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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO. 1217/2004

New Delhi, this the 6th day of September, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. V.K. Agnihotri, Member (A)

S.B. Kaushik

...Applicant

(By Advocate: Shri Naresh Kaushik and Ms. Shilpa Chauhan)

Versus

Indian Council of Agricultural Research & Ors. ...Respondents

(By Advocate: Shri V.K. Rao for R-1; Sh. J.P. Singh for R-3, 4 & 10;
Shri A.S. Singh proxy for Sh. R.N. Singh for R-5).

1. To be referred to the Reporters or not? *Yes.*
2. To be circulated to outlying Benches of the Tribunal or not? *Yes.*


(V.K. Agnihotri)
Member (A)

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Hon'ble Mr. V.K. Agnihotri, Member (A)

S.B. Kaushik
S/o late Shri Bharat Singh,
R/o B-6, Raksha Kunj,
Paschim Vihar,
New Delhi - 110 063.

...Applicant

(By Advocate: Shri Naresh Kaushik and Ms. Shilpa Chauhan)

Versus

1. Indian Council of Agricultural Research (ICAR)
Through its Director General,
ICAR, Krishan Bhawan,
New Delhi - 110 001.
2. The Secretary, ICAR,
Krishan Bhawan,
New Delhi - 110 001.
3. Shri S.P. Sanwal,
Under Secretary, ICAR,
Krishi Bhawan,
New Delhi - 110 001.
4. Sh. Rajiv Maheshwari,
Under Secretary, ICAR,
Krishi Bhawan,
New Delhi - 110 001.
5. Shri Kanahiya Chaudhary,
Under Secretary, ICAR,
Krishi Anusandhan Bhawan,
Pusa, New Delhi - 110 012.
6. Shri Vikram Singh,
Collector of Examinations, ASRB,
Krishi Anusandhan Bhawan,
Pusa, New Delhi - 110 012.
7. Shri Devi Chand,
Ex-Deputy Secretary, ICAR,
R/o AH-72, Shalimar Bagh,
New Delhi.



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8. Shri Sodhi Singh,
Deputy Secretary, ICAR,
Krishi Anusandhan Bhawan,
Pusa, New Delhi - 110 012.
9. Shri N.C. Sudan,
Chief Administrative Officer,
IVRI, Izatnagar (UP).
10. Shri J. Ravi,
Deputy Secretary (Personnel),
ICAR, Krishi Bhawan,
New Delhi - 110 001.
11. Shri G.R. Deshbandhu,
Deputy Secretary,
ICAR, Krishi Bhawan,
New Delhi - 110 001.
12. Shri B.N. Rao,
Deputy Secretary,
ICAR, Krishi Bhawan,
New Delhi - 110 001.
13. Shri Sanjay Gupta,
Deputy Secretary,
ICAR, Krishi Bhawan,
New Delhi - 110 001.
14. Shri A.C. Gosh,
Deputy Secretary, ICAR,
Krishi Anusandhan Bhawan,
New Delhi - 110 001.
15. Union of India through
Secretary, DOPT,
North Block,
New Delhi - 110 001.
16. The Secretary to the Govt. of India,
Ministry of Law and Justice,
Department of Legal Affairs,
'A' Wing, Shastri Bhawan,
New Delhi - 110 001.

...Respondents

(By Advocate: Shri V.K. Rao for R-1; Sh. J.P. Singh for R-3, 4 & 10;
Shri A.S. Singh proxy for Sh. R.N. Singh for R-5).

ORDER**By Mr. V.K. Agnihotri, Member (A):**

In this OA the applicant has sought a direction to the officials
respondents to implement the Award dated 19.08.1992 of the Board of



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Arbitration set up by the Indian Council of Agricultural Research (ICAR) for determining the seniority in the administrative cadres, accordingly to draw up a fresh panel of Under Secretaries by conducting a review DPC meeting on the basis of seniority list of Section Officers finalized as per the Award, and provide consequential benefits.

2. The bare facts of the case, shorn of unnecessary frills and relevant to the case of the applicant in the present OA, are that on 29.01.1991, under the Joint Council Scheme of the ICAR, a Board of Arbitration was appointed in the following terms of reference:-

“What criteria should be applied for determining of seniority of various staff in the administrative cadre under the ICAR.”

3. The Board of Arbitration submitted its Award on 19.08.1992. In consultation with DoP&T and Ministry of Law, the official respondents issued an Office Order dated 20.02.1998 accepting the Award, subject to the decision of this Tribunal in OA No. 290/1998, which was pending at that point of time. Aforementioned OA 290/1998 was dismissed, vide order dated 04.05.1999. Thereafter, the respondents drew the provisional seniority list of Section Officers/Assistants as on 01.01.1976 at the ICAR Headquarters on the basis of Arbitration Award and the principles contained in DoP&T O.M. dated 07.02.1986. This provisional Seniority List was circulated among all concerned, vide letter dated 27.05.1999 and was also referred to DoP&T for confirmation. The DoP&T, *inter alia*, opined that the Award of the Board of Arbitration to fix seniority in terms of O.M. dated 07.02.1986, even in cases pertaining to the period prior to 01.03.1986, was not in accordance with the Office Memorandum, which came into effect from 01.03.1986 only. In the meanwhile, certain employees aggrieved by the



order of the Tribunal in OA 290/1998 filed CWP No. 3460/1999 in Delhi High Court, which was disposed of with the following directions:-

“As during pendency of this petition, respondents 1 to 3 have decided to abide by the advise of DOPT, the very challenge of the petitioners as made in the petition does not survive for consideration and the petition is rendered as infructuous. The same is accordingly dismissed as infructuous. Interim order stands vacated.

It is made clear that in case respondents 5 to 12 or any one of them will have any grievance now, they will be at liberty to take such recourse as may be admissible to them in accordance with law.”

4. Thereafter, the official respondents, taking into account the totality of facts, including the latest advise of the DoP&T, decided that the Award given by the Board of Arbitration in the matter of fixation of seniority of administrative staff was not implementable and was accordingly rejected. Office Order dated 20.02.1998 (supra) was also cancelled and the provisional Seniority List issued vide letter dated 27.05.1999 (supra) became infructuous and was withdrawn.

5. Our account of the facts of the case would not be complete without reference to a few other related OAs, which were filed from time to time before this Tribunal in this context.

6. Some of the private respondents in the present OA had filed OA 2406/1988 in the context of their non-consideration for promotion to the post of Under Secretary as well as counting of their *ad hoc* service in Section Officers' grade for promotion to the post of Under Secretary. Several interim orders, including an order on MA 2459/1988, were issued in OA 2406/1988. It was finally disposed of by an order dated 04.02.1997, in view of an affidavit dated 04.09.1996 filed by the



respondents. The applicant in the present OA had earlier filed OA No. 1706/2002, which was dismissed on 05.07.2002 in *limine* on account of several defects, giving the liberty to the applicant to institute a proper OA in accordance with law and rules, if so advised. The applicant herein filed another OA 3362/2002 before this Tribunal challenging the decision of the respondents in not giving effect to the Office Order dated 20.02.1998 (*supra*). Consequent upon the issue of the impugned order (dated 13.03.2003) in the present OA, the applicant sought to file an application for amendment in OA 3362/2002 to challenge the said impugned order. However, subsequently, the applicant was promoted to the post of Under Secretary, whereupon he withdrew his OA 3362/2002 with liberty to file a fresh OA. This Tribunal accordingly dismissed OA 3362/2002 as withdrawn on 29.09.2003 and gave liberty to the applicant to approach the Tribunal, if any grievance survived. Hence, the present OA.

7. Hidden inside the voluminous pleadings filed by the applicant, the kernel of the relief seeks a direction to the official respondents to implement the Award of the Board of Arbitration dated 19.08.1992. Some of the significant averments made by the applicant in this context are as follows:-

- (i) By quashing the Award of the Board of Arbitration dated 19.08.1992, which was upheld by this Tribunal in its order dated 04.05.1999 in OA 290/1998, the respondents, in effect, have quashed a Rule of Court. Thus, they have withdrawn the provisional Seniority List of Section Officers circulated through letter dated 27.05.1999 and thus, permanently infringed/denied the applicant's claim of lawful seniority in the



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grade of Section Officers and further promotions on the basis of principle of continuous length of service in that grade. In support of his claim, the applicant has cited the rulings of the Hon'ble Supreme Court in **Rudra Kumar Sain & Ors. v. Union of India & Ors.**, 2000 (4) SLR 787; **Sub- Inspector Rooplal & Anr. v. Lt. Governor through Chief Secretary, Delhi & Ors.**, 2000 (1) SCC 644; **Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors.**, 1990 (2) SCC 715; **P.S. Mahal & Ors. v. Union of India & Ors.**, AIR 1984 SC 1291; and **S. Krishnamurthy v. The General Manager, Southern Railway**, AIR 1977 (SC) 1868.

- (ii) Seniority list of Section Officers as on 01.02.1986, which was circulated on 10.08.1988, violated the settled law, as it was fixed by applying the quota rule, when such quota rule had broken down for a number of years. OA 2406/1988 was filed before this Tribunal, *inter alia*, seeking reliefs (i) against the counting of *ad hoc* service for promotion to the grade of Under Secretary, and (ii) to make promotions according to the seniority list circulated on 10.08.1988. Vide order dated 09.02.1989, this Tribunal did not allow the reliefs sought and directed the respondents to regulate promotions to the grade of Under Secretaries according to rules and the question relating to counting of *ad hoc* service for promotion was left open.

- (iii) On the pronouncement of the order of this Tribunal in OA 290/1998 (*supra*), the claims made by the applicants in that OA (some of the private responders herein), viz. (i) against the



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implementation of the Award of the Board of Arbitration, (ii) for protection of the seniority list of Section Officers circulated in 1989, and (iii) for granting promotion against the then vacant posts of Under Secretaries on the basis of seniority list of Section Officers circulated in 1989, stood rejected by the Tribunal.

(iv) The Board of Arbitration was constituted with a commitment that the Award rendered by the Board will be implemented. Hence the issue of the impugned order dated 13.03.2003 amounts to renegation of that commitment and is, therefore, *ultra vires* of the Parent Act.

(v) Retrospective application of the principle contained in DoP&T O.M. dated 07.02.1986 (supra), directed by the Board of Arbitration in para 17 of the Award dated 19.08.1992 for re-casting the seniority of the ICAR employees, has been upheld by the Tribunal in OA 290/1998 (supra). The DoP&T themselves have applied the principle contained in that O.M. dated 07.02.1986 (supra) retrospectively from 1962 in their O.M. dated 03.12.1997, through which the Common Seniority List (CSL) relating to CSS Section Officers was re-cast, starting from 01.10.1962.

8. The official respondents (No. 1, 2, 15 & 16) have stated that the Award of the Board of Arbitration was quashed in consultation with DoP&T, which is a nodal body and governs the functioning of all Government departments. Since the respondents also adopt the advice of DoP&T with respect to governance of the service conditions of their



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employees, the same is just and proper and cannot be allowed to be challenged by the applicant. The decision contained in the Office Order dated 13.03.2003, which has been challenged in this OA, was taken by the competent authority after taking into account the advice of DoP&T on the matters which could be referred to Arbitration. Respondents have also taken into account the advice of DOP&T, according to which DoP&T's O.M. dated 07.02.1986 cannot, under any circumstances, be made applicable retrospectively. Upon consulting DoP&T with respect to the matters that could be referred to an Arbitral Tribunal, it was advised that Joint Council Scheme for the Central Government employee provides for arbitration only in matters relating to pay & allowances, leave and working hours of a class of employees and, therefore, matters with regard to seniority of employees are not arbitrable. Apart from this, arbitration can be resorted to only to decide an issue in respect of which there is a dispute between the employee and the employer and not between different sections of employees. In view of this advice of DoP&T, the respondents took the decision to quash the Award of Arbitration. It has been further stated that the provisional Seniority List circulated through letter 27.05.1999 was drawn up on the basis of the arbitral Award. But after it was referred to DoP&T for confirmation and, after examining their advice, the respondents came to the conclusion that fixation of seniority as per the Award was not in accordance with the provisions contained in DoP&T's O.M. dated 07.02.1986. In view of this, there was no question of finalizing the Seniority List circulated on 27.08.1999 and, as such, there was no question of holding the review DPC on the basis of that Seniority List. In these circumstances, Office Order dated 13.03.2003



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was issued withdrawing earlier Office Order dated 20.02.1998, which was issued pursuant to the Award of the Board of Arbitration.

9. The private respondents (No. 3 to 5 & 10), in their Preliminary Objections, have stated that the applicant had earlier filed OA No. 1706/2002 seeking similar multifarious reliefs and this Tribunal had dismissed that OA vide order dated 05.07.2002 on the ground that the OA was not only misconceived but was seeking multifarious reliefs. The applicant has again filed the present OA seeking similar reliefs as in OA 1706/2002. Hence, the OA deserves to be dismissed. They have further stated that the applicant is seeking seniority over certain officers, who have not been made party to the OA, viz. Mrs. Shashi Prabha Rajdan, Sh. S.K. Behera, Sh. P.K. Bage (all Under Secretaries) etc. In addition, certain officers have retired long back, who shall be definitely affected by any revision in seniority. The applicant, in this case, is trying to get the relief behind the back of officials mentioned above without giving them due notice about filing of this OA. Hence, this OA deserves to be dismissed on this ground itself. The private respondents have further stated that the applicant himself took the benefit of rota quota at the time of his appointment as Assistant as well as at the time of his promotion to the post of Section Officer, based on Limited Departmental Competitive Examination. He intentionally did not challenge the seniority in 1988-89 as that would have affected his seniority position adversely vis-à-vis promotees of that time. He has challenged the seniority after 15 years knowing that those appointed as Assistants/Section Officers against purely promotion quota in 1980s have since retired and, by any revision of the seniority at this stage, he foresees no harm to his position by such retired promotees. Hence, the



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applicant has not come to the Court with clean hands and should not be allowed to agitate the seniority position of 1988-89 after a lapse of 15 years. It has been further averred that the issue of determination of seniority cannot be decided by arbitration and that too behind the back of the affected persons. When private respondents nos. 3 to 5 came to know in 1997 that the official respondents were intending to change their seniority on the basis of some Arbitration Award, these private respondents submitted representation dated 26.08.1997 to the official respondents requesting them not to change their seniority on the basis of Award because: (i) the Award had not been made Rule of Court; (ii) the Award was time barred; and (iii) seniority could not be decided by such an arbitration, particularly, when the respondents were not a party to it. For this reason, the private respondents had to file OA 290/1998 before this Tribunal. However, this Tribunal in its order dated 04.05.1999 in OA 290/1988 held that the impugned Arbitration Award was an arbitration under the Industrial Disputes Act and the Indian Telegraph Act which are statutory; whereas, according to the respondents, the impugned Arbitration Award was admittedly non-statutory. As regards the applicant's contention that DoP&T's O.M. dated 07.02.1986 has retrospectively applicability, insofar as DoP&T itself had revised the seniority of CSS Officers in 1996 starting from 1962, the private respondents have averred that the seniority of Section Officers in CSS is determined in terms of statutory rules, namely, CSS Rules, 1962, as amended from time to time, and not in terms of DoP&T instructions dated 07.02.1986. Be that as it may, the common seniority list framed by DoP&T in 1983 was quashed by the Tribunal. Another list was formulated in the year 1995 as a follow up of Tribunal's order and was circulated by DoP&T in 1996. This revised seniority list was



quashed by the Hon'ble Supreme Court in 1997 and the final Common Seniority List was then circulated in the same year. As it happens, DoP&T's O.M. dated 07.02.1986 stipulates that: "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 O.M." Finally, the private respondents have averred that the Hon'ble Supreme Court in the case of **D.P. Sharma & Ors. v. Union of India & Anr., 1989 (1) SLR 780**, have held that rules framed subsequently regarding seniority cannot operate retrospectively to the disadvantage of the employees. Hence, the Award of the Board of Arbitration could not have directed retrospective application of DoP&T instructions dated 07.02.1986 in ICAR.

10. In his rejoinder to the counter of official respondents, in addition to reiterating the stand taken by him in the OA, the applicant has drawn attention to the following observations made in the order of this Tribunal in OA 290/1998 in respect of the Award of Board of Arbitration:

"We do not find anything in the Award which could be held to be outside the scope of the terms of reference" (para 17).

"It is contended that the Award has been accepted by the Competent Authority and regular promotions would be made after the *inter se* seniority is rectified and finalized" (para 12).

11. The applicant has further tried to reinforce the finality and sanctity of the Award of the Board of Arbitration by inviting attention, *inter alia*, to the rulings of various courts in **Sardar Singh v. Smt.**



Krishna Devi & Anr., AIR 1995 (SC) 491; **Food Corporation of India v. Joginderpal Mohinderpal & Anr.**, AIR 1989 (SC) 1263; **U.P. Hotels etc. v. U.P. State Electricity Board**, AIR 1989 (SC) 268; **Gouri Shankar Prasad Sinha v. The State of Bihar**, AIR 1973 (Patna) 405; and **Satish Kumar & Ors. v. Surinder Kumar & Ors.**, AIR 1970 (SC) 833.

12. In response to the counter of the private respondents, the applicant has reiterated the arguments advanced in his rejoinder to the counter of the official respondents. In addition, he has averred that the DPC meeting held in 1998, when the stay was operative, must be held to be *non est*. The stay order operates on both the parties and the promotions of the answering respondents, made during the period when stay was in operation, have been continued illegally. In support of his averment, he has cited the rulings of various courts in **Naval Kishore Parsad Sinha v. State of Bihar**, AIR 1983 (Patna) 8; and **Drug Transport Company v. Regional Transport Authority, Raipur**, AIR 1965 MP 142.

13. We have heard the learned counsel for the parties at length and perused the voluminous pleadings on record. It may be mentioned that private respondents nos. 6 to 9 and 11 to 14 were set *ex parte* vide this Tribunal's order dated 31.01.2005.

14. Amongst a plethora of pleadings and arguments, we find that, as stated at the beginning, the relief sought by the applicant is that the Award of the Board of Arbitration dated 19.08.1992 should be implemented by the official respondents. In our view, in the context of



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various averments of the parties to this OA, it boils down to giving our findings on the following issues:-

- (i) Whether the matter relating to determination of seniority of the administrative cadres of the ICAR could have been referred to a Board of Arbitration constituted under the JCM Scheme of the ICAR?
- (ii) Whether the Board of Arbitration exceeded its jurisdiction in the Award delivered by it?
- (iii) Whether the Award of the Board of Arbitration has to be Treated as a Rule of Court?
- (iv) Whether O.M. dated 07.02.1986 could be given retrospective effect?

15. Some of these issues are not *res integra*. As regards the first issue regarding reference made to the Board of Arbitration in respect of a matter pertaining to seniority of employees, this Tribunal in its order in OA 290/1998 (supra), after quoting clause 28 of the Joint Council Scheme of the ICAR, concluded as follows:-

“A bare reading of the aforesaid clause makes it abundantly clear that all matters relating to service conditions as a class or grade of employees is referable to Arbitration if there is any disagreement between staff side and the official side. In the instant case the official side was of the view that *inter se* seniority of the two groups of employees, namely, promotees and direct recruits (or examinees) should be determined according to the quota-rota rule while the staff side held the view that rota-quota rule having broken down *inter se* seniority should be determined according to the date of continuous officiation. There does not appear to be any substance in the contention of the applicants that since they were not represented



in the staff side for the reason that the majority of the employees are from the promotee cadre the reference to arbitration could not have been made. The official side were holding a view beneficial to the persons belonging to the group of employees to which the applicants belong and therefore the applicants interest was adequately safeguarded by the official side. It may be that the representatives from the staff side were from the promotee quota but that would not by itself be sufficient to hold that there was really no dispute which could have been referred to arbitration.

"...We also do not find any merit in the contention that clause 28 of the joint Council Scheme is either ultra-vires or illegal...The question of inter-se seniority certainly comes within the scope of the Scheme."

16. As regards the issue whether the Board of Arbitration exceeded its jurisdiction, as pointed out by the applicant, the following observation of this Tribunal in OA 290/1998 (supra) should set the matter at rest:

"We do not find anything in the Award which could be held to be outside the scope of the terms of reference."

17. We would now like to consider the contention of the applicant that, in view of the fact that the matter relating to the Award of the Board of Arbitration was deliberated upon in this Tribunal's order in OA 290/1998, and has, therefore, become a Rule of Court. In the first place, the issue before the Tribunal in that OA was not to make the Award a Rule of Court. In terms of the findings of this Tribunal in that OA, relating to the binding nature of the Award, after stating that there was no ground on the basis of which an arbitration under the Joint Council Scheme of the ICAR cannot be held to be a statutory



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Arbitration, the Tribunal observed as follows:-

“As a matter of fact it would be decision taken by the respondents implementing the award that would give the applicants the real cause of action...

“Quite clearly the arbitration proceedings were initiated by the respondents to resolve the dispute between the two groups of employees. This would be like referring that dispute to a departmental committee. It would be the decision that was eventually taken by the competent authority that would be relevant so far the grievance of the applicant is concerned.”[Emphasis ours]

18. We are in agreement with the above-mentioned findings of this Tribunal in OA 290/1998. The reference to the Board of Arbitration under the Joint Council Scheme is a mechanism by which the authorities concerned undertook to obtain professional advice from an independent agency before taking a decision. As such, a reference to the Board of Arbitration under the Joint Council Scheme of the ICAR is not even on par with the Joint Council Scheme of the Central Government, much less on par with a Board of Arbitration set up under the Arbitration Act, 1940. As such, we do not consider that the Award of the Board of Arbitration in the present case could at all be considered to be Rule of Court. The rulings cited by the applicant pertain to Arbitration Act, 1940 and Registration Act, 1908, are, in our opinion, not relevant to the Award under consideration in the present OA.

19. Finally, we would like to give our findings on retrospective applicability of DoP&T's O.M. dated 07.02.1986 (supra). In this context, we would like to pick up the threads from the logic behind the Award,



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which gave the following verdict:-

"17. Looking to the circumstances of the disputed cases and in the interest of equity and fairness, the Board is of the view to correct the distortions in the seniority list of Section Officers and Assistants in the ICAR Headquarters, the same should be drawn up afresh applying the principles contained in the DOPT O.M. dated 7.2.86 starting from the date from which different modes of recruitment were prescribed under the recruitment rules."

20. This recommendation of the Board of Arbitration, insofar as it implied retrospective application of DoP&T O.M. dated 07.02.1986, was squarely based on the ratio of the orders of the Madras Bench of this Tribunal in **T.M. Padmanabhan & Ors. v. ICAR**, quoted extensively in para 16 of the Award. The following extract from the said ruling of Madras Bench of this Tribunal is directly relevant to the issue before us:-

"We further direct the first two respondents to redraw the seniority list in the light of the guidelines given in the Department of Personnel & Training Office Memorandum dated 7.2.86. Though it has been stated in the counter that the said Office Memorandum will have effect only from 1.3.86, we are of the view that as the grievance of the applicants is justified in law, the principle as contained in the said Office Memorandum dated 7.2.86 has to be applied in redrawing the seniority list of Assistants/Senior Clerks in the CIFT, Cochin, as on 1.12.1985. That will be in accordance with the decision of this Tribunal in OA 140, 141 and 142 of 1985 (decided on 30.6.87 in T.R. Sarkar and others vs. The Union of India, Ministry of Finance) as well as the decision of this Bench in OA 41 of 1987 (decided on 28.10.97 in V.V. Verghese vs. The Union of India, Ministry of Personnel and others)." [As extracted in the Award of Board of Arbitration dated 19.08.1992].

21. The private respondents have drawn our attention to the ruling of the Hon'ble Supreme Court in **D.P. Sharma & Ors. v. Union of India &**



Anr., (supra) with regard to retrospective applicability of rules. We would like to quote the following ruling of the Hon'ble Supreme Court in the said decision:

“4. We have perused the judgment of the Division Bench and also considered the submissions of the parties. The view taken by the Division Bench appears to be erroneous. The Rules, no doubt provide that all persons substantially appointed to a grade shall rank senior to those holding officiating appointments in the grade. But the rules have no retrospective effect. It could not impair the existing rights of officials who were appointed long prior to the Rules came into force. The office memorandums to which learned single Judge has referred in detail and which we have extracted above clearly laid down that length of service should be the guiding principle of arranging the inter-se seniority of officials. The appellants being governed by those memorandums had the right to have their seniority determined accordingly before the Rules came into force. That being their right, the Rules cannot take it away to their prejudice. The Division Bench was, therefore, clearly in error in directing that the seniority shall follow their respective confirmations.

5. xxx xxx xxx xxx

6. These consideration apply equally to the present case as well. 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. The view taken by the Division Bench, which is in substance contrary to this principle is not sound and cannot be supported.”

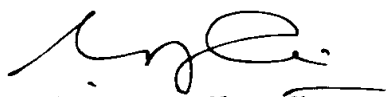
2 — If according to the above ruling of the Hon'ble Supreme Court, statutory rules cannot be given retrospective effect to the disadvantage of the employees, there is little scope for giving retrospective effective to an executive instruction (viz. O.M. dated 07.02.1986), especially when it specifically states that : “These orders shall take effect from 1st March, 1986.”



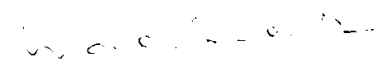
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22. In conclusion, therefore, taking into account the totality of facts and circumstances of the case, we find that even though, in the light of the ruling of the order of this Tribunal in OA 290/1998, making a reference to the Board of Arbitration for determining the seniority was in order and that the Board of Arbitration did not exceed its jurisdiction, we do not agree with the contentions of the applicant that the Award of the Board of Arbitration had to be treated as a Rule of Court. For the reasons mentioned above, we also find that the DoP&T's O.M. dated 07.02.1986 cannot be made applicable retrospectively. It was within the power of the official respondents to take a decision based on the recommendations of the Award of the Board of Arbitration, in consultation with the appropriate authorities, in terms of the rules and instructions in force. The rulings cited by the applicant regarding counting of continuous length of service for purposes of promotion are not quite relevant in the context of the specific issues identified by us. Finally, it is trite law that promotion/seniority should not be disturbed after a long lapse of time [**K.R.Mudgal & Ors. v. R.P. Singh & Ors.**, 1986 (4) SCC 531].

23. In the result, we do not find any merit in the OA, which is accordingly dismissed. There will be no order as to costs.


(**V.K. Agnihotri**)
Member (A)

/na/


(**M.A.Khan**)
Vice Chairman (J)