

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI



O.A.No. 582/1993

New Delhi this the 21st Day of July 1999

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

1. Shri R.S. Maheshwari,
S/o late Shri R.P. Maheshwari,
Aged above 52 years,
R/o Quarter No. 1035, Sector-8,
R.K. Puram, New Delhi-22
2. Shri Bhole Nath Saha
S/o late Shri R.C. Saha
Aged about 52 years,
R/o 2707-B,
Netaji Nagar, New Delhi.
3. Shri Balbir Singh Rawat
S/o Shri Bakhtwar Singh Rawat
Aged about 51 years,
R/o A/G 441, Shalimar Bagh,
New Delhi.
All working as Assts. in
AFHQ, M/o Defence, New Delhi.

Applicants

(By Advocate: Shri S.S. Tiwari)

Versus

1. Union of India, through
Secretary, Ministry of Defence,
South Block, DHQ P.O.
New Delhi - 11.
2. Joint Secretary (Admn) &
Chief Administrative Officer,
Ministry of Defence,
C-II Hutments, DHQ P.O.
New Delhi.

Respondents

(By Shri Tirlochan Rout, Departmental
representative)

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)

We have heard Shri S.S. Tiwari, learned counsel for
the applicant and Shri Tirlochan Rout, Departmental
representative, who is representing the respondents.

2. The issue in this OA relates to the inter se
seniority among two groups of LOCs in Armed Forces

on

(AFHQ)
Headquarters/and Inter Service Organisation - (i) those who are recruited through the UPSC and (ii) those who were recruited from other sources. The Ministry of Defence had followed the system of recruiting LDCs from the UPSC on the basis of the clerical grade examination conducted by them from 1959 onwards and also from other sources. This recruitment of LDCs from other sources had been going on from 1951, while the UPSC recruitment started in 1959 and continued for a few years more till the Government constituted the Staff Selection Commission for recruitment to sub-ordinate posts. The Ministry of Defence issued an office memorandum dated 21st December 1963 as at Ann. R-1 on the subject of procedure for filling permanent vacancies occurring from 1.1.1959 onwards in the grade of LDC in Armed Force Headquarters and Inter Service Organisation. The main features of this circular are that in respect of candidates appointed as LDC on the result of Clerks Grade Examinations conducted by the UPSC, their seniority will be regulated according to their rank in the examination. As regards those who joined as LDCs on 22nd December, 1959 or thereafter they would reckon their seniority from the date of which they joined as LDCs in AFHQ. The Ministry promulgated statutory rules called Armed Forces Headquarters (Clerical Services) Rules, 1968. These statutory Rules which came into force from 1st March, 1968 provided that the seniority shall be determined on the basis of date of confirmation. These rules changed the practice followed to earlier as per the OM of 1963 where the seniority was fixed on the basis of length of service. After the Rules came into force the seniority of some persons who were recruited earlier was sought to be disturbed on the basis of confirmation as prescribed under the Rules, some of the affected candidates approached the Hon'ble Delhi High Court under

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Article 226 of the Constitution contending inter alia that length of service should be the basis of inter se seniority. The learned Single Judge of the Hon'ble Delhi High Court accepted the claim of those petitioners holding that principle as laid down in the OM of 1963 should be followed and the seniority of the petitioners shall be decided on the basis of the length of service and that the statutory rules could have only prospective effect. This was taken on appeal to the Division Bench. The Division Bench of the High Court reversed the decision of the Single Judge. This order of the Division Bench of the High Court was challenged before the Hon'ble Supreme Court in D.P.Sharma's case in Civil Appeal No.4123-4134/1984. The order in this case was rendered by the Hon'ble Supreme Court on 21.2.1989 in which the Supreme Court upheld the judgment of the learned single Judge that seniority has to be regulated on the basis of the length of service. The Supreme Court had referred to the general rule that 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. One Sher Singh has approached the Supreme Court in Civil Appeal No. 7295 of 1996 against the order of the Tribunal which was disposed of by the Apex Court on 9.1.91 which is reproduced below.

"The claim of the appellant that he should be treated as regular appointee against the post of LDC from 7.2.1964 was turned down by the Tribunal in the order under appeal. The reason as given by the Tribunal in the order under appeal cannot be upheld in view of the judgment of this Court in Civil Appeal Nos.4123-4134 of 1984 - D.P.Sharma & Ors.Vs.Union of India & Anr.,decided on 21.2.89. The judgment in the said D.P.Sharma's case has been applied again in Writ Petition(C) No.493 of 1990 R.K.Khosla Vs.Union of India & Anr. decided on 9.1.1991. In the later judgment, this Court has

(X)

held that the judgment in D.P.Sharma's case will be also applied to persons who are similarly placed. In view of this, the order under appeal cannot be sustained. The respondents are directed to dispose of the claim of the appellant in terms of these judgments. The concerned authorities will take the decision within a period of eight weeks from today. The appeal is accordingly disposed of."

3. It is clear from this that the issue of seniority at the level of LDC has been mired in controversy. Eventually the matter was settled by the Hon'ble Supreme Court in D.P.Sharma's case which was followed in other cases. There were also a number of decisions of the Tribunal, some of which were reversed by the Supreme Court. In the light of the Court direction the basic principles to be followed for determining seniority are as follows;

- (i) As regards the candidates recruited by the UPSC in pursuance to the Clerical Grade Examination, their inter se seniority will depend on their merit position. A person holding a higher rank as per UPSC recommendation will get seniority over those who had got lower positions in the merit list. To illustrate Mr. X a person holding 555th position in the seniority list as per the UPSC list will rank above a person Mr. Y whose position is 556 even if Mr. Y joined duties earlier than Mr. X.
- (ii) As regards non-UPSC candidates their seniority will be determined on the basis of date of joining. This process will be followed in respect of all candidates both recruited on the basis of UPSC candidates and non-UPSC candidates.

The Departmental representative submits that

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the procedure followed was to arrange all LDCs on the basis of date of joining and then rearrange the list in respect of UPSC candidates as per their merit position.

4. After the Hon'ble Supreme Court gave its direction in D.P.Sharma's case and following other decisions based on this judgment, the respondents made efforts to implement the direction of the Supreme Court in D.P.Sharma's case. They prepared a draft seniority list of the LDCs which were circulated calling for objections and after receipt of the objection, the seniority list was finalised in April 1992 which is challenged in the present OA. The applicant, herein state that the final seniority list is not in accordance with the law laid down by the Supreme Court. Shri Tiwari, learned counsel for the applicants submits that the applicants in the present OA found that their position has been correctly assigned in the draft seniority list. However, when the same was finalised in April 1992 they were brought down. The applicant No. 1 submitted representation dated 17th July 1992 which was forwarded on 20th July 1992 by appropriate authorities to the Ministry of Defence. However, this representation was turned down by the Ministry holding that their place had been correctly assigned in accordance with the principle upheld by the Supreme Court. This decision is being challenged in the present OA.

5. We have gone through an extract of the revised seniority list supplied by the Departmental representative which is taken on record. We find therefrom that the first applicant Radhey Sham Maheshwari who is a UPSC candidate is shown at Sr.No.3262 but is shown below a non-UPSC candidate Shri Suraj Bhan. Shri Maheshwari who joined on 16.10.63 whereas Shri Suraj Bhan joined on 6.6.64. We enquired of the Departmental representative as to why

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the first applicant even though he joined earlier has been shown below Shri Suraj Bhan, a non-UPSC candidate who joined later. The respondents have filed an additional affidavit dated 28th July, 1999 today. We may reproduce paras 4 & 5 of this additional affidavit.

"4. It is submitted that the rationale for determining the seniority in the grade of LDC in pursuance to the judgment of the Hon'ble Supreme Court in CA No. 4133-34/1984 - DP Sharma and Ors Vs UOI has been clearly brought out in paragraph 11 and 12 of the additional affidavit filed on 2 Mar 99. Briefly stated, the seniority list dated 20 Apr 92 has been drawn on the basis of the following principle :-

(a) In the first stage, LDCs who joined AFHQ between 22 Dec 59 and 29 Feb 68 have been arranged as per the date of joining irrespective of their sources of induction.

(b) In the second stage, the inter se seniority of direct recruits have been rearranged amongst themselves on the basis of the rank position obtained by them in the respective examinations, without disturbing the position of the LDCs who joined from the other sources.

5. It is submitted that on the basis of the Clerks Grade Examination 1962, 231 candidates joined Armed Forces Headquarters in the following years:-

(a)	1963	-	49
(b)	1964	-	181
(c)	1965	-	1

They were initially arranged in the seniority list with reference to their date of joining alongwith the candidates recruited from other sources. Subsequently, their inter se seniority was rearranged amongst themselves on the basis of the rank obtained by them in the UPSC examination. To illustrate the point, the senior most person in the merit list is the Shri Gopal Ram Sehrawat who obtained 13th position but joined AFHQ on 24.4.64. The junior most person in the merit list is Shri CB Jarodhia who obtained 618th position

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in the merit list and joined on 13.11.63. Shri Kishan Chand Dhir who obtained the 16th position was the first in the batch to join on 21.9.63. Initially when they were arranged on the basis of the date of joining Shri Kishan Chandra Dhir was followed by Shri CB Jarodhia who in turn was followed by Shri Seharawat. When the seniority was rearranged on the basis of merit position in the UPSC list, Shri Shrawat was shown at Sr.No.2625, Shri Dhir at Sr.No.2626 and Shri Jarodhia at Sr.No.3139, even though Shri Jarodhia had joined before Shri Seharawat. Thus, the seniority of UPSC recruits have been strictly arranged as per their merit list irrespective of their date of joining."

In otherwords, while the inter se seniority of the direct recruits has been maintained on the basis of their merit position, while integrating them with the non-UPSC candidates the Department has assigned slots on the basis of the date of joining of the various UPSC recruits and the slots have been given not necessarily to the person among the direct recruits who actually joined on the date but to a person who might have joined later but who occupied ^a higher merit position. It would seem from this that the person having the top merit position in UPSC list has been fitted against the slot on the basis of the earliest date of joining of any direct recruit ^(i.e.) the earliest date of joining by any direct recruit of a particular batch has been assigned to the top most person as per the merit list even though the person might have joined later and the second in the merit list has been given the slot as per their second earliest date of joining any direct recruit irrespective of the date of joining of the individual concerned. The Departmental representative submitted that this has been done on the basis of the Ministry of Defence letter dated 1.11.68 enclosed as Annexure R-1 to the main reply statement. This letter deals with temporary/quasi permanent LDCs who joined on or after 22.12.59. Para 1 (c) of this letter deals with assignment of inter se seniority of direct recruits appointed on results of the UPSC Clerks Grade Examination.

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According to him, this instruction has been implemented by the Department by assignment of slots to the direct recruits as indicated above. We specifically enquired of the Departmental representative whether the instructions have been formulated on the basis of any Court decision and whether the circular dated 1.10.68 was considered by the Tribunal, Supreme Court etc. He is not able to show any such Court direction which would sustain the slot principle for assigning inter se seniority among the direct recruits.

We have gone through the Court judgments with the assistance we have received from both the learned counsel for the applicant and the Departmental representative, but we are not able to locate any reference to the 1968 circular nor do we find any authority to the adoption of the slot system as brought out by the respondents.

6. In the circumstances we direct the Department to *re*scrutinise the seniority list so far as the present applicants are concerned and apply strictly the principles which conform to the Court directions and take further appropriate action. While doing so the Department shall keep in view the fact that some of the decisions of the Tribunal have been reversed by the Supreme Court. This should be done within four months from the date of receipt of a copy of this order.


7. Shri Tiwari for the applicant submits at this stage that if in compliance with this direction, the seniority of the applicants get upgraded they should be given consequential benefits including advancing the date of promotion to the higher grade etc. He refers in this connection to the decision of the Hon'ble Supreme Court in the case of Pilla Sitaram Patrudu & Ors. Vs. Union of India & Ors. (1996) 8 SCC 637, in particular Head Note 'C' of the judgment reads as follows;

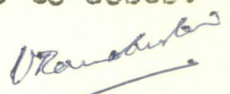
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"Service Law - Seniority - Inter se seniority - Direct recruit whose appointment was delayed for no fault on his part due to laches on the part of the department (Railway in this case), held, entitled to the ranking given to him in the select list."

This issue is not specifically urged in the present OA nor has it ^{been} brought out before us that the date of joining of the applicants was delayed due to any lapse on the part of the Department. However, if it transpires that the seniority of the applicants get upgraded in compliance with the Court's directions and if the applicants are able to make out a case that their date of joining was delayed on account of the fault of the Department, they may take up the matter through a proper representation to the Department. Shri Tiwari submits that this principle should be extended to the others also and if it is found that the date of joining of any of the UPSC direct recruits has been delayed, the benefits should be given to the present applicants also. We do not agree with this contention as the principle laid down by the Hon'ble Supreme Court in this case can be applied only if the date of joining of the applicants themselves is delayed and not that of others. This issue will be relevant only if the seniority of the applicants get upgraded and they are able to make out that there has been any administrative lapse on the part of the Department which has resulted in delay in their date of joining in service.

8. With the above direction/observations, the OA is finally disposed of. No order as to costs.


(Mrs. Lakshmi Swaminathan)
Member (J)


(V. Ramakrishnan)
Vice Chairman (A)

vtc.