

In the Central Administrative Tribunal
Principal Bench, New Delhi

✓ 1. OA-115/90 with MP-635/90 and Date: 8.11.1991
MP-2578/90

Shri Hans Raj Gaba & Ors. Applicants

Versus

Union of India through Respondents
the Defence Secretary and
Others

2. OA-335/90

Shri Ved Prakash Applicant

Versus

Union of India through Respondents
Ministry of Defence & Ors.

3. OA-978/90

Shri Ram Prashad Sood Applicant

Versus

Union of India through Respondents
Secy., Miny. of Defence
and Others

4. OA-2251/90

Shri Ram Kishen Singh Applicant

Versus

Union of India through Respondents
Secy., Miny. of Defence
and Another

5. OA-2373/90

Shri Sarwan Singh Applicant

Versus

Union of India through Respondents
Secy., Miny. of Defence
and Another

For applicants in 1 & 2 Shri G.K. Agarwal, Counsel
For applicant in 3 Shri M.C. Sharma, Counsel
For applicants in 4 & 5 Shri S.K. Gupta, Counsel
For respondents in 1 & 2 Shri P.H. Ramchandani, Counsel

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For respondents in 3 to 5 Shri K.S. Dhingra,
Sr. Admv. Officer,
Ministry of Defence.

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. B.N. Dhoundiyal, 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? *No*

(Judgement of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

In this batch of applications, common questions of fact and law have been raised and it is proposed to dispose them of in a common judgement.

2. The question of determination of seniority of some employees of the Ministry of Defence in the cadre of Lower Division Clerks had been raised in Civil Appeal Nos. 4133 and 4134 of 1984 in the Supreme Court in Shri D.P. Sharma and Others Vs. Union of India & Another. The Supreme Court delivered its judgement on 21.2.1989 allowing the appeals. The applicants in the applications before us are seeking extension of the benefit of the same judgement to them on the ground that they are also similarly situated.

3. OA-115/90 has been filed by 194 persons. After the filing of the application, MP-635/90 was filed for impleading 15 other persons who are also similarly situated as the applicants. MP-2578/90 was also filed for impleading another 12 persons as additional applicants. No orders were passed on these MPs as the Tribunal had directed that

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they could be taken up together at the time of final hearing.

4. After going through the records of the case and hearing the learned counsel for both the parties, we allow the aforesaid MPs. We may now proceed to consider the merits of the contentions put forth by the rival parties.

5. As the applicants are seeking the benefit of the judgement of the Supreme Court in D.P. Sharma's case, it may be relevant to briefly discuss the said judgement.

6. The appellants in D.P. Sharma's case were originally recruited as Civilian School Masters or LDCs, Leading Hand (Technical), etc., either in the lower defence installations comprising ordnance factories, ordnance depots, workshops, regimental centres, units, Command Headquarters, etc., under the control of the Army Headquarters, New Delhi. Some of them were declared as surplus in those establishments and they came to be posted/transferred to the Armed Forces Headquarters and inter-service organisations of LDCs. They joined the service in the Armed Forces Headquarters on various dates between 1960 and 1964. Some of them were later promoted as Upper Division Clerks. While they were thus continuing in service, the Rules framed under proviso to Article 309 of the Constitution known as the 'Armed Forces Headquarters Clerical Service Rules, 1968 (the Rules)

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were brought into force w.e.f. 1st March, 1968. The Rules, inter alia, provided that the seniority in the Service shall be determined on the basis of date of confirmation. Prior to the coming into force of the Rules, the seniority in the cadre of service was required to be determined on the basis of length of service. It was so laid down by several office memoranda of the Government, or that of the Defence Ministry. After the Rules came into force, the seniority of the appellants was sought to be disturbed on the basis of confirmation as prescribed under the Rules. The appellants moved the High Court of Delhi under Article 226 of the Constitution contending that length of service should be the basis of inter se seniority. The learned single Judge accepted the claim of the appellants and made an order accordingly on April 8, 1981. The Union of India preferred an appeal before the Division Bench of the High Court. The Division Bench reversed the above view holding that the seniority of the appellants must fall to be determined on the basis of confirmation as prescribed by the Rules and not on the length of service. The view taken by the Division Bench was challenged in the appeal before the Supreme Court. The Supreme Court held that the view taken by the Division Bench was erroneous. It was observed that the Rules have no retrospective effect and the same could not impair the

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existing rights of officials who were appointed long prior to the rules came into force. Accordingly, in reversal of the judgement of the Division Bench, the Supreme Court restored the judgement of the learned single Judge.

7. The same issue had been raised in writ petition (Writ Petition (Civil) No.493/90) filed by R.K. Khosla against the Union of India & Another. On 9.1.1991, the Supreme Court passed an order to the effect that there was no difference between the petitioner in that case and the petitioners in D.P. Sharma's case. The Supreme Court further held that the principle set out in the judgement of D.P. Sharma squarely applied to the facts of the case before it. It was ~~also~~ made clear that the judgement in D.P. Sharma's case would also apply to persons who are similarly placed.

8. The Union of India filed an interim application before the Supreme Court seeking clarification/modification of the judgement in Civil Writ 493/90 in R.K. Khosla Vs. Union of India which was pending before the Supreme Court. In the said application, the Union of India had sought the clarification as to whether the benefit of the Supreme Court's judgment dated 21.2.1989 in D.P. Sharma's case, would be given to all similarly placed persons. The said application was heard and dismissed on 8.8.1991 by the Supreme Court.

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9. In view of the above, the Supreme Court has authoritatively held that its decision in D.P. Sharma's case would apply to all persons who are similarly situated. It, therefore, becomes inescapable that the seniority of the applicants and those similarly situated has to be determined on the basis of the length of service.

10. The respondents have admitted that the applicants before us joined the Armed Forces Headquarters during the period from 1951 to 1966, which was before the Rules were framed to regulate their seniority. They have further stated that some of them have already retired from service. The question of considering all similarly placed individuals was examined by them at the time of implementing the judgement of the Supreme Court in D.P. Sharma's case. It transpired that approximately 4,400 persons had joined AFHQ as LDCs between 1951 and 29.2.1968, i.e., prior to the introduction of the Rules. Majority of them was recruited through competitive examination held by the U.P.S.C. Their seniority for further promotion was determined in accordance with the instructions issued from time to time in consultation with the Department of Personnel & Training and the U.P.S.C. In case the seniority of all persons recruited prior to the introduction of the Rules is determined on the basis of the length of

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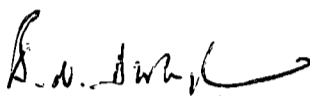
service, the seniority of the 4,400 persons will have to be redetermined and promotions made over the last 40 years or so, will have to be reviewed. According to them, administratively it is not possible to redetermine the seniority of such a large number of persons and review their promotions without bringing the day-to-day functioning of the organisation to a standstill.

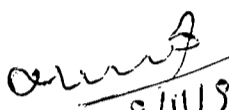
10. We have carefully considered the aforesaid submissions made by the respondents. Now that the principle for [✓]xxx determination of seniority of these 4,400 persons has been finally settled by the decision of the Supreme Court in D.P. Sharma's case, the Department is bound to undertake the exercise in the right earnest and implement the judgement of the Supreme Court in letter and spirit. It may be a time-consuming process but this has to be done.

11. We, therefore, allow these applications and dispose them of with a direction to the respondents to redetermine the seniority of the applicants and those ^{a including those who may have retired from service &} similarly situated ^{and} review their cases for promotion in the light of the revised seniority list. In our opinion, this could be accomplished within a period of six months, which may be taken to be the reasonable time for such implementation. We order and direct accordingly. ^{a and those similarly situated a} We further direct that the applicants ^a would be entitled

to all consequential benefits, including arrears of pay and allowances due to them. There will be no order as to costs.

12. MP-635/90 and MP-2578/90 are also allowed and disposed of as indicated hereinabove. Let a copy of this order be placed in all the five case files.


(B.N. Dhoundiyal)
Administrative Member


8/11/91
(P.K. Kartha)
Vice-Chairman(Judl.)