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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.2338 of 1991

New Delhi this the 9th day of February, 1996.
Hon'ble Shri N.V. Krishnan, Acting Chairman
Hon'ble Smt. Lakshmi Swaminathan, Member(J)

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|----|--------------------|---------------------|
| 1. | Shri M.P.Singh; | Ø |
| 2. | Shri P.K.Sharma; | |
| 3. | S/Shri S.C.Maitra; | Ø Section Officers. |
| 4. | R.K.Singh; | |
| 5. | N.U.Avirachen; | Ø |
| 6. | V.K.Taneja; | |
| 7. | Kamlesh Kumar; | |

C/O P.B.Section,
Ministry of External Affairs,
Akbar Bhawan(Room No.701),
Chanakya Puri, New Delhi Applicants.

(through Mr K.C.Mittal, Advocate).

versus

1. The Foreign Secretary,
Ministry of External Affairs,
South Block,
New Delhi.
2. Shri K.K.Sharma, working as
Section Officer in the Ministry of External
Affairs, C/O CA Division, M/O External
Affairs, South Block, New Delhi.
3. Shri Madan Gopal S/O Shri Ramji Dass Nagpal,
working as Section Officer in the Ministry of
External Affairs C/O ECU Unit, M/O External
Affairs, South Block, New Delhi Respondents.

(Mr N.S.Mehta Sr. counsel for the official respondent
and Mr A.K.Behera for the private respondents).

O R D E R

(delivered by Hon'ble Smt.Lakshmi Swaminathan, Member(J)

The applicants, who are working as Section
Officers with the respondents are aggrieved by
the orders No.I-IV dated 12.5.1988, that is, the
select list and the subsequent lists for promotion
to the Section Officers grade, seniority lists of

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Section Officers dated 16.2.1989, 7.6.1991, 13.6.1991 issued pursuant to the above four orders. According to the applicants, their seniority has not been correctly reckoned w.e.f. from the dates of their appointment as Section Officers in accordance with the directions of the Supreme Court in the case of Karam Singh vs. Union of India (Writ Petition No.2635 of 1980) decided on December 11, 1987 (copy placed on record at page 19).

2. Brief facts of the case are that the applicants claim that they were regularly appointed as Section Officers w.e.f. the respective dates shown in para 4(i) of the application. These dates ^{range} from 8.6.1983 for applicants No. 1 and 2, 27.1.1984 for applicants No.3 and 4, 20.7.1984 for applicant No.5, 29.8.1984 for applicant No.6 and 1.1.1986 for applicant No.7, respectively. The applicants claim that the official respondents ^{have} arbitrarily, illegally and contrary to the directions of the Supreme Court in Karam Singh's case (supra) showed their appointment as Section Officers from the dates which are subsequent to the actual dates of appointment. They claim that the Supreme Court had directed that they were not to be reverted and to be continued in higher post by ^{by} creating supernumerary posts to the extent as may be necessary, which gave them the seniority also.

3. In order to understand the facts and circumstances in which the applicants have made

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the above claims, it is necessary to refer to at least the three relevant decisions, which have a direct bearing on the issues, namely, (i) P.N.Tandon and others Vs. Union of India and others - TA No.129/95 and CW No.565/74, at pages 1 to 18 of the compilation placed on record, which was decided by the Principal Bench of this Tribunal on 21.11.1986(hereinafter referred to as the Tandon's case No.1); (ii) P.N.Tandon and others Vs. Union of India and others (hereinafter referred to as the Tandon's case No.2) (pages 21-24) and S.L.P. filed by the Union of India against the decision in the Supreme Court (SLP No.8128/88) which was dismissed by the Supreme Court on 28.4.1989 (page 43) and (iii) Karam Singh's case(supra).

4. In Tandon's case No.1, the applicants were aggrieved in 1974, by a seniority list of Assistants issued by the Ministry without reckoning the ad hoc service rendered by them as Assistants, before they were regularly appointed. They were given seniority only from the date of their regular appointment and the earlier ad hoc service was ignored. Therefore, they became juniors to a large number of Assistants who were directly recruited, after their ad hoc service had commenced but before their regularisation. The prayer made by these applicants for counting the ad hoc service for seniority was allowed by the Tribunal on 21.11.1986. A direction was given that the seniority of the applicants therein as Assistants should be counted from the dates of their continuous officiation on the post of Assistants, whether that be on ad hoc basis or in excess of the promotion quota. There was a direction that the seniority should be refixed on the above basis.

5. A seniority list of Assistants as on 1.8.1977 was issued on 18.10.1977(Annexure-II). In this seniority

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also, the Assistants who were appointed by promotion, were given seniority only from the date of regularisation, after excluding the period of their ad hoc service. Therefore, one Karam Singh filed a writ petition in the Supreme Court (Writ Petition No. 2635 of 1980). That was decided on 11.12.1987. Before that date, this Tribunal had decided the case of Tandon 1 on 21.11.1986, as stated above. It was apparently submitted to the Court that the Tribunal had set aside the seniority list impugned before the Supreme Court. As a matter of fact, the seniority list as on 1.8.1977 could not have been challenged in Tandon case No. 1, which was filed as a writ petition before the Delhi High Court in 1974. It was also pointed out that the decision therein has been accepted and implemented by Government. As there was a direction by the Tribunal for redrawing the seniority list, no direction was given by the Supreme Court to quash the seniority list or for redrawing it. The petitioner requested for a direction that upon the refixation of seniority as directed by the Tribunal, consequential benefits should be made available. This was made because the Tribunal did not refer to the grant of consequential benefits. Hence the Court directed as following:

" In the case of the petitioner before us, who has now retired, notional promotion may be granted so that the benefit which would have accrued may be worked out. These consequential benefits should be worked out within six months from today." (Emphasis given)

6. The private respondents appearing therein, were directly recruited Assistants who lost relative seniority vis-a-vis the promotee Assistants consequent upon the decision in Tandon case No. 1. They knew that

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consequent on the preparation of the revised seniority list in terms of the directions given by the Tribunal, there will be a review of the promotions made. They apprehended that the respondents who already stood promoted to higher grade, would be reverted because they would now be found to be much junior as Assistants and not eligible to hold the posts of Section Officers. They prayed for a direction that they should not be reverted but should continue in the higher posts for which purpose supernumerary posts be created to the extent necessary. It was pointed out by them that such directions were given in a similar case Narender Chadha & ors. Vs. U.D.I (1986 (1) SCR 211). Consequently, the Supreme Court suggested to Government "that while complying with the directions for extending the consequential benefits to the appellant upon redrawing of the seniority list, it should keep this principle in view and give effect to our order." (Emphasis given)

7. Thus, only the appellant Karam Singh was given consequential benefits by way of review of his promotion. That was extended also to other persons similarly situated in Tandon case No.2 as will be seen presently. The only benefit given to the private respondents who were similarly situated as the present applicants - was protection from reversion by being shown against supernumerary posts, if necessary.

8. In Tandon case No.2, the applicants who were the same as in Tandon case No.1 - prayed that the benefit of the earlier judgement be given, by giving arrears of pay and promotion consequent upon revision of seniority. This was decided on 12.2.1988, after the decision of the Supreme Court in Karam Singh's case. Consequential benefits were directed to be given consequent upon the revision of the seniority list of Assistants as directed

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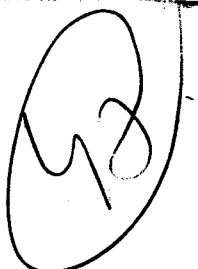
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by the Tribunal in Tandon case No.1. The Tribunal held that once a seniority list was revised, the beneficiaries of the revision became entitled to being considered for promotion to the next higher grade from the date their juniors in the revised seniority list had been promoted, irrespective of whether such benefits were asked for or not. Accordingly, a direction was given that the beneficiaries of the earlier order should be considered for retrospective promotion as Section Officers, if found suitable, from the date their juniors were promoted. They were to be given arrears of pay on such promotion by creating supernumerary posts, if necessary. It was also further directed that these beneficiaries would reckon their service as Section Officers from the date of their retrospective promotion for the purpose of eligibility for promotion to the next higher grade and that their seniority should be fixed on the basis of such retrospective promotion.

9. A revised seniority list as on 1.12.1986 of the Assistants was prepared ^{on 18.5.1987} (Annexure A-5), in pursuance of the judgement of the Tribunal in Tandon case No.1. Subsequently, after the decision of the Supreme Court on 11.12.1987 in Karam Singh's case, as also the decision of the Tribunal dated 12.2.1988 in Tandon case No.2, 4 orders were passed on 12.5.1988 as follows:

- (i) By one order (Annexure A-9), 251 supernumerary posts were created for various periods to give effect to the retrospective promotion of applicants in Tandon cases No.1 and 2 who had gained in seniority and who were directed to be promoted ^{retrospectively} /with effect from

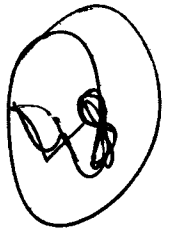
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the date on which their juniors in the revised seniority list had been promoted earlier to the higher grades. Likewise, in pursuance of the orders of the Supreme Court, supernumerary posts were created in respect of 84 officers, who had earlier been promoted on the basis of the pre-revised seniority list and who are now required to be reverted, but have been protected from reversion by the Supreme Court judgement.

- (ii) By the second order (Annexure A-8), a review of all the past promotions was made and the 251 Assistants who have now been found to be senior (i.e. the applicants in Tandon cases No.1 & 2 and others like them) were given officiating promotions from the dates mentioned therein. These dates are the dates on which their juniors in the revised seniority list, including the applicants, had been promoted earlier. To accommodate them and to give them arrears of pay etc., supernumerary posts, as mentioned above, were created.
- (iii) By the third order (Annexure A-6), 196 out of the above 251 Assistants were regularly promoted as Section Officers with effect from the dates given in that order, in continuation of their earlier officiating promotion by Annexure A-8 order.
- (iv) The fourth order dated 12.5.1988 (Annexure A-7) was issued to protect 84 officers, including the applicants, from reversion. For this purpose, they were shown against supernumerary posts. Accordingly, applicant No.2 (Sh. P.K. Sharma) who was earlier promoted on 8.6.1983





and who should have been reverted is now shown against the supernumerary post of Section Officer from 8.6.1983 to 25.11.1985 because from 26.11.1985 alone, he becomes entitled to a regular promotion. The 5 other applicants who were earlier promoted as Section Officers on various dates i.e. 8.6.1983, 27.1.1984, 20.7.1984 and 29.8.1984 were accommodated in the 1987 panel (Annexure A-10 order) and thus they were shown against supernumerary posts from the date of their promotion till their accommodation in the 1987 panel and appointment as Section Officer on that basis. Applicant No.7 (Shri Kamlesh Kumar) who was promoted on 25.11.1985 was yet to be accommodated in a regular panel and, therefore, he was continuing on a supernumerary post from 25.11.1985.

10. The main grievance of the applicants is that for reckoning seniority as Section Officer, their entire earlier service has been ignored and only the service rendered by them from the date of their fresh regularisation on the basis of the revised seniority list has been taken into account. On the contrary, in respect of the 251 promotee Assistants (beneficiaries of Tandon cases No.1 and 2) the period of service on the supernumerary posts has been counted. Shri K.C. Mittal, the learned counsel contended that the earlier service was regular because the applicants were promoted against substantive vacancies on the basis of the recommendations of the Departmental Promotion Committees. Hence, that service cannot be forfeited. It is secondly pointed out that if they are

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relegated in the seniority list of Section Officers to dates much later than the original date of promotion, this will also affect adversely the applicants in the Tandon cases, because the direction of the Tribunal in their case is that they should be promoted as Section Officers retrospectively only from the date their juniors have been promoted. His point is that they too would have to be appointed only from the later dates when the applicants have now been regularised. Lastly, it is contended that the Supreme Court has given a protection to them, which includes seniority in respect of the period they held supernumerary posts because of the reference to Narender Chadha's case and, denial of seniority from the date the supernumerary posts were held, is contrary to their order.

11. These claims have been resisted by the learned counsel for Government.

12. We have carefully considered these submissions and we are unable to agree with them for the reasons given below.

13. In the first place, the applicants cannot compare themselves with the applicants in the Tandon cases. (i.e. the applicants in Tandon cases) They/are declared senior by virtue of the judgements in their cases. They have been found to be entitled for retrospective promotion in place of the applicants who had been promoted in the past. Therefore, their service in the supernumerary posts is their rightful due and it has necessarily to be counted for seniority. That is not the position of the applicants. They occupy supernumerary posts to avoid reversion. In the circumstance, they hold the post only by virtue of the compassionate order passed by the Supreme Court to avoid reversion.

14. There is no doubt that their earlier promotion was on a regular basis but that was on the basis of the pre-revised seniority list of Assistants wherein they were shown as seniors to a number of promotee Assistants. However, that seniority list was directed to be recast by the Tribunal in Tandon case No.1. In the revised seniority list of Assistants (Annexure A-5) the applicants are far below in the list and became disentitled to hold the promotion post and faced reversion. In the normal course, the applicants and other similarly situated would have been reverted when these judgements came to be implemented on 12.5.1988. In other words, their earlier promotion was treated a mistake based on a wrongly prepared seniority list. In the light of the revised seniority list, they would have been reverted with all its consequences i.e. ^{reduction to the post of Assistant,} break in service as Section Officers for purposes of seniority. That was prevented in part by the Supreme Court's order. They cannot get any advantage out of that order for counting the earlier service, now found to be unauthorised, for the purpose of reckoning seniority. That order of the Supreme Court only prevented their reversion as Assistants and protects their pay and allowances as Section Officers and no more.

15. We see no substance in the argument that relegating the applicants to a later date when they were actually promoted on a regular basis in accordance with the revised Annexure A-5 seniority list, will affect the applicants in the two Tandon cases also. The direction in the Tandon case No.2 was that "they should be given promotion from the dates their juniors were so promoted." The reference to 'juniors' is to be understood to their juniors in the revised seniority list and the reference to the date of promotion

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of the juniors is to be understood to refer to the dates when such juniors were promoted in the past on the basis of the pre-revised seniority list.

16. The reliance on the Supreme Court's judgement in Narender Chadha's case is of no avail as can be seen from the following extract of the decision:

" We are informed that some of the promotees and direct recruits who are governed by this decision have been promoted to higher grades. If as a result of the preparation of the seniority list in accordance with the decision and the review of the promotions made to higher grades any of them is likely to be reverted such officer shall not be reverted. He shall be continued in the higher post which he is now holding by creating a supernumerary post, if necessary to accommodate him. His further promotion shall however be given to him when it becomes due as per the new seniority list to be prepared pursuant to this decision. There shall, however, be a review of all promotions made so far from Grade IV to higher posts in the light of the new seniority list. If any officer is found entitled to be so promoted to a higher grade he shall be given such promotion when he would have been promoted in accordance with the new seniority list and he shall be given all consequential financial benefits flowing therefrom. Such review of promotions shall be completed within three months and the consequential financial benefits shall be paid within three months thereafter. In giving these directions we have followed more or less the directions given in P.S. Mahal and others v. Union of India & ors. (supra)* "

*(1984) 3 SCR 847.

(emphasis added)

It is clear that there was to be no reversion from the higher grades as in the present case. They would be continued on supernumerary posts. But in the higher grades they will have a lower seniority on the basis of the revised seniority. It is this revised seniority list that will determine their further promotion. That is the position here too. For further promotion as Under Secretary etc. the service of the applicants as Section Officers can be considered only from the dates

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they have now been regularised afresh as Section Officers on the basis of the revised seniority list (Annexure A-5).

17. The applicants have a case that the Supreme Court's order in Karam Singh's case gave consequential benefits following the order that the respondents therein shall not be reverted but may be accommodated in supernumerary posts. We have read and reread the order of the Supreme Court. We do not find any such direction at all. That order has been considered in detail in paras 5 to 7 supra. As can be seen from paras 6 and 7, consequential benefits have been conferred only on Karam Singh. The only direction given in favour of the respondents therein was that they may not be reverted.

18. These findings take us to the last issue. In the above circumstances, we are of the view that the prayer now made is barred by the principles of constructive res judicata. We notice that the only prayer the respondents made before the Supreme Court in Karam Singh's case was that as the respondents, who have been promoted in the higher grades are likely to be reverted, they should not be reverted but allowed to continue in the higher posts by creating supernumerary posts to the extent as may be necessary. If they wanted protection of seniority from the date of their earlier promotion, they should have prayed for a direction therein. There was no whisper of any claim to seniority to be accorded to them on the basis of such accommodation. Indeed, it would have been presumptuous on their part to have asked for such an additional benefit, when they were liable to reversion with consequent interruption or break in service as Section Officers which would render the entire period of service ineligible for consideration for seniority. Therefore, the claim now made is also barred by the principles of constructive res judicata.

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19. In passing we have only to refer to the argument advanced by Shri N.S. Mahta, ^{senior} Standing Counsel for Government that Government counted the period of service rendered by the 251 promotee Assistants-beneficiaries of Tandon cases 1 & 2- against the super-numerary posts by mistake and this cannot result in a claim by the present applicants for similar treatment. We reject this contention, for, Government was obliged to accord such treatment to the 251 applicants of Tandon cases 1 & 2 because of the specific directions of the Tribunal in the Tandon case 2, as pointed out in para 8(supra).

20. Before we dispose of this OA, we have only to add that certain petitioners sought impleadment in MP No.358/91. That MP was directed to be heard along with the OA but no one appeared on behalf of these respondents.

21. Shri A.K. Behera, the learned counsel had moved MA 306/95 on behalf of two petitioners seeking their impleadment as respondents in the OA which was allowed by order dated 30.3.1995. Shri A.K. Behera, learned counsel appeared on behalf of interveners/ respondents and submitted that the applicants cannot continue to claim benefits on the basis of the promotion given to them in the past on the basis of the seniority list of 1977 which has been quashed and set aside. The petitioners represented by Shri A.K. Behera are those who have been inducted as Section Officers after the induction of the present applicants as Section Officers. In the view ^{that} we have taken of this OA, we do not find it necessary to consider the submissions made by this learned counsel.

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22. For the detailed reasons given above,
we find no merit in this OA. Accordingly, it is
dismissed. No costs.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member(J)

9/2/96.

N.V. Krishnan

(N.V. Krishnan)
Acting Chairman

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