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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 1394/88

New Delhi this the 9th day of March, 95.

Hon'ble Shri N.V. Krishnan, Vice Chairman(A).

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

Govardhan Ram,
S/o Shri Damri Ram, Inspector,
(Preventive) Office of Divisional
Opium Officer, C/22, Vigyanpuri,
Mahanagar, Lucknow. ... Applicant.

By Advocate Shri B.R. Saini, proxy for Shri R.K. Saini,
Counsel.

Versus

1. Union of India through Secretary,
Central Board of Excise and Customs,
New Delhi.
2. Narcotics Commissioner of India,
19, The Mall, Morar, Gwalior-6,
Madhya Pradesh.
3. Shri H.C. Punshi.
4. Shri M.C. Dhawan.
5. Shri P.S. Sachdeva.
6. Shri R.L. Goel.
7. Shri Bali Ram.
8. Shri Raj Deo Ram.
9. Shri Gorakhnath.
10. Shri S.K. Khandelwal. .. Respondents.

(Respondents 3 to 10, all District
Opium Officers, C/o Narcotics Commissioner
of India, 19, The Mall, Morar,
Gwalior-6, Madhya Pradesh).

By Advocate Mrs Raj Kumari Chopra (Respondent No.
1 and 2).

None for the contesting respondents.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1393/88

New Delhi this the 9th Day of March, 1995.

Hon'ble Sh. N.V. Krishnan, Vice-Chairman (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shiv Pujan Singh Yadav,
S/o Sh. Ram Ker Yadav,
Inspector (Narcotics),
Office of Deputy Narcotics Commissioner,
B-57, Mahanagar,
LUCKNOW (UP). ...Applicant

(By Advocate Sh. B.R. Saini, proxy for Sh. R.K. Saini,
Counsel).

Versus

1. Union of India through
the Secretary, Central Board
of Excise and Customs,
New Delhi.
2. Narcotics Commissioner of India,
19, The Mall, Morar,
Gwalior-6.
3. Sh. H.C. Punshi, presently posted
as District Opium Officer.
4. Sri M.C. Shawan, presently posted
as District Opium Officer (under
suspension).
5. Sri Pratap Singh, Superintendent
(Executive).
6. Sri R.L. Goyal,
Superintendent (Executive).
7. Sri Gorakhnath,
Superintendent (Executive).
8. Sri S.K. Khandelwal,
Superintendent (Executive)
9. Sri Bali Ram, presently posted
as District Opium Officer.
10. Sri Raj Deo Ram,
District Opium Officer.
11. Shri Chhotey Lal, presently
posted as District Opium Officer.

12. Sri P.L. Yadav, presently posted as District Opium Officer.

(Respondents 3 to 12 C/o Narcotics Commissioner of India, the Mall, Morar, Gwalior (MP).)

... Respondents

(Respondents 1 & 2 by Advocate Mrs. Raj Kumari Chopra)

(None present for respondents 3-12)

ORDER

Hon'ble Sh. N.V. Krishnan:-

This O.A. was earlier filed in the Allahabad Bench of this Tribunal on 21.1.87. This application was transferred to the Principal Bench along with a number of other cases and that is how this matter is before us.

2. The applicant is employed under the Narcotics Commissioner of India, Gwalior, the second respondent. The application is filed against the revised seniority list of Inspectors, Ordinary Grade (OG) issued under the memo dated 7.2.94 of the second respondent (Annexure XII-A) - 1984 seniority list, for short.

3. That seniority list was challenged in the

High Court of Madhya Pradesh by Sankatha Prasad in Writ Petition No.128 of 1984 for the reason that his promotion as Inspector w.e.f. 1.4.1971 was treated as an ad hoc promotion and hence reviewed by the DPC referred to in that memo whereas, his contention was that his promotion, though provisional was not ad hoc and, therefore, not required to be reviewed by that DPC. This petition was allowed by the Annexure XIII order dated 30.10.1985 by a learned Single Judge with the following directions:-

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"In the result, the petition is allowed to the extent stated below. The seniority list produced at Annexure P-6 is quashed and set aside and it is directed that the petitioner shall be shown as senior to the respondents 4 to 26 in the cadre of Preventive Inspectors and further promotion shall be dealt with accordingly giving due weight to the seniority to the extent it is considered relevant. It is unnecessary to call upon the respondents 1 to 3 to redraw the seniority list. Let an order in the nature of mandamus be issued directing the respondents 1 to 3 to assign seniority to the petitioner over the respondents 4 to 26. Seniority list shall stand re-drawn as herein indicated. Promotions given shall be liable to readjustment in the light of the direction herein. In the circumstances of the case, it is directed that the parties shall bear their own costs as incurred. The outstanding amount of security deposit shall be refunded to the petitioner after verification."

4. In pursuance of this order, the seniority list of Inspectors (OG) was redrawn by the second respondent and issued under memo dated 4.2.86 (Annexure XIV) which reads as follows:-

"Subject: Seniority list of Inspectors (OG) redrawn in the light of the judgement of the M.P. High Court Bench at Indore delivered on 30.10.85 in the Writ Petition No.128/84.

The Madhya Pradesh High Court Bench at Indore while delivering the judgement on 30.10.1985 in the Writ Petition No.128/84 - Sankatha Prasad Vs. Union of India and others - has quashed and set aside the revised seniority list of Inspectors (OG) issued vide this office Memorandum F.No.5/1/Et.I/84 dated 7.2.1984 and has also ordered that "seniority list shall stand redrawn". Accordingly, in view of the directions given by the aforesaid High Court, the seniority list of Inspectors (OG) has been redrawn and is circulated herewith.

2. Objections, if any, against the aforesaid seniority list, may be filed within a period of 15 days from the date of receipt of the seniority list".

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In the redrawn seniority list - 1986 seniority list, for short - not only was Sankatha Prasad, the petitioner before the M.P. High Court placed at Serial No.30 as against Serial No.75 in the earlier seniority list dated 7.2.1984 but the applicant was also placed at serial No.41 as against Serial No.99 assigned to him in the earlier/seniority list.

5. However, a subsequent memo dated 08.11.1986 (Annexure-XV) was issued by the second respondent which reads as under:-

"Subject: Seniority list of Inspectors (OG) - Assigning seniority to Shri Shankatha Prasad in the light of judgement of M.P. High Court Bench at Indore delivered on 30.10.85 in Writ Petition No.128 of 1984.

The M.P. High Court Bench at Indore while delivering judgement on 30.10.85 in the Writ Petition No.128/1984, Shri Shankatha Prasad Vs. Union of India and others has quashed and set aside the revised seniority list of Inspectors as circulated vide this office memorandum F.No.5(1)Et.1/84 dated 7.2.84 and has also ordered that seniority list shall stand redrawn. The department has also filed a Letters Patent Appeal in the Division Bench of the High Court at Indore and the same is under consideration. Thus, until the pendency of the L.P.A., the seniority list of February, 1984, which stands redrawn in terms of the Court's order in as much as the petitioner Shri Shankatha Prasad stands senior to Shri J.K. Saxena, remains effective, and the subsequent seniority list issued under this office memorandum F.No.5/6/Et.1/86 dated 4.2.86, is held in abeyance.

2. Shri J.K. Saxena has been assigned seniority notionally in the grade of Inspector (OG) above the name of Shri S.H. Khan and below the name of Shri Birdeo Ram i.e. at Sl. No.19(A) instead of Sl. No.26 in the seniority list as it stood on 7.2.84 referred to above, in the light of the judgement of the U.P. High Court of Judicature at Allahabad delivered on 25.7.84 in the Writ Petition NO.478 of 1976.

3. Shri Sankatha Prasad is hereby assigned seniority in the grade of Inspector above the name of Shri J.K. Saxena and below the name of Shri Birdeo Ram i.e., at Sl No.19 AA over Sl. No.19A instead of Sl. No.75 in the seniority list as it stood on 7.2.84 in the light of M.P. High Court Bench at Jabalpur's judgement delivered on 30.10.85 in the Writ Petition No.128 of 1984 subject to the decision in the following L.P.A./Writ Petitions etc. pending in the various High Court/Central Administrative Tribunals".

1. L.P.A. No.64/85 Union of India Vs. Sankatha Prasad.	M.P. High Court Bench at Indore.
2. Writ Petition No.228/84 Raj. Kumar Menon Vs. Union of India & Ors.	M.P. High Court Bench at Indore. (Since transferred to Central Admin. Tribunal, Jabalpur.
3. Writ Petition No.101/85 C.L. Sunehara Vs. Union of India & Others.	M.P. High Court Bench at Indore (Since transferred to Central Administrative Tribunal, Jabalpur).
4. Writ Petition No.437/84 A.S. Negi Vs. Union of India and Others.	Rajasthan High Court Bench (since transferred to Central Administrative Tribunal, Jodhpur.
5. Writ Petition No.425/83 U.K. Verma Vs. Union of India & Others	M.P. High Court Bench at Gwalior. (Since transferred to Central Administrative Tribunal, Allahabad Bench at Jabalpur) (Sic)
6. Writ Petition No.959/84 R.N. Yadav Vs. Union of India & others.	U.P. High Court Bench at Lucknow.
7. Writ Petition No.6976/84 Surendra Nath Khare Vs. Union of India & Others.	U.P. High Court Bench at Allahabad.
8. Writ Petition No.6977/84 Kedar Nath Lal vs. Union of India & others.	U.P. High Court Bench at Allahabad.

Sd/-
(A.M. Prasad)
"Narcotics Commissioner of India"

6. Aggrieved by this subsequent order, this applicant has filed this O.A. seeking the following reliefs:-

"(a) The seniority list dated 7.2.84 and the order dated 8.11.86 be quashed;

(b) the following seniority lists be maintained:-

- (i) F.No.5(24)Estt./78 dated 30.12.78;
- (ii) F.No.5(15)Estt-1/81, dated May, 1981;
- (iii) F.No.5(21) Estt-1/83, dated 14.6.83; and
- (iv) the seniority list dated 4.2.86;"

(c) the respondents nos. 1 and 2 may be directed to promote the applicant to the post of District Opium Officer on the basis of the seniority list dated 4.2.86; and

(d) quash the promotions of respondents Nos.3 to 12 made on the basis of the seniority list prepared in the year 1984."

7. The applicant has impleaded, besides the official respondents 1 and 2 (Union of India through the Secretary, Central Board of Excise and Customs (CBEC) and Narcotics Commissioner), 10 other respondents. The official respondents (Govt. for short) alone have filed a reply contesting the claims made by the applicant. Government have explained how the 1984 seniority list (Annexure XII-A) was issued, which was successfully challenged before the High Court of Madhya Pradesh by Sankatha Prashad. Their stand is as follows:-

7.1 There were three units in the Department

(a) Madhya Pradesh and Rajasthan (b) Uttar Pradesh (c) Narcotics Commissioner, Headquarters. Each unit had

its own seniority list which resulted in anomalies in promotions when persons in the units compared themselves with those working in other units.

7.2 This was sought to be eliminated by providing for a combined seniority list based on confirmation. That procedure also suffered from the same deficiency.

7.3 Hence a one man committee under Shri Shiv Naubh Singh O.S.D. was appointed to examine and review the organisational and administrative set up of the Narcotics Department. It would appear that he had submitted his report and some orders had been issued by the Ministry on 20.3.1970. Referring to this order Shri Shiv Naubh Singh wrote to the Narcotics Commissioner on 30.3.1970 (Annexure CA-3 with the reply) which, inter alia, stated as follows:-

"4. As I told you, we are also considering the question of rationalisation of the various cadres in the Narcotics Administration. Pending the finalisation of these proposals, we would suggest that the selections and promotions for the new posts may be made, according to the existing regulations, on a provisional basis. It would be advisable if the persons selected for promotion are informed in writing that the promotions are liable to be revised and regulated in the light of the final decisions regarding the rationalisation of cadres etc."

7.4 The applicant and certain others were promoted as Preventive Inspectors by the Annexure-I order dated 15.5.71. The appointment was described as temporary. This order was not in accordance with the directions given in the Annexure CA-3 d.o. letter dated 30.3.70 extracted above. Hence, another order

was issued on 31.1.73 (Annexure IV) which appointed the persons mentioned in that order, "to officiate on purely provisional basis and until further orders to the grade shown in column 3 and from the date shown in column 4 against each". The name of the applicant is mentioned at Serial No.12 and he is shown to be appointed as Preventive Inspector from 16.5.1971. The order ended as follows:-

"The above officials may please note that their seniority in the grade shown in col.3 above shall be decided later on. They may also note that their promotions are liable to be revised and regulated in the light of final decision regarding rationalisation of cadres etc."

7.5 Final orders were issued on 6.6.75 (Annexure VII) on the one-man committee's recommendations. In so far as that order concerns this OA, the following provisions may be noted:-

(a) The cadre of Inspector was unified merging the Preventive Inspector, Inspector Cultivation and Inspector Factory.

(b) It was provided that recruitment would be in the ratio of 1:1:1 by promotion of Sub-Inspectors, by promotion from ministerial cadre, i.e., UDC & Steno, and by direct recruitment.

(c) The combined seniority list of Inspectors will be on the basis of the length of service in the respective grades in the units concerned;

(d) Likewise, the combined seniority list of UDCs/Stenographers will also be on the basis of continuous length of service in the respective grades in the units concerned.

Para 6 of the instructions is important for our purpose. It reads as follows:-

"These instructions take effect from the date of issue of this letter and all promotions/recruitments to the grade of Sub-Inspector/Inspector should hereafter be

made in accordance with the revised procedure. All "promotions" made to the grades of Preventive Inspector/Gomashta/Factory Assistants/Head Clerk on ad hoc basis prior to the date of issue of this letter should also be reviewed by the duly constituted DPC to be held at an early date. All these ad hoc appointments will not count for the purpose of seniority in the respective grades or for the purpose of computing the minimum qualifying service to become eligible for promotion to higher grades."

all information and to furnish the same in the form of table

7.6 It is stated that the DPC which was held

in 1975 in pursuance of these instructions did not

follow the instructions in regard to the promotions

made from UDC to Inspector after 1970. The applicant could not have been confirmed as Inspector from 1974 if the DPC held in 1975 had followed the instructions. It is stated that in

the confirmed seniority list of UDC, prepared in pursuance of the Annexure VII instructions (CA-1), the applicant occupied a low place which did not justify his promotion from 16.5.1971.

7.7 Government state in para 3-E of the reply

the reason for issuing the Annexure XII-A 1984 seniority list. It is stated therein as follows:-

to para 3-E "That in 1980, one Inspector alongwith his some other associates made representation to the Central Board of Excise and Customs, New Delhi stating that the Board's order dated 6.6.75 were not kept in view while convening the 1975 Departmental Promotion Committee. On this representation the Board after careful consideration in consultation with the Department of Personnel and Administrative Reforms (Rules framing authority) have observed that the promotion to the grade of Inspector (Ordinary grade) made during the years 1970-73 on the basis of unitwise seniority, were not reviewed by the Departmental Promotion Committee, which was against Board's letter dated 6.6.75. Consequently on the directions of the Board all the previous cases of the promotions for the period 1.5.69 to 6.6.75 were reviewed by the constituted Departmental Promotion Committee. The seniority of the promotees

were recasted strictly in view of norms laid down and revised seniority list was circulated as on 7.2.1984."

7.8 It would appear from para 17 of the reply from the Board that detailed instructions were received/in the letter

No.A.2-3020/55/80-Annexure-III-A, dated 28.6.82 (not exhibited) regarding disposal of the representations.

Based on these instructions a DPC was held in December, 1983. The seniority list was recast assigning notional dates to some promotees and published on 7.2.84 (Annexure XII-A).

8. Government have further stated that, against the Annexure-13 judgement of the learned Single Judge of the M.P. High Court, a Letters Patent Appeal has been filed which is pending. That judgement was erroneously implemented by issuing the Annexure XIV order dated 4.2.1986. However, this was kept in abeyance by the Annexure XV order dated 8.11.1986, which, at the same time, gave effect to that judgement in respect of the petitioner therein (Sankatha Prasad), pending disposal of the LPA.

9. It is also pointed out that certain officers senior to the applicant as Inspector have not been impleaded by the applicant and the OA suffers from non-joinder of parties.

10. We have heard the learned counsel for the parties. The learned counsel for the respondents contended that, as can be seen from the prayers made, this OA is barred by limitation and in respect of one prayer, this Tribunal has no jurisdiction. Further, as all

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the persons, who would be adversely affected, if any order is passed allowing this OA, have not been impleaded, this OA should be dismissed for non-joinder of parties. As these issues go to the root of the matter, we heard the counsel at length and reserved it for orders. The only other matter heard on merit was whether the Government could have issued the Annexure XV order dated 8.11.1986.

Order not being called for in accordance with the rule

11. The O.A. was filed on 21.1.1987 before

the Allahabad Bench. The learned counsel for the applicant pointed out that the plea of limitation was not taken before that Bench and it has also not been taken in the reply. Therefore, the respondents cannot raise that issue now.

Verdict given by the learned counsel for the respondents

at page 32 of the judgment of the court

12. We are unable to agree. The case has come up for final hearing now. There is a bar in Section 21 of the Act in regard to limitation and it is the duty of the Tribunal to consider this aspect of the matter. No order has been passed earlier in this regard. Hence, the issue can be considered now.

Verdict given by the learned counsel for the respondents

at page 33 of the judgment of the court

13. Prima facie, all the prayers except the prayer to maintain the seniority list dated 4.2.1986 (Annexure-14) and the prayer to quash the order dated 8.11.1986 (Annexure-15) are barred by limitation. It is not necessary for us to consider the prayers made seeking the maintenance of the seniority lists issued before 1986 and made on 20.6.1986 by the memorandum dated 30.12.1988, May, 1981 and are to be disposed of on aفصل and dismissed as so filed.

Verdict given by the learned counsel for the respondents

on 14.6.1983, all of which are undoubtedly barred by limitation and one of them (based on memo dated May, 1981) is also barred by jurisdiction.

14. The grievance is of 14. The applicant received the impugned 1984 seniority list (Annexure XII-A) on 14.2.1984 and immediately, he sent a telegraphic representation to the second respondent followed by a detailed representation, copy of the representation is not on record. It has, however, to be noted that there was no scope for preferring a representation because the Annexure XII-A memo made it clear that the principles of seniority cannot be questioned. It is alleged that due to the influence of the local officials in the Headquarters office, representations of the applicant and others did not bear any fruit. In fact, it is alleged that it was not considered by the authorities.

15. It is thus clear that the grievance of the applicant arose within a period of three years anterior to the coming into force, from 1.11.1985, of the Administrative Tribunals Act, 1985. Therefore, in terms of Section 21 of that Act, the O.A. should have been filed before 1.11.1986. Hence, there is a delay in filing the O.A. No application of condonation of delay has been filed.

16. It is stated that one of the Inspectors similarly affected, Shankatha Prasad, filed the writ petition before the High Court of M.P., referred to above. It is also contended that the 1984 seniority list (Annexure XII-A) was quashed completely by the

High Court. Hence, a fresh list had to be drawn. The respondents were bound to redraw the seniority list generally in the light of that judgement. Hence, the applicant did not file a similar petition before the High Court of Allahabad or move the Tribunal within the period allowed for agitation of such grievance, namely, before 1.11.1986.

We have considered this plea. We are unable to agree that the order of the M.P. High Court was correct (Annexure XIII) quashed the impugned Annexure XII-A seniority list in its entirety, though this was the only impression which the respondents 1 and 2 also had. Further, a perusal of para 33 of the order of the High Court extracted in para 3 above makes it clear that the respondents were not called upon to redraw the entire seniority list, as it was held to be unnecessary. The only direction given was that the respondents 1 to 3 should assign seniority to the petitioner over Respondents 4 to 26 and that the seniority list was to be redrawn to this extent alone.

The learned counsel for the applicants submits that the claim of fundamental right cannot be defeated by setting up the plea of limitation. He relies on the judgement of the Supreme Court in Ram Chander Shanker Vs. State of Maharashtra, 1974 (1) SLR 470. We have perused that judgement. That case is distinguishable. It was a petition under Article 32 of the Constitution. There, the applicant

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..... was informed by a competent authority in 1960 that the rules of promotion have not been unified in the units which integrated to form the State of Maharashtra and that the unit seniority list will be the basis for promotion. However, the petitioner came to know through a judgement of the Bombay High Court in Kapoor's case in 1969 that unified rules for promotion have been notified. It is in this circumstance that there was delay in filing his writ petition. The Court, therefore, held that the petitioner had a right to be considered on a similar basis as others of other units and hence that right could not be defeated on the ground of limitation which had no basis in the instant circumstance. In the instant case, there is no question of any fundamental right being violated. The applicant was already aware of the impugned 1984 seniority list issued on 7.2.1984. He neither filed a writ petition in the High Court like Sankatha Prasad nor did he file this O.A. before 1.11.1986.

..... relied on the judgement of the Supreme Court in K.R. Mudgal and Others Vs. R.P.A. Singh and Ors., AIR 1986 SC 2086. That was a case where the seniority list was not objected to in 1958, 1961 and 1965. Based on the earlier seniority list, a seniority list was issued in 1968 to which an objection was raised in 1975. Hence, the Supreme Court held that the challenge was vitiated by laches. It was also held that after 3-4 years employees must have some assurance that their seniority should not be disturbed.

21. Also there is a case (21) No. doubt, if the present case is not action and is delayed so seriously as the above case but, one can say nevertheless, it is delayed and barred by limitation.

22. There may be limitation in the case of limitation of suit

23. The applicant next contends that, in any case, the Annexure XIII order of the Madhya Pradesh and Bihar High Court in Sankatha Prasad is a judgement in rem and it is submitted that it should be given effect to by the respondents in the suit in the respect of all persons similarly situated.

24. It is submitted that there is no limitation of suit

25. In support of his argument, the learned counsel cites the judgement of the Principal Bench in the case of Tota Ram Sharma vs. Union of India & Ors., 1990 (2) ATL 618. He draws our attention to an observation made therein to the effect that the judgements of the Tribunals are generally in rem because the decisions rendered affect someone or other based on the interpretation of rules and instructions. We have seen that judgement. That observation has been taken out of the context. It was made in the case of John Lucas, 1987 (3) ATC 323. That applicant was a third party who was affected by an earlier judgement rendered by the Principal Bench. Therefore, he filed a fresh original application for adjudication. It was held that, in such a situation, the proper course of action is to apply to the Tribunal to review the earlier decision to which the petitioner was not a party, as it has affected him adversely. It is in this context that it was observed that the judgements of the Tribunal in most cases are not confined to some individual but is more pervasive and hence it would affect others also as if it was a judgement in rem.

24. However, it cannot be said as a general law that every judgement of the High Court or the Tribunal is a judgement in rem. It depends upon the facts of the each case and the nature of the order passed by the High Court or by the Tribunal. We have no doubt that the Annexure XIII order of the M.P. High Court in Sankatha's case is only an order in personam and the only person intended to be benefited by that order was petitioner therein. Persons other than Sankatha Prasad who might be similarly situated may make such a claim based on that judgement. That is entirely a different issue. It may, however, be added that in this OA the applicant has not even made such a prayer.

25. Of course, when the applicant makes the prayer that the seniority list dated 4.2.1986, Annexure XIV be restored, it implies that the benefit of the judgement in Sankatha Prasad's case should be made applicable generally, because the seniority list was redrawn on the basis of such an understanding of the order of the High Court and circulated under the memo dated 4.2.1986.

26. It is contended that the applicant has not impleaded the persons likely to be affected if this O.A. is allowed. Reliance is placed on Ranga Reddy and Ors. Vs. State of Andhra Pradesh & Ors., (1987(Supp.)SCC 15) and Government of Andhra Pradesh and Ors. Vs. M.A. Kareem & Ors. (1991(2) SLJ 14).

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lawdays as an ordinary rule of the law.

27. The learned counsel for the applicant, however, contended that what is being challenged is only a principle and hence, it is not necessary to implead any individual respondent other than the Government.

28. We have considered this matter. We

find merit in the objection taken by the Government.

We are unable to accept that what is involved is merely a question of principle or a question of law. Disputes arise whether the applicants were first promoted on regular basis or on an ad hoc basis and whether they were confirmed in accordance with or in

violation of standing instructions and also whether it was necessary to review their cases by a review DPC.

These questions involve the merits of individual appointments. Hence, it is necessary to implead all those persons who are placed above the applicant in the seniority list against whom the applicant has a grievance. That has not been done.

29. We further notice that, admittedly, the

applicant is junior to Sankatha Prasad who filed the writ petition No. 128/84 in the High Court of Madhya Pradesh. The latter's place in the 1984 seniority list is at serial No. 75. He impleaded 23 persons as private respondents. The seniormost of them (H.C. Punshi) was placed in that seniority list at serial No. 24 and the juniormost (G.S. Dubey) was placed at serial No. 74.

(H.C. 128/84) (1984-85) 3 M.L.J. 820 Date

30. The applicant is very much junior to Sankatha Prasad. He is at serial No. 99 in the 1984 seniority list. Nevertheless, he has impleaded only 10 contesting private respondents (R-3 to R-12), whereas, Sankatha Prasad had impleaded all the 23 persons over whom he claimed seniority, because all of them were first appointed as Inspectors after he was appointed on 25.2.71. On that rationale, the applicant, who was appointed on 16.5.71 as Inspector should have impleaded all those who were appointed on a later date but are placed higher than him in the 1984 seniority list.

31. The drawback of not impleading specifically all persons against whom the applicant has a grievance in regard to the seniority can easily be illustrated. The seniormost person impleaded by the applicant is H.C. Punshi at serial No. 24 of the 1984 seniority list. If the application is allowed, the applicant's name should be shifted from serial No. 99 to immediately above serial No. 24 i.e. above H.C. Punshi. This obviously cannot be done because this would mean that he is to be placed above a number of persons like Nabi Noor Khan, serial No. 25 and even above serial No. 98 V.G. Chunekar, whom he has not impleaded as parties. The alternative would be to place H.C. Punshi and others impleaded by him en bloc below him i.e. serial No. 99. This also cannot be done because this will be unjust to these persons because they will be placed junior to persons who acknowledgedly are junior to them. For example if H.C. Punshi is placed at S.No. 99A below the applicant, he

will also be junior to S.No. 98 V.G.Chunekar and many others who did not claim any seniority over H.C. Punshi.

Accordingly, the 23 named respondents should be impleaded

who are senior to the respondents and should be impleaded

32. It may be added here that such a problem may not arise in the case of Sankatha Prasad even though he too did not implead all persons below H.C. Punshi but above him. He omitted a number of persons on a principle viz., they were all appointed earlier than him. Therefore, the 23 named persons over whom he claimed seniority can be brought en bloc below him.

They will be not only junior to Sankatha Prasad in accordance with the Annexure-13 judgement, but they will be junior to others, whom Sankatha Prasad had not impleaded, being his undisputed seniors.

33. In the circumstance, we are of the view

that the objection taken by the respondents about misjoinder of necessary parties is valid and the application cannot be maintained on this ground also.

34. It is, however, contended by the learned

counsel for the applicant that the seniority lists which were in force earlier, the last of which was issued on 14.6.83, have been drastically recast by the 1984 seniority list (Annexure XII-A) to the prejudice of the applicant. He contends that this could not have been done without first issuing notice to the affected parties. He relies on AIR 1963 SC 1446, *M. Chokilingam Vs. Commissioner of Income-tax*. Therefore, the impugned 1984 seniority list should be quashed.

35. We have considered this plea. No doubt, there should be fair play in administration and a decision prejudicial to an employee should not normally be taken without his being given a notice in that regard. However, in certain circumstances, it would be sufficient if such an opportunity is given after the event i.e. a post decisional opportunity.

36. We notice that the memo dated 7.2.1984 (Annexure 12-A) under cover of which the impugned 1984 seniority list has been issued, gives the reasons as to why such a seniority list was issued and the principles followed therein. However, the post decisional opportunity has been substantially denied inasmuch as the principles of seniority adopted are made immune from challenge. That would have been a good ground to challenge the 1984 seniority list but, as pointed out above, this O.A. suffers from several serious objections about its maintainability.

37. We now deal with the last issue. The Annexure-13 judgement itself has clarified that the respondents were not called upon to redraw the seniority list as a whole. Yet this was done by the Annexure-XIV order which circulated the revised 1986 seniority list. When the mistake was realised, a fresh order (Annexure XV) was issued to merely comply with the Annexure-13 judgement in strict terms i.e. giving the benefit thereof to Sankatha Prasad only and simultaneously, the Annexure XIV order has been kept in abeyance. In our view, the respondents were fully

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entitled to rectify the mistake committed by them in issuing the revised 1986 seniority list (Annexure XIV) and decide to keep it in abeyance pending a final decision by the High Court of Madhya Pradesh on the appeal filed against the Annexure-13 judgement. Therefore, their order at Annexure XV cannot be faulted.

38. However, as the Annexure-13 judgement itself has not become final inasmuch as it is stated to be pending in appeal before a Division Bench of the High Court, the fate of the Annexures XIV and XV orders will ultimately depend upon the final decision taken in that appeal. However, nothing is decided as the High Court has not passed a final order on Annexure XVII of our Rule 39. Before we conclude, we should add that the learned counsel for the applicant and the learned counsel for the respondents had also referred to the following judgements which we have not found it necessary to consider.

AIR 1955 SC 233 Hari Kishan Vs. Ahmad Ishaque.

AIR 1969 SC 1249 State of Orissa Vs.

and AIR 1970 SC 1250 B.K. Mahapatra.

ii) By the learned counsel for the respondents.

AIR 1985 SC 1367 Dr (Mrs) Sushma Sharma etc. Vs. State of Rajasthan.

AIR 1985 SC 1411 Union of India Vs. Tulsiram Patel.

1987(5) ATC 5 Ramdas Mahadu Handore Vs. Joint Secretary Government of India.

Order 40. For the reasons mentioned above, this O.A. is liable to be dismissed. It has only to be added that the parties agreed that the order passed in this O.A. will also apply to the following applications:

(a) O.A. 1394/88, Govardhan Ram Vs. Union of India & Ors.

(b) O.A. 1395/88, Ram Shanker Prasad Vs. Union of India & Ors.

(c) O.A. 1396/88, Umakant Srivastava Vs. Union of India & Ors.

(d) O.A. 1397/88, Habibur Rehman Vs. Union of India & Ors.

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Accordingly, these applications are also liable to be dismissed.

41. We have to mention here that other petitions similar to that filed by Sankatha Prasad in Madhya Pradesh High Court, filed before the same or other High Courts, have been received by this Tribunal on transfer (para 5 supra refers) and they (Transferred Applications - for short) are pending for disposal. Therefore, while the instant O.A. and the applications referred to in para 40 are being dismissed, we have to make it clear that the applicants concerned would be entitled to the benefits of any final decision that may be rendered either in the appeal against the Annexure-13 judgement or in the Transferred Application referred to above, if, either in that appeal or in the Transferred Application, any direction to that effect is given.

42. With these further observations, we dismiss this O.A. In the circumstances there will be no order as to costs.

43. In accordance with the stipulations made by the counsel for the parties, O.As 1394/88, 1395/88, 1396/88 and 1397/88 are also dismissed without costs.

44. This order shall be filed in OA-1393/88. Copies shall be kept in each of the other O.As along with the memo of parties in respect of each O.A.

(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

'SRD'

(N.V. KRISHNAN)
VICE CHAIRMAN(A)

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