

Central Administrative Tribunal  
Principal Bench

O.A. 1051/94  
with  
O.A. 709/94

(7)

New Delhi this the 17th day of September, 1999

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

O.A. 1051/94

A. K. Chaturvedi,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.

... Applicant.

By Advocate Mrs. Meera Chhibber with Shri Ashish Kalia.

Versus

1. Union of India,  
(Service to be effected on the Secretary(R)  
to the Government of India, Cabinet Secretariat,  
Room No. 8-B, South Block, New Delhi-110011).
2. Shri S.S. Khurana,  
Deputy Secretary,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.
3. Shri A.K. Bose,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.
4. Shri A.K. Sood,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.
5. Shri G.P. Sharma,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011..
6. Shri S.K. Gupta,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.
7. Shri Vinod Kumar,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.

8. Shri E.M. Haridasan,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011

9. Mrs. Suchi Bahl,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.

10. Shri S.C. Gupta,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.

11. Mrs. Nirmala Malla,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011. .... Respondents.

By Advocate Shri Madhav Panikar - for official respondents.  
By Advocate Shri B.T. Kaul - for private respondents.

O.A. 709/94

K.S. Chhatwal,  
Section Officer,  
Cabinet Secretariat,  
8-B, South Block,  
New Delhi-1. .... Applicant.

By Advocate Mrs. Meera Chhibber with Shri Ashish Kalia.

Versus

1. Union of India,  
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Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.
4. Shri A.K. Sood,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.

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5. Shri G.P. Sharma,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.
6. Shri S.K. Gupta,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.
7. Shri Vinod Kumar,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.
8. Shri E.M. Haridashan,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.
9. Mrs. Sneh Bahi,  
Section Officer,  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi-110011.

... Respondents.

By Advocate Shri Madhav Panikar - for official respondents.  
By Advocate Shri B.I. Kaul - for private respondents.

O R D E R

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

With the consent of the learned counsel for the parties who submit that the facts and issues involved in these cases are similar, these two cases have been heard together and are being disposed of by a common order. For the sake of convenience, the facts and documents placed in O.A. 1051/94 have been referred to.

2. The applicant is aggrieved by the seniority list issued by the respondents by memorandum dated 21.1.1991 revising the earlier final seniority list issued by them by memorandum dated 27.2.1989. By the said revision, the applicants in the aforesaid two applications have been brought down in the seniority list from Serial Nos. 84 to 93 in the case of applicant, Shri A.K. Chaturvedi in O.A. 1051/92, and

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from Serial No. 82 to 89 in the case of the applicant Shri K.S. Chhatwal in O.A. 709/94. The applicants have submitted that they had made representations to the respondents against the revision of their seniority by lowering their position in the draft seniority list issued on 21.1.1991 which have since been rejected by the respondents in January, 1994. Hence these two applications.

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3. The brief facts of the case are that the applicants who are working with the respondents as Assistants were promoted as Section Officers w.e.f. 14.8.1986 by the respondents' order of the same date. The applicants in both the O.As have been promoted from the posts of Assistants to Section Officers on the recommendations of the DPC which have been held on 2nd and 3rd July, 1986. These O.As have been filed on 19.5.1994 and 24.3.1994 respectively. Having regard to the fact that the respondents have rejected their representations only in January, 1994, the preliminary objections taken by them in their reply that the O.As. are hopelessly barred by limitation are rejected.

4. The private respondents who have been placed above in the impugned revised seniority list are admittedly Section Officers who have been promoted under the Limited Departmental Competitive Examination (LDCE) quota, as provided under the Research and Analysis Wing (Recruitments, Cadre and Service) Rules, 1975 (hereinafter referred to as 'the 1975 Rules'). The LDCE was held on 12th and 13th May, 1986, the ACRs of those who qualified in the written examination were evaluated by the DPC held on 9.7.1986 and the final merit list of the persons who qualified for promotion as Section Officers was prepared on 14.7.1986. According to the respondents, the appointing authority then took a conscious decision that the

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orders for promotion of both the categories i.e. promotees and those from LDCE will be issued on the same date after deciding their postings and transfers. Accordingly, the respondents issued the orders of promotion of the officials to the grade of Section Officers through the LDCE and DPC on 14.8.1986. Learned counsel for the applicants has submitted that as per the respondents own memorandum dated 19.1.1988 (Annexure A-6), they had decided the principle of fixing seniority of officers who have been promoted to various grades after the promulgation of 1975 Rules. In particular, she has stressed that this memorandum provides the criteria as follows:

It has also been decided that fixation of seniority will be independent of the maintenance of roster Seniority in various grades prior to promulgation of the R&AW (RC&S) Rules, 1975 i.e. before 21.10.75 will be in accordance with principles followed by IB as we were to follow IB's rules till that stage. Wherever modifications have been made with the approval of the Cabinet Secretariat, Seniority will be governed by such orders. The seniority following the promulgation of the 1975 Rules will be governed by the principle of chronology of selection, those from earlier date of selection being senior to those from a later date of selection.

(Emphasis added)

5. Mrs. Meera Chhibber, learned counsel, has submitted that in accordance with the respondents' own memorandum dated 19.1.1988, the seniority of persons promoted after promulgation of the 1975 Rules was to be governed by the principle of chronology of selection i.e. those selected earlier being placed senior to those selected later which, she submits, has been followed by the respondents in issuing the 1989 seniority list. However, without even issuing a show cause notice to the applicants, the respondents changed the seniority position of the applicants as indicated above by issuing the impugned draft seniority list dated 21.1.1991. Her contention is that though the appointment orders of both

The categories of persons were issued on the same date, that is on 11.8.1986, when the promotees like the applicants were found fit by the DPC which was held on 3.7.1986 whereas the results of the LDCE were finalised subsequently on 14.7.1986, then as per the principle laid down by the respondents' O.M. dated 19.1.1988, the promotees should be ranked senior to those selected by the LDCE on the basis of chronology of selection. She has also submitted that the officers promoted through the LDCE quota had submitted a representation against the draft seniority list of 1989 which had been rejected by the respondents on 4.7.1989 but later, all of a sudden they have reversed their stand and issued the draft seniority list on 21.1.1991. According to the applicants, in the rejection letter, the respondents have correctly explained the position, namely, that the promotee Section Officers have been placed en-block senior to the LDCE Section Officers in the seniority list because they have qualified in the written examination held in May, 1986 and the minutes were approved by the appointing authority on 1.8.1986. Learned counsel has, therefore, submitted that the respondents have acted in an arbitrary manner in not following the principles laid down in the memorandum dated 19.1.1988 in revising the seniority list after having finalised the same earlier in 1989. She has also contended that the letter of 29.4.1980 issued by the respondents on which the private respondents have relied upon cannot assist them in view of the later memo issued by the respondents themselves on 19.1.1988. She has, therefore, prayed that the impugned seniority list may be quashed and set aside wherein the positions of the applicants have been brought down by several places and restore to them the seniority position of Section Officers dated 27.2.1989 for purposes of their promotion to the next higher grade.

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6. We have seen the replies filed by the respondents as well as heard Shri Madhav Panikar, learned counsel for the official respondents and Shri B.T. Kaul, learned counsel for the private respondents. The learned counsel contends that the impugned seniority list of 21.1.1991 has been revised in accordance with the policy decision taken by the Govt. with the approval of DOP&T vide their letter dated 29.4.1988. According to them, a mistake had been committed earlier in the seniority list dated 27.2.1989. The respondents have submitted that the contention of the applicants that the seniority is governed by chronology of selection as laid down in their memo dated 19.1.1988 is refuted by their earlier letter dated 29.4.1980. They have submitted that in paragraph 7, the inter se seniority of all appointees, whether through promotion or through LDCE or by direct recruitment would be on the basis of chronology of appointments. Shri B.T. Kaul, learned counsel, has submitted that the letter of 1980 lays down the correct principle, i.e. the date of appointment. In this case, the respondents have contended that since both the categories of persons were appointed by the same order dated 14.8.1986, on a reference made to the DOP&T they clarified that they should then adopt ratio 1:1, and the seniority list had to be revised which was, therefore, in accordance with the rules and instructions.

7. We have carefully considered the records and the submissions made by the learned counsel for the parties.

8. From the facts mentioned above, it is seen that the criteria laid down by the respondents in their memorandum dated 19.1.1988 regarding fixation of seniority following the promulgation of the 1975 Rules which is to be based on the principle of chronology of selection, does not appear to be

either arbitrary or unreasonable taking into account the relevant situation dealt with in the Rules. This memorandum had been followed by the respondents in issuing the seniority list of 1989 and they had also rejected representations against it. Thereafter, as correctly pointed out by the learned counsel for the applicant, even without issuing a show cause notice, the settled position in the seniority list was revised by the impugned draft seniority list of 21.1.1991. The contention of Shri Madhav Panikar, learned counsel for the respondents, that the competent authority took a conscious decision to have the appointment orders of both the categories issued on the same date i.e. 14.8.1986 even though admittedly the promotion of two streams of officers to the rank of Section Officers had been done on different points of time i.e. the selection of promotees being earlier to that of the final selection through the LDCE method. Under the 1975 Rules, the method of filling the posts of Section Officers w.e.f. 21.10.1975 was in the ratio of 50% by promotion, 40% by LDCE and 10% by direct recruitment. This had been modified w.e.f. 19.7.1994 as 60% by promotion and 40% by LDCE. In the circumstances, the contention of the official respondents that the impugned revised seniority list had been done on the ratio of 1:1 is not supported by the Rules or any other discernible criteria. The respondents themselves have stated that the minutes of the DPC held for promotion quota were approved on 8.7.1986 and the merit list for LDCE was approved only on 1.8.1986. These facts would also show that the decision of the respondents to delay the promotion and posting orders of the promotees who have already been approved earlier to a date after the LDCE quota officers were also approved does not also appear on any rational basis. In the circumstances, merely because both the lists were taken together and issued by order dated 14.8.1986 would not enable the respondents to give a go

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by to their own memorandum dated 19.1.1988 which refers to the selections chronologically. In the respondents memorandum dated 29.5.1991, they have stated that the interpolation of the promotee and examinee Section Officers promoted on the same date i.e. 14.8.1986 has been done on 1:1 basis in accordance with the Rules given by DOP&T. However, it has been further stated that on 14.8.1986 the officers have been placed in the seniority list on the basis of chronology of selection. This also shows that the respondents seem to have made a departure to follow 1:1 basis only with regard to the promotion order dated 14.8.1986, and that too without any reasoning or basis as to why they have adopted 1:1 formula.

4 Thereafter, they have reverted to placing the persons in the seniority list on the basis of chronology in their selection. In the circumstances, we find that the action of the respondents in revising the seniority list by memorandum dated 21.1.1991, is not tenable.

9. For the reasons given above, O.A No. 1051/94 and O.A. No. 709/94 succeed and are allowed.

10. The Tribunal in its order dated 27.7.1994 had held as follows:

"We have heard the parties. We are of the view that the interest of the applicant would be sufficiently protected if a direction that any promotion made on the basis of the Annexure A-1 seniority list would be subject to the outcome of the present OA, and all promotees will have to be informed about this condition, is given and accordingly direct so. We also make it clear that in case the application is allowed, it will only be fair that the applicant will be given all the consequential benefits ignoring the technical objection of 'no pay no work' that may be raised by the respondents at that time".

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11. In the result, the impugned seniority list dated 21.1.1991 is quashed and set aside restoring the earlier seniority list of 27.2.1989 which is in order. Accordingly, the respondents are directed to take further action for promotion of the concerned officers to the next higher post by holding review DPCs in accordance with the Rules and instructions. Such officers who are promoted will be entitled to consequential benefits in accordance with the Tribunal's order referred to in Paragraph 11 above. No order as to costs.

12. Let a copy of this order be placed in O.A.

709/94.

(S. P. Biswas)  
Member (A)

(Smt. Lakshmi Swaminathan)  
Member (J)

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