

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 930/90
T.A. No.

199

DATE OF DECISION 10.1.1992

Shri J.B. Sahdev	Petitioner Applicant
Shri M.J. Kapoor	Advocate for the Petitioner(s) Applicant
Versus	
Union of India & Others	Respondent
Shri K.S. Dhingra, Sr. A.O.	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The 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? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

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

The applicant, who is working as Senior System Security Officer, Grade II in the Joint Cipher Bureau under the Ministry of Defence, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (i) To set aside the seniority list dated 13.7.1989 insofar as it relates to the seniority of the applicant, vis-a-vis, that of respondents 3 to 5;
- (ii) to set aside the order dated 24.11.1989 insofar as it rejects his representation

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claiming seniority above respondent No.3
in the impugned seniority list as Senior
System Security Officer, Grade II;

- (iii) to declare that he is senior to respondent
Nos.3, 4 and 5 as Senior System Security
Officer, Grade II; and
- (iv) to direct the respondents to consider him
above respondent Nos.3 to 5 for selection
to any higher post.

2. On 24.10.1990, the Tribunal passed an order to the
effect that any promotion made will be subject to the outcome
of the present application.

3. In the Joint Cipher Bureau under the Ministry of
Defence, there existed two Wings - Technical, and Research -
which were merged and brought on a common seniority roster
in March, 1989. Consequent upon the said merger, the impugned
seniority list has been prepared and issued by the respondents
which is under challenge before us. The applicant belongs to
the Research Wing.

4. The applicant was promoted as Senior System Security
Officer (Research), Grade II w.e.f. 24.12.1982. Respondent
No.3 was promoted as Senior System Security Officer (Technical),
Grade II w.e.f. 26.11.1983. Respondent Nos.4 and 5 are direct
recruits. Respondent No.4 was appointed as Senior System

Security Officer (Research), Grade II w.e.f. 19.12.1983 and respondent No.5, with effect from 8.11.1985. After the merger, the applicant as well as the respondents mentioned above, were working as Senior System Security Officer, Grade II. The respondents have stated that respondent No.4 has since been promoted as Senior System Security Officer, Grade I w.e.f. 31.7.1990 on the basis of recommendations of the D.P.C. As regards the seniority, the respondents stated in their note dated 13.7.1989 as follows:-

".....The following principles have been adopted while preparing the combined provisional Seniority Lists:-

- (a) In cases where posts in the same pay scales are merged together, the inter se seniority has been determined by arranging the persons on the basis of length of continuous service in the grade and in cases where the length of service rendered on regular basis happens to be the same in the respective grades, the inter se seniority has been determined on the basis of their dates of birth, i.e., the elder person will rank senior.
- (b) The inter se seniority of persons included in each category has not been disturbed."

5. The applicant contends that in view of the aforesaid provisions, he is senior to respondents 3, 4 and 5.

6. The respondents have denied the aforesaid contention in their counter-affidavit. They have stated that the recruitment rules for the post of Senior System Security Officer, Grade II (Research) were notified in the official gazette on 25.10.1980. The said rules provided that the

vacancies in the grade of Senior System Security Officer, Grade II (Research) were to be filled in the following manner:-

- (a) $66\frac{2}{3}$ per cent by direct recruitment through the U.P.S.C.
- (b) $33\frac{1}{3}$ per cent by promotion of System Security Officer (Research) with three years' regular service in the grade, failing which by direct recruitment.

6. The applicant was holding the post of Junior Research Officer before the merger w.e.f. 21.8.1979 and was assigned seniority in the grade of System Security Officer (Research) with reference to that date. Respondent No.3, who belongs to the Scheduled Caste community, was appointed as Technical Production Officer, later on redesignated as 'System Security Officer (Technical)' w.e.f. 19.8.1969. He was promoted as Senior System Security Officer, Grade II (Technical) w.e.f. 26.11.1983 against a vacancy reserved for Scheduled Caste community.

7. After the notification of the recruitment rules for the post of Senior System Security Officer, Grade II (Research) in 1980, the following vacancies in the said grade became available due to retirement/promotion, etc., as under:-

Number of vacancies	Date of Occurrence	Reason for the occurrence of vacancy	Point on which vacancy falls, as per recruitment roster
1.	2.	3.	4.
1	01.04.1981	Vice Shri GP Bhatnagar, Senior System Security Officer, Grade II (Research) retired w.e.f. 31.3.1981	Promotion

1.	2.	3.	4.
1	10.8.1981	<u>Vice</u> Shri Madan Mohan, promoted to Senior System Security Officer, Grade I (Research).	Direct
1	1.12.1981	<u>Vice</u> Shri K.N. Sharma, promoted to Senior System Security Officer, Grade I (Research).	Direct
1	1.1.1982	<u>Vice</u> Shri S.C. Agarwal, Senior System Security Officer, Grade II, (Research), retired on 31.12.1981	Promotion

8. Out of the four vacancies, two were allocable to direct recruitment quota and the remaining two, to promotion quota as per the recruitment roster. The respondents have stated that none of the System Security Officer (Research) was eligible for consideration for promotion as Senior System Security Officer, Grade II (Research) on 1.1.1982 for want of qualifying service. Requisition for filling up three vacancies of System Security Officer, Grade II (Research) through direct recruitment was placed with the U.P.S.C. on 10.2.1982. The respondents have not stated as to why no action was initiated for filling up of the 4th vacancy as the records maintained by them do not give any reason for the same. The vacancies were finally notified by the U.P.S.C. on 26.2.1983. In the meanwhile, two System Security Officers, namely, Shri Harinder Singh and the applicant, became eligible for promotion as Senior System Security Officer, Grade II. On the recommendation of the U.P.C., they were promoted as such w.e.f. 24.12.1982 against the vacancies allocable to promotion quota. Shri Harinder Singh

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was adjusted against the vacancy available w.e.f. 1.4.1981 and the applicant was adjusted against the vacancy that became available on 1.1.1982. The respondents have stated that the vacancies in the grade of Senior System Security Officer, Grade II (Research) available w.e.f. 10.8.1981 and 1.12.1981 and allocable to direct recruitment quota, were still to be filled through the U.P.S.C. The U.P.S.C. recommended respondent No.4 against one of the vacancies allocable to direct recruitment quota, but did not have any name to recommend for appointment to the remaining vacancy. Respondent No.4 was appointed to the grade w.e.f. 19.12.1983. In the meanwhile, one more vacancy falling to direct recruitment quota, became available on 1.6.1983 vice Meenakshi Chaurasia, Senior System Security Officer, Grade II (Research), who had retired. These vacancies falling to direct recruitment quota, were advertised by the U.P.S.C. on 4.5.1985. The U.P.S.C. recommended respondent No.5 for appointment as Senior System Security Officer, Grade II (Research) and he was appointed as such w.e.f. 8.11.1985. Respondent Nos. 4 and 5 have been adjusted against the vacancies allocable to direct recruitment quota, as per the recruitment roster.

9. We have carefully gone through the records of the case and have heard the learned counsel for the applicant, and Shri Dhingra, the representative of the respondents. In the

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impugned seniority list of 1989, respondent No.3 figures at serial No.4, Respondent No.4 at serial No.5, Respondent No.5, at serial No.6, and the applicant, at serial No.7. According to the general principles for determination of seniority in the Central Services, embodied in the O.M. dated 22.12.1959 issued by the Ministry of Home Affairs, the relative seniority between direct recruits and promotees has to be determined on the basis of the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. The roster should be maintained based on the reservation for direct recruitment and promotion in the Recruitment Rules. Where 75% of the vacancies are reserved for promotion and 25% by direct recruitment, each direct recruit shall be ranked below three promotees. In the instant case, the seniority of the applicant vis-a-vis respondents 4 and 5 was fixed by rotation of vacancy in the ratio of 2:1, two direct recruits and one promotee. In the seniority list published on 26.3.1984, respondent No.4 has been shown at serial No.6 and the applicant at serial No.8. Serial No.7 of the seniority list was kept vacant for the direct recruit who was to be appointed against the unfilled vacancy of 1981. After the appointment of respondent 5, he was adjusted against the vacant slot.

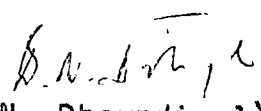
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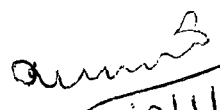
10. The respondents have stated in their counter-affidavit that respondent No.3 was holding the post of Senior System Security Officer, Grade II (Technical) in substantive capacity and the applicant was holding the post of Senior System Security Officer, Grade II (Research) in officiating capacity, their dates of appointment being 21.8.1979 and 19.8.1969, respectively.

11. The applicant as well as respondents 4 and 5 belonged to the Research Wing prior to 13.3.1989, when the Technical and Research Wings were merged into a single stream. Their seniority was determined in accordance with the general principles. The principle for determination of seniority on the basis of length of service will apply where there are no rules/instructions on the subject. That principle will not apply where rules or general instructions exist, as in the instant case.

12. In the light of the above, we are of the opinion that the impugned seniority has been prepared in accordance with the relevant rules and instructions and that it cannot be called in question on legal or constitutional grounds. The applicant would be entitled to promotion to higher posts only in accordance with his position in the existing seniority list. We, therefore, see no merit in the present application and the same is dismissed. There will be no order as to costs.


(B.N. Dheundiyal)
Administrative Member

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100192.


10/11/92
(P.K. Kartha)
Vice-Chairman(Judl.)