

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI. //

Regn. No. Q.A. 1650/89.

DATE OF DECISION: February 5, 1990.

R.K. Parmar & Others Applicants.

V/s.

Union of India & Others Respondents.

Applicants in person.

Shri P.P. Khurana, counsel for Respondent No.1.

Ms. Shyamla Pappu, Sr. Counsel with
Shri K.T. Anantharaman, Counsel for
Respondents No.3, 4, 6, 8, 9, 10, 14 and 16.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether Reports of local papers may be allowed to see the Judgement? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether their Lordships wish to see the fair No. copy of the Judgement?
4. To be circulated to all Benches of the Tribunal? No.

JUDGEMENT

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

The applicants, who are direct recruits belonging to the Indian Economic Service (hereinafter referred to as 'Service') filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the Grade IV Seniority List circulated on 8.5.1986, said to have been issued in implementation of the judgement of the Hon'ble Supreme Court in CWP 1595/1979 in Narender Chadha & Others Vs. Union of India (1986 (2) SCC 157) and all seniority, promotions and related privileges based on this impugned seniority list, and have prayed for the following reliefs: -

- "1. Quashing of the Impugned Seniority list and all promotional benefits of seniority etc., based on the same.

2. Redrawing of the Grade IV seniority list
 - a. Exclusion of Officers on Ex-Cadre posts who were not covered by the judgement of the Hon'ble Supreme Court in the Narendra Chadha case.
 - b. Refixing of seniority of those intermittently holding Ex-Cadre posts.
 - c. Refixing seniority of Officers whose entry into the IES is to be determined with effect from dates on which their posts were encadred into the IES and not from any earlier date as has been incorrectly done.
3. Review of all promotions in accordance with the revised seniority list and making the same operative from retrospective dates.
4. Filling up of the vacancies in Grade III of the IES for the period 19.12.1983 and 15.6.1987 from the date the vacancy arose."

2. The application was filed on 17.8.1989 and was admitted on 22.8.1989. Notice was directed to be issued to the respondents for filing their counter-affidavits within four weeks and rejoinder was to be filed within two weeks thereafter. Parties were to appear before the Deputy Registrar (J) on 18.1.1990. In the meanwhile, the Hon'ble Supreme Court passed an order in SLP Nos. 15176-77 of 1987 and 11548/87 on 12.9.1989, observing that the Tribunal may dispose of this application preferably by the end of December, 1989. In view of the aforesaid order of the Supreme Court, the case was directed to be listed before the Bench on 22.11.1989. The parties were also directed to be informed about the change in the date of hearing. The pleadings were, however, not complete by that date and time was allowed to the parties, vide order dated 23.11.1989. On 19.12.1989, it was observed that the service on the respondents was also not complete; therefore, it was ordered on that date that the case be listed for further directions on 7.2.1990. The case was, however, again listed on 22.1.1990 in view of the order of the Supreme Court dated 10.1.90 received vide communication dated 13.1.1990 from the Registrar (Judicial) of the Supreme Court and a direction of the Hon'ble Chairman

(Signature)

to place it before the Bench on that date. The Supreme Court, in the order dated 10.1.1990 had enquired as to whether the present O.A. had been disposed of as directed vide order dated 12.9.1989 and in case it had not been disposed of, the Tribunal was directed to dispose of the same by the end of January, 1990. This order was conveyed by the Registrar (Judicial) vide his communication dated 13.1.1990, which was received on 17.1.1990. The applicants and the learned counsel for respondent No.1, viz., Union of India, appeared on 22.1.1990 after seeing the cause list, but the other respondents had no notice of the hearing fixed for that date. Thus, the final hearing was directed to be fixed for 29.1.1990 and issue of notice to respondents No.2 to 16 through special messenger was also directed. This case was before the Division Bench comprising Hon'ble Mr. P.K. Kartha, Vice Chairman (J) and Hon'ble Mr. D.K. Chakravorty, Member (A). This Bench heard the arguments advanced by the applicants on 29.1.90. When the case was called on 30.1.1990 for further arguments, the representative of the respondents brought to the notice of the Bench a note recorded on 25.4.1986 in File No.11024/1/86-IES of the Department of Economic Affairs. That note had been recorded after discussion with Hon'ble Shri P.K. Kartha, Vice Chairman (J) while he was in the Department of Legal Affairs as Law Secretary. As this note dealt with the issues raised in this application, the above said Division Bench referred the matter to the Hon'ble Chairman for his directions with the observation that the propriety demands that the case may be heard afresh by another Bench of which Hon'ble Shri P.K. Kartha is not a member. The Hon'ble Chairman, vide his order dated 30.1.1990 directed that this O.A. be listed before the Special Bench in Court No.4 for hearing on 31.1.1990 as the first case after Part Heard and that the orders passed by the Hon'ble Supreme Court on 10.1.90 may also be brought to the notice of the Special Bench. This

case, thus, came to us on transfer on 31.1.1990. The applicants and the learned counsel for the Union of India stated before us that even though the case cannot be disposed of by the end of January, 1990, this Bench should hear the case and dispose it of as early as possible in the circumstances of the case. We thereafter proceeded with the hearing of the case afresh, and heard the arguments on 31.1.1990 and 1.2.1990.

3. It may be noted here that this application is an off-shoot of the judgement of the Supreme Court in the case of Narender Chadha & Others Vs. Union of India & Others (*supra*) in which service rules for the Indian Economic Service and the service rules for the Indian Statistical Service were at issue and the petitioners also belonged to both these Services.

4. A similar application (O.A. 844/86 - Shri Partap Narain & Others Vs. Union of India) filed by the direct recruits belonging to the Indian Statistical Service, was pending in the Tribunal at the time of filing the present application. The said application has since been disposed of by this Tribunal by its judgement dated 8.9.1989.

5. After the Supreme Court delivered its judgement in Narender Chadha's case, two applications had been filed in the Tribunal by Economic and Statistical Investigators in various Departments / Ministries, praying that the respondents be directed to promote and confirm the Investigators eligible on 11.2.1986 in Grade IV or Class I posts of Indian Economic Service and Indian Statistical Service with effect from the date their juniors (ad-hoc promotees) were confirmed therein and to direct promotion of all eligible Investigators who had been denied promotion as a result of the ban on promotions between 1981 and 1985 to Grade IV Class I posts with all consequential benefits. - O.A. Nos. 698/86 and 1156/86 -

(Signature)

B.S. Kapila Vs. Cabinet Secretary and Others, and Shri M.S. Sankamarayana & Others Vs. Union of India & Others respectively. The Tribunal disposed of these applications by a common judgement dated 8.6.87 allowing the applications to the limited extent. It was observed that while the applicants' entire claim cannot be allowed, there is no impediment in directing the respondents to consider the claim of the applicants for appointment against the posts that have been kept vacant in view of the interlocutory order of the Supreme Court dated 5.4.82. Before doing so, the promotees already officiating have to be regulated in accordance with the directions of the Supreme Court; and the vacancies, if any, available after such adjustment have to be filled up as directed in the judgement. Anything said therein was to preclude the respondents from meeting the grievance of the applicant by creating supernumerary posts.

6. Special Leave Appeals have been filed against the aforesaid judgement in Kapila's case (SLP (Civil) Nos. 11548 and 15176-77 of 1987). In the SLP, the appellants have filed applications for stay (C.M.P Nos. 24896 and 32860 to 32861 of 1989).

7. Apart from respondent No.1, viz., Union of India, respondents No.3, 4, 5, 6, 8, 9, 11, 14 and 16 have also filed their counter-affidavits in this case. The applicants have filed their rejoinder. One Shri R.C. Mittal filed an application on 25.1.90 being impleaded as a respondent, along with his written statement of the same date. This application was neither given any number nor listed. Moreover, applicant had not given copies of the same to the applicants in this C.A. till the date of hearing. As such, no orders could be passed on the application of Shri Mittal.

8. We have perused the material on record and heard the applicants on 31.1.90, and Shri P.P. Khurana, learned counsel for the Union of India and Ms. Shyamla Pappu, Senior counsel for respondents No.3, 4, 6, 8, 9, 10, 14 and 16 on 1.2.1990.

9. The applicants' main contention in this case is that the Union of India, while preparing the impugned seniority list has not acted strictly in accordance with the orders of the Supreme Court in Narender Chadha's case

See:

and have assigned seniority in Grade IV of the Service even to those promotees who are not entitled to the same as per the Supreme Court's order in the above case. The case of the applicants, in brief, is as follows: -

In Narender Chadha's case, the Supreme Court disposed of the petition filed by the promotee officers belonging to the Indian Economic Service and the Indian Statistical Service with the following directions: -

"Having given our anxious consideration to the submissions made on behalf of the parties and the peculiar facts present in this case we feel that the appropriate order that should be passed in this case is to direct the Union Government to treat all persons who are stated to have been promoted in this case to several posts in Grade IV in each of the two Services contrary to the Rules till now as having been regularly appointed to the said posts in Grade IV under rule 8(1)(a)(ii) and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts. Even those promotees who have been selected in 1970, 1982 and 1984 shall be assigned seniority with effect from the date on which they commenced to officiate continuously in the posts prior to their selection. For purposes of seniority the dates of their selection shall be ignored. The direct recruits shall be given seniority with effect from the date on which their names were recommended by the Commission for appointment to such grade or posts as provided in clause (a) of Rule 9-C of the Rules. A seniority list of all the promotees and the direct recruits shall be prepared on the above basis treating the promotees as full members of the Service with effect from the dates from which they are continuously officiating in the posts. This direction shall be applicable only to officers who have been promoted till now. This is the meaning of the direction given by the Court on February 1, 1984 which stated 'we wish to make it clear that there is no question of any rotation system being applied under the Rules,

as they exist now. All appointments shall be made hereafter in accordance with the Rules and the seniority of all officers to be appointed hereafter shall be governed by rule 9-C of the Rules.

"We are informed that some of the promotees and direct recruits who are governed by this decision have been promoted to higher grades. If as a result of the preparation of the seniority list in accordance with the decision and the review of the promotions made to higher grades any of them is likely to be reverted such officers shall not be reverted. He shall be continued in the higher posts which he is now holding by creating a supernumerary post, if necessary to accommodate him. His further promotion shall, however, be given to him when it becomes due as per the new seniority list to be prepared pursuant to this decision. There shall, however, be a review of all promotions made so far from Grade IV to higher posts in the light of the new seniority list. If any officer is found entitled to be so promoted to a higher grade he shall be given such promotion when he would have been promoted in accordance with the new seniority list and he shall be given all consequential financial benefits flowing therefrom. Such review of promotions shall be completed within three months and the consequential financial benefits shall be paid within three months thereafter. In giving these directions we have followed more or less the directions given in P.S. Mahal & Ors. v. Union of India & Ors (5) supra."

10. The applicants' contention is that the directions of the Supreme Court in the above case, were applicable only to those who had been promoted to Grade IV of the Service and what was allowed in terms of the deemed relaxation of the rules was only regularisation of appointments of promotees to Grade IV of the Service even if such appointments had been made contrary to the rules. The applicants, therefore, further contend that those who were never appointed to Grade IV of the Service were not entitled to any benefit of seniority as given by

Con.

the Union of India in the impugned seniority list, purportedly in pursuance of the judgement of the Supreme Court in Narender Chadha's case. In support of this averment, they have pleaded that the Union of India gave relief to the following categories of Investigators/ad-hoc promotee officers: -

- (i) 25 petitioners in the petition before the Supreme Court;
- (ii) 300 Officers of the two Services in respect of whom the petition had been filed in a representative capacity in the Supreme Court;
- (iii) officers promoted after the filing of the petition and not reverted mainly in view of the ban on reversions imposed by the Supreme Court on 1.2.1982; and
- (iv) officers on ex-cadre posts not included in the two Services, and that these posts are not included in Schedule I of the Services at all.

11B. The applicants urged that the following categories have been wrongly included: -

- (a) Those on ex-cadre posts, i.e., posts equivalent in pay scale to Grade IV of the Service and not included in Schedule I as laid down in the Service Rules (hereinafter referred to as 'the 1961 Rules');
- (b) those on Group 'B' posts gazetted as well as non-gazetted, i.e., in the scale of pay of Rs.650-1200 (pre-revised) and Rs.550-900 (pre-revised); and
- (c) those holding senior time-scale posts outside the cadre in a pay-scale equivalent to Grade III of the Service.

Clerk

It is stated that the total number of such officers included under the above three categories is 126 as per the SLP No. 11548/87 filed by Cabinet Secretary ^{Mr.} B.S. Kapila's case before the Hon'ble Supreme Court. A list of such officers, which is stated to be not an exhaustive list, has been given in Annexure ^{and 6} 5 to the application, but as per computation done in para 6 of the application, this number is stated to be 159.

12. The applicants further stated that the Government has erred by giving seniority to officers who have been intermittantly holding posts in the Service retrospectively even though they belong to the following categories: -

- (i) Those who were reverted;
- (ii) those who were on deputation;
- (iii) those who were on long periods of training;
- (iv) those who were on long periods of leave; and
- (v) those who were given seniority from dates prior to dates their posts were included in the Service.

13. It is further contended that in the case of one Shri S.S. Ahluwalia, who was holder of an ex-cadre post, the Union of India de-notified his name, but they have not taken steps to de-notify the remaining officers who were on ex-cadre posts. They have also not taken any steps to refix the seniority of officers who were intermittantly holding ex-cadre posts.

14. The case of the Union of India, in brief, is that -

- (1) the application is time-barred as the cause of action accrued to the applicants as a result of issuing of the seniority list on 8.5.1986;
- (2) in implementing the directions of the Supreme Court in Narender Chadha's case, they have adhered to the most judicious interpretation

(See.)

of the judgement and according to them, the Supreme Court has clearly given the directions in respect of all ad-hoc appointees irrespective of whether they were holding cadre vacancies or ex-cadre vacancies; and

(3) that all persons, including deputationists who had been continuously officiating in Grade IV were included in the select list.

15. In regard to the case of Shri S.S. Ahluwalia, it is stated that he was appointed to the post of Senior Research Officer (General Central Service) in the Planning Commissioner with effect from 27.10.1973 and was subsequently confirmed in that post with effect from 22.1.1980. Consequent upon his confirmation in the post of Senior Research Officer in the Planning Commission, his lien in the Indian Economic Service was terminated. They have also referred to the provisions of Fundamental Rule 12(b), according to which a Government servant cannot be appointed substantively to two or more permanent posts at the same time and, therefore, the name of Shri Ahluwalia was deleted from Grade IV and Grade III of the Indian Economic Service vide Notification dated 2.1.89.

16. The other respondents who have filed separate counter-affidavits, have taken the plea of limitation and have also drawn attention to the Review Petition No.307 of 1986 filed by the direct recruits in the Supreme Court against the judgement in Narender Chadha's case. In the said petition, they had sought review of the judgement on various grounds, including that as a result of the legal consequences of interpretation of the Rules, ad-hoc appointments outside the cadre have been treated as valid promotions without following the requirements of the rules. The Supreme Court, however, dismissed the Review Petition on 12.8.86. Ms./ Pappu, therefore, also took the plea of res-judicata while making the above said contention.

It is further contended that in view of the provisions of Section 9 B(2)(b) of 1961 Rules, promotions of IES officers in Grade IV or other grades can also be made by the Cadre Controlling Authority to any posts not included in Schedule I and such appointments will be deemed to be on a regular basis. It was, therefore, argued that if the promotee Grade IV officers of the Service have been intermittently shifted to ex-cadre posts by the Cadre Controlling Authority, this cannot mean a discontinuity for the purpose of assigning seniority from the date of their initial appointment against Grade IV of the Service. They have also contended that the Supreme Court in Narender Chadha's case had clearly given their directions to cover all ad-hoc appointees irrespective of whether they were holding cadre vacancies or ex-cadre vacancies.

17. The applicants also filed along with this O.A., Miscellaneous Petition No.1813/1989 seeking the applicability of the judgement of this Tribunal in the case of Pratap Narain Vs. Union of India (O.A. 844 of 1986) to the instant case. In that case, the applicants were direct recruits to the Indian Statistical Service. They had contended that the seniority list of Grade IV of the ISS issued on 8th May, 1986 was not in accordance with the directions of the Supreme Court in Narender Chadha's case. The ground of challenge was that as per judgement of the Supreme Court in the said case, only if a person had been working continuously on ad-hoc basis against a Grade IV post, included in the cadre of the ISS, he was to be given benefit of continuous officiation of working on such a post and that such a benefit could not be given to an incumbent who either did not hold a post in Grade IV of the Service or did not officiate continuously in such a post or where an officer who, on the one hand, worked on various posts outside Grade IV, either in lower posts

of Class II/Group B posts, or higher posts and on the other hand, wanted the benefit of so working in the said posts for purposes of seniority in Grade IV. The case of the respondents was that the Supreme Court in Narinder Chadha's case gave the benefit of continuous officiation towards seniority irrespective of the fact whether the incumbents were holding cadre or ex-cadre posts. Averment to the filing of the Review Petition and its dismissal was also made and on that account, the application was stated to be not maintainable.

18. After considering the rival contentions of the parties, the Tribunal in its judgement dated 8.9.89 partly allowed the application with the direction that the impugned seniority list dated 8th May, 1986 shall be modified by the Union of India so as to limit the benefit of continuous officiation towards seniority only to those incumbents who had continuously officiated against cadre posts included in Grade IV of the ISS, even though their appointments were not made in accordance with Rule 8(1)(a) of the Rules. However, if such a person, after appointment to a cadre post, had gone on deputation, against a post in the same or higher scale, and the cadre controlling authority certifies that but for his deputation, he would have continued to officiate in a Grade IV post of the Service, the deputation period would not constitute a break and the benefit of continuous officiation would not be denied to him in respect of such period towards seniority. The Tribunal further directed that the promotions made to Grade III of the Service shall also be reviewed in the light of the revised seniority list.

19. We were informed during the oral arguments that the applicants as well as the respondents in Shri Pratap Narain's case (supra) had filed separate SLPs in the Supreme Court and the same are still pending.

20. One of the main preliminary objections urged by the respondents /in their counter-affidavits and during the course of oral

G. C. W.

arguments is that the application is time-barred. It is not in dispute that the seniority list issued on 8.5.86 and the promotions ordered vide Notification dated 11.6.86 (Annexure A-11 to the application) in pursuance of the directions given by the Supreme Court in Narinder Chadha's case are, inter-alia, under challenge in this application. The application had been filed on 17.8.89 and, as such, it had not been filed, *prima-facie*, within the period allowed under Section 21 of the Administrative Tribunals Act, 1985. The applicants, however, contended that the ^{fourth} relief prayed for in para 8 of the application, i.e., filling up of the vacancies in Grade III of the Service which accrued during the period 19.12.83 and 15.6.87 from the date the vacancies arose, is not related to the above cited seniority list and the promotion notification. It was also contended that the cause of action accrued to the applicants when Notification No.13012/11/87-IES was issued by the Department of Economic Affairs on 2.1.1989 (Annexure A-9 to the application), by which the name of Shri S.S. Ahluwalia was deleted from Grade IV and Grade III notifications, both dated 11.6.86, and also from the seniority lists of Grade IV and Grade III dated 8.5.86 and 2.12.86 respectively. A representation was made to the Secretary, Department of Economic Affairs (Annexure A-17 to the application), on 7.6.89 on the basis of this notification praying that all officers on ex-cadre posts should similarly be denotified and seniority of those officers who had intermittently held ex-cadre posts be refixed. No reply to this representation has been received so far. It was also urged that they had filed M.P. No.1813/1989 along with the O.A., praying for attaching this application to O.A. 844/1986 (*supra*), which was ripe for final hearing.

(See)

in accordance with the directions of the Supreme Court, or, making applicable the judgement in O.A. 844/1986 to this case as well. It was further contended that changes in the seniority list notified on 8.5.86 had taken place from time to time and that 14 changes had taken place in the seniority list since that date. Officers are included or seniority is revised. Five cases have been cited in para 13 of the O.A. in support of this contention.

21. The respondents' case on the point of limitation is with reference to the provisions of Section 21 of the Administrative Tribunals Act, 1985 and they have also cited 1969 (2) SCR 824 in support of their contention that even where no limitation was fixed as in the case of writ petitions under Article 226 of the Constitution, the petition is expected to be filed within a reasonable period. They further contended that the notification about Shri S.S. Ahluwalia had been issued not because he was holding an ex-cadre post, but because it came to notice that he came to hold lien on two substantive posts simultaneously.

22. We have carefully considered the rival contentions of the parties on the point of limitation and are of the view that this application does not deserve to be rejected on that ground. We say so for more than one reason. The notification about Shri S.S. Ahluwalia had been issued on 2.1.1989. The plea of the respondents is that this had to be issued in accordance with the provisions of F.R. 12 (b) under which a Government servant cannot be appointed substantively to two or more permanent posts at the same time. The applicants contended that Shri Ahluwalia had never been confirmed in the Service (IES) and in support of this contention, they stated that the orders issued by the Union of India for confirmation in regard to officers of the Service so far, do not include

CJew

The decision of the Division Bench in O.A. 844/86, in our view, declares a law on the point of applicability of judgement in Narinder Chadha's case to the members of the ISS. There being no material difference in the cases of the two Services, as already mentioned above, the direct recruits in this application will be deemed to be equally placed with the direct recruits of the ISS. The legal position on this point appears to be fairly well settled. When a citizen aggrieved by the action of the Government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to the Court (Amrit Lal Berry Vs. Collector of Central Excise and Others - 1975 (1) SIR (SC) 153 at 169). In A.K. Khanna & Others Vs. Union of India and Others, ATR 1988 (2) CAT 518 at 519, this Tribunal has observed that not extending similar benefit to persons similarly situated would amount itself to a discrimination violative of Articles 14 and 16 of the Constitution. In John Lucas Vs. Additional Chief Mechanical Engineer, 1987 (3) ATC 328 at 335, a Full Bench of this Tribunal considered the question whether the judgements of the Tribunal would be judgments in rem or judgments in personam. The relevant observations are reproduced below: -

" In "service matters" any judgment rendered except perhaps in disciplinary proceedings, will affect someone or the other member of the service. The interpretation of Rules governing a service by the Tribunal, while it may benefit one class of employees, may adversely affect another class. So also upholding the claim of seniority or promotion of one may infringe or affect the right of another. The judgments of the Tribunal may not, in that sense be strictly judgments in personam affecting only the parties to that petition; they would be

(new)

in accordance with the directions of the Supreme Court, or, making applicable the judgement in O.A. 844/1986 to this case as well. It was further contended that changes in the seniority list notified on 8.5.86 had taken place from time to time and that 14 changes had taken place in the seniority list since that date. Officers are included or seniority is revised. Five cases have been cited in para 13 of the O.A. in support of this contention.

21. The respondents' case on the point of limitation is with reference to the provisions of Section 21 of the Administrative Tribunals Act, 1985 and they have also cited 1969 (2) SCR 824 in support of their contention that even where no limitation was fixed as in the case of writ petitions under Article 226 of the Constitution, the petition is expected to be filed within a reasonable period. They further contended that the notification about Shri S.S. Ahluwalia had been issued not because he was holding an ex-cadre post, but because it came to notice that he came to hold lien on two substantive posts simultaneously.

22. We have carefully considered the rival contentions of the parties on the point of limitation and are of the view that this application does not deserve to be rejected on that ground. We say so for more than one reason. The notification about Shri S.S. Ahluwalia had been issued on 2.1.1989. The plea of the respondents is that this had to be issued in accordance with the provisions of F.R. 12 (b) under which a Government servant cannot be appointed substantively to two or more permanent posts at the same time. The applicants contended that Shri Ahluwalia had never been confirmed in the Service (IES) and in support of this contention, they stated that the orders issued by the Union of India for confirmation in regard to officers of the Service so far, do not include

Circum

the name of Shri Ahluwalia therein. The respondents have not been able to rebut this contention. Further, the name of Shri Ahluwalia has been denotified from Grade IV of the Service with effect from 27.10.73, i.e., from his first appointment to the post of Senior Research Officer in the Planning Commission, and not from the date of his confirmation therein with effect from 22.1.1980. The applicants, in their rejoinder, have stated that applicants No.1, 24 and 33 were never served with a copy of the draft seniority list dated 3.6.86 or the impugned seniority list dated 8.5.86 in full and, therefore, no period of limitation can be said to have commenced. This contention has also not been rebutted by the respondents. In regard to the five specific changes made in the impugned seniority list, referred to in para 13 of the application, the Union of India, viz., respondent No.1, have commented only on the cases of three officers and they have not said anything in their reply about the other two officers.

23. The petitioners in Narender Chadha's case belonged to both IES and ISS. The rules for both these Services, in all material contents, are identical. The directions of the Supreme Court in Narender Chadha's case were made equally applicable to members of both the Services. In the case of direct recruits of ISS, however, the seniority list prepared by the Union of India purportedly in pursuance of the directions of the Supreme Court has been found to be requiring a revision as per judgement dated 8.9.89 by a Division Bench of the Central Administrative Tribunal in the case of Shri Pratap Narain & Others Vs. Union of India (O.A. 844/86). If the plea of limitation taken by the respondents in this case is accepted, it would be inequitous to the direct recruits of the Indian Economic Service if their claim for a similar benefit to them is not allowed to be considered on merits.

(Signature)

The decision of the Division Bench in O.A. 844/86, in our view, declares a law on the point of applicability of judgement in Narinder Chadha's case to the members of the ISS. There being no material difference in the cases of the two Services, as already mentioned above, the direct recruits in this application will be deemed to be equally placed with the direct recruits of the ISS. The legal position on this point appears to be fairly well settled. When a citizen aggrieved by the action of the Government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to the Court (Amrit Lal Berry Vs. Collector of Central Excise and Others - 1975 (1) SLR (SC) 153 at 169). In A.K. Khanna & Others Vs. Union of India and Others, ATR 1988 (2) CAT 518 at 519, this Tribunal has observed that not extending similar benefit to persons similarly situated would amount itself to a discrimination violative of Articles 14 and 16 of the Constitution. In John Lucas Vs. Additional Chief Mechanical Engineer, 1987 (3) ATC 328 at 335, a Full Bench of this Tribunal considered the question whether the judgements of the Tribunal would be judgments in rem or judgements in personam. The relevant observations are reproduced below: -

" In "service matters" any judgment rendered except perhaps in disciplinary proceedings, will affect someone or the other member of the service. The interpretation of Rules governing a service by the Tribunal, while it may benefit one class of employees, may adversely affect another class. So also upholding the claim of seniority or promotion of one may infringe or affect the right of another. The judgments of the Tribunal may not, in that sense be strictly judgments in personam affecting only the parties to that petition; they would be

judgments in rem. Most judgments of the Tribunal would be judgments in rem and the same authorities impleaded as respondents both in the earlier and the later applications would have to implement the judgments."

In view of the pronouncements in the above cases and a number of other cases, we are of the view that the applicants in this case are entitled at least to be heard on their claim to the benefits of the judgment in Shri Pratap Narain's case (supra).

24. If the judgement in a case is a declaration of law on the relevant subject, the decision gives a fresh cause of action to those who are similarly situated (Judgment of the Central Administrative Tribunal delivered on 17.11.89 in O.A. Nos. 1046/88, 778/87, 182/88, 439/87, 1864/87, 721/88 and 1550/87). The judgement in Shri Pratap Narain's case is certainly a declaration on the interpretation of the decision in Narender Chadha's case which is also a subject matter of this application. In view of this also, the objection of the respondents that the application is time-barred cannot be upheld.

25. Another preliminary contention of the respondents is that the direct recruits of the Service had filed a Review Petition No. 307/1986 against the judgement of the Supreme Court in Narender Chadha's case and the Review Petition was dismissed as per the following order: -

"We have gone through the review petition and connected papers. We find no merit in the review petition which is accordingly dismissed."

Ms. Shyamla Pappu, learned Sr. Counsel for the private respondents also took the plea of res-judicata. The applicants have contested this contention.

- *1. Dharan Pal & Others Vs. Union of India (1988 (6) ATC 396). (Judgement of the Tribunal).
- 2. Piara Lal Vs. State of Punjab & Others (1983(2) SLR 786). (Judgement of the High Court).
- 3. Ashok Kumar Sehgal Vs. The Punjab State Electricity Board (1989 (2) SLJ 143). Judgement of the High Court.
- 4. T.K. Pandarish & Others Vs. The Regional Director, ESIC (1989 (2) SLJ CAT 59). (Judgement of the Tribunal).
- 5. Parmod Kumar Vs. U.O.I. & Others. (1989 (2) SLJ CAT 510).
- 6. Decisions of the Supreme Court:
 - (i) Inderpal Yadav & Others Vs. U.O.I. & Others (1985 SCC (L&S) 526; (ii) M/s. Star Diamond Company India Vs. U.O.I. & Ors. (AIR 1987 SC 179) and (iii) Prof. C.D. Tase Vs. Uni. of Bombay & Others (JT 1989 (1) SC 364).

26. The respondents' emphasis in this connection was on the following sentence in Ground II of the review petition: -

".....but that the ad-hoc appointments outside the cadre has been treated as valid promotions made without following the requirements of the rule."

They, therefore, tried to argue that the question of ex-cadre posts has already been raised in the review petition, which was dismissed. The applicants, on the other hand, argued that there were 14 grounds in the review petition and reference to a part of a sentence and which too does not mention ex-cadre posts cannot be taken to fulfil the requirements of the doctrine of res-judicata. It was further argued that the subject-matter of this application is the implementation of the directions of the Supreme Court and those directions are not at issue in this case.

27. We have considered the rival contentions of the parties on this point. The provision about res-judicata finds place in Section 11 of the Code of Civil Procedure and it is provided therein that no court shall try any suit or issue in which the matter directly and substantially is at issue in a former suit between the same parties, or between parties under whom they or any of them claim litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. The issue of correct implementation of the directions of the Supreme Court in Narender Chadha's case has not been shown to us to have been decided in any other case except in the case of Shri Pratap Narain (supra) on 8.9.89. Moreover Section 22 (1) of the Administrative Tribunals Act, 1985 provides that a Tribunal shall not be bound by the procedure

Cec.

laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice. Sub-section 3 of Section 22 lists the matters in which the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure and this is not one of them. We, therefore, do not find any substance in the contention of the respondents that the application is barred by res-judicata.

28. Another preliminary objection of the private respondents is that all the members of the Service who are likely to be adversely affected by grant of the reliefs prayed for in this application have not been made parties to this case and, therefore, the provisions of Order 1 Rule 8 of the CPC have not been followed by the applicants and, thus, the application is not maintainable. The applicants' contention is that the CWP in Narender Chadha's case was filed in a representative capacity and similarly the respondents therein were also named in their representative capacity and that they have followed the same procedure in this application. The learned counsel for the respondents, however, stated that in the writ petition, a public notice had been issued in the Hindustan Times of 4.7.80. A photostat copy of the same has been made available to us. It was further contended that in this case no permission of the court has been sought for filing a representative suit in accordance with the provisions of Order 1 of Rule 8 of the CPC.

29. We have already stated above that the Tribunal, under Section 22 of the Administrative Tribunals Act, 1985, is not bound by the procedure laid down in the Code of Civil Procedure and the matters in respect of which the Tribunal has the same powers as are vested in the Civil Court under the CPC do not mention any such provision. However, Rule 4(5) of the Central Administrative Tribunal (Procedure) Rules, 1987 provides that the Tribunal may

permit more than one person to join together and file a single application if they have a common interest in the matter. Such a permission may also be granted to an association representing the persons desirous of joining in a single application on the condition mentioned in Rule 4(5)(b). The rules, however, are silent on the respondents being sued in a representative capacity. The applicants have filed with the O.A. a petition under sub-rule 5^{(a) & c} of Rule 4, vide M.P. No.18/14/89, which was allowed on 22.8.89. In spite of all this, the fact remains that as per the pleadings of the applicants in this case, at least 123 officers are likely to be adversely affected by the grant of reliefs prayed for, and these have been identified in Annexures 5 and 6 to the application, though these lists are said to be not exhaustive. However, only 15 such officers have been made respondents. It is not permissible to the applicants to insist that a particular respondent(s) should agree to be sued in a representative capacity. The respondents in this case have not agreed to any such proposition. No separate petition has been moved for seeking the permission of the court on the analogy of the provisions of Order 1, Rule 8, CPC, nor any such permission has been granted. There has also been no request from the applicants and payment of process fee etc. for individual service on the officers who are likely to be adversely affected or for issue of public notice. Non-impleadment of parties likely to be adversely affected, especially when those parties are identified to a large extent, will itself be against the principles of natural justice and thus also violative of Articles 14 and 16 of the Constitution (SLR 1988 (1) 3C page 4 - Ranga Reddy & Others Vs. State of Andhra Pradesh & Others).

30. In view of what has been stated in the preceding para, we do not consider it appropriate to adjudicate on the

Recd.

rival contentions of the parties on the merits of the first three reliefs prayed for in para 8 of the Application. The same is applicable to relief 4 under the same para in view of the fact that this is inextricably linked up with the first three reliefs.

31. In view of the above discussion, we hold that the application is not maintainable in its present form for not impleading all the necessary parties as respondents and is accordingly dismissed. The applicants will, however, be free to file a fresh application in accordance with law, if so advised. Parties will bear their own costs.

J. P. Sharma
(J.P. SHARMA) 5/2/90
MEMBER(J)

C. C. Jain
(P.C. JAIN) 5/2/90
MEMBER(A)