

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

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O.A. No. 2626/1992 with  
O.A. No. 698/1993

New Delhi this the 9th Day of October, 1996.

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)  
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)  
Hon'ble Shri K. Muthukumar, Member (A)

O.A. No. 2626/1992

1. Shri O.P. Sharma
2. Shri Raj Kumar
3. Shri Ram Nath
4. Shri Chandra Pal
5. Shri U.P. Mittal
6. Smt. Usha Saxena
7. Shri Gulshanji Singh
8. Shri J.D. Nangia
9. Smt. V.D. Nagpal
10. Shri Sadhu Ram
11. Shri O.P. Mathur
12. J.S. Drall
13. Smt. Parvesh Chawla
14. Shri K.B.S. Nigam

....Applicants

Applicants at Sl.No. 1 to 3, 6, 8 to 9 and 11 to 12, and 14 are:

Technical Assistant,  
Directorate of Economic & Statistics,  
Ministry of Agriculture,  
New Delhi

Applicant at Sl.No. 13

Technical Assistant (Retd),  
C-3/193 Janakpuri,  
New Delhi.

Rest of the applicants:

Research Investigators, Gr.I,  
Directorate of Economics & Statistics,  
Ministry of Agriculture,  
New Delhi.

(By Advocate: Ms. Shyamala Pappu, Sr. Advocate with  
Shri Mr. Krishnamurthy, Advocate  
Shri Pramod Sharma, Advocate

vs

Union of India, through

1. The Secretary,  
Dept. of Agriculture & Cooperation  
Ministry of Agriculture,  
Krishi Bhawan,  
New Delhi.

2. The Economic & Statistical Advisor,  
Directorate of Economics & Statistics,  
Krishi Bhavan,  
New Delhi.

... Respondents

(By Advocate: Shri B. Lall, counsel of the Respondents  
with Shri Hari Shankar, Advocate)

O.A. No. 698/1993

Suresh Chandra Yadav,  
R/o 19-F CPWD Housing Complex,  
Vasant Vihar,  
New Delhi.

... Applicant

(By Advocate: Shri B.B. Raval)

Vs

1. The Union of India, through  
The Secretary (Agriculture)  
Dept. of Agriculture & Cooperation,  
Ministry of Agriculture,  
Krishi Bhawan,  
New Delhi.
2. The Economic & Statistical Advisor,  
Directorate of Economics & Statistics  
Dept. of Agriculture & Cooperation.,  
Ministry of Agriculture,  
Krishi Bhawan  
New Delhi.
3. Shri L.S. Bhatnagar,  
House No. 6,  
NDMC Quarters,  
Palika Niketan, Sector 10,  
RK Puram,  
New Delhi.
4. Shri N.L. Verma  
50 Goonge Nawab Park,  
Garg Market, 2nd Floor,  
Aminabad,  
Lucknow-226018.

... Respondents

(By Advocate: Shri B. Lall, Counsel of the Respondents  
with Shri Hari Shankar.)

ORDER

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

The Division Bench consisting of Hon'ble Shri  
J.P. Sharma, Member (J) and Hon'ble Shri B.K. Singh,  
Member (A) in its order dated 24.3.1994 felt that in  
view of certain confusion regarding the source of

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recruitment and adjustment of seniority reflected in the judgement in T-231/1985, OA No. 754/1990 and TA-193/1987, a reconsideration of the issue has become necessary to thrash out the questions in the light of substantial issues raised in these two OAs, and that for that purpose these two OAs have to be heard by a larger bench. Therefore the Division Bench placed the matter before the Hon'ble Chairman for constituting a larger Bench. Accordingly, the Hon'ble Chairman has constituted the larger bench and thus the matter is before us.

The historical back drop in which these two applications came to be filed and the related facts are as follows:

Shri L.S. Bhatnagar the intervener in OA-2626/1992 and the third respondent in OA-698/1993 was appointed as a Computer with effect from 19.9.1959 in the Directorate of Economics and Statistics (Department of Agriculture) and he was confirmed on that post on 1.1.1965. One Shri N.L. Verma joined the same service in the same post on 20.11.1959, and was his junior in service as a Computer. Shri Verma was promoted as Technical Clerk and posted at Jaipur on 4.4.1964. Applicant protested against his supersession. However, he was also promoted as Technical Clerk on 17.12.1969. While Shri L.S. Bhatnagar's dispute regarding his supersession in the matter of promotion as Technical Clerk was still pending. Shri N.L. Verma was further promoted as Market Intelligence Inspector w.e.f. 2.6.1965. Shri L.S. Bhatnagar made further

representation but he was also promoted on ad hoc basis as Technical Assistant which has the same scale of pay and is an equivalent post as Market Intelligence Inspector w.e.f. 28.5.1975. Regarding the seniority of Shri. L.S. Bhatnagar over Shri N.L. Verma, Shri Bhatnagar was informed by Order 197/77/ESTT 11-ES dated 19.12.1977 of the Directorate that the promotion of Shri N.L. Verma w.e.f. 4.4.1964 to 16.12.1969 was on ad hoc and that his seniority over Verma was maintained. Praying for having his promotion as Technical Clerk and refixation of the seniority in that grade w.e.f. 4.4.1964 and for regularisation of his promotion as Technical Assistant w.e.f. 28.5.1975 with arrears of pay. Shri L.S. Bhatnagar filed a suit No. 70 of 1981 in the Court of Sub-judge, 1st Class, Delhi. After the commencement of the Administrative Tribunals Act the suit was transferred to this Tribunal. It was numbered as T-231/1985 and was disposed of by a Division Bench consisting of Hon'ble Shri Madhava Reddy (J) who was the then Chairman and Hon'ble Shri Kaushal Kumar, who was Member (Administrative). The Bench held that Shri L.S. Bhatnagar could claim seniority in the grade of Technical Clerk with effect from the date his junior was promoted or from 2nd June 1965 when he passed the departmental test noting the statement in the written statement of the respondents that after the amendment of the recruitment rules w.e.f. 23.3.1964 Computers were promoted as Technical Clerks without laying down any requirement of educational qualification. Regarding Shri Bhatnagar's promotion as Technical Assistant w.e.f. 28.5.1975, it was held that as he was promoted on the recommendation of a duly constituted Departmental

Promotion Committee, the subsequent amendment of the Recruitment Rule making the post non-selection could not affect his promotion and therefore, his reversion on 8.9.1975 and repromotion on adhoc basis on 9.9.1975 would not stand judicial scrutiny. It was also held that for regular promotion as Technical Assistant, the panel prepared by the DPC in May 1975 would have precedence over any other panel formed after the post was made non selection in July 1975. The transferred application was disposed of with a direction to the respondents to fix the pay of Shri L.S. Bhatnagar in the grade of Technical Clerk w.e.f. 2.6.1965, to pay him consequential arrears of pay and to regularise his appointment in the grade of Technical Assistant in the first regular vacancy that became available in the grade after providing for those placed above him in the panel of May 1975. The Union of India challenged the above order before the Supreme Court in SLP.10985/86. Shri Bhatnagar stated that he was prepared to forego the arrears of pay in the post of Technical Clerk amounting to Rs.1895/- and the Supreme Court confirmed the orders of the Tribunal dismissing the SLP. In implementation of the order of the Tribunal in T-231/1985, the Directorate issued an order dated 16.2.1987 antedating Shri L.S. Bhatnagar's promotion as Technical Clerk to 2.6.1965. A seniority list of Technical Clerk was also issued showing Shri L.S.Bhatnagar at S1.No.20 and Shri N.L.Verma at S1.No.42. Shri Bhatnagar made representation against that seniority list on the ground that promotion of S1.Nos. 2, 6, 7, 8, 12 and 19 and consequent seniority assigned to them was erroneous. However, the

Directorate issued office order No.29/89 dated 27.3.1989 informing Shri Bhatnagar that on the recommendation of the DPC, his adhoc promotion as technical assistant was antedated to 28.1.1971. This was because of the change in seniority in the grade of Technical Clerk as a result of order dated 16.2.1987 antedating his appointment as Technical Clerk to 2.6.1965. His pay was refixed in the grade of Technical Assistant under FR 22(C) by order dated 29.3.1989. Thereafter the Directorate issued an order dated 8.8.1989 promoting the applicant as Market Intelligence Inspector on adhoc basis w.e.f. 2.6.1965 to 20.8.1971 on notional basis on par with Shri N.L. Verma with all consequential financial benefits. As a consequence by Order dated 16.8.1989 the pay of Shri L.S. Bhatnagar was refixed under FR 22(c) in the post of Market Intelligence Inspector. At this time some of the Technical Assistants including some of the applicants in these cases represented against granting this benefits to Shri Bhatnagar upon which the Directorate issued an order dated 8.10.1989 stating that on a consideration of the representation made by some Technical Assistants it had been decided to review the appointment of Shri L.S. Bhatnagar as Market Intelligence Inspector w.e.f. 2.6.1965 to 20.8.1971, that the matter could be placed before a review DPC and that the order dated 8.8.1989 and 16.8.1989 in his favour would stand suspended. Shri L.S. Bhatnagar challenged this order and filed OA-754/1990 impugning the office order dated 8.10.1989 and praying that the department may be restrained from referring the matter to the review DPC and for directing the department to pay him the revised pay in terms of order dated

16.8.1989 and the order of the Tribunal in T-231/1985 by regularising his ad hoc promotion in the grade of Technical Assistant on the basis of his seniority in the combined panel formed in May 1975 giving precedence to that panel over any other panel formed in June 1975 and onwards.

The Union of India and the Directorate in their reply to the OA contended that Shri L.S. Bhatnagar was not eligible was not eligible for promotion to the post of Market Intelligence Inspector on 2.6.1965 and that was why it was proposed to review the case for adhoc promotion as Market Intelligence Inspector on 21.8.1971. The Tribunal rejected this contention. It was observed that in view of the order in T-231/1985 the applicant got refixation of seniority in the grade of Technical Clerk with effect from the date on which Shri N.L. Verma was promoted and he was promoted as Market Intelligence Inspector w.e.f. 2.6.1965 on ad hoc basis when Shri N.L. Verma was so promoted. The Tribunal allowed OA-754/1990 set aside order dated 8.10.1989 and directed the respondents to release the pay and allowances to Shri L.S. Bhatnagar on the basis of order dated 16.8.1989. It was further held that Shri L.S. Bhatnagar would be entitled to all consequential benefits including promotion and seniority in the grade of Technical Assistant on the basis of direction contained in the judgement of the Tribunal dated 21.4.1986 in T-231/1985. It was on the basis of the order in OA-754/1990 that the second respondent in these two OAs issued the office order dated 20.4.1992 (Annexure A in OA-698/1993) appointing Shri L.S.

Bhatnagar as Technical Clerk on regular basis w.e.f. 4.4.1964 the date on which his junior Shri N.L. Verma was so appointed and, as Technical Assistant on regular basis w.e.f. 14.3.1966 assigning him seniority over Shri J.L. Bhatnagar, and deciding to appoint him as Research Investigator, Grade I on adhoc basis w.e.f. 1.11.1977 with consequential benefits. An order dated 22.9.1992 was also issued pursuant to the judgement of this Tribunal in OA-943/1989 in which the appointment of Shri L.S. Bhatnagar alongwith some other as Research Investigator, Grade I was regularised. A revised provisional seniority list of Technical Assistants as on 1.1.1993 in partial modification of the seniority list issued on 29.7.1988 was issued pursuant to the judgement in favour of Shri L.S. Bhatnagar in which Shri L.S. Bhatnagar was shown senior to Shri J.L. Bhatnagar at Serial No. 20 giving the date of his appointment in the grade as 14.3.1966. Shri S.C.Yadav the applicant in OA-698/1993 having been appointed as Technical Assistant on 31.5.1975 was shown at Serial No. 46.

The 14 applicants in OA-2626/1992 finding that by Order dated 20.4.1992 Shri L.S. Bhatnagar was granted retrospective promotion as Technical Clerk from 4.4.1964, as Technical Assistant from 14.3.1966 and as Research Investigator, Grade I, from 1.11.1977 made representations to the Second Respondent on 30.7.1992 stating that they were senior to Shri L.S. Bhatnagar that the retrospective promotion given to Shri Bhatnagar was not correct and that if the benefit is not withdrawn, they may also be given the same benefit. This representation was rejected by Order dated

10.9.1992, Annexure A-4 in OA-2626/1992 on the ground that the Office Order dated 24.4.1992 was issued in respect of Shri L.S. Bhatnagar in compliance with the orders of the Tribunal dated 21.4.1986 and 30.8.1991 on the advice of the Ministry of Law, Department of Legal Affairs and with the approval of the competent authority and that there was no *prima facie* merit in the representation. The applicants alleging that they being similarly circumstanced as Shri Bhatnagar and seniors to Shri Bhatnagar in the cadre of computer are entitled to the same benefit which was given to Shri Bhatnagar and denial to them of the same benefit amounts to violation of Articles 14 and 16 of the Constitution filed OA-2626/1992 praying that the respondents may be directed to grant promotion to them and all consequential benefits to them with retrospective effect to the post of Technical Clerk, Technical Assistant/Market Intelligence Inspector and Research Investigator, Grade I, from the date their juniors Shri Bhatnagar and Shri N.L. Verma were promoted to this post. Shri Suresh Chandra Yadav, the applicant in OA 698/1993 in his application sought to quash the order dated 20.4.1992 by which retrospective promotions were given to Shri L.S. Bhatnagar, the Order dated 22.9.1992 by which the promotion to Shri L.S. Bhatnagar as Research Investigator, Grade I was regularised with effect from 1.11.1977 and the provisional seniority list of Technical Assistant issued on 21.1.1993 or in the alternative to direct the respondent to declare Shri L.S. Bhatnagar, the respondent No. 3 junior to the applicant to give the applicant all the benefits of seniority, promotion pay and allowances, arrears of pay

etc. as given to the third respondent. However, he has filed MA on 31.6.1993 seeking permission to withdraw the prayer No. 1 in OA for quashing the impugned Orders A, C and D and to restrict the relief only to the alternative prayer so as to avoid conflicting prayers but on 13.12.1993 this MA was dismissed as withdrawn.

The respondents in OA-2626/1992 contested the application raising the following contentions.

The applicant's claim for relief with effect from 4.4.1964, 2.6.1965 and 1.11.1967 is barred by limitation as the Order dated 20.4.1992 giving retrospective promotion to Shri L.S. Bhatnagar was granted in implementation of the Judgement of the Tribunal in T-231/1985 and in OA-754/1990 which are judgement in personnam from which those who are not parties would not be entitled to any relief. Shri N.L. Verma, junior to the applicant as Computer was promoted to the post of Market Intelligence Inspector on 2.6.1965, the applicant did not choose to represent at the relevant point of time seeking the same benefits. Shri L.S. Bhatnagar projected his grievance through representations and ultimately filed Suit No. 70/1981 before the Sub-judge, Delhi and the Tribunal allowed his prayers by its judgement dated 21.4.1986 vide its judgement in T-231/1985. While the above judgement was being implemented, the applicants made representations on 19.9.1989 and while the respondents took steps to review the date of promotion of Shri L.S. Bhatnagar, the Tribunal in its order dated 7.4.1990 restrained the Department from referring the matter to the Review DPC and directed the implementation of the Orders issued in pursuance to the judgement in T-231/1985. On account of the refixation of the seniority of Shri L.S. Bhatnagar on par with his junior Shri N.L. Verma, Shri Bhatnagar had to be regularised as Technical Assistant with effect from 14.3.1966 and therefore he became senior to Shri N.L. Verma and also to all the applicants. As the applicants did not raise any grievance in time when their junior Shri N.L. Verma was promoted as Technical Clerk

with effect from 4.4.1964 their right to claim any benefit on the ground that their juniors were promoted had become barred by limitation and the claim which has become barred by limitation cannot be revived by making a representation in the year 1989 on the basis of a judgement in favour of Shri L.S. Bhatnagar which is a judgement in personam. The respondents thus contended that the application has only to be rejected.

In the reply statement filed in OA-698/1993 on behalf of the respondent Nos. 1 & 2 before admission it was contended that the application is barred by limitation, that the impugned order was issued in implementation of the judgement of the Tribunal in T-231/1985 which was confirmed by the Hon'ble Supreme Court and judgement in OA-754/1990 and that the application is without any merit. Respondent No. 3, Shri L.S. Bhatnagar filed a reply statement opposing the prayer made in the application. However, quite interestingly the respondent Nos. 1 & 2 filed another reply statement on 24.1.1994 in which while stating that the impugned orders were issued in implementation of the judgement, in T-231/1985 and OA-754/1990 in consultation with the Ministry of Law, they have inter alia made the following statement:

"Ministry of Law had advised to regularise Shri L.S. Bhatnagar as TA w.e.f. 14.03.1966. So Shri Bhatnagar is senior to the petitioner as the latter was appointed on this post on 31.05.1974. However, their Lordship has already felt in O.A. No. 2626 of 1992 that the relief given to Shri Bhatnagar vide order dated 20.04.1992, are beyond the CAT's directive and therefore, the said order should be cancelled. If the order dated 20.04.1992 is cancelled, Shri L.S. Bhatnagar will become junior to the petitioner. Then, there would not be any justification for seeking the relief which has been sought in this para".

The Division Bench consisting of Hon'ble Shri J.P. Sharma, Member(J) and Hon'ble Shri B.K. Singh, Member (A) after hearing the arguments in both these cases noted that though the applicants in these two cases could have got themselves impleaded as parties to T-231/1985 and OA-754/1990, they failed to do so. It was also noted that the applicants did not care to seek the review of the orders in case they had any grievance in regard to the benefits given to Shri L.S. Bhatnagar. It was further noted that the seniority in the cadre of Technical Assistant was adjudicated upon in another case TA-1193/1987 filed by Shri N.L. Verma which was decided in his favour on 15.3.1991 and then also the applicants failed to implead themselves as parties to contest the same but yet the Bench made the following observations:

"True, that we are not angels pronouncing the gospel truths and to err is human and some of these judgments are confused regarding the two sources of recruitment and also about the inter se seniority of direct recruits and promotees. But the action of the respondents No. 1 and 2 in going much beyond the ambit and scope of the judgement of 21.4.86 is characterised by human foibles, foibles and judicial fallibility. But there is no rule or procedure in the AT Act 1985 by which a matter already adjudicated upon by three division benches can be reopened on the same or similar issues by another division bench. Although, Hon'ble Mr. Rastogra, M(A) felt that the applicants in both the OAs approached the Tribunal at a belated stage and the OAs are hit by limitation but since there is substantial issue of justice involved, we may ignore the point of limitation.

There is no well defined boundary line between intellectual honesty and intellectual dishonesty. The frontiers of one blend with the outdoor limits of the other and he who attempts to tread this dangerous ground may be sometimes in one domain and sometimes in the

other. This holds good for the respondents 1 and 2 because whether intentionally or by manipulation, they have conferred benefits on the respondent No.3, L.S. Bhatnagar (in OA No. 698/1993 and given him seniority over the direct recruits who were in service when the former was not even born in that cadre. This also holds good about Shri S.C. Yadav (Applicant in OA No. 698/93) and Shri O.P. Sharma and other applicants (in OA.2626/92).

Both the OAs have raised substantial issues of justice and if it is proposed to rehear these cases in the interest of justice and fair play, a division bench cannot hear the matter. It would be necessary to constitute a larger bench to thrash out the issues involved in the three judgements and as such it would be in the fitness of things to approach the Hon'ble Chairman, CAT for constituting a larger bench.

We have gone through the various records and we find that there are parties who are adversely affected by these judgements and are necessarily aggrieved parties on account of the action of the respondents 1 and 2 and as such deserve consideration.

This may be referred to the Hon'ble Chairman, CAT for favour of his kind orders."

It is thus that this Full Bench has been constituted.

We have heard the arguments of Mrs. Shyamla Pappu, the counsel of the applicant in OA -2626/1992, Shri B.B. Raval, Counsel of the applicant in OA-698/1993, Shri B. Lall, Counsel for Respondent Nos. 1 & 2 in both these applications and Shri Hari Shankar for Shri L.S. Bhatnagar for the intervener in OA No.2626/92 and the third respondent in OA No.698/93.

The relief prayed for by the applicants in OA-2626/92 is for extension of the benefits given to Shri L.S. Bhatnagar on the ground that they are

similarly circumstanced as Shri Bhatnagar and that they were senior to him in the grade of Computer. Shri L.S. Bhatnagar persistently agitated his claim for promotion as Technical Clerk with effect from 4.4.64 and for further promotion as Market Intelligence Inspector on par with his juniors Shri N.L. Verma. Since the representation submitted by him to the competent authority hung fire for a long period, he filed Suit No.70/81 before the Sub Judge, 1st class, Delhi. This Suit was on transfer to this Tribunal renumbered as T-231/85 which was disposed of with the direction to fix the pay of Shri Bhatnagar in the grade of Technical Clerk w.e.f. 2.6.65 when he qualified in the departmental test and also to pay him consequential benefits in the said grade and to regularise his appointment in the grade of Technical Assistant on the basis of his seniority in the panel formed in 1975 in the first regular vacancy that became available in the said grade after providing all those placed above him in the panel. It was while orders were issued in implementation of the judgement that the applicants made representation opposing the grant of benefits to Shri L.S. Bhatnagar. On the basis of these representations the order dated 8.8.89 to the effect that the applicant was promoted to the post of Market Intelligence Inspector on ad hoc basis w.e.f. 2.6.65 and the order dated 16.6.89 refixing the pay of Shri Bhatnagar to the post of Market Intelligence Inspector was refixed under FR 22-C (were proposed to be kept in abeyance) by order dated 8.10.89 pending review of the appointment of Shri L.S.Bhatnagar to the post of Market Intelligence Inspector w.e.f 2.6.65 to 20.8.71 was issued. This order dated 3.10.89 was challenged by Shri L.S.

Bhatnagar in OA 754/90 and the Tribunal quashed this order and directed the department to release the pay and allowance of Shri Bhatnagar on the basis of their order dated 16.8.89 and to grant him the benefit including promotion and seniority in the grade of Technical Assistant on the basis of the directions contained in the judgement of the Tribunal dated 24.4.86 in T-231/85.

When action was taken by the Department in pursuance to the representation of the applicant the same was challenged by Shri L.S. Bhatnagar and the applicants did not take care to get themselves impleaded in the application and to contest the same. They did not even care to file an application for review of the final order in that case. They waited for the implementation of the order so that they could come up with an application claiming the same benefit to them. If Shri Bhatnagar had failed in that application, the applicants would not have had an opportunity to come forward to claim the relief on par with Shri L.S. Bhatnagar. Therefore, apparently the applicants had purposely refrained themselves from opposing the grant of prayer in OA-754/1990 probably thinking that if Shri Bhatnagar would get the benefit, they could also claim the same on the ground that they were senior to Shri L.S. Bhatnagar. I am of the considered view that this claim of the applicants for parity with Sh. L.S. Bhatnagar is unsustainable. Shri L.S. Bhatnagar was vigilant of his right for promotion on par with his junior Shri N.L. Verma, he projected his grievances in time through representation and when he failed to get a relief from department he approached to Court in 1981 as also in 1990. The impugned order dated 20.4.1992 is the

fruit of his persistent and strenuous litigation. It was on finding that Shri L.S. Bhatnagar was senior to Shri N.L. Verma and that he was left out of consideration for promotion unjustifiably when Shri N.L. Verma was promoted that the Tribunal gave the relief to Shri L.S. Bhatnagar. If the applicants had any grievance in regard to their non-promotion on the date on which Shri N.L. Verma was promoted they should have been vigilant as Shri L.S. Bhatnagar was and sought redressal of the grievances at the appropriate time. They failed to do so. The first time they came up with a representation was only in the year 1989 claiming the benefit given to Shri L.S. Bhatnagar. The judgement in T-231/1985 is a judgement in personam and not a judgement in rem. The benefit of the judgement would enure only to the benefit of the persons who had sought relief in that case. Therefore on the basis of the judgement whatever benefit was given to Shri L.S. Bhatnagar would not be available to the applicants. Though they attempted to oppose the grant of the benefit to Shri L.S. Bhatnagar in the year 1989 and though the department took steps to recall the benefits the move was successfully resisted by Shri L.S. Bhatnagar by filing OA-754/1990. The applicants in OA-2626/1992 therefore are not entitled to the relief claimed by them. It is well settled that a judgement given in favour of a person though similarly circumstanced would not revive the cause of action if the same is barred by limitation. If any authority is needed on this point, the same can be had from Bhoop Singh Vs. Union of India JT 1992(3)SC 322.

What is stated in the foregoing paragraphs is equally applicable to Shri S.C. Yadav in OA-698/1993 also. On account of the retrospective promotion granted to Shri L.S. Bhatnagar as a result of the judgement in T-231/1985 and OA-754/1990 he became Technical Clerk with effect from 4.4.1964 and by operation of the panel prepared in May 1975 in accordance with the judgement in T-231/1985, he became entitled to be appointed as Market Intelligence Inspector with effect from the date Shri N.L. Verma was so appointed. The post of Market Intelligence Inspector and Technical Assistant are of the same grade. Thus Shri L.S. Bhatnagar became senior to the applicants in OA-2626/1992 as also the applicant in OA-698/1993. The applicant in OA-698/1993 was appointed as Technical Assistant by direct recruitment only in May 1974. Therefore, there is no merit in the contention of the applicant in OA-698/1993 that Shri L.S. Bhatnagar was junior to him and therefore the impugned orders are not sustainable. He also did not take care to get himself impleaded in T-231/1985. He did not also seek a review of the orders in these two cases. The orders in T-231/1985 and OA-754/1990 having become final, it is not permissible to reopen the issues adjudicated in those cases in a subsequent litigation. The applicant in OA-698/1993 has not suffered any detriment by the impugned orders in this case. Shri Bhatnagar stood retired from service in May 1992. Therefore by the impugned orders the applicant did not stand to lose anything. The learned counsel of the applicants argued that the official respondents have granted undue benefits to Shri L.S. Bhatnagar by giving him retrospective promotion and arrears of pay and

allowances which he did not deserve, but neither the applicants in OA-2626/1992 nor the applicant in OA-698/1993 can be considered as persons aggrieved by such an action because none of their legitimate rights have been deprived of by the issue of the impugned orders in favour of Shri L.S. Bhatnagar. The impugned orders were issued by the official respondents in accordance with the advice received by them from the Ministry of Law and these orders do not, as stated by us, affect any of the applicants adversely. Whether Shri L.S. Bhatnagar had received anything in excess of what he would have been legally entitled or not need not to be adjudicated upon in a litigation instituted by persons who are not affected by grant of such benefits to him. This application filed under Section 19 of the Administrative Tribunals Act cannot take the character of a public interest litigation.

It appears that the Division Bench felt that the respondent Nos. 1 & 2 have gone beyond the ambit and scope of the judgement of 21.1.1986 and that they have whether intentionally or by manipulation conferred undue benefits on Shri L.S. Bhatnagar and given him seniority over the direct recruits who were in service when the former was not even born in the cadre. On that premises the Division Bench felt that it would be necessary to thrash out issues involved in the three judgements i.e. T-231/1985, OA-754/1990 and OA-1193/1987 and that the reference was made because this could not be done by a Division Bench. In the judgement of the Tribunal in T-231/1985 it was held that denial of promotion to the applicant therein to the post

of Technical Clerk with effect from 4.4.1964 when Shri Verma was promoted or at least on the date on which he passed the departmental examination was unjustified. Pursuant to the judgement, the department promoted Shri L.S. Bhatnagar as Technical Clerk with effect from 4.4.1964 when Shri N.L. Verma was promoted and thus he became senior to many of the Technical Assistants in the grade of Technical Clerk including the applicants in OA-2626/1993. On account of refixation of seniority with retrospective effect Shri L.S. Bhatnagar became eligible for appointment as Market Intelligence Inspector when his junior Shri N.L. Verma was so promoted with effect from 2.6.1965. When an order was issued by the Official Respondent on 29.9.1983 by which it was ordered that the post of Market Intelligence Inspector which was held by Shri N.L. Verma w.e.f. 2.6.1965 would be deemed to have been on ad hoc basis as his appointment to the post of Technical Clerk having been treated as ad hoc, Shri N.L. Verma approached the High Court of Allahabad with writ petition No.1552/1987 which was transferred to Allahabad Bench of the Tribunal sitting at Lucknow and was numbered as TA-1193/1987. The above application was allowed. The orders impugned therein were set aside and it was directed that Shri N.L. Verma should be treated to have been regularly promoted to the post of Market Intelligence Inspector with effect from 2.6.1965 and given seniority accordingly. The judgement in TA 1193/1987 has become final. Shri N.L. Verma who has been held to be junior to Shri L.S.Bhatnagar was declared to have been regularly promoted as Market Intelligence Inspector with effect from 2.6.1965. Market Intelligence Inspector and

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Technical Assistant are posts of the same grade and come under common seniority for further promotion persuant to the order in T-231/1985 and OA-754/1990 Shri L.S. Bhatnagar was promoted as Market Intelligence Inspector with effect from 2.6.1965 the date on which Shri N.L. Verma was thus promoted. With this retrospective promotion Shri L.S.Bhatnagar has become senior to all the applicants in these cases including Shri S.C. Yadav, the applicant in OA-698/1993, who was appointed as Technical Assistant in the year 1974. When as a result of prolonged litigation, a person becomes entitled to promotion with retrospective effect, it is possible and is natural that he is promoted with retrospective effect from a very anterior date and that in that process somebody who was in the cadre and had been so far held senior to him would become junior. There is nothing extraordinary about it. If the appointment of Shri L.S.Bhatnagar as Market Intelligence Inspector with effect from 2.6.1965, the date on which Shri N.L. Verma was thus promoted is valid then Shri L.S.Bhatnagar is senior to all the applicants in the two cases. Shri L.S.Bhatnagar's promotion as Market Intelligence Inspector with effect from 2.6.1965 cannot now be challenged by the applicants in these two cases because his entitlement on the basis of his junior Shri N.L.Verma's promotion was adjudicated in T-231/1985 and OA 754/1990. Shri N.L.Verma's promotion as Market Intelligence Inspector with effect from 2.6.1965 has also been held regular by the judgement in T1193/1987 of the Lucknow Bench of the Tribunal. Therefore, Shri L.S. Bhatnagar who has been adjudicated to be senior to Mr. N.L. Verma had to be appointed as Market Intelligence

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Inspector or Technical Assistant which is the equivalent grade with effect from the date Shri N.L.Verma was so appointed regularly.

Since there has not been any direction as to what would be the date with effect from Shri L.S. Bhatnagar was to be appointed as Technical Assistant, it may appear that by appointing him as Technical Assistant with effect from 14.3.1966 and giving him seniority with effect from that date was in excess of the directions contained in the judgement in TA-231/1985 and OA -754/1990. With a view to see whether the appointment of Shri L.S. Bhatnagar as Technical Assistant with effect from 14.3.1966 and his further promotion based on that seniority was done in accordance with the rules and in compliance with the judgements of the Tribunal, we directed the official respondents to make available for our persual the file which led to the decision to give him such promotion including the advice given by the Ministry of Law. In the judgement in T-231/1985 the Tribunal had held that Shri L.S. Bhatnagar was entitled to regularisation as Technical Assistant from the date from which the first vacancy was available after providing all those who were placed above him in the panel recommended by the DPC in May 1975 and that this panel would have precedents over any other panel formed after the post was made non-selection post in June 1975. It was noted by the Law Ministry that by an order dated 31.3.1982 the department had accorded deemed regularisation of 15 technical assistants the earliest of whom was working on ad-hoc basis on the post with effect from 14.3.1966 and opined that it would be untrue

if it was held that a regular vacancy for the post of Technical Assistant had arisen only after 1975. On that premises the Law Ministry advised to implement the judgements of the Tribunal in true letter and spirit. Shri L.S. Bhatnagar who was promoted on the recommendation of a duly held departmental promotion committee which met in May 1975 his regularisation should be with effect from the date on which a regular vacancy arose after providing all those who were placed above him in the panel of May 1975. On the recommendation of the Departmental Promotion Committee Shri L.S. Bhatnagar was initially promoted in 1975 only on adhoc basis because at that time there was no regular vacancy falling to the promotion quota; but in 1982 it was found that there were 15 vacancies and it was on that basis 15 persons were promoted by order dated 31.3.1982 with effect from various dates from 14.3.1966. Since the Tribunal had held that the panel prepared in May 1975 would have precedents over any other panel and as by virtue of retrospective adhoc promotion of Shri L.S. Bhatnagar as Market Intelligence Inspector with effect from 2.6.1965 when his junior Shri N.L. Verma was promoted, it was just and proper that Shri L.S. Bhatnagar should be promoted on regular basis with effect from 14.3.1966 and assigned seniority over Shri L.S. Bhatnagar who was regularised w.e.f. that date by order dated 21.3.1982. From the material available on record there is absolutely nothing to indicate that this advise given by the Law Ministry and acted upon by the official respondents, is either

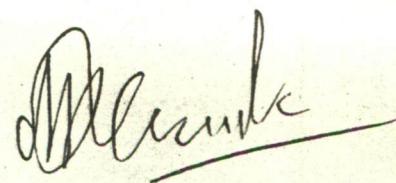
pervasive or arbitrary. Therefore, we find that there is apparently nothing which would establish that any undue favour has conferred on Shri L.S. Bhatnagar.

The question of seniority of Shri L.S. Bhatnagar over Shri N.L. Verma having been adjudicated upon and finally determined in two previous litigations and as Shri N.L. Verma has been held to have been regularly promoted as Market Intelligence Inspector with effect from 2.6.1965, it is not permissible for the issue being reopened in a subsequent litigation. It has been held in T-231/1985 that by retrospective appoint of the applicant as Technical Clerk with effect from the date on which Shri N.L. Verma was promoted as Technical Clerk he has become senior to other Technical Clerks. Considering the applicant for promotion as Technical Assistant in accordance with the directions contained in the judgements in the above application, Shri L.S. Bhatnagar was promoted as Technical Assistant with effect from 14.3.1966. Therefore, there is no merit in the prayer for declaration that Shri L.S. Bhatnagar is junior to Shri S.C. Yadav, the applicant in OA - 698/1993.

There is no provision in the Administrative Tribunal Act which enables the Full Bench to re-open an issue decided finally by a Bench and to redecide it annulling the earlier decision of the Tribunal so as to affect of the parties to the earlier decision. In this case what is prayed for by the applicants is exactly the same, for unless they are declared senior to Shri L.S. Bhatnagar they cannot claim the benefits given to Shri

Bhatnagar. Finality and consistency are important attributes of judicial decision making process. If a decision which has become final is to be reopened in a subsequent litigation that will lead to an anomalous situation where consistency and finality is lost.

In the light of the above discussion, I am of the considered view that these applications have no merit and have to be dismissed. In the result the applications are dismissed leaving the parties to bear their own costs.



(A.V. Haridasan)  
Vice Chairman(J)

\*Mittal\*

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We have seen the order of Hon'ble Shri A.V. Haridasan, Vice-Chairman (J), but with due respect, are unable to persuade ourselves to agree with his conclusions for the following reasons. The facts in the case are not being repeated, except where they are relevant.

1. The Tribunal by its order dated 7.4.1990 in O.A. No. 754 of 1990 quashed the Department's order dated 8.10.1989 and directed the respondents to release the pay and allowances of Shri L.S. Bhatnagar (hereinafter referred to as 'LSB') on the basis of the Tribunal's order dated 16.8.1989 and directed the respondents to release the pay and allowances and to grant him the benefits, including promotion and seniority in the grade of Technical Assistant on the basis of the directions contained in the Tribunal's judgment in TA No. 231 of 1985 decided on 24.4.1986. In this TA, the directions of the Tribunal were: "to fix the pay of Shri L.S. Bhatnagar w.e.f. 2.6.1965 when he qualified in the Departmental test and to pay him consequential arrears of salary in the said grade till his promotion to the next grade of Technical Assistants. They had further directed to regularise his appointment in the grade of

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Petitioner was appointed as Technical Assistant on the basis of the panel formed in 1975 in the first regular vacancy that became available in the said grade after providing for those placed above the petitioner in the panel of May, 1975. This panel would have precedence over any other panel formed after the post was made non-selection in June, 1975".

2. The respondents passed consequential orders on this judgment in their order dated 16.6.1987.

By this order, LSB was appointed as Technical Assistant w.e.f. 5.4.1978. Later on, by the order dated 16.2.1987 LSB's promotion as Technical Clerk was antedated to 2.6.1965 and by the order dated 20.04.1992, it was further antedated to 4.4.1964.

His promotion as Technical Assistant was also 14.3.1966.

given w.e.f. By antedating the promotion to 4.4.1964, the interests of the applicants who were admittedly senior to LSB as Technical Clerks have been adversely affected in regard to the seniority and other benefits as contested in this application. Although

the orders of the Tribunal in TA 231 of 1985 and O.A. No.754 of 1990 have become final and binding, it cannot be said that the order dated 20.04.1992

was issued strictly in pursuance of the judgment of the Tribunal in O.A. No. 754 of 1990. Reference to the actual order passed by the respondents

in their letter dated 20.04.1992 purporting to

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be in pursuance of the judgment of the Tribunal  
in O.A. No. 754 of 1990 bears repetition and is  
reproduced below:-

" In pursuance to the judgment of the Central Administrative Tribunal dated 30th August, 1991 in O.A. No. 754 of 1990, and with the approval of the competent authority, the following orders are made.

1. In partial modification of Office Order No.38/87-E.II ES dated 16th of February, 1987, Shri L.S. Bhatnagar is deemed to have been appointed to the post of Technical Clerk on regular basis w.e.f. 4.4.1964, i.e., from the date Shri N.L. Verma was promoted.
2. In partial modification of Office Order No.99/87-E.II dated 16th June, 1987, Shri L.S. Bhatnagar is deemed to have been appointed to the post of Technical Assistant w.e.f. 14.3.1966(A.N.) on regular basis, when Shri J.L. Bhatnagar was promoted. Further Shri L.S. Bhatnagar is assigned notional seniority over and above Shri J.L. Bhatnagar, deemed to have been regularised Technical Assistant w.e.f. 14.3.1966(A.N.) vide Office Order No.36/82-E.II ES dated 31.3.1982 (issued under No.F2-10/78-E.II.ES).
3. The competent authority has also decided to promote Shri L.S. Bhatnagar (Grade-I) on ad hoc basis w.e.f. 1st November, 1977.
4. Shri L.S. Bhatnagar will be entitled to the accompanying benefits for the said post (Research Investigator, Grade-I), i.e., pay, allowances, etc.
5. Shri L.S. Bhatnagar has already been paid arrears of pay and allowances of the above mentioned post of Technical Assistant w.e.f. 2.6.1965".

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3. The order dated 20.04.1992 provides for promotion of LSB as Technical Assistant w.e.f. 14.3.166, the date on which Shri J.L. Bhatnagar was promoted as Technical Assistant. Some of the applicants like applicant No.1 in this application was senior to LSB in the grade of Technical Assistant. It is thus not clear how this order can be said to have been passed in pursuance of the judgment in O.A. No. 754 of 1990, when the respondents had already issued their order dated 16.6.1987 in pursuance of the judgment in TA 231 of 1985 which is maintained in O.A. No. 754 of 1990 also. Since this order had the effect of going beyond what was contained in the directions in TA 231 of 1985 which has been reiterated in judgment in OA 754 of 1990, during the hearing we/ desired to know the reason for such antedating of the seniority of LSB. The respondents produced before us copies of the notings of the respondents' Ministry, i.e., Ministry of Agriculture and the advice of the Law Ministry. From the perusal of the notings which are produced before us, it is clear that the Law Ministry had proceeded on the basis that the first regular vacancy of Technical Assistant for the 1975 panel was available on 14.3.1966. The judgment of the Tribunal in

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TA 231 of 1985 which was again ordered to be implemented in the order of the Tribunal in OA 754 of 1990 provided that LSB was entitled to be "regularised in the grade of Technical Assistant from the date the first regular vacancy became available after providing for those who are placed above him in the panel of Technical Assistant, in the panel of May, 1975. This panel would have precedence over any other panel formed after the post was made non-selection post in June, 1975". The Law Ministry referred to the Executive Order dated 31.3.1982 by which the Department accorded deemed regularisation to 15 other Technical Assistants, the earliest of whom was working on ad hoc basis, w.e.f. 14.3.1966 and on that basis expressed the view that the first regular vacancy was available on 14.3.1966 itself from which date one Shri J.L. Bhatnagar, the first in the list was regularised. All that the judgment in TA 231 of 1985 stated was that the 1975 panel would have precedence over any other panel formed after the post was made a non-selection post in 1975". The regularisation of 15 Technical Assistants w.e.f. 14.3.1966 was not apparently with reference to the panel formed after the post was made a non-selection post in June, 1975.

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These 15 persons were working on ad hoc basis as Technical Assistants from their respective dates. It was, however, pointed out by the department to the Law Ministry that "these ad hoc appointments were from 1966 to 1971, the earliest being 14.3.1966 and these persons were appointed on the Departmental Promotion Committee recommendations and from panels formed during the period 1966-71" and, therefore, regularisation of these 15 people were not made with reference to any panel formed after the post was made a non-selection in June, 1975 as pointed out by the department in their notings. When the post itself was made a non-selection post only in 1975, the regularisation of these 15 ad hoc Technical Assistants from respective dates of their ad hoc appointments with reference to the panels during the period from 1966 to 1971 can, in our view, in no way be the reference point for considering the claim of LSB to be brought on par with them on the plea of correct implementation of the Tribunal's order dated 21.4.1986 in TA 231 of 1985. This was also pointed out by the Department in their notings. The Department was, therefore, of the view that the earlier order passed granting regular appointment to LSB to the post of Technical Assistant w.e.f. 5.4.1978 was in accordance with

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the order passed in TA 231 of 1985 and does not go against the directions of the CAT, as opined by the Law Ministry. Since the Law Ministry did not consider the above contention of the Department, ultimately the Department issued the aforesaid order dated 20.04.1992 antedating the appointment of LSB as Technical Assistant to 14.3.1966. It is worth pointing out at this stage that in judgment in TA 231 of 1985 as well as in OA 754 of 1990, the regularisation of 15 ad hoc Technical Assistants by order dated 31.3.1982 of the respondents was not considered or referred to at all.

4. Aggrieved by the above order dated 20.4.1992, the applicants made a representation dated 30.07.1992 alleging that the order of the Tribunal was not implemented in real spirit and they were seniors to LSB in the feeder category of Technical Clerks and some of them are senior as Technical Assistants as well. The representation of the applicants was rejected by the impugned letter of the respondents dated 10.09.1992, which is under challenge in this application. It has been stated in the aforesaid letter while rejecting the representation that the applicants have been informed that this Office Order dated 20.04.1992 had been issued in compliance with the orders

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joined drew your notice of the Tribunal in TA 231 of 1985 dated 21.4.1986  
according to you and reiterated in OA No.754 of 1990 dated 30.08.91  
to you and on the advice of the Ministry of Law and with  
the approval of the competent authority.

5. The Division Bench while referring the  
matter to the Full Bench felt that the respondent  
Nos. 1 and 2 had gone beyond the scope and ambit  
of the judgment dated 21.4.1986.

6. We have considered the observations of  
the respondents and other relevant connected  
materials leading to the issue of the order dated  
20.04.1992 and the impugned order rejecting the  
representation of the applicants. We are of the  
considered view that the respondents letter ante-  
dating the promotion of LSB to 14.3.1966 is strictly  
not in accordance with the directions given by  
the Tribunal in TA 231 of 1985 and reiterated  
in the order in OA 754 of 1990 and also on the  
basis of the facts, as brought out by the  
respondents' in their notings to the Ministry  
of Law and the material placed before us. While  
we are of the considered view that the issue of  
the letter dated 20.04.1992 stated to be in  
implementation of the judgment in O.A. No. 754  
of 1990 giving antedated seniority to LSB as  
Technical Clerk w.e.f. 4.4.1964 and as Technical

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Assistant w.e.f. 14.3.1966, does affect the rights of the applicants inasmuch as, they were senior to Shri Bhatnagar in the feeder category of Technical Clerks and some of the applicants in the category of Technical Assistants and could not have come into the picture before the redetermination of LSB's seniority on the basis of the Law Ministry advice and issue of the order dated 20.04.1992.

Besides, there is nothing on record to show that the posts of Market Intelligence Inspector and Technical Assistant are of the same cadre. In any case, there is no specific direction in this regard in the judgment in O.A. No. 754 of 1990. In view of this matter, it cannot be said that the applicants have approached this Tribunal belatedly. At the same time, we are also of the view that the applicants would not be straight-away entitled to any of the benefits extended to Shri Bhatnagar when such benefits were given beyond the scope of the judgments given by the Tribunal in the aforesaid cases and the factual position brought out by the respondents in regard to the first available vacancy in the grade of Technical Assistant is only after June, 1975.

7. As regards the applicant in O.A. No. 698

of 1993, the applicant is aggrieved by the

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respondents' order dated 20.04.1992 antedating the seniority of LSB making the applicant junior to the third respondent (LSB) in the grade of Technical Assistant and also as Research Investigator. The applicant claims that he has been senior to Shri Bhatnagar as he joined the post as Technical Assistant as a direct recruit as early as in May, 1975 and, therefore, he is aggrieved that the promotion of Shri Bhatnagar as Research Investigator on ad hoc basis w.e.f. 1.11.1977 would be irregular and would have the effect of his being considered as senior to the applicant, who was promoted as Research Investigator only w.e.f. 11.3.1991 although he was direct recruit Technical Assistant in the feeder category and was senior to third respondent before issue of the order dated 20.04.1992. As we have said in the other application that on the basis of the material on record and on the basis of the observations made, we are of the considered view that the date of promotion of Shri L.S. Bhatnagar as Technical Assistant and Research Investigator needs to be reviewed and, therefore, this application has also to be considered in the light of this view.

8. We make it clear, however, that we are in no way reopening the decisions of the Tribunal

in TA 231 of 1985 and OA 754 of 1990, which have

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become final and binding. Since we are of the considered view that in implementation of the judgments that the order dated 20.04.1992 cannot be said to be a correct implementation of the judgment in TA 231 of 1985 as maintained in OA 754 of 1990 by this order, the interest of the applicants in both the TA and OA are affected and these TA and OA cannot be dismissed simply on the ground of limitation. In the circumstances of the case, the judgment of the Supreme Court in Bhoop Singh vs. U.O.I. (JT 1992 (3) SC 322) is clearly distinguishable and will, therefore, not be applicable in the present case.

9. In the light of the foregoing, it is

necessary for the respondents to review their

order dated 20.04.1992 and also their letter

dated 10.09.1992 as far as the applicants in

O.A. No. 2626 of 1992 are concerned and their

orders dated 20.04.1992, and the seniority of

the applicant in O.A. No. 698 of 1993, vis-a-vis

the seniority of Shri L.S. Bhatnagar in the light

of the judgments referred to above and pass

appropriate orders within a period of 3 months

from the date of receipt of this order in accordance

with the directions given in the aforesaid O.As.

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Conduct of a meeting of the concerned O.A.s.

and handing over of a copy of the order dated 18.3.1993.

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and T.A. and we direct accordingly.

10. With the above directions, the applications and reference to Full Bench are disposed of. There shall be no order as to costs.

(K. MUTHUKUMAR)  
MEMBER (A)

(SMT. LAKSHMI SWAMINATHAN)  
MEMBER (J)

In view of the above opinions, the majority view shall prevail.

(K. MUTHUKUMAR) (SMT. LAKSHMI SWAMINATHAN) (A.V. HARIDASAN)  
MEMBER (A) MEMBER (J) VICE CHAIRMAN (J)

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