

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1581/1991

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New Delhi this the 10th Day of September 1997.

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

1. Shri H.C. Guru,
son of Shri Ram Partap,
Resident of A-3/57, Paschim Vihar,
New Delhi.
2. Shri Harish Chandra,
son of Shri Shiam Sunder Gupta,
Resident of KD-63, Pritam Pura,
New Delhi-110 034.
3. Shri T.R. Gulhati,
son of Wadhawan Mal Guklati,
Resident of F-45/C MIG Flats, Hari Nagar,
New Delhi-110 064.
4. Shri R.C. Gandhi,
son of late Shri Dina Nath Gandhi,
Resident of C-2/76 Janakpuri,
New Delhi-110 058. Petitioners

(By Advocate: Shri M.L. Chawla with
Shri S.L. Lakhanpal)

-Versus-

1. The Union of India, through,
The Secretary to the Government of India,
Ministry of Home Affairs, New Delhi.
2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India, New Delhi.
3. Shri R.L. Maria,
Section Officer,
Intelligence Bureau,
Ministry of Home Affairs, New Delhi.
4. Shri A.D. Prasad,
Section Officer,
Intelligence Bureau,
Ministry of Home Affairs, New Delhi.
5. Shri S.C. Joshi,
Section Officer,
Subsidiary Intelligence Bureau,
Lucknow (U.P.)
6. Shri V.P. Chawla,
Section Officer,
Subsidiary Intelligence Bureau,
Bhopal (M.P.)

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7. Shri P.K. Bhowmick,
Section Officer,
Subsidiary Intelligence Bureau,
Calcutta (West Bengal)
 8. Shri Subodh Kumar,
Section Officer,
Intelligence Bureau (MHA),
New Delhi.
 9. Shri Gurcharanjit Singh,
Section Officer,
Intelligence Bureau (MHA),
New Delhi.
 10. Shri N.N. Tagore,
Section Officer,
Intelligence Bureau (MHA),
New Delhi.
 11. Shri Balraj Krishan,
Section Officer,
Intelligence Bureau (MHA),
New Delhi.
 12. Shri T.R. Kathuria,
Section Officer,
Intelligence Bureau (MHA),
New Delhi.
- Respondents

(By Advocate: Shri KCD Gangawani with
Shri B.B. Rawal, Counsel for Private Respondents)

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

Here is another seniority case requiring revision of seniority even prior to 1954 and with subsequent seniority lists of 1976 and 1987 which has been successfully challenged and quashed by various Courts and the so-called final seniority list issued thereafter in the year 1989 is again under challenge in this case.

2. The applicants were holding the post of Section Officer in the Intelligence Bureau under the Ministry of Home Affairs, Government of India. They were appointed as Section Officers on the basis of

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their passing the limited departmental competitive examination as per the recruitment rules. The relevant dates of appointment of the applicants as Section Officers are as follows:

1.	Shri H.C. Guru	-	30.12.1982
2.	Shri Harish Chandra		30.1.1983
3.	Shri T.R. Gulati	-	07.7.1982
4.	Shri R.C. Gandhi	-	30.12.1982

3. There is no direct recruitment to the level of Section Officers in the respondent Bureau. All the posts of Section Officers are filled departmentally from among Assistants and Stenographers, through two different methods namely, (a) departmental promotion on the basis of seniority-cum-fitness; and (b) departmental promotion on the basis of limited departmental examination.

4. A number of Assistants were appointed before 1.2.1954 when the ministerial posts in the respondent Bureau were re-organised. The re-organisation was made effective from 1.2.1954 by Government of India, Ministry of Home Affairs No. 40/154/49-E.3 dated 17.8.1955. the Scheme of re-organisation of the ministerial posts which was issued on 17.8.1955 and became effective from 1.2.1954 laid down the following rule in regard to the recruitment to the post of Assistant Superintendent (later re-designated as Section Officer):-

17. Grade-III: Assistant Superintendents (SO)

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- a) The future recruitment in the G grade of Assistant Superintendents should be made mainly by promotion. Occasional recruitment to this Grade is, however, permitted for special reasons, e.g. where a candidate is considered suitable by reason of specialised qualifications. Direct recruitment in such cases should be reported to the Ministry of Home Affairs for the information on the Union Public Service Commission.
- b) Promotion of Grade IV Assistant to this Grade should be made in two ways (except for the number of posts specifically reserved in consultation with the MHA and the UPSC for Stenographers of the Bureau at the future maintenance stage of the service.

The grades II and III of the IB Ministerial Service (Re-organisation Scheme 1955) were merged into a single grade of Section Officer vide MHA order No. 3/6/61-P.III dated 27.9.1961.

- i) By seniority subject to the rejection of the unfit and
- ii) through a test which should be open to (i) Assistants who have rendered not less than five years continuous service after regular appointment to the Grade (ii) Grade II Officers of the Intelligence Bureau Stenographers Service which have rendered not less than 5 years continuous service after regular appointment to the Grade of Stenographers Grade II (3)/Estt(C)/74(10)-Pers.I dated 31.7.1975).
- iii) The filling up of the vacancies will be in equal proportion by the two methods indicated above.
- iv) The inter-se-seniority of Assistants Superintendents (subsequently re-designated as Section Officers in MHA letter No. 1/3/58-P.III dated 10.1.58 and No. 3/6/61-P.III dated 27.9.61 shall be determined as under:

Assistants Superintendents who have been appointed on the basis of grading approved, by the Govt. of India, vide this Ministry's letter No. 25/35/54-P.III dated 6th October, 1955, will rank senior to those appointed subsequently and their

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inter-se-seniority should be fixed on the basis of the order in which their names are arranged in the grading list;

Vacancies arising subsequent to the absorption of the graded persons will be filled by the following two categories of persons one from each category alternatively; i) Persons who have been promoted on the basis of seniority-cum-fitness; and ii) Persons who have qualified in the Assistant Superintendent Examination held by U.P.S.C. A combined list will be drawn by taking one officer alternatively from each of the two categories (1) and (2) above and seniority of each officer will be determined in accordance with his position on the combined list.

As promotion to the post of Section Officer was from among Assistants mainly, the determination of seniority of Assistants became important. Initially seniority of Assistant was assigned on the basis of the Government of India, Ministry of Home Affairs O.M. dated 22.6.1949, on the basis of length of continue service, temporary or permanent, in the grade of Assistant. Subsequently the seniority list of Assistant underwent a change in the light of the Ministry of Home Affairs O.M. dated 22.12.1959 which envisaged fixation of seniority on the basis of confirmation. In the light of the O.M. dated 22.12.1959 a seniority list was prepared in 1968. Following the decision of the Supreme Court in Union of India and others Vs. M. Ravi Verma and others in which the Supreme Court held that the seniority of those who had been appointed prior to 22.12.1959 should be determined on the basis of length of service and not the date of confirmation, the Andhra Pradesh High Court in Writ Petition No. 7060 of 1973 (D.P. Sastry, and N. Kamaleswara Rao Vs. Union of India and others) in which the seniority fixed on the basis of the O.M. dated 22.12.1959 was challenged, directed the Department to restore the original seniority of the petitioners in the said writ petition as fixed prior to the issue of the O.M. dated 22.12.1959 with all consequential benefits.

In pursuance of the judgement of the Andhra Pradesh High Court the Department issued a revised seniority list of Assistants on 28.1.1976. In this seniority list which was based on the date of appointment, those who are appointed in 1954 were senior to those who were appointed in 1955 and subsequently.

The seniority list issued on 28.1.1976 was challenged in Civil Writ Petition No. 638 of 1976 in the Delhi High Court. The said petition was dismissed by a Single Bench of the High Court of Delhi. An L.P.A. (LPA No. 6 of 1978) was filed against the judgement of the Learned Single Judge. The Division Bench of the Delhi High Court allowed the said L.P.A. vide its judgement dated 19.12.1980 and set aside the judgement of the Single Judge and held that the re-organisation scheme had become effective from 1.2.1954 and that all the posts of Assistants had to be filled by persons eligible in terms of para 15 of the

re-organisation scheme of 1955, effective from 1.2.1954. The Division Bench gave a number of directions which resulted in the disturbance of the seniority list as issued on 28.1.1976

The judgement by the Division Bench in the L.P.A. No. 6 of 1978, delivered on 19.12.1980, was challenged in the Supreme Court. The Supreme Court vide its judgement dated 30.9.1986 allowed the appeals, set aside the judgement of the Division Bench of the High Court and directed that "all the promotions made in the Intelligence Bureau shall be reviewed in accordance with the impugned seniority list dated 28.1.1976."

Following the judgement of the Supreme Court, the Department issued Memorandum No. 4/Seniority/CC-86(3)-660 dated 8.8.1987 laying down a revised seniority list of Section Officers working under the Intelligence Bureau.

5. The seniority list issued on 8.8.1997 which was the basis of rota-quota, was challenged by two groups of Section Officers who had been promoted on the basis of seniority-cum-fitness in subsequent two OAs filed in this Tribunal vide O.A. No. 1675/89 and 31/88. The question which arose for determination in the said original applications were as follows:

- (1) Whether the review of all promotions on the basis of seniority list of Assistants dated 28.1.1976 was in accordance with the directions of the Hon'ble Supreme Court as given in the judgement dated 30th September, 1986; and
- (2) whether the interpolation of examinee promotees and assignment of seniority to them in the seniority list of Section Officers issued on 8.8.1987 was in accordance with the scheme of Reorganisation regulating promotion to the rank of Section Officer.

6. The applicants in both the OAs sought redetermination of seniority according to the length of service in the grade and challenged the application of the principle of quota and rotation of the determination of seniority.

7. In the judgement and order passed on 26.4.1989 in O.A. No. 1675 of 1987 and O.A. No. 31 of 1988 the Hon'ble Tribunal held as follows:

"The facts of the present case clearly show that the appointment of the applicants and the third party respondents was not made from a combined list as envisaged by the provisions of the Scheme. These can be considered as having been made only in relaxation of the provisions of the Scheme. Further even though the promotions from either category or stream viz., seniority-cum-fitness or limited Departmental Competitive Examination were not in excess of quota, there was a departure from the principle of quota in as much as examinees shown in the impugned seniority list had qualified in examinations held three to six years later than the dates of promotion of those who had been promoted on the basis of seniority. It could be that some of the examinees were not even qualified or eligible to take examination in the years of their assigned seniority or might have failed in the examination held in those earlier years. The rota rule of seniority cannot be applied in the present case since the quota principle had not been followed at the time when promotions were made as envisaged by the provisions of the scheme. The only just and fair principle for determining seniority in the circumstances of the case would be the date of continuous officiation in the post of Section Officer.

In view of the above discussion, both the applications are allowed with the direction that the impugned seniority list issued in August, 1987 is quashed to the extent that it assigns the applicants in O.A. 1675/1987 notional seniority of years later than the dates when they were actually promoted to the posts of Section Officers and further to the extent that it assigns seniority to the examinee respondents above the applicants in both the OAs on the rotational principle. The respondents who were promoted on the basis of the Limited Departmental Competitive Examinations shall be assigned seniority with reference to the applicants on the basis of the dates of their actual appointment/promotion. A fresh seniority list of Section Officers shall be issued within a period of three months from the date of this judgement

keeping in view the above directions. There shall be no order as to costs" vide Bhatnagar's case.

8. Special Leave Petition No. 9315-16 of 1989, filed in the Hon'ble Supreme Court of India from the above judgement and order of the Tribunal, was dismissed on 21.12.1989 with the following order:

"That the S.L.P. is dismissed. It is needless to state that the Government shall implement the order of the Tribunal faithfully".

9. Meanwhile the Respondents Bureau, in pursuance of the judgement and order dated 26.4.1989 passed by the Hon'ble Tribunal, had revised the seniority and issued a seniority list vide its Memo No. 4/Seniority/CC(86(3)2152-2329 dated 25.7.1989. By the same Memo, objections were invited pointing out factual errors or omissions within four weeks of the issue of the said seniority list.

10. The petitioners in this case, challenging this seniority list issued by the Respondents dated 25.7.1989, in pursuance to the judgement and order of this Tribunal dated 26.4.1989 in Bhatnagar's case which has become final due to dismissal of the S.L.P. subsequently filed. One of the main grounds of challenge of seniority list is that the rota-quota applied as a principle of seniority, while issuing the present seniority list have been violated and principle of continuous officiation in the post of Section Officers has not been followed. By way of illustration the petitioners have extracted some instances which are reproduced herebelow:

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Sl.No. in the seniority list	Name	Date since when continuously officiating as S.O.	Remarks
216	R.L. Maria	16.6.83	Promotee
216	A.D. Prasad	20.7.83	Promotee
218	S.C. Joshi	26.7.83	Promotee
219	V.P. Chawla	16.4.82	Promotee
		(Leave Vacancy)	
220	Ram Dass (SC)	27.3.82	Promotee
221	P.K. Bhowmic	15.6.83	Promotee
222	Subodh Kumar	01.7.83	Promotee
223	Gurcharanjit Singh	30.6.83	Promotee
224	N.N. Tagore	27.8.83	Promotee
225	Balraj Krishna	09.9.83	Promotee
226	Nathu Prasad (SC)	27.8.83	Promotee
227	T.R. Kathria	29.6.83	Promotee
228	Baljit Singh (SC)	30.8.82	Promotee
229	Karunmoy Dass (SC)	30.6.82	Promotee
230	F.L. Bharent (SC)	30.3.82	Promotee
231	M.N. Medak (ST)	30.3.82	Promotee
232	V.K. Damodaran	29.4.82	1980 Exam.
233	P. Damodaran	31.5.82	1980 Exam.
234	T.R. Gulati	07.7.82	1980 Exam.
235	R.C. Gandhi	23.12.82	1981 Exam.
236	H.C. Guru	30.12.82	1981 Exam.
237	S. Chandrasekharan	30.12.82	1981 Exam.
238	K.K. Chandana	05.1.83	1981 Exam.
239	Harish Chand	30.1.83	1981 Exam.
240	P.L. Kher	28.2.83	1981 Exam.
241	S.K. Sable	30.1.83	1981 Exam.
242	Mithan Lal (SC)	30.12.82	1981 Exam.

APPLICANT

11. It is seen that applicant No. 1 was senior to Officers at Serial No. 216 to 235 by more than 100 places. It was also alleged that the inter se seniority of the applicants and the Respondent Nos. 3 to 12 as per this seniority list has been determined in violation of the principles laid down in the Bhatnagar's case. It was also pointed out that applicant No.1 who has been holding the post of Section Officer continuously from 30.12.1982 has been shown at Serial No. 236 in the seniority list and Shri Balraj Kishan who has been appointed as Section Officer on 9.9.1983 has been shown as senior to the applicant at Serial No. 225 in the same seniority list.

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12. The respondents, on the other hand, stated that when the seniority list of 1989 was made, they have followed the inter se seniority on the basis of continuous officiation but they also applied the general principle of seniority while finalising the seniority on the basis of principle of continuous officiation. But it was stated that the general principles of seniority not having been quashed in the previous decision, the respondents were bound to consider the question of some of the persons in the same panel joining the post before others, and it happens so with regard to those who were at the Headquarters, the principle of continuous officiation could not be put into practice in the strict sense. We are afraid that the question of joining earlier or later has no direct relations with the break down of rota-quota maintained on the basis of the same in the seniority list of upsetting the principle of continuous officiation.

13. In the circumstances we are of the opinion that the rota- quota, in the present case, has broken down and in pursuance to various decisions of the Hon'ble Supreme Court, once the rota quota has broken down, the only principle that can be applied is the principle of continuous officiation while a seniority list is drawn up.

14. The last question that remains to be decided is that what could be the relief that can be granted to the petitioners. Should the Court in the

circumstances quash the seniority list of 1989 and direct the respondents to redraw the seniority right from the beginning? We are afraid that cannot be the logical and practical consequence of the break down of the rota-quota. We feel that the seniority list of 1989 should not be upset in the year 1997 on the ground of breakdown of rota -quota, rather we should look into the adverse effect that are likely to follow such determination of wrong seniority. We are of the firm opinion that one of the major adverse effects that can have on such faulty seniority is, on the prospect of the petitioners for promotion to the next grade. In case the Court is able to protect the prospect of the petitioners with respect to the next promoted or would be promoted grade, the seniority list as it existed today need not be upset on that ground. We propose that the promotions of the petitioners, the respondents, as well as all other persons similarly situated to the next grade, shall not be made in accordance with the seniority list impugned in this O.A., rather it shall be made in accordance with the 12 gradation list, specially drawn for the purpose, for promotion to the next grade strictly on the basis of the principle of continuous officiation. That is to say those persons who joined earlier shall be shown as senior in the said gradation list and the promotion made accordingly without upsetting the existing seniority list that operated till todate since 1989.

15. It goes without saying that in view of the fact that the promotions made during 1991-97 i.e. to say from the inception of this O.A., has been, by an interim order stated to be subject to the final outcome of this O.A., we find that if any promotions made during this period, and the incumbents therein might have acquired a higher placement on the proposed gradation list only because of promotion that has taken place during the pendency of this case, the same shall not have any effect vis-a-vis those persons who are entitled to a better claim on the basis of the principle of continuous officiation in the feeder cadre. The respondents shall consider the case of such petitioners or any other similarly situated persons who have been in the feeder grade on an officiation basis, and if any of their juniors on the basis of a consideration of longer period of continuous officiation, in the feeder grade, have acquired a better position and such notional holding of the grade shall also be calculated in favour of those persons, for the purpose of finalising the gradation list for promotion to the next grade.

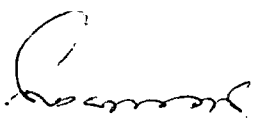
16. It also goes without saying that in case the next would-be-promoted grade is the one that is to be filled on the basis of selection, zone of consideration shall not be on the basis of position in the seniority list impugned in this case, rather it shall be on the basis of a gradation list proposed by us by this order. On the other hand, if the promotion to the next grade is to follow the method of seniority subject to fitness, the seniority is to be reckoned, not on the basis of the impugned seniority list, rather

on the basis of the gradation list proposed and prepared on the basis of length of service in the grade in accordance with the present order.


17. In the circumstances we do not quash the seniority list impugned, nor do we set aside the promotion made during the pendency of this case rather we declare that this order shall have only prospective application and this order will have effect only the grade in the cadre, suggested above. Those promoted and already in position should step down as and when the promotions to the next grade are considered by a review DPC, in the lines, proposed by this order.

18. We have come to these conclusions only for the purpose of avoiding a confusion that may arise out of drawing and re-drawing the seniority lists and the delay occurring thereto and the infraction of injustice that affects the persons within the seniority list. We propose that the seniority list as such is not to have any further change since it has been operated all these years, and as far as the seniority list of 1989 is concerned, it shall have the finality subject to the operation of the proposed gradation list for the purpose of promotion to the next grade.

19. With these directions this O.A. is allowed to the extent stated above and the same is disposed of with no order as to costs.


(S.P. Biswas)

Member(A)


(Dr. Jose P. Verghese)

Vice Chairman (J)