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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1134/86
T.A. No.

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DATE OF DECISION 16.2.1990.

Shri K.K. Govil & Others Applicant (s)

Shri E.X. Joseph Advocate for the Applicant (s)

Versus
Union of India & Others Respondent (s)

Shri P.H. Ramchandani, Sr. Advocate for the Respondent (s)
Counsel for respondent Nos. 1 to 5.

CORAM :

Shri Rakesh U. Upadhyay, Counsel for respondent Nos. 6 to 40

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters 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 copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha,
Vice Chairman(J))

The applicants, who are working as Directors in the Central Electricity Authority, which is a statutory body constituted under Section 3(1) of the Electricity (Supply) Act, 1948, filed this application under Section 19 of the Administrative Tribunals Act, 1985, on 11.12.1986 where-
in besides the Union of India represented by Secretary, Ministry of Energy, Secretary, Department of Personnel & Training, the Chairman, Central Electricity Authority, the Chairman, UPSC and the Chairman, Railway Board, ^{they} have impleaded respondent Nos. 6 to 40 who are the affected respondents. The reliefs sought in the application

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are the following:-

- (i) to quash and strike down the decision by respondent Nos. 1 to 3 that the modified principles laid down for determination of seniority in Government of India OM No. 35014/2/AT-Estt.(D) dated 7.2.1986 will have effect only from 1.3.86 and that seniority determined earlier will not be revised (Annexure-I, pages 138 to 144 of the Paper-Book);
- (ii) to quash and strike down the seniority lists of Assistant Directors/Deputy Directors/Directors issued by the Department (including seniority lists at Annexures C, D, E and F at pages 66 to 108 of the Paper-Book) which have been determined on the basis of the principles laid down in the OM dated 22.12.1959;
- (iii) to quash and strike down the seniority granted to respondent Nos. 6 to 40 above the applicants; and
- (iv) to direct respondent Nos. 1 to 3 (a) to refix the seniority of the applicants vis-a-vis respondent Nos. 6 to 40 in the grade of Assistant Directors/Deputy Directors/Directors on the basis of the modified principles laid down in the OM No.12/5(1)/81-Admn.1 dated 18.5.1982 (Annexure-G, pages 109 to 111 of the Paper-Book) and OM dated 7.2.86: (b) to issue fresh seniority lists in the grades of Assistant Director/Deputy Director/Director on the basis of the modified principles laid down in the OM dated 7.2.86 and in accordance with the

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law laid down by the Supreme Court of India; (c) to grant the applicants confirmation in the post of Assistant Director/ Deputy Director/Director on the basis of the revised seniority and with effect from a date earlier than the date on which respondent Nos. 6 to 40 have been confirmed in the same post; (d) to grant the applicants further promotions to the post of Deputy Chief Engineer/Chief Engineer on the basis of the revised determination of seniority; and (e) to grant the applicants consequential benefits by way of arrears of pay and allowances and other due benefits on the basis of the re-fixation of seniority and due promotion and confirmation on the basis of the revised seniority in the grades of Assistant Director/ Deputy Director/Director.

2. The case of the applicants in brief is as follows. The Central Power Engineering (Group 'A') Service (hereinafter referred to as the Service) comprises the following Group 'A' Engineering posts in the Central Electricity Authority under the Ministry of Energy:

	"Grade	Scale of pay (IIIrd Pay Commission)
1.	Assistant Director/Asstt. Executive Engineer	Rs.700-1300
2.	Deputy Director/Executive Engineer	Rs.1100-1600
3.	Director/Superintending Engineer(Ordinary Grade)	Rs.1500-2000
4.	Director/Suptd. Engineer (Selection Grade)	Rs.2000-2250
5.	Deputy Chief Engineer	Rs.2000-2250
6.	Chief Engineer/Member Secretary (Level II)	Rs.2250-2500
7.	Chief Engineer/Member Secretary (Level I)".	Rs.2500-2750

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3. The Central Power Engineering (Group 'A') Service Rules, 1965 (hereinafter referred to as the 1965 Rules) deal with the Constitution of the Service (Annexure-A, pages 31 to 53 of the Paper-Book).

4. The applicants were recruited to the Service through the Combined Engineering Services Examination conducted by the UPSC in September, 1964, on the basis of advertisement in April, 1964 and they joined the Central Water and Power Commission as Assistant Directors on varying dates during October-November, 1965. They were recommended by the UPSC for appointment as Assistant Director (Electrical and Mechanical) in June, 1965.

5. Respondent Nos. 6 to 19 were recruited to the Service through interview by UPSC and were recommended for appointment without any examination in April, 1965 on Class I Posts in Central Water and Power Commission and they joined during May-June, 1965. In April, 1964, the process of recruitment by UPSC had already started.

Out of respondent Nos. 6 to 19, a large number were departmental candidates working as Technical Assistants/ Extra Assistant Directors. They were placed en bloc above the applicants in the seniority lists issued on 1.1.1966 and 1.1.1969.

6. Respondent Nos. 20 to 40 were promoted as Assistant Directors on the basis of selection by the Departmental Selection Committee by method of departmental promotion. They were given seniority from the years 1966, 1967 and 1968.

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They have been granted seniority in the cadres of Assistant Director, Deputy Director and Director on the basis of the quota-rotation and carry forward of vacancies.

7. The basic grievance of the applicants is that respondent Nos. 6 to 40 have been granted seniority above the applicants illegally and contrary to the 1965 Rules and on the basis of the arbitrary and unfair criteria laid down in the Office Memorandum issued by the Home Ministry on 22.12.1959 which has been set aside by the Government by its Office Memoranda dated 18.5.1982 and 7.2.1986.

8. The applicants preferred representations to the respondents against the wrong seniority assigned to them. Copies of the representations dated 25.4.69, 25.8.69, 28.3.70, 21.12.71 and 1.6.72 have been annexed as Annexure-B collectively, vide pages at 54 to 65 of the Paper-Book. In the Office Memorandum dated 18.5.82 issued by the Ministry of Energy, it has been clarified that the principle of rotation of vacancies enunciated in the Office Memorandum dated 22nd December, 1959 is not applicable for determining the inter se seniority of direct recruits vis-a-vis departmental promotees in the grade of Assistant Director/Assistant Executive Engineer in the Electricity Authority as the quotas of recruitment prescribed in the Service Rules relates to the posts and not to the

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vacancies. The last para of the said OM laid down that "seniority list of officers in the grade of Assistant Director/Assistant Executive Engineer may be revised and prepared in accordance with the principles of seniority embodied in the preceding paragraph". However, no steps were taken to revise the seniority lists in view of their stand that the principles laid down in the said OM would be applied only prospectively and that no revision of the existing seniority will be effected.

9. The applicants submitted representations to the respondents in the matter, copies of which have been annexed as Annexure-H collectively at pages 112-to-137 of the Paper-Book. These representations are dated 1.6.82, 28.6.82, 8.7.82, 13.7.82, 26.7.82, 2.8.82, 2.5.85 and 20.5.85.

10. By OM dated 7.2.86, the Department of Personnel and Training modified the principles laid down in the OM dated 22.12.59 in the light of the law laid down in the Supreme Court in a catena of cases. The said OM laid down that the orders contained therein shall take effect from 1st March, 1986 and that "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 OM".

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11. Thereafter, the applicants again submitted representations to the authorities which have been annexed as Annexure-J collectively at pages 145 to 158 of the Paper-Book. These representations are dated 20.3.86, 19.6.86, 21.8.86, 20.10.86 and 7.11.86.

12. The applicants have also annexed as Annexure-K at pages 159-160 of the Paper-Book, a list of Deputy Directors promoted as Directors after the issue of the seniority list on 1.1.1986. These promotions were also based on the seniority fixed on the principles of quota-rotation of vacancies and carry forward of vacancies. They have also annexed as Annexure-L at pages 161 to 163 of the Paper-Book, a statement giving the seniority as on 1.11.1986 in the grade of Director/Superintending Engineer (Elec. & Mech.) as would obtain on the basis of fresh determination of seniority according to the modified principles laid down in the Office Memoranda dated 18.5.82 and 7.2.86. They have submitted that the applicants and the respondents are holding the post of Directors and that the revised determination of seniority will not adversely affect any one of the respondents by way of reversion. The only consequence of the revised determination of inter se seniority as claimed by them would be the change in the position of seniority in the grade of Director/SE (Elec & Mech).

13. The Government respondents 1 to 5 have raised two

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preliminary objections in regard to the maintainability of the present application. Their first preliminary objection is that the basic issue raised in the present application is substantially the same as in the writ petition Nos. 12482 to 12485 of 1984 filed by Shri S.S. Yatri and three other Assistant Directors of the Central Electricity Authority against the Union of India and Others in the Supreme Court under Article 32 of the Constitution. In the said writ petitions which are still pending in the Supreme Court, the petitioners have raised the issue of the alleged unfairness of a system of quotas, rotation of vacancies and carry forward of vacancies on the basis of which direct recruits appointed later than the Departmental promotees are deemed to be senior to the said departmental promotees. As the substantive question raised in the instant application is the validity of the seniority of the applicants vis-a-vis respondent Nos. 6 to 40 in the grade of Assistant Director/Assistant Executive Engineer and a similar matter is subjudice in the Supreme Court, it is not necessary for this Tribunal to go into this question at this stage. The second preliminary objection raised by them is that the application is barred by time and not maintainable under Section 21 of the Administrative Tribunals Act, 1985. The seniority list as on 1.1.1966 in the grade of Assistant Director is challenged by the applicants in the instant case. They have sought to construct a current relevance

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by challenging the prospective application of the Govt. of India, Department of Personnel & Training OM dated 7.2.1986. In this context, the respondents have stated that although, in accordance with the principles laid down in the OM dated 22.12.59 issued by the Ministry of Home Affairs, the inter se seniority of direct recruits and promotees in the grade of Assistant Director was being determined on the basis of the rotation of vacancies between direct recruits and promotees, as per the quota of vacancies reserved for direct recruitment and promotion respectively in the Service Rules, the question of determination of inter se seniority of direct recruits vis-a-vis departmental promotees in the grade of Assistant Director was subsequently examined in consultation with the Department of Personnel and Administrative Reforms. Accordingly, it was clarified in the OM dated 18.5.82 issued by the Ministry of Energy that the principle of rotation of vacancies enunciated in the OM dated 22.12.79 was not applicable in the case of seniority of Assistant Directors in Central Electricity Authority as the quotas of recruitment prescribed in the Service Rules related to the 'posts' and not to the vacancies. The revised principles of seniority indicated in the OM dated 18.5.82 would be effective from 18.5.82. In the light

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of this position, the orders issued by the Department of Personnel and Training vide their OM dated 7.2.86 modifying the general principles of seniority laid down in the OM dated 22.12.59 are not relevant in this case and as such, the present application which is purported to have ^{been} made against the aforesaid orders dated 7.2.86 is not maintainable in so far as the claims of the applicants are concerned. The respondents have also pointed out that the applicants could have tried to get themselves impleaded as party to the case already pending in the Supreme Court, but they had chosen not to do so.

14. Subject to the aforesaid preliminary objections, the stand of the respondents on the merits of the contentions raised by the applicants may be summarised as follows:-

(i) The seniority of the applicants in the grade of Assistant Director has been determined in accordance with the relevant rules which were then being applied, namely, the general principles of fixation of seniority as contained in the Ministry of Home Affairs OM dated 22.12.1959. Promotions to the grade of Deputy Director from the grade of Assistant Director are on the basis of seniority subject to rejection of unfit, vide proviso to Rule 24(1) of the promoted 1965 Rules. Thus the seniority of officers to the grade of Deputy Director will have the same order of seniority as in the grade of Assistant Director unless some persons are bypassed for promotion due to being unfit etc. Promotion

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from the grade of Deputy Director to the grade of Director of the Service is on the basis of merit with due regard to seniority. Therefore, the seniority in the grade of Director will normally follow the order in which selection is made for promotion from the lower grade. As the seniority of the applicants vis-a-vis respondent Nos. 6 to 40 has been decided in accordance with the rules, there has been no violation of any rule or law applicable in this case.

(ii) The grade of Director/Superintending Engineer (selection grade) has since been abolished, although formal amendment of the Service Rules in this regard is yet to be notified.

(iii) Respondent Nos. 8 to 17 and 19 were recruited through ad hoc advertisement by the UPSC as per the provisions contained in the Service Rules and respondent Nos. 6, 7 and 18 were promoted from the lower grade of Extra Assistant Director. They have denied that the recruitment on the basis of the interview was outside the purview of the laid down procedures. They have also denied the allegation that such recruitment was mala fide. According to them, selection through ad hoc advertisement by the UPSC in certain circumstances is very much permissible in accordance with the provisions contained in Rules 17, 24(3) and 30(6) of the 1965 Rules. The seniority of the concerned respondents in the grade of Assistant Director was determined on the basis of the Rules

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in force at the relevant time, namely, the principles laid down in the Ministry of Home Affairs OM dated 22.12.1959.

(iv) The Central Power Engineering (Group 'A') Service Rules envisaged filling up of posts according to the percentages provided therein. The instructions contained in the OM dated 22.12.1959 which refers to vacancies as well as the instructions contained in the OM dated 7.2.86 issued by the Department of Personnel & Training/slightly modifying the instructions contained in the OM dated 22.12.1959 are not applicable to the said Service. The said Service is governed by the separate instructions contained in the Department of Power's OM dated 18.5.82.

(v) The batch of direct recruits through ad hoc advertisement became available earlier and were appointed in May-June, 1965 whereas the batch of direct recruits through the competitive examination became available later and were appointed in November-December, 1965 and on later dates. Therefore, the batch of direct recruits through ad hoc advertisement was rightly assigned higher seniority. The recruitment made through ad hoc advertisement by the UPSC in 1965 was within the framework of the Rules.

15. We have gone through the records of the case carefully and have heard the learned counsel of both parties. The seniority of the members of the Service

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in the grade of Assistant Director had been determined on the basis of the principles laid down in the ^{Home} Ministry's OM dated 22.12.59 upto 18.5.1982. The seniority at the higher level was also fixed on the basis of the seniority fixed in the grade of Assistant Director. The first seniority list of Assistant Directors was prepared as on 1.1.1966. Another seniority list of Assistant Directors as on 1.1.1969 had also been prepared. The applicants had made representations against the aforesaid seniority lists as they were then aggrieved by the fixation of their seniority in the said lists. To our mind, they should have sought relief from appropriate legal forum within a reasonable time thereafter.

16. The applicants are seeking the revision of their seniority in view of the Office Memorandum dated 18th May, 1982 issued by the Department of Power and of the Office Memorandum issued by the Department of Personnel and Training on 7th February, 1986. The Officer Memorandum dated 7th February, 1986 clearly stipulates that the instructions contained therein shall take effect from 1st March, 1986 and that the seniority already fixed in accordance with the existing principles on the date of issue of these instructions will not be reopened. As regards the Office Memorandum dated 18th May, 1982, the respondents have taken the stand that they had taken

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a decision, that the instructions contained therein shall be given effect to from 18th May, 1982, leaving the inter se seniority of the officers in the grade of Assistant Director as determined before the said date undisturbed. While it is true that in the last para of the said Office Memorandum there is a stipulation that the seniority list of officers in the grade of Assistant Director/Assistant Executive Engineer may be revised and prepared in accordance with the principles of seniority embodied therein, there is no stipulation that ^{the seniority of} those who had been appointed as Assistant Directors/Assistant Executive Engineers as early as in 1966 and those who have been promoted upto 18.5.1982 thereafter/on the basis of their unrevised seniority are also required to be revised. Revision of seniority of such persons will have the effect of unsettling settled things for over 15 years and is bound to create confusion ^{and} administrative difficulties. In the circumstances, it will be reasonable to hold that the Office Memorandum dated 18.5.1982 will have only prospective operation. As regards the Office Memorandum dated 7.2.1986, there is a clear stipulation in the last para that it shall take effect from 1st March, 1986 and that seniority already determined in accordance with the existing principles on the date of issue of these

orders will not be reopened.

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17. A Constitution Bench of the Supreme Court has held in S.S. Rathore Vs. State of Madhya Pradesh, ATR 1989(2) SC 335 that "the cause of action shall be taken to arise not from the date of the original adverse order but on the date, when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representations is made and where no such order is made, though the remedy has been availed of, a six months period from the date of preferring ^{of a} the appeal or making ^{of a} the representation shall be taken to be the date when cause of action shall be taken to have been first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle".

18. The Supreme Court further observed in the same case that "in every such case, only the appeal or representation provided by law is disposed of, accrual of cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made".

19. In the aforesaid case, the Supreme Court was referring to the position obtaining under Section 21 of the Administrative Tribunals Act, 1985. The position

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prior to the setting up of this Tribunal may also be mentioned. The doctrine of laches would have applied to the maintainability of a writ petition in the High Court in the event of such a petition being filed after inordinate delay (vide P.S. Sadasivaswamy Vs. State of Tamil Nadu, 1978 SCC (L&S) 22; Gian Singh Mann Vs. High Court of Punjab & Haryana, 1980 SCC (L&S) 527).

20. In K.R. Mudgal and Others Vs. R.P. Singh and Others, 1986(2) SCALE 561, the Supreme Court observed that satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petition filed after several years. It was essential that any one who felt aggrieved by the seniority assigned to him, should approach the Court as early as possible, as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties. There are observations to the same effect in Yashbir Singh & Others Vs. Union of India and Others, 1987(2) SCALE 371.

21. In the recent case of D.P. Sharma Vs. Union of India and Another, AIR 1989 SC 1071 at 1073, the Supreme Court followed the observations made in

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Union of India Vs. M. Ravi Verma, AIR 1972 SC 670 at pages 675-676:-

" As the said Office Memorandum has, except in certain cases with which we are not concerned, applied the rule of seniority contained in the Annexure thereto only to employees appointed after the date of that Memorandum, there is no escape from the conclusion that the seniority of Ganapathi Kini and Ravi Verma, respondents, who were appointed prior to December 22, 1959, would have to be determined on the basis of their length of service in accordance with Office Memorandum dated June 22, 1949 and not on the basis of the date of their confirmation".

22. In ^{Sharma} Sharma's case, the Supreme Court observed that the same considerations apply equally to the case before it. It was further observed that "the general rule is if 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".

23. In the light of the foregoing, we see merit in the preliminary objection raised by the respondents that in the instant case the application is barred by time and is not maintainable under Section 21 of the Administrative Tribunals Act, 1985. We are not impressed by the argument of the applicants that the revision of seniority as sought by them will not adversely affect any one of the respondents by way of reversion and that the only consequence of such revision would be the change in the position of the seniority in the grade of Director/SE(Elec and Mech). What the applicants are seeking in the present application

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is to review and revise the seniority determined in 1966, in the light of the Office Memoranda dated 18.5.1982 and 7.2.1986. In our opinion, there is no justification ^{in law} ~~to~~ to do so.

24. In the conspectus of the facts and circumstances of the case, we see no merit in the present application and the same is dismissed. The parties will bear their own costs.

D.K. Chakravorty
(D.K. CHAKRAVORTY)
ADMINISTRATIVE MEMBER

P.K. Kartha
16/2/90
(P.K. KARTHA)
VICE CHAIRMAN(J)