental officers and 15% by deputation. In accordance with Rule 9(1) and subject to the provisions of Rule 31 an officer shall be eligible to be considered in his turn for confirmation. The post of Deputy Director/ Executive Engineer were to be filled by promotion and deputation in the ratio of 75:25. The respondents contend that the applicants were appointed in the grade of Assistant Director Grade I/ Assistant Executive Engineer only in an officiating capacity.

Under the instructions of the DOPT vide memo dated 30.12.1976 confirmations are required to be adjudged by a DPC and it should assess the officers as fit or not yet fit in their turn. There were 139 permanent posts of Assistant Director, Assistant Executive Engineer born on the cadre of the Service. Out of this, 45 posts were already filled permanently. 94 permanent posts were available for confirmation. Confirmation in the grade of Assistant Director/Assistant Executive Engineer is to be made on the basis of the combined seniority list of direct recruits and promotee officers in the grade. Though this would not affect reservation and other concessions, the respondents refer to para 17.2 of the Brochure on Reservations for SCs and STs, which states that reservation is required to be made for SCs and STs both at the time of initial appointment on a temporary basis as well as at the time of confirmation. There is no reservation at the time of confirmation of promotees. Thus, reservations for SCs and STs shall be made in the case of direct recruits only. Officers from serial nos. 46 to 138 in the seniority list were considered for confirmation. Out of the 94 posts 74 are direct recruits and 20 promotees. At the time of confirmation there were 47 reserved posts (including carried forward reservation posts) comprising 31 posts for SCs and 16 posts for STs. This was limited to 50% of the total vacancies of 74 i.e. 25 posts reserved for SCs and 12 for STs. Out of this, only 20 officers belonging to the category of SC and 2 ST officers were eligible and available for

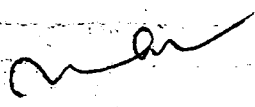
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confirmation. Other posts were dereserved. The stand of the official respondents is summed up at pages 16 & 17 of their counter affidavit, an extract of which is reproduced below -

" (j) Since the list of 94 officers considered for confirmation included 20 promotees and there was no reservation for SC/ST candidates at the time of confirmation of promotees, all of them were confirmed in the order of their seniority. Out of the 74 direct recruits, 52 persons of general category and one SC candidate were confirmed in the order of their seniority and 21 junior most direct recruits were replaced by the SC/ST candidates (19 SC candidates and 2 ST candidates) (including respondents No.3 to 9). One Scheduled Caste candidate was covered amongst the 53 direct recruit candidates on the basis of his own seniority.

" (1)....The Respondents No. 3 to 9 who were initially junior to the Applicant in the grade of Assistant Director (Grade-I)/Asstt. Executive Engineer, were confirmed enbloc on account of reservation vide Department of Power's notification No.F.12/86.F.No.A-31013/1/84-Adm.I dated 3rd February, 1986 (Annexure-R-3). As already mentioned, in accordance with the instructions contained in the MHA's OM dated 22.12.1959 (Annexure-R-2), permanent officers of each grade shall be ranked senior to persons who are officiating in that grade. The instructions also provide that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit. The position in this regard has further been confirmed in MHA's O.M.No. 9-45/60-Est.(D) dated the 20.4.1961 (Annexure-R-11). In terms of these instructions and as a consequence of their confirmation, the respondents No. 3 to 9 were shown senior to the Applicant in the seniority list as on 1.1.1986 (corrected upto 1.7.1986)."

14. The applicants contend that simply because respondents 3 to 9 belong to SC/ST they cannot ipso facto be confirmed or promoted earlier than the applicants. They say that the seniority of the



applicants has been brought down without giving them an opportunity of being heard. Orders of confirmation had to be in the order of seniority of initial appointment because all of them were appointed against substantive vacancies. They have only to be declared to have completed probation. Roster is only for adequate representation and not for regulating order of appointment or grant of seniority or out of turn confirmation. It is urged that the confirmation as Assistant Executive Engineers as well as their promotion as Executive Engineer of respondents 3 to 9 were in excess of the prescribed quota and were also in excess of 50% of the vacancies. Annexure- A-13 shows a table that confirmation by way of reservation of SC/ST exceeded the permissible quota. Reservations are applicable only to regular vacancies. Where the initial appointments were made against substantive vacancies there can be no further reservation in the matter of confirmation and the seniority will continue to be based on the merit list prepared at the time of initial appointment in the Service. The applicants have brought to our attention Annexure-A-15 of the DOPT dated 12.3.1984.

15. We have carefully considered the rival submissions. First we will take up the plea of limitation. We notice that the OA has been admitted. The applicant has filed this OA on 14.7.1994. He has challenged the seniority list at Annexure-A-10 dated 24.2.1993 because he has not received any reply to his representations to earlier seniority lists dated

25.6.1992 and because the seniority list dated 24.2.1993 perpetuated according to them the illegality of the earlier seniority lists. The respondents only state that the representations were not traceable. The genuineness of the filing of the representations was not denied. If the 1993 seniority list was only a repetition of earlier seniority list, the question at issue is why it was issued at all? The moment the 1993 seniority list is issued, for whatever reasons, it gives a cause of action to the applicants. We will presently see that the inter se seniority fixed by the respondents is not based on correct law. We are satisfied that the grounds relating to limitation would not apply in the special facts and circumstances of this particular case.

16. We now have certain principles of law relating to determination of seniority. In the absence of any contrary statutory rule or executive memorandum or order laying down a rule for determining seniority in a grade, rule applicable to determination of seniority would be length of continuous officiation in the grade. In the case of State of Bihar and others Vs. Akhourī Sachindra Nath and others, AIR 1991 SC 1244 = 1991 SCC (L&S) 1070 = 1991 Supp (1) SCC 334 it has been held that -

"It is well settled that no person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others. It is well settled by several decisions of this court that amongst members of the same grade,

seniority is reckoned from the date of their initial entry into the service".
(emphasis supplied)

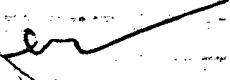
17. In Satpal Mittal Vs. Union of India, (1995) 30 ATC 551 the Hon'ble Supreme Court examining the claim of Junior Engineers in the TeleCommunication department for according seniority to them over those who qualified in the subsequent qualifying examination held later in the same year, held that seniority would be determined on the basis of length of service irrespective of the date of passing the qualifying examination. In Jagdish Lal Vs. State of Haryana, (1997) 6 SCC 538 the Hon'ble Supreme Court held that confirmation is an inglorious uncertainty, therefore, the seniority counts from the date of appointment, if the appointment is made according to rules and by considering claims of all eligible persons.

18. The undisputed facts are that respondents 3 to 7 joined the service of Central Electricity authority on the basis of UPSC Engineering Services Examination, 1979 and the respondents 8 and 9 joined service on the basis of the 1980 examination. In the year 1985 the DPC was held for confirmation in the grade of Assistant Director, Grade-I against available vacant permanent posts. By the time the DPC took place in the year 1985 the applicants completed their probation. The question of fitness unless otherwise indicated is granted by the DPC to the applicants as well as the respondents. The question at issue is whether the private respondents can be made senior over the applicants originally

ranking higher at the time of selection. We are of the opinion that this is not in accordance with law. We have already stated earlier that on the basis of the Hon'ble Supreme Court's judgment in Patwardhan's case (supra) and Direct Recruit's case (supra) the three OMs issued by the Ministry of Home Affairs on 22.12.1959, 20.4.1961 and 12.9.1968 on the basis of which the official respondents fixed the seniority of respondents 3 to 9 are bad in law and deserve to be ignored. The respondents have not shown to us any rule to prove that there shall be reservation also during confirmation. There is nothing on record to disprove the table filed by the applicants, namely, Annexure-A-13. It is wholly illegal on the part of the official respondents to confirm SCs and STs in a carried forward substantive post - (i) before their recruitment and (ii) before their completion of the period of probation. Under no circumstances, such confirmation be done in a carried forward vacancy because the question of confirmation arises only when the candidate is born in the department.

19. The question of confirmation arises to both general candidates and reserved candidates only after they complete the probation. We suspect that reserved candidates 3 to 9 were confirmed on vacancies which were carried forward. In fact we do not have any counter reply by the respondents when this point was specifically raised. We are, therefore, of the view that placing respondents 3 to 9 over and above the applicants at the stage of confirmation is illegal.

20. In the case of R.K. Sabharwal and others Vs. State of Punjab and others, JT 1995(2) SC 351 = (1995)2 SCC 745 their Lordships have held that the running account is to operate only till the quota provided under the impugned instructions is reached and not thereafter. The vacancies arising in the cadre after the initial posts are filled should pose no difficulty. As and when there is a vacancy, the same is to be filled from amongst the category to which the posts belong in the roster. But if a candidate is not available it would be open to the Government to carry forward a reserved point in a just and fair manner. The Hon'ble Supreme Court held that the above principle would be operative prospectively. We are now determining seniority of the general candidates, the applicant and reserved candidates, SCs belonging to a particular batch. We direct that the private respondents be placed on the points reserved for them in the same batch, same year's vacant posts. The private respondents can be placed on carried forward points provided such carried forward points appertain to an year after the reserved candidates are recruited and two years thereafter i.e. the reserved candidate become ripe for being allotted to a point in the roster only after he completed the probation and is declared to have completed the probation successfully. Not before that. We do not know when each candidate has been declared to have completed the probation in this case. We, therefore, direct the date of declaration of successful probation be immediately notified of

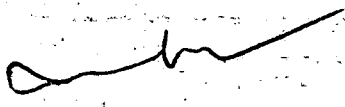


the applicants as well as the respondents and, thereafter the roster point in accordance with R.K. Sabharwal's case (supra) be allotted to them. We direct that the official respondents shall follow the principles repeatedly laid down that seniority shall be only on the basis of the ranking given in the initial cadre subject to adjustment while considering allotment to a particular slot in the roster point with same batch and in the same year. In doing so, as we mentioned above, the reservation quota should be 15% of SCs and 7-1/2% for ST of the posts and not vacancies. This shall be done for fixing seniority in the entry Grade : Assistant Director, Grade-I.

21. After promotion different principles apply. In Akhil Bhartiya Soshit Karmachari Sangh and another Vs. Union of India and others (1996) 6 SCC 65 : 1996 SCC (L&S) 1346 the Hon'ble Supreme Court considered the case of accelerated promotion and inter se seniority between a general candidate and a reserved candidate in the promoted category and held as under-

"In the case of Union of India and others Vs. Virpal Singh Chauhan and others, JT 1995 (7) SC 231 = (1995) 6 SCC 684, this Court again considered the case of accelerated promotion and inter se seniority between a general and reserve candidate in the promoted category and after considering the several circulars issued by the Railway administration held:

Hence the seniority between the reserved category candidates and general candidates in the promoted category shall continue to be governed by the panel position. We have discussed hereinbefore the meaning of the expression 'Panel' and held that in case of non-selection posts, no panel is prepared or is necessary to be prepared. If so the question arises, what did the circular/letter, dated 31.8.1982, mean when it spoke of seniority being governed by panel position? In our opinion, it

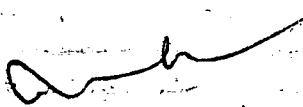


should mean the panel prepared by the selecting authority at the time of selection for Grade 'C'. It is the seniority in this Panel which must be reflected in each of the higher grades. This means that while the rule of reservation gives accelerated promotion, it does not give the accelerated - or what may be called the consequential - seniority. There is, however, one situation where this rule may not have any practical relevance. In a given case it may happen that by the time the senior general candidate gets promoted to the higher grade, the junior reserved category candidate (who was promoted to the said grade earlier), may have got promoted to yet higher grade. In other words, by the time the senior general candidate enters, say Grade 'B', his junior SC/ST candidate is promoted to Grade 'A'. It is obvious that in such a case, the rule evolved in the aforesaid circular does not avail the senior general candidate for there can be no question of any seniority as between a person in 'B' Grade and a person in 'A' Grade.

Thus, by the time a senior person belonging to the general category gets promoted to the higher grade, if the junior person belonging to a reserved category who had been promoted to the said higher grade earlier has been promoted to still higher grade, question of granting seniority to the general category candidate in the promoted category could not arise. This being the position and the promotion of respondent No.6 to DSK-I having been made as early as in February, 1991, much prior to the judgment of this Court in R.K. Sabharwal (supra) as well as Virpal Singh Chauhan (supra) the Tribunal was wholly justified in rejecting the OA filed before it."

The seniority of the applicant and respondents shall be regulated on the basis of the principles laid above after promotion.

22. In OA No.267/94 there are three applicants challenging the seniority list bearing no.3/5/91-Adm. I(CEA) dated 26.9.91 and seniority list dated 24.2.1993. There also the applicants and respondents 3 to 7 joined the service after they qualified in the All India Combined Engineering Services Examination



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of the year 1978. Respondents 8 to 12 had appeared in the examination of 1979 and respondents 13 and 14 had appeared in the examination of the year 1980. The disputes about seniority and the lowering of their position and upgrading the position of respondents 3 to 14 are similar to the claims of the applicant in OA 266/94. The same principle would apply mutatis mutandis in disposing of the claims in OA 267/94.

23. We would direct the respondents to consider the above aspects and redetermine the seniority in the light of the principles laid out above within a period of 20 weeks from the date of receipt of a copy of this order.

(Dr. A. Vedavalli)
Member (J)

(N. Sahu)
Member (Admnv)

24/7/10

rkv.

Attested

S. Kumar

24-9-98

(संजीव कुमार)

(SANJIV KUMAR)

वरिष्ठ निजी सहायक/Sr. P. A.

केन्द्रीय प्रशासनिक अधिकरण

Central Administrative Tribunal

आयपीठ, फरीदकोट हाउस

Bench, Faridkot House

New Delhi-110003