

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 618/1994

199

T.A. No.

24-9-99

(21)

Sh.M.L.Bhusia and Ors

....Petitioner(s)

Sh.M.L.Ohri

....Advocate for the  
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh.S.M.Arif,1d.counsel for official respondents ....Advocate for Respondents.  
Dr.DC Vohra with Sh.Kulbhushan Prashar for Pvt.respondents 3-8

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Shri S.P.Biswas, Member (A)

1. To be referred to the Reporter or not  
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

*Lakshmi Swaminathan*  
(Smt.Lakshmi Swaminathan )

Member (J)

Central Administrative Tribunal  
Principal Bench

O.A. 618/94

(22)

New Delhi this the 24 th day of September, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).  
Hon'ble Shri S.P. Biswas, Member(A).

1. Shri M.L. Dhusia,  
Assistant Archivist,  
S/o late Shri Nand Lal,  
R/o 7060/66, ramesh Wai, Nehru Nagar,  
Karol Bagh, New Delhi-5.
2. Shri V.K. Jain,  
S/o Shri K.C. Jain,  
C-47 Y-3, Dilshad Garden,  
Delhi-110095.
3. Shri G.D. Kararha,  
Assistant Archivist,  
S/o Shri J.R. Kararha,  
R/o D-33, Jagjit Nagar,  
Delhi-110053.
4. Smt. Sudeshi Sharma,  
W/o Shri S.K. Sharma,  
C-13, Oriental Enclave,  
Patparganj, Delhi
5. Smt. Raj Kumari Bhardwaj,  
W/o Shri K.S. Bhardwaj,  
G-112, Nauroji Nagar, N. Delhi.
6. Shri Dharambir Singh,  
S/o Shri Hari Chand,  
Village - Deri Muchha,  
PO - Dhoom Dadri,  
Distt. Ghaziabad (UP).
7. Smt. Raj Bala Jain,  
W/o Shri A.K. Jain,  
B-93, Sarojini Nagar,  
New Delhi-110023.
8. Shri B.S. Dahiya,  
S/o Ch. Tek Singh,  
V & PO - Sehrai,  
Tehsil & Distt. Sonepat (Haryana)
9. Shri Ashok Kumar,  
S/o Shri Gujan Singh,  
30-A, South Anarkali Extn.,  
Delhi-110051.
10. Shri Kishan Chander,  
S/o Shri Karan Singh,  
R/o V&PO - Bohla,  
Distt. Sonepat (Haryana).
11. Shri Zile Singh,  
S/o Shri Sis Ram,  
H.No. 27/318, West Ram Nagar,  
Sonepat (Haryana)

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12. Smt. Amar Jit Kaur,  
W/o S. Amarjit Singh,  
M-61, Street No. 5,  
New Mahabir Nagar,  
Near Tilak Nagar,  
New Delhi-110018.

13. Smt. Purabi Sarkar,  
W/o Sh. Dalip Sarkar,  
R/o K-34, Sheikh Sarai,  
New Delhi

14. Mohd. Tariq Jamil Chisti,  
S/o Shri J. A. Chisti,  
B-6-39/2, Safdarjung Enclave,  
New Delhi-110029.

Applicants

(All are employed as Asstt. Archivist, in  
the office of Director General, National  
Archives of India, Janpath, N. Delhi).

By Advocate Shri M.L. Ohri

Versus

1. Union of India, through  
its Secretary,  
Department of Culture,  
M/o Human Resources & Development,  
Govt. of India, Shastri Bhawan,  
New Delhi

2. Director General,  
National Archives of India,  
Janpath, New Delhi.

3. Ms. Ritu Kapoor,  
Asstt. Archivist (General),  
National Archives of India,  
Janpath, New Delhi-1.

4. Sh. Shahibuddin Khan,  
Asstt. Archivist (General),  
National Archives of India,  
Janpath, New Delhi-1.

5. Miss Sangeeta Mathur,  
Asstt. Archivist (General),  
National Archives of India,  
Janpath, New Delhi-1.

6. Sh. Inamul Kabir,  
Asstt. Archivist (General),  
National Archives of India,  
Janpath, New Delhi-1.

7. Sh. Rajiv Lodhan Sahoo,  
Asstt. Archivist (General),  
National Archivist of India,  
Janpath, New Delhi-1.

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8 Shri S.K. Mishra,  
Asstt. Archivist (General),  
National Archives of India,  
Janpath, New Delhi-1. .... Respondents.

(2A)

By Advocate Shri S.M. Arif - for official respondents.  
By Advocate Shri D.C. Vohra with Shri Kulbir Prashar - for  
private respondents 3-8.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J.)

The applicants, 14 in number, are aggrieved by fixation of their seniority as Assistant Archivists (General), Grade-I (hereinafter referred to as 'AA Grade-I'), circulated by the respondents by their circular dated 12.11.1991. According to them, they are entitled to reckon their seniority as AA Grade-I with effect from the date of appointment in the grade of Rs. 1640-2900 w.e.f. 1.1.1986.

2. During the hearing of the case, Shri M.L. Dhusia, learned counsel for the applicants, has submitted that as regards the applicants 6, 9 and 12, they have got the pay scale of Rs. 1640-2900 when they were appointed in that grade, that is, w.e.f. 29.9.1989, 21.11.1989 and 11.7.1989, respectively. Therefore, he has submitted that there is some error in the prayer paragraph 8.2 of the O.A. with regard to the directions prayed for, but he has submitted that excepting these three applicants i.e. applicants 6, 9 and 12 the others may be given the seniority w.e.f. 1.1.1986 and these three persons with effect from the dates they were appointed in 1989. The applicants have relied on the judgement of the tribunal in O.A. 490/90, decided on 13.3.1992. Learned counsel has submitted that the present 14 applicants were also applicants in that O.A., applicant No. 1 Shri M.L. Dhusia being applicant No. 1 in the present

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Q.A. also. In that O.A. the Tribunal had directed as follows:

In the light of the above discussion, we allow the application and direct the respondents to merge the posts of Assistant Archivists Grade-II with the post of Assistant Archivist Grade-I and grant the revised scale of Rs.1640-2900 with effect from the date of implementation of the recommendations of the Fourth Pay Commission, namely, 1.1.86. The applicants shall also be entitled to arrears of pay and all consequential benefits".

Learned counsel for the applicants contends that as the applicants, who were earlier in the pay scale of Rs.1400-2300, have got the pay scale of Rs.1640-2900 w.e.f 1.1.1986 after the merger of the post of AA Grade-II with AA Grade-I, they will become entitled to count their seniority also in the grade of AA Grade-I with effect from the date of their appointment. He contends that this has been denied by the respondents by placing the direct recruits above them, even though they were appointed to the grade subsequent to the applicants which they cannot do. He has submitted that Respondent No. 3 has been directly recruited as AA Grade-I on 8.1.1988, Respondent 4 on 7.1.1988 and Respondents 5-8 on 21.8.1990. Learned counsel has also contended that the respondents ought to have implemented the recommendations of the 4th Pay Commission in merging the two grades and given the merged pay scale of Rs.1640-2900 by themselves, instead of the applicants having to file O.A. 490/90 for the same purpose which was decided ~~before~~ two years later on 13.3.1992. He has, therefore, submitted that since the applicants have also got the revised pay scale of Rs.1640-2900 as AA Grade-I with effect from the date of implementation of the recommendations of the 4th Pay Commission, namely, 1.1.1986 by virtue of the Tribunal's order dated 13.3.1992, with all consequential benefits, they should be given the seniority

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also from the same date i.e. 1.1.1986. He has relied on the judgements of the Supreme Court in **Narender Chadha & Ors. Vs. Union of India & Ors.** (1986(2) SCC 157) and **Direct Recruit Class-II Engineering Officers Association Vs. State of Maharashtra** (1990(2) SCC 715). 26

3 We have seen the replies filed by the official respondents as well as the private respondents and heard Shri Mohd. Arif, learned counsel for the official respondents and Dr. D C Vohra, learned counsel for the private respondents.

1 The learned counsel for the respondents have not admitted the above contentions of the applicants. The official respondents have submitted that the judgement of the Tribunal in O.A. 490/90 has been fully implemented by them in regard to giving the monetary benefits, including the arrears of pay and all consequential benefits to the applicants, who were AA Grade-II, in the pay scale of Rs 1640-2900 as directed by the Tribunal. They have submitted that these applicants were only direct recruits in the lower grade of AA Grade-II and have not officiated in the grade of AA Grade-I to claim the seniority from the date of their appointment. They have submitted that the respondents from Serial Nos 3 to 8 are direct recruits to the post of AA Grade-I (General) and appointed on the recommendations of the UPSC and they are continuously officiating on the same post from different dates, from 1988 onwards. They have submitted that the cadres of AA Grade-I and AA Grade-II were merged in 1992 by the Tribunal's order dated 13.3.1992 and the post of AA Grade-II was the feeder post for promotion to the post of AA Grade-I until the merger of both the cadres took place. They have submitted that merely granting the

revised pay scale w.e.f. 1.1.1986 does not entitle <sup>the</sup> applicants to steal a march over the regularly appointed AA Grade-I persons who have been appointed in accordance with the recruitment Rules in the direct recruits quota. They have also relied on the judgement of the Supreme Court in **Direct Recruit Class II Engineering Officers Association (supra)**. The learned counsel have submitted that the rule for determining the relative seniority of the promotees and direct recruits of officers in the Central Government is that once an incumbent is appointed to a post according to rule his seniority has to be counted from the date of his appointment, which the respondents have done in accordance with the recruitment Rules. The learned counsel for the respondents have, therefore, submitted that there is no infirmity in the impugned seniority list and the applicants cannot claim seniority in the grade of AA Grade-I merely on their getting the revised pay scale as ordered by the Tribunal on 13.3.1992. Dr. D.C. Vohra, learned counsel has also relied on a list of cases (copy placed on record) and in particular, on **Sukhvarsha Narula Vs. Union of India & Ors.** (1989(7) SLR 652), **State of UP Vs. Dr. M.J. Siddiqui & Ors.** (AIR 1980 SC 1098) and **R.K. Sethi & Anr. Vs. Oil & Natural Gas Commission & Ors.** (1997(1) SCC 616).

5 We have carefully considered the pleadings and the submissions made by the learned counsel for the parties

6 Following the Tribunal's order dated 13.3.1992 in O.A. 190/90, the respondents have issued Office Order dated 16.6.1992 and granted the applicants the revised pay scale of Rs 1640-2900 with effect from the date of implementation of the recommendations of the 4th Pay Commission, namely, 1.1.1986 with arrears of pay and all consequential benefits

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By this order, it was also stated that the remaining officers were entitled to draw arrears of pay and consequential benefits w.e.f. 13.3.1992, that is the date of the tribunal's order. It was further stated that the 35 existing posts of AA-II (General) and the merged posts will carry the pay scale of Rs.1640-2900. In the circular dated 12.11.1993, the respondents have issued the seniority list in the grade of AA-I (General) which has been impugned in this O.A. Learned counsel for the applicants has submitted that Respondent No. 3, Mrs. Ritu Kapoor, who is shown as having been appointed as a direct recruit on 8.1.1988 is at Serial No. 9, Respondent 4, Shri S. Khan, who was appointed on 7.1.1988 is at Serial No. 11, Respondent No. 5, Ms Sangita Mathur, who was appointed on 21.8.1990 is shown at serial No. 13, whereas applicant No. 11, Shri Zile Singh who was appointed on 30.5.1989, is shown at Serial No. 16. We are unable to agree with the contentions of the learned counsel for the applicants that all the applicants, excepting applicants 6, 9 and 12, who are admittedly appointed on various dates in 1989 should be shown as having been appointed on 1.1.1986, that is the date when they received the revised pay scales of Rs.1640-2900. The order of the Tribunal dated 13.3.1992 only directs the respondents to merge the post of AA Grade-II and AA Grade-I and grant the revised pay scale to the applicants w.e.f. 1.1.1986 from the date of implementation of the recommendations of the 4th Pay Commission. During the intervening period, the private respondents 3-8 have been appointed as AA Grade-I in accordance with the relevant recruitment Rules as direct recruits through the UPSC. The judgement of the Supreme Court in R.K. Sethi's case (supra) is relevant to the facts of this case. In this case, the Court upheld the criteria for placing the lower grade employees en bloc junior to

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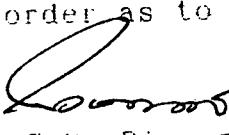
higher grade employees after merger of two grades. In the other case of Sukhvarsha Narula (supra), relied upon by the respondents, the Tribunal had held as under:

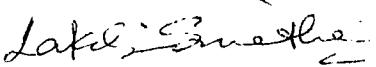
we find considerable force in the contention of the applicant that by introducing a uniform scale of pay, although with retrospective effect, her pre-existing seniority could not have been altered to her disadvantage. Evidently, the criterion for determining the inter se seniority of the applicant and respondents 4 to 6 was the higher grade viz. Class II in which she had started her career as a Senior III Lecturers. So, all that happened by the merger of two cadres and introduction of uniform scale of pay from back date was that even the respondents became entitled to the same scale of pay. There is absolutely nothing in the policy letter dated 25.5.1977, Annexure R/1, of the respondent-Administration to even remotely suggest that existing inter se seniority of the incumbent of the posts of Senior Lecturers and Lecturers Class II was intended to be disturbed thereby. Admittedly, there is no statutory rule governing the inter se seniority between the two cadres of erstwhile Senior Lecturers and Lecturers. It is not, therefore, comprehensible how by the mere fact that respondents 4 to 6 became entitled to revise scale of pay from retrospective date they could claim higher seniority over the applicant. In the fitness of things, therefore, the seniority as existing on the date of the recommendation of the uniform pay scale although from a back date should have been maintained. The revision of pay scale was not intended to give double benefit to Lecturers in the lower scale of pay by conferring higher seniority on them vis-a-vis their erstwhile seniors as also higher scale of pay".

7 We respectfully agree with the aforesaid judgements of the Supreme Court and the Tribunal (CAT-Chandigarh Bench). Applying these principles to the facts of this case, the applicants cannot claim seniority over respondents who were directly appointed as AA-Grade-I, merely because of merger of the two scales of pay of AA Grade-I and AA Grade-II w.e.f. 1.1.1986. The applicants cannot claim higher seniority from that date. It is also not disputed that the respondents 3-8 who have been appointed as AA Grade-I between 1988-1990 have been so appointed as direct recruits in their quota in accordance with relevant recruitment rules. In our view, the judgement of the Supreme Court in Direct Recruits Class-II Engineering Officers

*Case 19/*  
Association (supra) also supports the case of the ~~private~~ respondents, rather than the applicants, as the appointment of the private respondents as AA Grade-I has been done in accordance with the Rules and their seniority from the date of appointment cannot, therefore, be denied to them. In the light of these two judgements, the judgement of the Supreme Court in Narender Chadha's case (supra) relied upon by the applicants will also not assist them.

8 In the result, we find no merit in the claim of the applicants that they should be given seniority as AA Grade-I w.e.f 1.1.1986 placing them over those who have been regularly appointed in that grade. As there is no merit in this application, the same is accordingly dismissed. No order as to costs.

  
(S.P. Biswas)  
Member(A)

  
(Smt. Lakshmi Swaminathan  
Member(J))

'SRD'