

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A. No. 695/1993

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with

O.A. No. 962/1993

O.A. No. 1168/1993

CP 1191/2002 In

O.A. 695/1993

New Delhi, this the 6th day of March, 2003

HON'BLE MR. W. K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUD)

O.A. No. 695/1993

1. Chattar Singh, ACSO
S/o Sh. Nathru Ram
F-287/18 Ladu Sarai,
P.O. Mehrauli,
New Delhi.
2. Komal Singh, CSO
S/o Sh. Shyam Lal
408 Prasad Nagar, Karol Bagh,
New Delhi.
3. Kartar Singh, CSO
S/o Sh. Ganga Ram
13.98 Dev Nagar, Karol Bagh,
New Delhi.
4. Itwari Singh, ACSO
S/o Sh. Kacheru,
116C/IV Pushp Vihar,
New Delhi.
5. Brijesh Kumar, ACSO
S/o Sh. Mohan Lal
147F/IV, Pushp Vihar,
New Delhi.
6. Kishan Chand, ACSO
S/o Sh. Bhima,
738, L.R.Complex,
New Delhi.
7. Sir Ram, ACSO
S/o Sh. Mangat Ram
H.No. 57, Yusuf Sarai,
New Delhi.
8. Nirmal Singh, ACSO,
S/o Sh. Ujagar Ram
WZ/24A Sant Garh (Shapura)
Tilak Nagar,
New Delhi.
9. Shangara Ram, ACSO
S/o Sh. Hari Ram
84, Ram Puri, Kalkaji,
New Delhi.

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10. Ram Swarup, ACSO
S/o Sh. Goverdahn Dass
3053 Arya Pura, Subzimandi.
New Delhi.
11. Rijpal Singh, ACSO
S/o Sh. Karan Singh
R-7 Brahpuri Colony.
New Delhi.
12. Bhagwan Singh, ACSO
S/o Sh. Panna Lal,
S-111/1654 Pushp Vihar,
New Delhi.
13. C.B. Jarodhia, ACSO
S/o Sh. Phusa Ram
G-269 Nanakpura,
New Delhi.
14. Ram Prasad, ACSO
S/o Sh. Shuka Ram
310 Sector 11, Sadiq Nagar.
New Delhi.
15. Agya Ram, ACSO
S/o Sh. Chura Ram
11B CGH Complex,
Vasant Vihar,
New Delhi.
16. Hari Singh, ACSO
S/o Sh. Kundan Lal
7/893 Pushp Vihar,
New Delhi.
17. Ganga Saran Suman, ACSO
S/o Sh. Narain Dev,
101-R Aram Bagh,
New Delhi.

-APPLICANTS

OA No. 962/93

1. O.P. Gupta
Assistant Civilian Staff Officer,
Office of JS (T) and CAO,
C-II Hutmants,
New Delhi-110 011.
2. R.K. Khanna
Assistant Civilian Staff Officer.
Directorate of Naval Plane,
Naval Headquarters,
South Block,
New Delhi-110 011.

Par

3. T.S. Yadav
Assistant Civilian Staff Officer,
Defence Research and Development Organisation
(R & D),
Ministry of Defence,
Sena Bhawan,
New Delhi-110 011.

4. K.N. Dewah
Assistant Civilian Staff Officer,
M.S. Branch,
Army Headquarters,
South Block,
New Delhi-110 011.

5. R.K. Sharma
Assistant Civilian Staff Officer,
Defence Research and Development Organisation
(R & D),
Ministry of Defence,
Sena Bhawan,
New Delhi-110 011.

6. S.S. Katyal
Assistant Civilian Staff Officer,
Directorate of Personnel Officers,
Air Headquarters,
Vayu Bhawan,
New Delhi-110 011.

7. Vishwanath
Assistant Civilian Staff Officer,
G.S. Branch,
Army Headquarters,
Sena Bhawan,
New Delhi-110 011.

OA No. 1168/93

1. Pitam Singh
S/o Shri Rishal Singh
R/o D-427, Sarojni Nagar, New Delhi-110 023.

2. P.P. Mehsram
S/o Shri P. Meshram
R/o Z8A J&K Pocket,
Dilshad Garden, Delhi-110 095.

3. Sohan Ram
S/o Shri Chander Bhan
R/o I-231 Sarojini Nagar, New Delhi-110 023.

4. Mom Raj Singh
S/o Sh. Rabbu Singh
R/o C-205 Nanakpura, New Delhi-110 022.

versus

1. Union of India, through
Defence Secretary,
South Block,
New Delhi.

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2. The Joint Secretary (Admin.),
and Chief Administrative Officer,
Government of India,
New Delhi.

-RESPONDENTS

By Advocate: Shri Sarvesh Bisaria counsel for the
applicants.

By Advocate: S/Shri Mohar Singh

C.P. 191/2002 In
OA 695/1993

Bhagwan Singh
working as ACSO
Armed Forces Headquarters
New Delhi. .Petitioner

By Advocate: Shri Sarvesh Bisaria.

Versus

A Chandrashekhar
Joint Director
Office of JS (Training) & CAO,
Ministry of Defence,
New Delhi-110 011. . Respondents

By Advocate: Shri S.M. Arif.

O R D E R

By Hon'ble Mr. Kuldeep Singh, Member (Jud)

The three OAs bearing No. 695/93, 962/93 and 1168/2003 had been decided by a common order by this Tribunal on 28.9.95. The respondents intended to revert the applicants in the OAs because of the judgment delivered by the Hon'ble Supreme Court on 21.9.1989 in Civil Appeal No. 3489-3491/1996 against the judgment of the Delhi High Court in CWP No. 423/1975 in case entitled as D.P. Sharma Vs. U.O.I. which was registered as CWP No. 423/1975 and also on the basis of another judgment in R.K. Khosla Vs. U.O.I. and a judgment given by this Tribunal in OA 115/90 H.R. Gauba Vs. U.O.I. & Others and certain other judgments. On the basis of these judgments, the panels of Assistants which were drawn during the years 1977-78 to 1992 for

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promotion as Assistant Civilian Staff Officers (hereinafter referred to as ACSO) were sought to be reviewed. Similarly there was revision in seniority of Lower Divisional Clerks by virtue of the judgments delivered by the courts and Tribunals. Though certain reversions were quashed as were not in proper implementation of the judgment but even by quashing those the Tribunal made it clear that the applicants, or for that matter anyone else, shall be liable to be reverted in accordance with law, if the need so arises, after the order of the of the Tribunal in Gaba's case is properly implemented. An SLP was filed before the Hon'ble Supreme Court which was granted a number as CWP 3489-3491 of 1996 the Hon'ble Supreme Court set aside the reasonings and judgment of the Tribunal, we remit the matter to the Tribunal for reconsideration of the question as to whether any of the reverted employees were in fact promoted to the post of UDC or Assistant or got any higher promotion against any roster point as a reserved candidate and in such an event whether they could be directed to be reverted notwithstanding their re-determination of seniority in the cadre of LDC in implementation of the judgment of the Supreme Court in Sharma and Khosla. The Union of India as well as reverted employees may place necessary materials in this regard and the Tribunal may re-consider the same and dispose of in accordance with law. This is how this matter has come up before this Tribunal again.

2. We have heard the learned for the parties and gone through the records of the case.

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3. Both the counsel agree that the matter has been remanded back only on the short question as narrated above because the Hon'ble Supreme Court had also observed in the judgment that we have ordinarily disposed of this application by allowing the appeal but for the contentions raised and noticed in paragraph 45 of the judgment of the Tribunal to the effect that the reverted employees did claim that their promotion to the post of UDC and Assistant was on the basis of reservation and against the roster point, and that question the Tribunal has not considered or answered, so the matter was remanded back to this Tribunal only on this short point.

4. Before dealing with the rival contention as put forth by the parties, we would also like to make mention that the Hon'ble Supreme Court had also observed as under:-

After examining the judgment of this Court in D.P. Sharma Vs. Union of India as well as R.K. Khosla Vs. U.O.I., we have no manner of doubt that the seniority of all those employees, who had been in the Army Headquarters prior to 1968 has to be determined/redetermined on the basis of continuous length of service irrespective of their date of confirmation in accordance with the Office Memorandum then in force. In that view of the matter, the reverted employees, who had joined the Army Headquarters being selected by the Union Public Service Commission cannot claim to be belonging to a different category so as to be excluded from the purview of the judgment of this Court in Sharma and Khosla".

5. The perusal of the above observation, as made by the Hon'ble Supreme Court, it is quite clear that the department had to redetermine the seniority of the LDC to UDC and from the UDC to that of Assistant who had joined the service of the Army Headquarters prior to 1968 on the basis of continuous length of service irrespective of



their date of confirmation as it was so provided in the Office Memorandum. Even while arguing the case before us none of the parties raised any dispute about redetermination of seniority on the basis of continuous length of service for all those employees who joined prior to 1968 on the basis of the OM.

6. The only contention raised by the learned counsel for the applicants is that the applicants now before the court all belong to reserved category and since the question whether they could be reverted back had not been considered by this Tribunal and that is why the Hon'ble Supreme Court had remanded back this case. Arguing on this aspect the learned counsel for the applicants Shri Bisaria contended that the applicants could not be reverted back as no senior to the applicants is being given promotion against the roster point.

7. The counsel for the applicants further submitted that seniority of SC/ST employees had to be dealt with on a different feeding basis. The applicants were promoted to higher posts against vacancies reserved for members of Scheduled Castes and they should have been allowed to retain their position in the seniority list of UDCs, Assistants, ACSOs, CSOs and SCOs, the position was due to them as a member of SC and since no Scheduled Castes employee has been replaced by their seniors as sufficient number of vacancies were available there, the question of post dation of seniority in their case in these grade is against the law declared by the Hon'ble Supreme Court in the case of O.P. Singh and Another Vs. UOI and Others reported in 1984 AIR SC 1595.



8. The applicant further submitted that in the review DPC panels the respondents have arbitrarily changed the eligibility criteria because as per the AFHQ Civil Service Rules, the eligibility for promotion from UOC to Assistant is 5 years continuous service in the actual grade and this 5 years service counts from the actual date of promotion and not from the date of revised seniority or post dation as per the policy enunciated by the respondents in 1979. The counsel for the applicants further submitted that neither the review DPC could not change the grading of an officer nor could it change the zone of cosideration and take into account any increase in the number of vacancies as per the review DPC, so zone of consideration could not be changed by the review DPC. Similarly extension of panel could not be extended beyond prescribed limit.

9. The counsel for the applicants further submitted that revision of seniority on the basis of lower post is untenable and the learned counsel for the applicants has referred to a judgment in the case of O.P. Singla and another Vs. U.O.I. & Others, AIR 1984 SC 1595 wherein the Hon'ble Supreme Court while dealing with the question of seniority of members of Delhi Higher Judicial Service and commenting upon the seniority position of respondent No.4 Shri G.S. Dhaka submitted that the same has to be dealt with on a different basis. He was appointed as an Additional District and Sessions Judge in a vacancy reserved for members of the Scheduled Castes. He will retain his position in the seniority list since that position is due to him as a member of

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Scheduled Caste. As far as this judgment is concerned, we find that this does not apply to the present facts of the case because the seniority under the Delhi Higher Judicial Service Rules was to be determined as per Rules 16 and 17 of the Delhi Higher Judicial Rules whereas the case in hand is with regard to seniority of the employees is to be determined on the basis of their continuous length of service as per Sharma and Khosla's case. Moreover in the case of O.P. Singla (Supra) the promotee officers from Delhi Judicial Service to Delhi Higher Judicial Service had challenged the seniority list when there was induction of direct recruits in Delhi Higher Judicial Service but here in this case the applicants seniority has to be determined on the basis of OM as they are recruits prior to the year 1968 before coming into force of AFHQ Rules. First of all their seniority is to be determined in the LDC cadre and thereafter they are to be given promotion as per the AFHQ Rules, so the case of O.P. Singla does not apply to the present case.

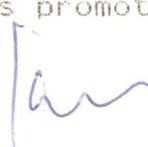
10. As against the other contentions raised by the applicants are concerned, the respondents pleaded that after the Sharma, Khosla and Gauba Judgment (Supra) the seniority list in the grade of LDC had to be recasted as per the provisions of the OM and the said list was published for all concerned on 20.4.1992. The promotions from the grade of LDC is to that of UDC which is a Group 'C' post and is required to be filled up by promotion of LDCs who have 5 years of service though this eligibility service was increased to 8 years and the promotions had to be made on the basis of seniority-cum-fitness. The panels of promotion to the



grade of UDC from 1959 to 1983-84 were reviewed on the basis of the revised seniority list in the grade of LDC and the reservation in the promotion was introduced vide Memo dated 27.11.1972 was strictly followed and based on the panel of UDC, promotion to the grade of Assistant had also be reviewed which had also strictly followed the instructions for promotions. A roster chart had been prepared and it has been submitted that in case if sufficient number of SC candidates were not available even in the extended zone of consideration, that too only in the grade of ACSO, so the seniors may have to replace the reserved candidates.

11. It is also pleaded that when the vacancies had got dereserved, the same was done only on account of non-availability of SC/ST candidates or SC/ST candidates figuring out of zone of consideration and that too by promotion on selection, so it cannot be said the same has been done in a discriminatory manner.

12. The counsel for the applicants has also referred to a judgment in the case entitled as Bhagwantha Rao Vs. The State of Mysore by its Chief Secretary, Dihana Soudha and Another page 366 wherein it has been observed that " officiating promotion to a higher post on selection basis - subsequent change in seniority in lower grade cannot effect such promotion ". The counsel for the applicant relied upon this judgment and submitted that once promotion has been given on proforma basis, the change in the seniority list could not have been effected. However, on going through the judgment we find that the petitioner was promoted as Special Officer as he



was the only officer in the cadre who fulfilled the qualifications of the post of Special Officer. It was held in this judgment that promotion as special officer was made as new appointment on the basis of eligibility and qualifications did not depend on the rank previously claimable by the petitioner in the antecedent post which he so held. So as far this judgment is concerned, the same does not apply to the present facts of the case as it did not depend upon the rank which was so held in the lower grade whereas in the case in hand the seniority list which is directed to be revised by the three judgments referred above depended upon the feeder category.

13. The counsel for the applicants has also relied upon another judgment of Madras High Court in the case entitled as D. Blasubramaniam and etc. etc. vs. Government of Tamil Nadu and another reported in 1991(8) SLR 431 wherein it has been observed as under:-

"Constitution of India, Articles 245 and 309 - Amendment in rules - Retrospective rules - Promotion - Reversion - Promotees reverted since they were rendered ineligible for that promotion by change in eligibility criteria introduced by GOM dated 4.8.1976 retrospectively - Vested rights cannot be taken away by change in eligibility criteria having retrospective effect - Reversion on such a ground illegal".

14. The perusal of the above quoted passage would show that the promotees were reverted since they were rendered ineligible because of introduction of another Government OM dated 4.8.76 which had a retrospectively effect and the Hon'ble Court quashed the OM dated 4.8.76 and has held that the vested rights cannot be taken away by change in eligibility criteria having

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retrospective effect and reversion on such a ground is illegal. But in the case in hand the reversion is not being done by way of amendment in the OM which has retrospective effect but it is being done in compliance of the order passed by the Hon'ble Apex Court and as held in the case of Sharma, Khosla and Gauba, applicants seniority list had been directed to be revised and if on the basis of revised seniority list promotions are to be considered again on the basis of the then applicable rules, the applicants cannot have any grievance about their reversion if they do not fulfil the eligibility conditions or if they lose their seniority or that they were not in the consideration zone at the time when promotions were considered by the DPC.

15. So the next question is whether the applicants who had got promotion against any reserved point on the basis of a seniority list which had been quashed cannot retain their promoted post if on the direction of the Hon'ble Supreme Court the seniority list is redetermined and after redetermination if it is found that at the time of consideration of promotion the candidates were not eligible or were away from the zone of consideration so in that event they cannot retain the higher post on promotion which they had got on the basis of erroneous seniority list. They will have to make way for the eligible candidates who were entitled for promotion because of the erroneous seniority list they cannot take away the rights of other who are eligible and are deserving to be promoted to the next grade.

A handwritten signature in blue ink, appearing to read 'K. H.' or 'K. H. S.'.

16. In view of the above discussion and particularly the observation made by the Hon'ble Supreme Court that they would have allowed the appeal against the earlier order passed by the Tribunal in this very OA wherein they had observed as follows:-

After examining the judgment of this Court in D.P. Sharma Vs. Union of India as well as R.K. Khosla Vs. U.O.I., we have no manner of doubt that the seniority of all those employees, who had been in the Army Headquarters prior to 1968 has to be determined/redetermined on the basis of continuous length of service irrespective of their date of confirmation in accordance with the Office Memorandum then in force. In that view of the matter, the reverted employees, who had joined the Army Headquarters being selected by the Union Public Service Commission cannot claim to be belonging to a different category so as to be excluded from the purview of the judgment of this Court in "Sharma and Khosla".

17. Further the Hon'ble Supreme Court had also in clear terms set aside the earlier judgment and reasoning given by the Tribunal, so in view of that the OA cannot be allowed and the department is justified to redetermine the seniority as per the judgment given by the Hon'ble Supreme Court in the case D.P. Sharma, R.K. Khosla and the judgment given in Gauba's case by the Tribunal.

18. Consequently after the redetermination of the seniority, the position of the applicants in the seniority list would also change and they cannot retain their promotions on the basis of their earlier seniority list. Their eligibility for promotion and zone of consideration is to be considered on the basis of revised seniority list.

19. No other contention has been raised before us.



20. With the above observation, the OA is dispensed of. No costs.

CP 191/2002

21. The applicant has filed this Contempt Petition for initiating Contempt Proceedings under Section 11 and 12 of the Contempt of Courts Act and to initiate proceedings under Section 340 Cr.PC on behalf of the applicant.

22. The facts in brief are that the applicant had filed an OA which was allowed by this Hon'ble Tribunal against which the Union of India had filed an appeal before the Hon'ble Supreme Court and the case was remanded back to this Tribunal to decide the following question:-

"Whether any of the reverted employees were in fact promoted to the post of UDC or Assistant or got any higher promotion against any roster point as a reserved candidate and in such an event whether they could be directed to be reverted notwithstanding their re-determination of seniority in the cadre of UDC in implementation of the judgment of the Supreme Court in Sharma and Khosla. The Union of India as well as reverted employees may place necessary materials in this regard and the Tribunal may re-consider the same and dispose of in accordance with law."

23. After the remand of the case, the applicant submitted written submissions. The official respondents also filed written submissions along with Annexure R-3, i.e., a chart position showing the promotion of UDC to Assistant along with their written submissions where the respondents admitted that in the review panel of 1980-81 the respondents have considered one SC and one ST and promoted them upon which the court had asked the

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respondents to file an affidavit vide order dated 12.12.2001 seeking certain clarification as the applicants were replaced by senior SC candidates. The respondents filed an affidavit in January, 2002 and submitted that Shri Brijesh Kumar was replaced by Shri Prem Chand and also mentioned the said fact in the addiviton affidavit of Jaunary, 2002 . It is furtehr submitted that per the revised panel and list available with the applicant Shri Prem Chand was promoted in 1973 from LDC to UDC and that in the said affidavit the resnidents have shown Shri C.D. Ujlain in the revised panel of Assistants of 1980-81 which, in fact, as per the list ciruculated by the respondents of the panel of Assistants, the name of Sh. C.D. Ujlain does not appear in the said panel. The applicant further submits that the respondents have interpolated/fabricated the original list by inserting the name of Sh. C.D. Ujlain in the panel of 1980.

24. The respondents filed a counter-reply. Respondnts in their reply submitted that a review DPC for the year 1980-81 for promotion from the grade of UDC to Assistant was held on 5.11.1992 in terms of the directions/implementation of Hon'ble Supreme Court's order in D.P. Sharma's case and in 1994 it was noticed by the respondents that a few eligible persons had been inadvertently left out for consideration for promotion from the date of UDC to Assistant. Thefore, a review DPC was held on 16.9.1994 to consider such left out officers and Shri Charan Das Ujlain was one of the left out eligible persons who was assessed fit by the review DPC held on 16th September, 1994 for promotion to the grade

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of Assistant in the penel year 1980-81. An amendment to the select list was notified vide respondents order dated 25.10.1994. Thus there has been no wilful act on the part of the respondents to either mislead or suppress any material from this Tribunal.

25. We have heard the learned counsel for the parties and gone through the records of the case.

26. The learned counsel for the respondents has also shown the record how and in what manner the review DPC was held which was duly held as per the rules and the name of C.D. Ujlain was duly notified in the select list. Thus there does not appear to be any wilful contumacious disobedience of the order nor any action calls for to be taken under Section 340 Cr.P.C.

27. Hence, CP does not call for any interference which is accordingly dismissed.

Kuldeep
(KULDIP SINGH)
MEMBEIR (JUDJ)

W.M. Majotra
(W.H. MAJOTRA)
MEMBEIR (A)

Rakesh