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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 555/1986. DATE OF DECISION: August 17, 1990.

H.P. Singh & Others APPLICANTS.
Shri M.S. Ganesh Counsel for the Applicants.
V/s.
Union of India & Ors. RESPONDENTS.
Shri N.S. Mehta
Shri M.K. Gupta
Shri S.C. Gupta Counsel for the Respondents.

CONAM: Hon'ble Mr. G. Sreedharan Nair, V.C. (J).
Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgement? *yes.*
2. To be referred to the Reporter or not? *No.*
3. Whether their lordships wish to see the fair copy of the judgement? *No.*
4. To be circulated to all Benches of the Tribunal? *No.*

(P.C. JAIN)
Member(A)

[Signature]
17/8
(G. SREEDHARAN NAIR)
Vice Chairman (J)

17.8.1990.

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Shri N.S. Mehta	Counsel for Respondents No.1 and 2.
Shri M.K. Gupta with Sr. Counsel Shri S.C. Gupta		For Respondents 3 to 6.

CORAM: Hon'ble Mr. G. Sreedharan Nair, Vice Chairman (J).
Hon'ble Mr. P.C. Jain, Member (A).

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

JUDGEMENT

All the 15 applicants in this application under Section 19 of the Administrative Tribunals Act, 1985 (for short, the Act) are promotee Deputy Superintendents of Police (D.S.P.), Central Bureau of Investigation (C.B.I.). They have impugned the seniority lists of 'Non-deputationist' D.S.P. as on 1.12.1980, circulated vide C.B.I. letter dated 2.2.1981 (Annexure VIII); Memorandum dated 24.6.1983 from the C.B.I., whereby certain officers were appointed substantively to the post of D.S.P. (Annexure XIV); and paragraph 7 of Office Memorandum dated 7.2.1986 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training (Annexure XXV). The applicants have prayed:

- (i) they be permitted to file this application in a representative capacity under Order I Rules 8 and 8A of the Code of Civil Procedure, 1908, on behalf of all the aggrieved promotees/ D.S.P. who figure in the impugned seniority list as on 1.12.1980 and similarly to implead Respondents 3 to 6 in a representative capacity on behalf of all directly recruited D.S.P;

- (ii) the impugned seniority list as on 1.12.1980 and the Memorandum dated 24.6.1983 be declared as contrary to Government of India, Ministry of Home Affairs O.M. dated 22.12.1959 (Annexure R-1) and to the Special Police Establishment (Executive Staff) Recruitment Rules, 1963 and as violative to the applicants' fundamental rights under Articles 14 and 16(1) of the Constitution;
- (iii) to declare paragraph 7 of O.M. dated 7.2.1986 (Annexure XXV) as opposed to the rule of law and violative of Articles 14 and 16(1) of the Constitution;
- (iv) issue appropriate order or direction in the nature of certiorari quashing the impugned seniority list dated 1.12.1980, O.M. dated 24.6.1983 and paragraph 7 of O.M. dated 7.2.86; and
- (v) issue an appropriate order or direction in the nature of mandamus directing respondents 1 and 2 to draw up a fresh seniority list of non-deputationists/D.S.P. in the C.B.I. with reference to the impugned seniority list as on 1.12.1980, showing Shri R.K. Sharma, direct recruit/respondent No.3 after S.No.17 i.e., after Shri D.M. Rao and showing S/Shri J.S. Waraich, S.P. Singh and H.C. Singh, direct recruits/respondents 4 to 6 after S.No.35, i.e., after Shri Jadunandan Prasad.

2. Very briefly stated, the applicants' case is that the impugned seniority list as on 1.12.1980/^{and} O.M. dated 24.6.1983 in regard to confirmation to the posts of D.S.P. are contrary to the O.M. dated 22.12.1959 and violative of Articles 14 and 16(1) of the Constitution. Similarly, paragraph 7 of the O.M. dated 7.2.1986, which partly

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modifies the instructions in O.M. of 1959 is stated to be arbitrary and violative of Articles 14 and 16(1) of the Constitution in so far as its operation is made effective with effect from 1st March, 1986. It is contended that applicants No.1 to 3 were promoted and have been continuously working as Deputy S.P. with effect from 3rd August, 1974 and they satisfactorily completed their probationary period of two years in August, 1976, while respondents No.3 to 6 were directly recruited - two and four years later and started working as D.S.P. with effect from 31.1.76, 15.12.78, 15.12.78 and 23.12.1978 respectively. The names of the aforesaid three applicants appeared at Sl. Nos.8, 9 and 11 respectively in the impugned seniority list, but the names of the four respondents appeared at Sl. Nos.5, 6, 7 and 10 respectively in the aforesaid seniority list. It is stated that if the respondents 1 and 2 had convened the D.P.C. for confirmation in the post of D.S.P. in time, the applicants would have been senior to the respondents. Similarly, it is stated that the D.P.C. for promotion to the post of S.P. had not been convened in time. In both cases, the action of respondents 1 and 2 is alleged to be mala-fide with a view to helping the direct recruits. It is also alleged that vacancies in the quota of promotees were diverted to direct recruits. It is contended that the principles of seniority now laid down in O.M. dated 7.2.1986 issued on the basis of pronouncements of Hon'ble Supreme Court in a number of cases favours the applicants' case, but in view of the restrictions in para 7 of the said O.M. to the effect that seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened, the applicants are being denied the relief. This restriction is, therefore, sought to be quashed on grounds of arbitrariness.

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3. The case of respondents 1 and 2, in brief, is that both the promotees and direct recruits are categorised as non-deputationists to differentiate them from deputationists/transferees; the seniority as on 1.12.1980 was fixed in accordance with the Recruitment Rules for the post of D.S.P. in C.B.I. and the general principles laid down in O.M. dated 22.12.1959 read with O.M. dated 17.11.1975 (Annexure R-2); confirmations of D.S.P. vide O.M. / Notification dated 24.6.83 were based on the instructions contained in O.M. dated 22.12.1959 and 17.12.75; probation period of three years was prescribed for the post of D.S.P. in C.B.I. vide Notification dated 30.6.76; the matter of confirmation of D.S.P. was processed in 1976 and the seniority of the confirmed direct recruits as well as promotees was arranged according to prescribed quota and the seniority in respect of unconfirmed direct recruits and promotees was also fixed and seniority list as on 1.12.80 was issued accordingly; confirmation of D.S.P. was again taken up in 1981 on the basis of seniority list as on 1.12.80 and after obtaining the approval of the UPSC, orders in respect of persons approved for confirmation were issued in 1983; 27 promotee Deputy Superintendents of Police were regularly appointed in April, 1984 against 27 vacant slots meant for direct recruits in consultation with UPSC as one time settlement for utilization of these 27 vacant slots; and confirmation of other D.S.P. was also taken up 1984 and the matter was under consideration in consultation with the UPSC. The allegation about favouring direct recruits is stated to be absolutely incorrect and the diversion of 27 vacant slots meant for direct recruits to the promotees is mentioned as an instance in proof of the bonafides of respondents 1 and 2. The counter-affidavit also states that only Dy. Superintendents of Police who were appointed to that rank in 1973 have been promoted and the petitioners who were appointed as D.S.P. on or after August, 1974 are junior to them. It is also stated that no posts meant for promotees

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have been diverted to direct recruits. The matter regarding confirmation of D.S.P. is stated to have been taken up in May, 1976 with crucial date for consideration as 1.10.76, and the D.S.P. who were approved for confirmation were confirmed with effect from 20.11.1977. As the applicants had not completed the period of three years ^{probation} / on 1.10.1976, their cases could not be considered for confirmation in 1976. The matter regarding confirmation of the applicants No.1 and 2 along with other directly recruited D.S.P. as per seniority list as on 1.12.1980, was taken up in 1981 and confirmation orders were issued in 1983. The confirmation of other applicants could not be taken up at that time as there were 27 vacant points meant to be filled up by direct recruits. The matter regarding convening of D.P.C. for promotion of D.S.P. to the rank of Superintendent of Police is stated to be under process. As regards challenge to paragraph 7 of the O.M. dated 7.2.1986, it is stated that the instructions issued in the aforesaid O.M. could not have been ^{given} retrospective effect and the date 1.3.1986 appears to have been fixed so that the instructions reach all the concerned authorities including the subordinate offices at distant places and a uniform date is kept for making these instructions effective to avoid any confusion and to ensure uniformity in their application.

4. Respondents No.3, 5 and 6, in their counter-affidavit have adopted the reply filed by respondents 1 and 2. No reply was filed by respondent No.4.

5. We have perused the documents on record and have also heard the learned counsel for the parties.

6. In their preliminary objection, the respondents have raised the issue of limitation. The applicants also filed on 1.8.1986 a petition under Section 21 of the Act regarding condonation of delay wherein they contended that their application filed on 21.7.1986 is not barred by

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limitation, and without prejudice to this contention, the delay, if any, was bonafide, unintentional and due to circumstances beyond the control of the applicants and that the applicants have sufficient cause for not making the application within the statutory period.

7. It is not in dispute that the impugned seniority list was circulated vide letter dated 2.2.1981 and the applicants made a representation shortly thereafter, which was rejected on 30.4.1981. The limitation for this purpose would, thus, commence from the date of the order rejecting the representation as held by the Supreme Court in the case of S.S. Rathore Vs. State of Madhya Pradesh (AIR 1990 S.C. 10). Further, as the grievance in this respect had not arisen during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal exercisable under this Act, which was on 1.11.1985, the Tribunal has no jurisdiction in accordance with the provisions of clause (a) of sub-section (2) of Section 21 of the Act. In such a case, the Tribunal does not have jurisdiction even to condone delay (V.K. Mehra Vs. The Secretary, Ministry of Information & Broadcasting, New Delhi - ATR 1986 (1) CAT 203). Thus, the challenge to the impugned seniority list as on 1.12.1980 and the prayer for a direction in the nature of mandamus for drawing up a fresh seniority list with reference to the impugned seniority list cannot be adjudicated upon by us as being barred by limitation.

8. Memorandum / Notification dated 24.6.1983 is based on the seniority list as on 1.12.1980. In view of this and in view of what is stated in the preceding para, challenge to the Memorandum / Notification cannot be gone into by us. Moreover, it is also barred by limitation in view of the provisions of sub-section (2) of Section 21 of the Act.

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9. As regards the relief for quashing paragraph 7 of the O.M. dated 7.2.1986 in so far as it makes the orders contained in this O.M. applicable with effect from 1.3.1986 and for not reopening any cases settled in accordance with the instructions in force prior to the issue of this O.M., the learned counsel for the respondents urged that since the applicants had not made any representation in this regard and thus not availed of departmental remedies, the application in this regard is not maintainable in accordance with the provisions of Section 20 of the Act. We are not impressed by this contention on behalf of the respondents. In accordance with the provisions of Section 20, an application shall not ordinarily be admitted unless the Tribunal is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. This application has already been admitted. Thus, the bar under Section 20 is not available to the respondents at this stage.

10. By O.M. dated 7.2.1986, the general principles for determination of seniority in the Central Services as contained in the Annexure to Ministry of Home Affairs O.M. dated 22.12.1959, were partially modified. Para 7 of this O.M., which has been challenged by the applicants is reproduced below: -

"7. These orders shall take effect from 1st March 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the issue of this O.M. "

The case of the applicants is that the fixation of the date of 1.3.1986 for giving effect to the aforesaid O.M.

of 1986 is wholly arbitrary, irrational and discriminatory. Further, the condition that seniority already determined in accordance with the existing principles on the date of issue of these orders, will not be reopened, is also arbitrary and unconstitutional. It is also stated that the contents of paragraph 7 of the aforesaid O.M. of 1986 are not based on any intelligible differentia having any rational nexus with the object sought to be achieved with the remaining contents of that O.M. and the said paragraph 7 is tantamount to barring the jurisdiction of the courts to adjudicate upon the grievances or otherwise of any seniority list published prior to 1.3.1986. Such prohibition or bar is per-se opposed to the rule of law and ex-facie arbitrary, null and void.

11. The respondents, in their reply, have stated that these instructions could not be given retrospective effect because earlier instructions contained in O.M. dated 22.12.59 were in force and giving retrospective effect to these instructions would have created confusion requiring revision of seniority lists retrospectively, which apart from being an administratively unsound proposition, would have created administrative complications and difficulties by officers considered hitherto senior and may be working in higher positions being declared as junior and thereby facing reversion in some cases. The learned counsel for the respondents also cited at the bar the following observations of the 5-Judge Bench of the Supreme Court in the case of Direct Recruit Class II Engineering Officers' Association and Others Vs. State of Maharashtra and Others (Judgment Today 1990 (2) S.C. 264: -

"47. To sum up, we hold that:

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(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding

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out any possible error. It is not in the interest of Service to unsettle a settled position. "

In R.S. MAKASHI & OTHERS V. I.M. MENON & OTHERS (1982(2) S.C.R. 69) also, it was held that laches which sought to disrupt vested rights regarding seniority, rank and promotion cannot be condoned. In the case of Shri D.P. SHARMA AND OTHERS V/s. UNION OF INDIA AND ANOTHER (JUDGEMENT TODAY 1989 (1) S.C. 359), their lordships of the Supreme Court held as below:

"The general rule is the seniority is to be regulated in a particular manner in a given period, it shall be given effect to, and shall not be varied to disadvantage retrospectively."

12. From the above, it is clear that prior to issue of instructions on 7.2.1986, the inter-se seniority was to be governed by the instructions contained in the Annexure to O.M. dated 22.12.59. When appointments to the service were made in accordance with the Recruitment Rules and the senior^{ity} had been fixed in accordance with the principles laid down by the Government, certain rights accrued to members of the service. Those rights cannot be taken away by giving retrospective effect, as the applicants have pleaded, to the provisions contained in the O.M. dated 7.2.86. Therefore, the provisions in para 7 of the aforesaid O.M. of 1986 cannot be taken as bad in law. The gap between the date of issue of orders, i.e., 7.2.86 and the date with effect from which the revised instructions were to apply, i.e., 1.3.1986, is satisfactorily explained in the counter-affidavit of the respondents as being necessary on administrative grounds. We do not see any arbitrariness or discrimination in the matter and we are, therefore, unable to hold that the provisions in para 7 of the aforesaid O.M. of 1986 is violative of Articles 14 and 16 (1) of the

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Constitution. In any case, the gap in these two dates does not make any difference in the case of the applicants 13. As regards the prayer for treating the application in a representative capacity and to implead Respondents 3 to 6 also in a representative capacity, the respondents opposed this prayer as the requirement of Order I Rules 8 and 8A of the CPC had not been followed. The learned counsel for the applicant fairly conceded that the application may not be treated to have been filed in a representative capacity and may be confined to parties in this case. As such, the application is not being treated as having been filed in a representative capacity.

14. In view of the above discussion, we hold that challenge to the impugned seniority list as on 1.12.1980 and to the Memorandum / Notification dated 24.6.1983 by which certain officers were confirmed in the post of Deputy Superintendent of Police is barred by limitation, and the challenge to paragraph 7 of the O.M. dated 7.2.86 is devoid of merit. The application is accordingly rejected. Parties will, however, bear their own costs.

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(P.C. JAIN)
Member(A)

G. Sreedharan Nair
(G. SREEDHARAN NAIR)
Vice Chairman(J)

17.8.1990.