

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman  
Hon'ble Mr. M. S. Mukherjee, Member (A)

1. O.A. 789 of 1996 with M.A. 222 of 1996

1. Sudhendu Kumar Ganguly  
2. R.N.Ghosh  
3. A.K.Nag  
4. A.K.Chakraborty  
5. D.D.Roy Chowdhury  
6. N.K.Saha  
7. S.K.Sen  
8. S.Roychowdhury  
9. S.T.Kaviraj  
10. D.K.Sengupta  
11. S.S.Guin  
12. G.D.Burman  
13. S.N.Chanda  
14. D.K.Majumdar  
15. K.K.Gangopadhyay  
16. P.K.Sanyal  
17. A.K.Bhattacharya  
18. G. Adhya  
19. P.C.Goswami  
20. A. Dasgupta  
21. S.C.Das  
22. S.K.Munshi  
23. D.K.Sarkar  
24. R.P.Shaw  
25. N.C.Roy  
26. A.N.Mukherjee

.....Petitioners

=VS=

1. Union of India through  
Secretary, Ministry of Defence,  
South Block (Defence Production)  
New Delhi

2. Chairman/Director General,  
Ordnance Factory Board,  
10A, Auckland Road,  
Calcutta-700 001

3. Deputy Director General  
Personnel Department,  
Ordnance Factory Board,  
10A, Auckland Road,  
Calcutta 700 001

.....Respondents

For petitioners : Mr. K.K.Moitra, Counsel  
Mr. S.Moitra, counsel  
Mr. K.L.Mukhopadhyay, counsel

For respondents : Mr. Sardar Amzad Ali, counsel  
Mr. S.K.Dutta, counsel

Heard on : 29.8.96 & 4.9.96  
Order on : 12.12.96

2. O.A. 756 of 1995

1. Ranjit Kr. Sen
2. Sibabrata Basu
3. Satya Ranjan Saha
4. Manoj Kumar Das
5. Ranjit Kr. Mukherjee
6. Satya Prasanna Bhattacharya
7. Debabrata Bandopadhyay
8. Mukul Krishna Roy
9. Snehamoy Bhaduri
10. Ashok Kumar Dasgupta
11. Soumendra Kumar Ghose
12. Ranjit Kr. Das
13. Samir Chandra Piplai
14. Dipak Bhattacharya
15. Ajoy Kumar Ghose
16. Prasanta Kumar Baksi
17. Jayanta Prasanna Biswas
18. Biraj Kr Das
19. Asit Baran Das
20. Kantilal Sengupta
21. Tapan Kumar Nandi

.....Petitioners

VS

1. Union of India through  
Secretary, Ministry of Defence Production  
Ayudh Bhavan, New Delhi-110 001
2. Chairman, Ordnance Factory Board,  
10A, Auckland Road,  
Calcutta-700 001
3. General Manager,  
Cossipore Gun & Shell Factory,  
Cossipore, Calcutta-700 002

..... Respondents

For petitioners : Mr. T.N. Bandopadhyay, counsel  
Mr. S. Bhattacharya, counsel

For respondents : Mr. M.S. Banerjee, counsel

Heard on : 14.5.96, 13.6.96 & 19.8.96

Order on : .12:96

[Judgement delivered by M.S. Mukherjee, Member(A) ]



M.S. Mukherjee, A.M.:

By this common order we propose to deal with both the OAs and the connected MA as they are eventually related to the comprehensive recent Full Bench judgement at Principal Bench of the Tribunal delivered on 22.12.95 in respect of 43 numbers of separate OAs, which had been filled at different Benches of the Tribunal by persons working in various Ordnance Factories, but subsequently stood transferred to the principal Bench for analogous hearing. (hereinafter referred to as the " Full Bench judgement (PB)" for short).

O.A. 789/96 (An outline of rival citation of facts and prayers) :

2. OA 789 of 1996 represents petition of 26 employees of Ordnance Factories who had originally been appointed as Apprentices by the then Director General of Ordnance Factories (DGOF) . Their contention is that the Hon'ble Supreme Court by its order dated 5.8.93 in CA 2322 of 1991 (Union of India & Ors -vs- Purnendu Mukhopadhyay & Ors ) had upheld the earlier judgement and order of the Calcutta Bench of the Tribunal dated 9.7.90 in TA No. 1069 of 1986 ( CR No. 1671-W of 1983) and had rejected the SLP filed by the official respondents against the Tribunal's order. The present petitioners contending to be similarly circumstanced like the petitioners in TA 1069 of 1986, moved this Bench of the Tribunal through OA No. 112/94 (Debdas Roychowdhury -vs-UOI) which was decided by this Bench on 30.11.94. This Bench of the Tribunal disposed of the said OA 112/94 with the directions that the Chairman, OFB must dispose of the representations of the petitioners in terms of the previous judgement of the Tribunal in the case TA 1069/86 (Purnendu Mukhopadhyay's case) which had since been upheld and clarified by the Hon'ble Supreme Court in CA 2322/91 as

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already mentioned. This directive of the Calcutta Bench of the Tribunal in O.A. 112/94 had to be implemented within a period of six months from the date of communication of that order. If, however, the Chairman, OFB on considering all the facts would come to the conclusion that any of the applicants was not entitled to get the benefits of the aforesaid judgement, then appropriate speaking order would have to be communicated to the concerned applicant(s) within the time fixed.

3. It is the further contention of the petitioners of the instant case that the official respondents subsequently filed an application before the Calcutta Bench of the Tribunal through MA 174/95 seeking extension of time to implement the judgement and order passed in OA 112/94 and this MA 174/95 was disposed of by the Tribunal on 5.7.95 directing that the order passed in OA 112/94 shall be implemented within a further period of six weeks from the date of the order.

4. The petitioners contend that thereafter DG, OFB (respondent No. 2) through OFB Memo dated 14.8.95 and 13.11.95 (Annexures E & F to the petition) communicated that on the basis of records, 26 out of 70 applicants in OA 112/94 had been found to be similarly circumstanced with those of the petitioners in TA 1069/86. Since thereafter no further follow up measures were taken either for the group of 26 similarly circumstanced petitioners or for the remaining petitioners, <sup>MA 174/95</sup>, they (the petitioners) moved a contempt petition against the official respondents being CCP No. 181/95 which is still pending.

5. The petitioners' further grievance is that following the judgement of the Hon'ble Supreme Court dt. 5.8.93 in CA No. 2322/91 (UOI -vs- Purnendu Mukhopadhhay & Ors), all the



applicants in TA 1069/86 (Purnendu Mukhopadhhay-vs- UOI) had already been given approriate promotion by the official respondents retrospectively and they have eventually been promoted also to the posts of Jr. Works Manager, the maximum due to them at that point of time, even by superseding the existing senior employees. The petitioners' grievance is that they (the petitioners) are much seniors even to the applicants in Purnendu Mukhopadhyay's case and the official respondents are doing nothing to extend similar benefits to them even in implementation of the Tribunal's order in OA 112/94.

6. The present petitioners further fear that the Chairman, OFB is now processing the case of promoting a large number of employees to the post of Asst. Works Manager or equivalent posts in junior time scale by ignoring the legitimate claims of the petitioners and that unless the petitioners are also promoted retrospectively by being allowed the benefits of the judgement in OA 112/94 in line with the judgement in Purnendu Mukhopadhyay's case, their case of promotion will suffer.

7. The petitioners have, therefore, prayed for a declaration on the respondents to the effect that all the promotions above the rank of Jr. Works Manager upto the rank of Dy. General Manager or equivalent after 30.11.94 (i.e. the date of the order of the Calcutta Bench in OA 112/94) be treated as bad and quashable. They have also prayed for not to confirm or regularise any of the promotees within the rank of Dy. General Manager, who have been promoted after 30.11.94 before promoting and/or confirming and/or regularising the promotion of 26 applicants in OA 112/94 by extending the benefis of the decision of the Hon'ble Supreme Court in appeal in Purnendu Mukhopadhyay's

case. They have also prayed for a direction on the respondents to hold review DPCs within a specific time frame for promotions of the applicants to the posts of Chargeman, Gr.I, Assistant Foreman, Jr. Works Manager, Assistant Works Manager or equivalent Works Manager and Dy. General Manager or equivalent and actually promoting the applicants to the respective posts as due and fixing their pay, scales as due along with all consequential monetary and service benefits as per rules.

8. When the petition had originally been moved as an unlisted motion on 2.7.96, we had issued an interim order after hearing both parties, restraining the respondents from giving further promotion to the posts above the rank of Jr. Works Manager and upto the rank of Dy. General Manager or equivalent till the next date fixed. The respondents were, however, given liberty to seek modification of the interim order by filing suitable application. The respondents then filed MA 222/96 seeking vacation of the said stay order dt. 2.7.96. Eventually, this interim order was modified on 4.9.96 and the respondents were allowed to give promotions above the rank of Works Manager or equivalent.

9A. The respondents have contested the case by filing a written reply. Their case is tha immediately after receipt of the order of the Tribunal dt. 30.11.94 in OA 112/94, the respondents initiated actions to ascertain the relevant facts from the service records of the applicants and it was detected that the relevant documents had been scattered at various Ordnance Factories at different places in the country, as the applicants had joined their initial training as Supervisors in different Ordnance Factories during the years 1959 to 1963. Since by collecting all the relevant records from different formations, their case could not be

processed completely, the respondents had to file MA 174/95 praying for extension of time and this Tribunal by its order dt. 5.7.95 has itself granted six weeks' further time for implementing the order. Through this laborious ~~and~~ process and by searching and locating very old records, the official respondents had identified in all 26 applicants who are similarly circumstanced and entitled to the benefits of the Purnendu Mukhopadhyay's (supra) case.

9B. The respondents submit that the present petitioners ~~are not entitled to all consequential benefits as clarified by the Hon'ble Supreme Court in CA 2322/91 (UO1 -vs Purnendu Mukhopadhyay & Ors) in the following lines :~~

"We direct the respondent authorities to refix the respective notional seniority of the applicants and fix their pay scale and all benefits attached thereto as per rule on the basis that all the applicants came out successful in the selection test for promotion to the post of Chargeman, Gr.II from their respective dates of examination. But they will not be entitled to any back wages or any other financial benefits save and except the notional seniority."

10. The respondents contend that the petitioners, who had joined long back as Supervisors, their pay is required to be refixed in the post of Chargeman, Gr.II in different scales and then in the post of Chargeman, Gr.I, Assistant Foreman, Foreman (Tech.). It is submitted that the post of Foreman (Tech.) has now been redesignated as Jr. Works Manager (Group B Gazetted) in scale Rs. 2375-3500/- On such refixation, the petitioners have been substantially benefited and the order dt. 30.11.94 in OA 112/94 has been

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fully implemented. By way of illustration, the respondents have produced at Annexure-R1 to the reply, copies of the relevant orders refixing the pay at different stages/posts. According to the respondents, the petitioners are not entitled to any further relief, nor are the benefits extendable to the remaining petitioners in OA 112/94 who are not similarly circumstanced as the applicants in Purnnendu Mukhopadhyay's case. The respondents further observe that the petition lacks in material particulars about the petitioners and that the persons likely to be affected from the result of the petition have not also been impleaded as parties.

11. The petitioners have filed a rejoinder to the reply. Their basic grievance is that even for 26 applicants, who were admittedly similarly circumstanced, and in whose cases notional seniority has been given by the official respondents as Chargeman, Gr.II, the said petitioners have not been given any consequential benefits regarding further promotions in the upper hierarchy as a result of which in the impending promotions to take place in the near future their interest would be prejudiced seriously.

12. At the final stage of hearing of this proceeding, the official respondents came up with a new submission that the entire scenario has undergone considerable change with the recent judgement of the Full Bench at Principal Bench dated 22.12.95 in the group cases OA 2601/94 (A.K.Mukhopadhyay & Ors -vs- General Manager, Grey Iron Foundry, Jabalpur & Ors ) etc. etc.

13. In that judgement the Full Bench at Principal Bench has traverse a plethora of relevant judgements, passed by different High Courts and different Benches of this Tribunal and some of which are mutually conflicting. The Full Bench

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(PB) has also dealt with different judgements of the Hon'ble Supreme Court in Ordnance Factories cases. Eventually, by the said judgement, the Full Bench (PB) has decided the principles of fixing inter se seniority of various groups of employees who are beneficiaries and/or are claiming benefits of different Courts/Tribunal's judgements. Therefore, according to the respondents, the previous order of this Bench of the Tribunal in OA 112/94 has to be implemented subject to the aforesaid Full Bench judgement (PB) and the petitioner's cannot have any legitimate grievance in the matter.

14. We shall deal with the rival contentions with reference to the aforesaid contention of the respondents shortly below. Meanwhile, we may briefly state the case about OA 756 of 1995.

O.A.756/95 (An outline of rival citation of facts and prayers) :

15. This is a petition by 21 petitioners working as Asst. Foreman in Cossipore Gun & Shell Factory. They are aggrieved by the order dt. 6.5.95 issued by the Addl. General Manager, Cossipore Gun & Shell Factory (Annexure-A9 to the petition) by which, it is alleged, the dates of notional dates of promotion of the petitioners to the posts of Chargeman, Gr.I and Asst. Foreman with attendant refixation of pay have been arbitrarily and illegally changed.

16. This group of petitioners, prior to and as on 1.1.73, were working as Supervisor, Gr.A (Tech). At that time Supervisor, Gr.A(Tech) and Sr. Draftsman, Sr. Rate Fixer, Sr. Planner and Sr. Estimator were equivalent to each other being in the same pre-revised scale of Rs. 205-380/- and formed a common feeder grade for promotion to



the post of Chargeman, II (Tech) in scale Rs. 250-380/- and the incumbents of these grades belonged to a common seniority group for promotion as Chargeman, Gr.II(Tech). Their further promotion lay in the grades of Chargeman, Gr.I (Tech) in scale Rs. 335-485/-, Assistant Foreman in scale Rs. 370-485/- and Foreman in scale of Rs. 450-850/-. It is the contention of the petitioners that on implementation of the recommendations of the 3rd Pay Commission, all the said equivalent grades of Supervisor, Gr.A (Tech.) etc. were gradually awarded with the higher revised pay scale of Rs. 425-700/- w.e.f. 1.1.73 which pay scale was incidentally awarded to the promotional post of Chargeman, Gr.II (Tech.) from the same date. <sup>At The</sup> <sup>A</sup> Granting of identical pay scale to both the feeder and promotional grades necessitated determination of inter se seniority which had to be settled judicially. The petitioners along with others filed OA 495 of 1986 (Birendra Nath Sahoo & Ors -vs- UOI & Ors) before this Bench of the Tribunal which was decided on 1.3.89 with the following directions :

" Seniority of the applicants shall be fixed taking into account the fact that they have been granted the scale of Rs. 425-700/w.e.f. 1.1.73. This seniority will be taken into account while determining their seniority in the posts to which they have been promoted from the posts in which they enjoyed the pay scale of Rs. 425-700/-. No arrears shall be payable on account of such fixation of such seniority but their pay shall be fixed notionally taking into account the seniority granted by this order."

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17. The petitioners contend that the respondents did not immediately implement this order of the Tribunal. Being aggrieved they filed another OA being OA 282/89 (Biman Baran Chakraborty & Ors -vs-UOI & Ors) seeking enforcement of their seniority as was granted by the Tribunal's earlier order in OA 495/86. OA 282/89 was disposed of by the Tribunal on 25.4.90 giving specific time limit to implement the earlier order. It was inter alia directed that the seniority of the applicants in the grade Rs. 425-700/- as on 1.1.73 be refixed on the basis that they were also appointed to that grade on that date and that after refixation of seniority, their further promotion, if any, be reviewed and regulated according to the revised seniority and further that if on the basis their revised seniority, the petitioners were entitled to higher promotion, then they should also be given such promotion from the same date when their juniors (based on the revised seniority) got such promotion with actual pay benefits only ~~from~~ prospectively. These orders were directed to be implemented within 3 months from the date of receipt of the order.

18. However, the respondents filed a review petition against this order being RA 64/90 on the ground that the decision of the Calcutta Bench in OA 282/89 was somewhat at variance and conflicting with the directions given by other Benches of the Tribunal like the New Bombay Bench, Jabalpur Bench etc. The Calcutta Bench of the Tribunal, however, after analysing all the material facts, it is contended by the petitioners, <sup>at finally</sup> ~~contend~~ dismissed RA 64/90 by a detailed order dt. 16.7.90. But even then the respondents would not, it is alleged by the present petitioners, implement the order by publishing revised seniority list and giving effect

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to such seniority to the applicant in the promotional posts of Chargeman, Gr.I, Asst. Foreman etc. The respondents thereafter, filed an SLP before the Hon'ble Supreme Court against the order of this Tribunal in RA 64/90. The SLP was, however, dismissed by the Hon'ble Supreme Court by an order dt. 7.1.91.

19. It is the contention of the present petitioners that finally after more than 2 years of the Tribunal's order dt. 24.4.90 in OA 282/89 (wih CA 247/89) the respondents implemented the order by giving all the petitioners notional promotion to the grade of Chargeman, Gr.I and Asst. Foreman from 19.12.79 and 2.4.82 respectively without attending financial benefits by the order dt. 4.4.92 and 9.9.92. Copies of this order have been annexed at Annexure-A5 to the petition. It is the grievance of the petitioners that even after the said belated refixation of seniority and promotion the respondents have wrongly interfered with their seniority and notional promotion dates in the grades of Chargeman, Gr.I and Asst. Foreman and have deprived the petitioners of their promotional benefits from due dates. The OFB by their impugned order dt. 12.7.94 (Annexure-A7) have unsettled the settled seniority of the incumbents to the posts of Chargeman, Gr.I and Asst. Foreman. The petitioners thereupon made representations against the order of the OFB dt. 12.7.94 but despite this the respondents have issued factory order dt. 6.5.95 (Annexure A/9 to the petition) which threatens further the benefits enjoyed by the petitioners.

20. Meanwhile, the categories of the case of the petitioners have been referred to the Full Bench by the

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Jabalpur Bench of the Tribunal and during the pendency of the case before the Full Bench, the petitioners oppose the revision of the benefits by the respondens.

21. The respondents have similarly contested the case by filing a written reply. Their case is that the OFB Memo dt. 12.7.94 had been issued after considering various judgements passed by different Benches of the Tribunal and that the Factory order dt. 6.5.95 has been issued in bona fide exercise of powers after considering the recommendation of the review DPC. The respondents' contention is that the alteration of the seniority and consequential refixation of pay in the promotional post is in accordance with the judgements of the Tribunal of Bombay and Jabalpur Benches in OA Nos. 589/93 and 309/95.

22. Finally, at the stage of arguments, Mr. M.S.Banerjee, the ld. counsel for the respondents submitted to the Full Bench of the Tribunal at Principal Bench to which the cases had been referred to, has since delivered pm 22/12/95 its judgement (already mentioned at para 1 supra aof this order) and that in view of this Full Bench decision, the petitioners cannot raise any legitimate grievance. The respondents have, therefore, urged for rejection of the case.

23. The Tribunal had on 12.9.95, issued an interim order staying the operation of the impugned order dt. 6.5.95 (Annexure-A9) directing refixation of the petitioners' salary as well as notional dates of promotion. The respondents have also urged for vacation of this interim order.

General Background concerning both OA 789/96 & OA 756/95 :

24. We have heard the learned counsel for both the

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parties in both the petitions and have gone through the massive documents produced and the written arguments submitted. Before we analyse these, it will be useful if certain general background is outlined first for convenience of understanding the context.

25. The basic issues involved concern the fixation of seniority in the grade of Chargeman, Gr.II (Tech.) to begin with and the question of inter se seniority amongst various groups of Chargeman, Gr.II (Tech.) as well as their further consequential promotions in the upper rungs of hierarchy with consequential refixation of pay, seniority all along the line. In the Ordnance Factories, the post of Supervisor-B had originally been the feeder cadre for promotion to the post of Supervisor, A. Supervisor, A along with Senior Draftsman, Senior Rate Fixer, Senior Planner and Senior Estimator are the feeder posts to the next higher grade of Chargeman, Gr.II. The further promotions are to the posts of Chargeman, Gr.I, Asst. Foreman and Foreman - the last post has since been redesignated as Jr. Works Manager w.e.f. 1.6.94.

26. In 1950, the Union of India in the Ministry of Defence introduced an Apprentice training scheme for supervisory posts in the ordnance factories for efficient work and better supervision. After completion of the successful apprenticeship training, the trainees were offered post-training employment by the DGOF to various posts including the posts of Supervisor, A and Chargeman, Gr.II on the basis of gradation secured by them in the examination conducted by the Central Selection Board. Indian Ordnance Factories (Recruitment and Conditions of Service of Class III Personnel) Rules, 1956 as promulgated

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through Defence Ministry SRO No. 4 dated 4.1.56  
(hereinafter described as IOF Class III Rules, 56)

prescribed that vacancies in the grade of Chargeman, Grade II  
should normally be filled ~~by~~ <sup>at</sup> 80% by promotion of Supervisors,  
Grade A in accordance with the provisions of rule 8 or by  
appointment of selected qualified apprentices recruited and  
trained in accordance with the provisions of Appendix B and  
that the remaining 20% by direct recruitment. Therefore,  
under the 1956 rules, 80% of the vacancies were promotional  
posts from Supervisors, Gr.A or by appointing trainee  
qualified apprentices. It is to be noted that the internal  
ratio between the promotees from lower feeder cadre of  
Supervisor, A or from qualified Apprentices was not  
prescribed. This left room for dispute as to the issue of  
inter se seniority of Chargeman, Gr.II recruited from these  
two separate sources within the first 80% feeder category  
posts.

27. With regard to apprentices, in November 1965, DGOFB  
suggested that in border line cases of apprentices graded as  
Supervisor, Gr. A, it would be fair to give them another  
chance to appear within six months in the next examination  
for grading as Chargeman, Gr.II since they might have been  
graded as Supervisor Gr. A due to slightly different  
standards of marking. This suggestion materialised in 1967  
and the scheme was amended as under :

"The Supervisory Apprentices who secure 5%  
marks less in the aggregate than prescribed  
by the Central Selection Board for gradation  
as Chargeman Gr.II in a particular gradation  
examination, will be graded as Supervisor  
Gr. A/or equivalent but will be allowed to

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take another chance at the next gradation examination and on the basis of their performance may be graded by the DFOF as fit for appointment as Chargeman, Gr.II and appointed as such with effect from a date after they are so graded in the subsequent gradation examination.

This will have retrospective effect to cover the past cases in which the DFOF has already allowed the Supervisory Apprentices another chance to appear in the gradation examination."

28. Although formal instructions were issued in 1967, the DFOF permitted some of the apprentices graded as Supervisor Gr.A in the examination conducted in 1965 to appear in the next examination in 1966, in which many succeeded and were appointed as Chargeman, Gr.II. Some of the Supervisor, Gr.A, who were working from before and satisfied the eligibility criteria and others who were denied similar opportunity even though they had secured 5% less marks in the aggregate approached the Hon'ble Supreme Court by way of writ petition and claimed that they too should have been given another opportunity to improve their gradation as was done in case of others. When the said writ petition came up for hearing before the Hon'ble Supreme Court, it was permitted to be withdrawn and the petitioners approached the High Court of Delhi through writ petition under Art. 226 of the Constitution. The Delhi High Court held that the action of the respondents in denying similar opportunity to the Supervisors, Gr.A who had appeared in the examination prior to 1965 or even thereafter and were in the

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field of eligibility as provided by the modified scheme, was discriminatory and violative of equality guaranteed under Art. 16(1) of the Constitution. The Delhi High Court issued the following directions :

' The Govt. is granted liberty to consider the dispute afresh. in case Govt. is not abale to arrive at a reasonable workable solution acceptable to the petitioners within six months from to-day..... hereby issue a writ of mandamus directing the respondents 1 to 6 to give anaother chance to the ex-Supervisory apprentices i.e. such of the petitioners who secured 5% less marks in the aggregate than prescribed by the Cenral Selection Board for gradation as Chargeman, Gr.II in a particular examination and who have been graded as Supervisor Gr. A or its equivalent, to appear at a gradation examination specially constituted for this purpose....."

Appropriate further directions were also issued by the Delhi High Court that reasonable time will be given to the eligible persons to appear in the gradation examination and the syllabus will also be settled and communicated within a reasonable time. It further ordered that "such of the petitioners who are found fit for appointment as Chargeman, Gr.II, would be appointed notionally with effect from the date six months later than the date of their original gradation. In other words, the appointments will take effect prospectively, but notional seniority will be allowed

to them with effect from the date six months later than the date of original gradation. There will be no retrospective financial obligations on the Government.

29. Since the first alternative given to the Govt. by the Delhi High Court was not carried out and no workable solution was arrived at, therefore, the only way to comply with the High Court's order was to hold an examination for those Supervisors, who were working as Gr.A Supervisors and were in the field of eligibility. Unfortunately, no examination was held and the petitioners, who had succeeded before the Delhi High Court, approached the Calcutta High Court for a direction to the respondent authorities to grant them the same benefit and determine their seniority as Chargeman, Gr.II, six months from the date of the examination. The said writ petition ( CR 1671-w/83) was transferred to the Calcutta Bench of the Tribunal and renumbered as TA 1069 of 1986. This TA was disposed of by the Calcutta Bench on 9.7.90. (Purnendu Mukhopadhyay -vsU01). Before the Tribunal it was conceded by the respondents that the posts of Supervisor, Gr.A were abolished as far back as 1980 and therefore, there was no question of holding the examination as directed by the Delhi High Cour. It was also admitted that all those who were petitioners before the Tribunal had been confirmed in their respective higher posts. The only ground the petition was contested was that it was filed after a lapse of long time. The Tribunal did not agree with it and held that the respondents in not calling the petitioners for appearing in the examination acted discriminately and since it was conceded that it was not possible to hold the examaination a direction was issued to the respondent authorities to refix

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the notional seniority of the petitioners and fix their pay scale and all benefits attached thereto as per rule on the basis that all the petitioners came out successful in the selection tests for the post of Chargeman, Gr.II.

30. The above facts are culled out from the citation of the Hon'ble Supreme Court's judgement dt. 5.8.93 in CA No. 2322/91 (UOI -vs- Purnendu Mukhopadhyay & Ors). The said Civil Appeal before the Hon'ble Supreme Court arose from the SLP filed by the respondents against the judgement and order of the Calcutta Bench of the Tribunal in TA 1069/86. The Hon'ble Supreme Cour rejected the appeal and upheld the order of the Calcutta Bench of the Tribunal with the clarification that the" placement of all those Supervisors, Gr.A who came in the field of eligibility, namely of securing less than 5% marks in aggregate fixed for selection as Chargeman, Gr.II, should be fixed by directing that they were selected for that post six months from the date of their gradation examination."

31. The aforesaid judgement of the Hon'ble Supreme Court and this Bench of the Tribunal in TA 1069/86 have been, it is submitted by the petitioners and not contradicted by the respondents, eventually implemented in full.

32. Meanwhile, on 6.11.62, the following order was issued by the Director General of Ordnance Factories :

" Subject " NON-INDUSTRIAL ESTABLISHMENT PROMOTION DGOF has decided that Diploma holders serving as Supervisor A Tech/Supervisor B/Tech and in equivalent grades should be treated as follows :

(i) All those Diploma holders who have been appointed as Supervisor B(Tech) (and in equivalent



grades) should, on completion of one year's satisfactory service in ordnance factories, be promoted to Supervisor A (Tech) and in equivalent grades.

(ii) All those diploma holders who work satisfactorily as Supervisor A (Tech) or in equivalent grades for 2 years in Ordnance Factory should be promoted to Chargeman. Kindly acknowledge the receipt."

(reproduced from para 5 of the Full Bench Judgement (PB)).

33. Now those Supervisors, Gr.A who had not been given promotions to the grade of Chargeman, Gr.B, based on the DGOF circular dt. 6.11.62, moved the Allahabad High Court which was dismissed. Eventually, it was appealed against before the Hon'ble Supreme Court and the Hon'ble apex court decided the appeal (Appeal No. 441/81 - Virendra Kumar & Ors -vs- UOI & Ors) on 2.2.81 (vide AIR 1981 SC 1775). Through this appellate order, the Hon'ble Supreme Court allowed the appeal and held as follows :

" Heard counsel. Special leave granted. Our attention has been invited by learned counsel for both the sides to the relevant rules which govern promotion to the post of Chargeman, Gr.II. It appears that a large number of persons have been promoted to those posts though they have completed only two years of service. The Government now appears to insist that, in so far as the appellants are concerned, they cannot be considered for promotion unless they complete three years of service. We see no justification for any such

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differential treatment being given to the appellants. If a large number of other persons similarly situated have been promoted as Chargeman, Grade II, after completing two years of service, there is no reason why the appellants should also not be similarly promoted after completing the same period of service. We are not suggesting that the appellants are entitled to be promoted to the aforesaid posts even if they are found fit to be promoted.

We, therefore, direct that the concerned authorities will consider the cases of the appellants for promotion as chargeman gr. II and promote them to the said posts unless they are found to be unfit. If the appellants are promoted, they will naturally have to be promoted with effect from the date on which they ought to have been promoted."

34. Accordingly, the respondents issued orders on 12.10.82 granting promotion to 75 appellants in Virendra Kumar's case from earlier dates as Chargeman, Gr.II.

(vide para 7 of Full Bench judgement (PB)

35. The Madhya Pradesh High Court in Dilip Singh Chauhan & Ors -vs- UOI & Ors (MP No. 174/81) also passed an order on 4.4.83 along with another case viz. MP No. 9/82 (KKM Nair & Ors -vs- UOI & Ors). It was inter alia held that concerned petitioners, who were Diploma Holders but appointed as Supervisor, Gr.B, should be granted the relief prayed for viz. that they should be treated as Supervisor, Gr.A from the date of their first appointment and further that they should be treated as Chargeman, Gr.B from the date

of completing 2 years of service as Supervisors, Gr.A provided they had been appointed before 28.12.65 - because from that date the criterion of three years minimum service was introduced. It was further decided that their notional seniority has to be fixed as Chargeman, Gr.II and higher grades. In regard to financial benefits, it was held that they were not entitled to any retrospective benefit, they would however be entitled to refixation of their present salary on the basis of notional seniority granted to them in different grades so that their present salary is not less than that of those who are immediately below them. SLP No. 5987-92 of 1986 filed against this judgement of the MP High Court before the Hon'ble Supreme Court was dismissed on 28.7.86. Thereupon, a seniority list dt. 20/25.2.87 giving antedated seniority to the 124 petitioners in the grades of Chargeman, Gr.II, Chargeman, Gr.I, Ast. Foreman and Foreman was issued pursuant to the judgement of the MP High Court.

36. Subsequently, another batch of Science Graduates viz. Ananthamurthy & Ors filed a case before the Jabalpur Bench of the Tribunal claiming benefits of the judgement of the MP High Court in K>K.M>Nair's case. The Jabalpur Bench of the Tribunal disposed of the said petitions TA 322/86 (Ananthamurthy & Ors -vs- UO1) and TA 104/86 (Ravinder Nath Gupa & Ors -vs- UO1) on 30.6.87 by directing that the petitioners "who were science graduates and such of the petitioners who are diploma holders, shall be treated as Supervisor, Gr.A from the date of their initial appointment and their notional seniority revised. They shall be entitled to be considered for promotion to the post of Chargeman, Gr.II on completion of 2 years of satisfactory

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service as Supervisors, A retrospectively. If found fit and promoted by the DPC, their notional seniority shall be refixed for the post of Chargeman, Gr.II, Chargeman, Gr.I or that of Asst. Foreman, as the case may be. Their present salary shall also be so fixed so that it is not lower than the salary of those who are immediately below them in seniority. They shall not be entitled to past arrears of pay."

37. SLP filed by the Union of India against this order of the Jabalpur Bench was dismissed on 16.11.88. Thereafter, based on this decision, the seniority list was amended assigning higher position to the applicants to the aforesaid two TAs by factory order No. 143 issued on 10.7.89 in the grade of Supervisor, Gr.A.

38. Subsequently, by an order dt. 27.7.89, the seniority of Virender Kumar & Ors was refixed and antedated in the cadre of Chargeman, Gr.II and therefore, their seniority in the higher grades viz. Chargeman, Gr.I, Asst. Foreman and Foreman, if they were holding such poss, was also refixed. Based on this revised seniority list, some petitioners in that OA were promoted on 31.7.89 as Foreman. A furher order of promotion was also issued on 22.9.89 as Asst. Foreman in respect of some other applicants in that OA.

{(vide para 13 of Full Bench judgement (PB)}

39. The above selective citation of facts indicates promotion/appointment of various officials as Chargeman, Gr.II on different dates by virtue of the Govt. policy or change in policy from time to time regarding eligibility for promotion from Supervisor, Gr. A and by virtue of orders of various High Courts/Tribunals as well as Hon'ble Supreme

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Court because of the same. This by itself makes the matter more complex.

40. This complexity was compounded further by the subsequent action of the Govt. in pursuance of the recommendations of the 3rd Pay Commission which came into force w.e.f. 1.1.73. As on 31.12.72, Supervisors, Gr.A (Tech), Sr. Draftsman, Sr. Rate Fixer, Sr. Planner, Sr. Estimator were treated as of equivalent posts in the pre-revised scale of Rs. 205-380/- as already indicated and they formed common feeder grade for promotion to the next higher post of Chargeman, Gr.II in scale Rs. 250-380/- and the incumbent of this grades belonged to the common seniority group for promotion as Chargeman, Gr.II. Further promotions lay in the grade of Chargeman, Gr.I, Asst. Foreman, Foreman in that order. However, the 3rd Pay Commission recommended that the revised pay scale of Chargeman, Gr.II (Tech) would be Rs. 425-700/- and further that 50% of the posts of Sr. Draftsman should be placed in the same scale of Rs. 425-700/- and that the remaining 50% would be in the lower scale of Rs. 380-560/-. This created an anomaly amongst various groups which constituted a common feeder posts earlier for promotion as Chargeman, Gr.II and further anomalies because the higher post of Chargeman, Gr.II and 50% of the feeder post of Sr. Draftsman were also given the identical pay scale. As a result, series of litigations arose which went upto the Hon'ble Supreme Court and finally it was decided that persons holding the posts of Sr. Draftsman were all placed in grade Rs. 425-700/- w.e.f. 1.1.73 while those holding other 4 erstwhile equivalent posts were placed in scale Rs. 380-560/- from the same date. Officers holding the four categories of posts like

Supervisor, Gr.A, Sr. Estimator, Sr. Planner, Sr. Rate Fixer agitated that they should also be fixed in the higher scale of Rs. 425-700/- from 1.1.73 and that their relative seniority vis-a-vis Sr. Draftsman as on 31.12.72 should also be maintained after 1.1.73 and taken into consideration for further promotions to higher posts. Govt. eventually agreed to place all officials holding the posts of Supervisors, Gr.A, Sr. Estimator, Sr. Rate Fixer, Sr. Planner in the higher scale of Rs. 425-700/- from rather 1.3.77. But not being satisfied with the decision, they filed application before different Benches of the Tribunal claiming their placement in the higher scale of Rs. 425-700/- w.e.f. 1.1.73 and consequent restoration of their seniority vis-a-vis Sr. Draftsman to the position as it stood prior to 1.1.73.

41. The MP High Court in the case MP 312/81 (Yogender Pal Singh & Ors ) amicably decided on 19.10.83 held that 50% of the Sr. Draftsman, who got the same scale of Chargeman, Gr.II (Rs. 425-700/-) should be given seniority along with Chargeman, Gr.II from 1.1.73. The MP High Court rejected the contention of the official respondents that the petitioners of that case (MP 312/81) should be treated as Chargeman, Gr.II from 4.7.78 i.e. when the orders were issued on the revised pay scale and not from 1.1.73, the date with effect from which the pay scale was given. Subsequently, on petition from certain other Sr. Draftsman, the MP High Court extended the benefits of the earlier order to all similarly placed Sr. Draftsman (vide N.L.Junnotia & Ors -vs- UOI - MP No. 1944/84) and M.N. Chandola & Ors -vs- UOI & Ors - MP No. 1955/84) [ Reproduced from para 28 of Full Bench judgement at Principal Bench]. S.L.Ps filed

against these orders of MP High Court were rejected by the Hon'ble Supreme Court on 28/7/86. Thereupon, the Ministry of Defence issued an order on 9.4.87 refixing the seniority of erstwhile Sr. Draftsman existing as on 31.12.72 with Chargeman, Gr.II existing as on 1.1.73. That order gave all similarly placed Sr. Draftsman seniority as Chargeman, Gr.II from 1.1.73 and indicated their revised places in the seniority list of Chargeman, Gr.II as on 1.1.77, issued on 15.11.78. Likewise it antedated their promotion as Chargeman, Gr.I and Asst. Foreman. It showed their revised positions as Chargeman, Gr.I in the seniority list issued on 16.5.81 as on 1.1.81 and similarly as Asst. Foreman in the seniority list published on 28.4.86 as on 1.4.85. (Vide para 30 of Full Bench judgement at PB).

42. These judgements of MP High Court were followed by the New Bombay Bench while disposing of TA 324/87 (Sayyed Zamir Haider & Ors -vs- UOI) on 31.12.87. These applicants were also Sr. Draftsman and the respondents were directed to consider heir cases for promotion as Asst. Foreman from the dates on which their junior i.e. beneficiaries of the judgements of the MP High Court, were promoted.

43. The sr. Draftsman then felt aggrieved that the revised seniority so fixed in pursuance of the judgements of the MP High Court has been modified to their detriment. They contended that certain compromise judgements were delivered by different Benches of this Tribunal in 4 OAs in favour of Supervisors, Gr.A and allied categories. In pursuance thereof the Ministry of Defence issued orders on 7.8.89 according to which Supervisors, Gr.A (Tech) and allied categories (i.e. Sr. Planner, Sr. Estimator, Sr. Rate Fixers) were given the scale of Rs. 425-700/- at par with



Chargeman, Gr.II from 1.1.73 on notional basis with direction for refixation of their pay on that basis and payment of arrears from 7.5.89. A revised seniority list has also been issued on 17.6.91 in respect of Chargeman, Gr.II as on 1.1.73 in which the beneficiaries of the judgements of the MP High Court have been placed junior to Supervisors, Gr.A though such Supervisors, Gr.A had been shown as junior to them (beneficiaries of MP High Court judgement) in the earlier seniority list dt. 9.4.87. Hence an OA was filed being OA 398/91 praying for quashing the orders dt. 7.8.89 and dt/ 29/9/89/

44. Also the Jabalpur Bench of the Tribunal in the case OA 182/87 (Dharam Nath Singh -vs- UO1) decided on 18.1.89 on the basis of certain agreement arrived at between the parties, directed that the "Sr. Draftsman and Supervisors, Gr.A and allied categories shall be entitled to fixation of pay and seniority w.e.f. 1.1.73 on the terms agreed between the parties" with the stipulation that no arrears on account of revised fixation would be granted for period before 6.5.88 when the compromise was reached.

45. Soon thereafter on 1.3.89 the Calcutta Bench of the Tribunal delivered a judgement in similar case being OA 495/86 (Birendra Nath Sahoo & Ors -vs- UO1) in which the petitioners, who belonged to the category of Supervisors, Gr.A(Tech) and equivalent, were directed to be given the pay scale of Rs. 425-700/- notionally w.e.f. 1.1.73 with the further direction that no arrear on account of the refixation of pay would be given till the date of the order and that the seniority of the applicants would be fixed by taking into account the fact that they had been granted the scale of Rs. 425-700/- w.e.f. 1.1.73. This seniority will

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be taken into account while determining their seniority in the post to which they have been promoted from the posts in which they enjoyed the pay scale of Rs. 425-700/- .

46. A further decision was given by the Calcutta Bench of the Tribunal in OA 282/89 (Bimal Baran Chakraborty & ors -vs- UOI) in which some refineness was made in regard to determination of seniority was given along with some clarification/ The said OA was disposed of on 25.4.90 with the following orders :

- "i) The seniority of the applicants in the grade of Rs. 425-700/- as on 1.1.73 should be refixed on the basis that they were also appointed to that grade on that date;
- ii) After drawing up the seniority list of all officials in the grade of Rs. 425-700/- as stated above and as ordered by this Tribunal in OA 495/86, promotions to higher grades should be reviewed and regularised according to the seniority list so drawn up;
- iii) Promotions already made to higher grades of Rs. 550-750/- and Rs. 700-900/- need not be disturbed. If the applicants on the basis of their revised seniority as indicated above, are found fit for promotion to higher grades from retrospective dates, their seniority in those grades should be fixed above their juniors in the revised seniority list as on the dates they are so found fit. However, they will draw pay in the higher grades only from the actual date of their promotion. But their pay on



such promotion should be fixed as if they had actually been promoted on the dates they were found fit for promotion."

47. Meanwhile, Ministry of Defence had issued a letter on 30.1.80 which reads as follows "

" I am directed to convey the sanction of the President to the merger of the posts of Supervisor "A" (Tech) and other allied categories, Sr. Planner, Senior Rate Fixer and Senior Estimator in the scale of Rs. 425-15-500-EB-15=560-25-700/- in Ordnance and Ordnance Equipment Factories including the DGOF Hqrs. and OEF Hqrs. with that of Chargeman, Gr.II (Tech.) in the Non-gazetted establishment w.e.f. 1.1.80. Consequently upon merger, the revised strength in the grade of Chargeman, Gr.I (Tech) and Chargeman, Gr.II (Tech) will be shown in the Annexure attached hereto "

48. The Full Bench judgement at Principal Bench has noted that the aforesaid letter of the Defence Ministry dt. 30.1.80 had not been brought to the notice of the Tribunal and as such the implication of this order for the purpose of seniority as Chargeman, Gr.II could not be considered in these judgements.

49. The aforesaid two judgements of the Calcutta Bench in OA 495/86 (Birendra Nath Sahoo) and OA 282/89 (Bimal Baran Chakraborty) have been relied upon by the petitioners of the instant case No. OA 756/95. Their grievance is that the subsequent action of the authorities have modified these orders of the Tribunal at Calcutta Bench. The respondents have taken the plea that these two orders are in conflict with the orders of the Tribunal at New Bombay Bench and

Jabalpur Bench. But this very issue had been agitated by the respondents in RA 64/90 in relation OA 282/89 and this RA had been disposed of the Calcutta Bench on 16.7.90 by rejecting the RA through a very detailed and analytical order and while disposing of the said RA the Calcutta Bench had observed that its earlier order in OA 282/89 was not in conflict with the judgement of the New Bombay Bench or Jabalpur Bench of the Tribunal. This fact of rejection of the RA by the Calcutta ABench had not been brought to the notice of the Full Bench at Principal Bench as there is no mention about this in the judgement. It is also to be noted that the SLP filed by the respondents against the order of the Tribunal rejecting the RA was also dismissed by the Hon'ble Supreme Court.

50. These are some of the cases where under orders of the Courts/Tribunal various groups of persons have been given retrospective seniority w.e.f. 1.1.73 <sup>or even earlier, as the case may be.</sup> These facts have been very comprehensively summed up by the Full Bench in its judgement dt. 22.12.95 at paragraphs 1 to 43 extensively. Having analysed the facts, the Full Bench (PB) in the said judgement has categorised the cases of different groups of employees into six broad groups of classifications at para 51 of the judgement which are reproduced as follows

1. Case of Supervisors A who have claimed accelerated promotion as Chargeman, II on the basis of the order dt. 6.11.92 (should be read as 6.11.62) of the DGOF granting promotion after completion of two years on the basis of Virendra Kumar's case ( AIR 1981 SC 1775) and the sequel thereto.

2. Cases of other Supervisors A who are similarly situated like those at serial No. 1 in respect of whom orders have been passed by Courts other than the Supreme Court of India (i.e. judgement of MP High Court dt. 4.4.83 in MP 174 of 1981 [Dilip Singh Chauhan & Ors] and five other MPs and decisions of the Jabalpur Bench in B.H.Ananthamurthy's case and Ravindra Nath Gupta's case (TA No. 322/86 and TA 104/86)).

3. Case of 50% Senior Draftsman who have claimed seniority as Chargeman, Gr.II from 1.1.73 based on the judgement of the MP High Court in the Yoginder Pal Singh's case (MP 312/81).

4. Case of residual 50% Senior Draftsman, who were not initially given the pay scale of Rs. 425-700/- from 1.1.73 in respect of whom the Jabalpur Bench of the Tribunal has passed orders in OA 88/1986 (P. Savia & 176 others -vs- UOJ).

5. Case of Supervisors A and allied groups for seniority as Chargeman,II from 1.1.73 based on the judgements of the Benches of this Tribunal at Jabalpur (OA 182/87 - Dharam Nath Singh's case), New Bombay (TA 440.86 - M.P. Saha's case) and Calcutta (OA 495/86 - Birendra Nath Sahoo's case and OA 289/89 - Bimal Baran Chakraborty's case.)

6. Case of Chargeman-II who have been directly recruited on or after 1.1.73 or have been so promoted regularly from the feeder grades, in accordance with Rules who have a grievance against all the above groups in respect of seniority as Chargeman, Gr.II.

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51. By analysing the facts and issues as presented before it, the Full Bench at Principal Bench held the view that although various courts and Benches of the Tribunal had in the long past allowed retrospective promotions and seniority to various groups of employees in various cases cited or not cited, the issue regarding inter se seniority of Chargeman, Gr.II amongst all these categories ~~payman~~ ~~Chargeman~~ still remained to be decided. Those categories comprise Chargeman, Gr.II, other declared Chargeman, Gr.II by Govt. by issuing orders in this respect on their own or in pursuance of the orders of different High Court or different Benches of the Tribunal. After analysing various relevant facts, the Full Bench (PB) by its order dt. 22.12.1995 eventually decided the principles regarding preparation of inter se seniority list amongs various groups and held that such various categories of Chargeman, Gr.II should be placed in the following order, viz :-

CC (i) The first lot of persons would be those who have been regularly appointed or promoted as Chargeman, Gr.II before 1.1.73.

(ii) We declare that 50% of the Senior Draftsmen, in whose case the pay scales were revised and who have been given seniority from 1.1.73 as a result of the judgement of the MP High Court, should be placed next in the seniority list as on 1.1.73. They will be placed en bloc below the persons referred to at (i) above as also those persons who have been regularly appointed as Chargeman, Gr.II on 1.1.73, in accordance with the recruitment rules then in force, either on the basis of promotion or on the basis of direct recruitment.

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(iii) Next to them in the seniority list would be the category of Chargemen, Grade II, who have been regularly appointed after 1.1.73 and upto 1.1.80 either by way of promotion or by way of direct recruitment, in accordance with the recruitment rules.

(iv) This would be followed by the Supervisors 'A' and allied categories and the remaining 50% of the Sr. Draftsmen who had not been given the pay scale of Rs. 425-700/- from 1.1.73. The inter se seniority of the persons comprising this group, namely, the Supervisors, 'A', etc. etc. and Senior Draftsmen will be decided on the basis of the seniority which existed between them immediaely prior to 1.1.80.

(v) No group of Supervisors 'A' is entitled to an earlier date of promotion as Chargeman, Grade II merely because of the Ordnance Factory's circular daed 6.11.1962, after that circular was notified on 26.1.66.

(vi) We declare that, in the light of the judgement of the Supreme Court in K.K.M. Nair's case [(1993)(2) SCALE 469] no benefit of higher seniority can be given to the petiioners Virendra Kumar & Ors in AIR 1981 SC 1775, the petitioners in the batch of Misc. Petitions 174/81 and five others decided by the M.P.High Court on 4.4.83, the applicants in TA No. 322/86 and TA 104/86 ( B.H.Ananthamoorthy's case and Ravinder Gupta's case). Accordingly, all these persons will count their seniority as

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Chargeman, Gr.II only from the dates on which they were actually promoted in accordance with the recruitment rules.

(vii) We further declare that the orders of Government quashing the seniority list dated 27.7.89, issued as a consequence of the judgement in Palurus case (AIR 1990 SC 1775), (para 12 refers) ...are valid in the light of the above judgement.

(viii) As a result of the above orders/declarations about the manner in which the seniority of Chargeman, II commencing from 1.1.73 to 1.1.80 should be fixed, it would be necessary to review the promotions made to the higher grades. This would be done yearwise for all categories. We make it clear that if it is found that any person was promoted in the past who was not due for such promotion, no action can be taken by the Government to make any recovery from him because he had already worked on a higher post of promotion on the basis of validly issued orders of promotion. In so far as the reversion is concerned, the principles have been stated in para 79 supra.

(ix) There are other orders which revised the pay scales of draftsman and senior draftsman. We are not concerned whether the benefit thereof has been given to the three categories of senior draftsman viz. (i) those who have been treated as Chargeman, II from 1.1.73; (ii) those who have been merged in the category of Chargeman, II from 1.1.80 and (iii) those appointed as such after 1.1.80, if any. To forestall further complications, we declare that



merely because they have become entitled to any pay scale higher than Rs. 425-700/-, it will not, ipso facto, mean that they are equivalent to any category of post higher than Chargeman, II and they cannot claim any benefit based on that higher pay scale."

52. In the given situation, when under various historical developments of facts or court/Tribunal's proceedings, different groups of applicants in those cases were declared entitled to the relief of being Chargeman, Gr.II w.e.f. ~~1.1.73~~ <sup>1.1.73, but there was no principle as to how to determine</sup> <sup>^</sup> the inter se seniority amongst various groups, one has to devise a cut and dry practical formula which optimise equity apportioned amongst competing groups. Such a practical and equitable formula has been prescribed by the Full Bench judgement (PB) after a comparative analysis of facts of 43 separate cases <sup>^</sup> <sup>at a</sup> host of relevant rulings/judgements and orders.

53. At the final stage of hearing, the learned counsel for the official respondents submitted in essence that the previous commitments, if any of the Deptt. or the entitlement of any of the applicants/groups of applicants by virtue of previous decisions is now subject to the final scheme of inter se seniority as decided in the Full Bench judgement dt. 22.12.95 at Principal Bench.

Examination of rival contentions of the parties in case O.A. 789/96 and M.A. 222/96 :

54. Mr. K>K>Moitra, the learned counsel for the petitioners in the case OA 789/96 vehemently argued that the aforesaid judgement of the Full Bench (PB) has been obtained by the respondents at the petitioners' back. The

petitioners were not made any party nor were they given any specific notice about the said Full Bench cases. Moreoever, according to Mr. Moitra, the petitioners' rights had already acquired the position of finality in view of the following facts :

(1) Hon'ble Supreme Court has already rejected on 5.8.93, the appeal of the Deptt. in the case UO1 & Ors -vs- Purnendu Mukhopadhyay & Ors (CA 2322/91) and upheld the orders of the Tribunal in TA 1069 of 1986 delivered on 9.7.90 (Purnendu Mukhopadhyay -vs- UO1), which had allowed the Apprentice trained applicants notional promotion to the post of Chargeman, II with the clarification that placement of all those Supervisors Gr. A, who came in the field of eligibility namely of securing less than 5% marks in aggregate fixed for selection as Chargeman, Grade II, should be fixed by directing that they were selected for that post six months from the date of their gradation examination.

While passing this judgement, the Hon'ble apex court even passed a stricture on the official respondents by chosing to delay the matter further by preferring the said appeal and the appeal was dismissed by the Hon'ble Supreme Court with costs. This judgement of the Hon'ble Supreme Court was not even brought to the notice of the Full Bench ( Principal Bench) by the official respondents.

(2) The Calcutta Bench of the Tribunal had passed an order on 30.11.94 in the case Debdas Roy Chowdhury & Ors -vs- UO1 ( O A 112/94) granting 70 petitioners therein the benefits of the Hon'ble Supreme Court's



judgement in Purnendu Mukhopadhyay's case with the direction that the Chairman, OFB would individually scrutinise the facts of each of 70 applicants and to the extent the facts would accord with those of Purnendu Mukhopadhyay's case, the petitioners of OA 112/94 should be given similar benefits within six months. The respondents failed to implement this order within six months and prayed for extension of time through MA 174/95 which was allowed by the Calcutta Bench on 5.7.95 and further six weeks time was granted to implement the order passed in OA 112/94. Since this order was not challenged before the Hon'ble Supreme Court, the petitioners therein have acquired an element of finality and this position was not brought to the notice of the Full Bench at Principal Bench.

(3) According to Mr. K.K.Maitra, the learned counsel for the petitioner in O.A. 789/96, thereafter, the respondents themselves have in fact admitted that at least 26 petitioners of OA 112/94 were similarly circumstanced like those of TA 1069/86 (Purnendu Mukhopadhyay's case) and accordingly the DGOF has passed orders dt. 14.8.95 and 13.11.95 (Annexure-E and F respectively of OA 789/96) and further order dt. 23.2.96 (Annexure-G to the said OA) revising their seniority as Chargeman, Gr.II (Tech.). Since these orders have already been issued in implementation of the orders of the Tribunal, their seniority cannot arbitrarily be changed now by subsequent orders behind their back.

This fact was also not brought to the notice of the Full Bench (PB).

55. In the first flash of reaction, we were inclined to accept this objection of Mr. Maitra. We indeed find it very inexplicable as to why the official respondents viz. OFB, chose to keep the Full Bench (PB) in the dark about the existence of these facts and the judicial pronouncements, specially when the Hon'ble Supreme Court had rejected the appeal of the Deptt. with stricture and costs in the case UOI & Ors -vs- Purnendu Mukhopadhyay & Ors (supra).

56. Yet a little disconfiture notwithstanding, we have to examine whether because of the aforesaid reasons or objections, the judgement of the Full Bench (PB) loses validity vis-a-vis the petitioners of OA 112/94. Firstly, the Full Bench judgement (PB) does not alter the date of retrospective appointment of any group of petitioners including the present petitioners which has already been decided by the Deptt. under the rules or by virtue of different judicial pronouncements. The Full Bench judgement (PB) has in fact merely decided the principle of settling inter se seniority amongst the competing groups whose position as Chargeman, Gr.II as on 1.1.73 had already been settled. So, in this view of things, the Full Bench judgement (PB) does not offend the other judicial decisions including the one in OA 112/94 or Purnendu Mukhopadhhay's case (TA 1069/86) or the Hon'ble Supreme Court's judgement.

57. Regarding the objection that the Full Bench decision has been obtained behind the back of the petitioners, we do not incidentally find sufficient justification for such grievances. Paras 44 to 47 of the Full Bench judgement has detailed the procedure adopted by it while deciding that

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case. We can do no better than quoting the said paragraphs in full as follows :

"44. Procedure followed by the Full Bench.

(i) Considering the nature of the dispute and the need felt to settle the disputed issues once and for all, the Full Bench sitting at Jabalpur gave a direction on 15.12.94 in OA 91/93 of that Bench i.e. A.K.Mukhopadhhay's case (OA 2061/94 of Principal Bench) as follows :

" The dispute in this petition relates to seniority on the post of Chargeman, Grade II. After hearing the learned counsel of parties it appeared that appointment to this post was made from various sources. In the writ petition only the Union of India and its officers have been impleaded as respondents. The incumbents who have been drawn from various sources have not been impleaded. They are in large numbers. Accordingly, their impleadment by name would be inconveneint. We consider it appropriate in order to give finality to the dispute that general notice be given to all categories of persons."

This OA and the connected OAs were then transferred to the Principal Bench by the order of the Hon'ble Chairman. MA 124/95 was filed by the applicants that the parties could be better served if the official respondents (i.e. Govt.) are directed to issue the said notice through a Factory

Order. Suitable directions were given to Government in this regard to publish in a Factory Order, a copy of the referral judgement of the Jabalpur Bench and also indicating that interested parties could seek impleadment.

45. Such notices were published and in response thereto 327 MAs have been filed in three OAs (OA 2601/94 = 301, OA 2598/94 = 4 and OA 2591/94 = 22). We have rejected those MAs where the applicants sought impleadment as additional applicants and not as additional respondents. Thus 3 MAs in OA 2598/94 (U.D.Roy's case), 19 MAs in OA 2591/94 (Mannu Lal's case) have been rejected.

46. Thus, we now have in all 305 MAs filed in the above OAs. They have either filed separate replies to the OAs or them have set out their case in the MA itself.

47. While the four OAs (excluding OA No. 350/93 of the Jabalpur Bench) referred by the Jabalpur Bench to the Hon'ble Bench for being disposed of by a larger bench were pending, there were a number of similar other applications pending in various Benches. By the orders of the Hon'ble Chairman, the OAs not filed before the Principal Bench were transferred to the Principal Bench and he further directed that they should be disposed of along with the four OAs referred by the Jabalpur Bench to the Larger Bench. Thus, we are now dealing with a batch of 42 cases, including the four cases referred by the Jabalpur Bench. We have heard all

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the counsel who appeared for various parties. We also gave an opportunity to the individuals who appeared in person and did not have any counsel to assist them."

58. It will be seen from the above that because of complexity of the cases and innumerable ~~and~~ multiplicity of parties, it was decided to give a general notice to all categories of persons rather than any individual notice. Moreover, the Full Bench had consciously decided that such notice should be issued through a Factory Order for information of all concerned and this was done. Under the circumstances, just because the petitioners of OA 789/96 were not given any individual notice, it cannot be held that the case was decided at their back and that they were denied opportunity to represent their case before the Full Bench (Principal Bench).

59. This objection of the petitioner is, therefore, overruled. We accordingly hold that the official respondents are entitled to recast the inter se seniority in the grade of Chargeman, Gr.II for all categories of employees including the present petitioners in accordance with the formula laid down by the Full Bench at Principal Bench as indicated at para 80 of its judgement (extracted above).

60. Sub-para (viii) of Para 80 of the Full Bench judgement lays down the following work schedule for the official respondents:

(viii) As a result of the above orders/declarations about the manner in which the seniority of Chargeman-II commencing from 1.1.73 to 1.1.80 should be fixed, it would be necessary to

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review the promotions made to the higher grades. This would be done yearwise for all categories. We make it clear that if it is found that any person was promoted in the past who was not due for such promotion, no action can be taken by the Government to make any recovery from him because he had already worked on a higher post of promotion on the basis of validly issued orders of promotion. In so far as the reversion is concerned, the principles have been stated in para 79 supra."

61. While dealing with the related MA 222/96 (OA 789 of 96), the petitioners of OA 789/96 drew our attention to the respondents' admission that there are 104 posts of Asst. Works Manager, 19 posts of Works Manager and 76 posts Dy. General Manager-- all lying vacant. The petitioners submitted that the official respondents were going to fill up a large number of posts of Asst. Works Manager, Works Manager and Dy. GM and they pray that these posts should not be filled up without first considering their case with antedated seniority. The official respondents state that the vacancies to be filled up included 114 posts of AWM, 19 posts of WM and 76 posts of Dy. GM and that these vacancies are needed to be filled urgently in the interest of work and in pursuance of the separate direction of the Principal Bench of this Tribunal in the case OA 273/91. Mr. A.Ali, the ld. counsel for the respondents submitted that the Tribunal's order in that case had been passed on 20.7.95 directing the respondents to fill up the vacancies already existing or likely to occur in the next one year by convening appropriate DPCs within a period of six months from the date of receipt of the certified copy of the order.



He added that a contempt case ~~is~~ also pending in the Principal Bench being CP 62/96 for non-implementation of this order. Since, however, through the MA 222/96 (OA 789/96), this Bench has issued an interim order on 7.8.96 at the pre admission stage restraining the respondents from filling up the vacant posts in view of the grievance of the present petitioners, the respondents were in a fix, as they will be facing contempt proceeding from opposite directions on the same issue.

62. We are not aware of the full facts of the Principal Bench order in OA 273/91. The official respondents have neither produced a copy of the said judgement before us nor have they supplied at least even the cause title of the said case. We are, therefore, unable to study further the same. But be that as it may, on the basis of available facts, it is, however, clear that all final promotions/appointments have to abide by the recasting of inter se seniority following the final judgement of the Full Bench (PB) dated 22.12.95. By that judgement the Full Bench has settled the principles of determining inter se seniority amongst various groups of Chargeman, Gr.II and after final revised integrated seniority list of Chargeman, Gr.II has been prepared, subsequent review DPCs have to be held for the higher promotional posts like, Chargeman, Gr.I, Asst. Foreman, Foreman, (now redesignated as Jr. Works Manager), Asst. Works Manager, Works Manager, Dy. General Manager etc. etc. under the rules.

63. We, therefore, direct that the official respondents shall not pass any final orders of promotion/appointment to these grades after convening appropriate DPCs before recasting of seniority at all the relevant feeder levels.

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64. Since this may of necessity take considerable time, if meanwhile any promotion has to be given in view of urgency, such promotions have to be on ad hoc basis subject to finalisation of inter se seniority position at all feeder grades as per principles laid down by the Full Bench at Principal Bench. We do not consider it reasonable to issue any permanent stay order against any such promotion even on ad hoc basis, although prayed for by the petitioners, because of the nature of the facts and also because by now the principle of determining inter se seniority of Chargeman, Gr.II has been decided. The petitioners' locus standzai for claiming consideration for promotion as Asst. Works Manager/Works Manager/Dy. GM would arise only when the revised seniority lists of all relevant feeder posts like, Chargeman, Gr.II, Chargeman, Gr.I, Asst. Foreman, Foreman (now Jr. Works Manager), Asst. Works Manager, Works Manager ec. are finally decided by the respondents in terms of the Full Bench (PB) formula. The stay order already granted earlier by this Bench is, therefore, vacated subject to the above observations.

65. The next submission of the petitioners is that a number of petitioners have already retired during the pendency of this case and that the remaining ones will also retire very shortly. They are, therefore, apprehensive that they would never get the benefit of the judgement. But on the other hand, because of the complex nature of the facts, it will take some time for the respondents to recast the seniority lists at all feeder grade posts in the context of the prevailing recruitment and promotion rules and changed facts. If any of the petitioners or all of them retire in the meanwhile, their interest should be protected in the

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interest of justice. Hence, we direct that if any of the petitioners retire before finalisation of the seniority lists, and if after such finalisation of the seniority lists, and consideration by the Review DPC, it is found that any of the petitioners is entitled to higher promotions, then he should be given such promotion or promotions to higher posts from the same date when his junior has got such promotion with all consequential and actual monetary benefits along with resultant refixation of pension and other retiral benefits. Such benefits of arrear pay/pension shall, however, be available only to promotion posts above the level of Chargeman, Gr.II and not at the level of Chargeman, Gr.II. If the recruitmen rules prescribe certain minimum period of service at a particular feeder grade as a precondition for promotion to next higher grade, then even without actually working therein, the petitioners shall be given promotions to higher grades, if due, by counting the requisite service based on the tetrospective dateof relevant promotions/seniority, towards fulfilment of the said precondition. In giving such directions, we lend support from the decision of the Madras Bench of the Tribunal in P.V.Subramanian, (1987) 2 ATC 598 and the decision of the Hon'ble Supreme Court in the case of S.Krishnamurthy -vsGM, Souther Rly, 1977 SCC(L&S) 79.(both these cases will be discussed at the appropriate place of this judgement) below.)

66. Mr. K.K.Maitra, the ld. counsel for the petitioners at the concluding stage of hearing, submitted an argument in the alternative that the 26 petitioners of OA 789/96 are beneficiaries even of the Full Bench judgement at Principal Bench dt. 22.12.95 inasmuch as under the judicial pronouncement they have been ordered to be appointed as Chargeman, Gr.II from prior to 1.1.73 and when they attract the principle at sub-para (i) of para 80 of the Full

Bench judgement (PB). This sub-para (i) prescribes that "the first lot of persons would be those who have been regularly appointed or promoted as Chargeman, Gr.II before 1.1.73 and they will en block occupy top positions in the integrated seniority list. Since admittedly these are the persons, who under benefits of judicial verdicts, have been appointed now as Chargeman, Gr.II retrospectively with effect from different dates, much prior to 1.1.73, (as is also evident from official respondents' own notifications dt. 14.8.95 and dt. 13/11/95 - Annexures E and F to OA 789/96 respectively), read with DGOF circular dt. 23.2.96, Annexure-G to MA 222/96. it goes without saying that for determination of inter group inter se seniority as Chargeman, Gr.II in accordance with the Full Bench (PB) formula, the eligible candidates of OA 789/96 will qualify for first priority placement as per decision of para 80(i) of the Full Bench (PB) judgement, reproduced, at para 51(1) above in this present judgement.

67. The above decision will, however, apply to only the 26 persons out of all 70 petitioners of OA 112/94, as only they have been identified by the official respondents as similarly circumstanced with the successful petitioners of T.A. 1069 of 1986. The non-similarly circumstanced petitioners of OA 112/94 shall not be entitled to such benefits, nor are there any pleadings with supporting facts advanced in the present petition in favour of the remainder persons.

67A. We may analyse here in passing also the preliminary objections raised by the official respondents to the petition. Their first objection is that in the petition material particulars of the petitioners are not there. However, this appears to be a mere technical objection without much substantive merits. The 26 petitioners of OA 789/96 are those whose relevant service details are available in the official respondents' notifications dt. 14.8.95 and dt. 13.11.95 issued by the respondents themselves, copies of which have been added by the petitioners as Annexures-E and F respectively to the petition. So this objection is overruled.

67B. The other objection is that the petition is defective since it does not implead as co-respondents the other employees whose interest will be prejudicially affected from the reliefs. But this objection is also not tenable, because it is not possible for the petitioners to know in advance for certain as to which particular employees are likely to be affected at this stage, as implementation of

the Full Bench judgement (PB) dt. 22.12.95 may mean recasting of inter se seniority for a large number of persons and as the Full Bench judgement (PB) has not yet been implemented by the respondents. So, this objection is also held as not tenable.

68. Before we go to analyse the case of the petitioners in OA 756/95, we briefly refer to several rulings cited by Mr. Maitra, the ld. counsel for the petitioners and Mr. A.Ali, the ld. counsel for the respondents in the cases of OA 789/96 and MA 222/96 .

69. Mr. Maira refers to the case of General Manager, South Central Rly -vsA.V.R.Siddhanti & Ors, AIR 1974 SC 1755 in support of his case. In this case, the Hon'ble Supreme Court has held that once the persons coming or recruited to the service from two different sources are absorbed into one integrated class with identical service conditions, they cannot be discriminated against with reference to the original source for the purpose of absorption and seniority. To our mind, this ruling of the Hon'ble Supreme Court is not strictly relevant to the facts of the instant case. Here the employees from different sources were given retrospective appointment or promotion as Chargeman, Gr.II not by executive orders which could be subject to scrutiny of the court but through different judicial pronouncements and the problem arose as to how compile integrated seniority list amongst all these groups. The Full Bench judgement (PB) has harmonised all these decisions without affecting the orders of retrospective appointment/promotions of any of the employees validly given under relevant and respective court/tribunal's orders; but has only decided the principles of determining inter se seniority amongst the competing groups in a most pragmatic and equitable manner in the facts and circumstances of the cases. There is no alternative in the given situation and the Full Bench judgement is binding on all coordinate Bench of this Tribunal.

70. Mr. Maira next quoted the ruling of the Hon'ble Supreme Court in the case of Arun Kr. Chatterjee -vsS.E.Rly, 1985 SCC(L&S) 465. Here the Hon'ble Supreme Court was concerned with the issue of seniority and promotion where administrative error resulted in the loss of seniority

seniority and consequent loss of promotional prospects of a railway employee. The Hon'ble Supreme Court held that in compliance with certain Rly. Board's circular, the railway administration should correct the position of the petitioner vis-a-vis his juniors already promoted irrespective of date of promotion. We are afraid, this ruling also does not appear to be relevant to the issues involved in the instant case. Here the administrative action causing loss of seniority or promotional prospects of any employee or group of employee is not under scrutiny. What has been done is that under valid judicial pronouncement, the Full Bench (PB) has directed the administration to recast integrated inter se seniority of various groups according to a formula prescribed. So, this ruling is of no help to the petitioners.

71. The next ruling cited by Mr. Maitra is that of AIR 1990 SC 100 (Bal Kishan -vs- Delhi Admn.) in this case, the Hon'ble Supreme Court has held that there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Art. 16(1) of the Constitution. We are afraid, this ruling is also of no avail to the petitioner as it is not the case of either parties that any junior should be promoted by superseding or without considering the case of seniors. Here the relative position of seniority/juniority amongst various employees or groups of employees is to be ascertained by recasting the integrated inter se seniority position of Chargeman, Gr.II after complying with the formula given by the Full Bench at

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Principal Bench. After this is done, if any senior in the integrated seniority list is found to have been superseded by his junior without considering senior's case, only then the petitioners' can have any grievance but not before that.

72. The next case cited by Mr. Maira is reported in AIR 1977 SC 185. There is obviously some error in the citation as there is no ruling against this citation and the ruling cited in AIR 1977 SC 183 relates to land acquisition case and not to any service matter.

73. The next case cited by Mr. Maitra is that of S. Krishna Murthy -vs- General Manager, Southern Rly. as reported in 1977 SCC (L & S) 79. Here it was a case of inadvertent denial of promotion to one person while others were promoted. The Deptt. recognised the injustice and the Hon'ble Supreme Court passed orders of his promotion, notional seniority and arrears of pay with due regard to the rights of others. The above principle of the Hon'ble Supreme Court is in relation to the contrary principle of no work no pay. In the instant case, entitlement of any employee or group of employee to arrear pay by virtue of such retrospective revision of seniority, which proceeds from the nature of specific orders of respective judicial fora be it High Court or any Bench of the Tribunal. The Full Bench judgement (PB) does not negate this decision. It only determine the principles of inter se seniority. So, to the extent any petitioner has been allowed the benefit of actual pay by virtue of retrospective appointment/promotion by specific judicial pronouncement on the issue, that right remains. This coordinate Bench is not called upon to adjudicate further on such pronouncements by other Benches of the Tribunal or High Court. Incidentally, however, we

*✓ Vida para 65 above*

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have already passed orders regarding grant of actual arrear pay and benefits if any of the petitioners is found to be entitled to retrospective promotions to higher posts after finalisation of the seniority list as per principles laid down by the Full Bench judgement (PB) irrespective of the fact whether they actually work or not in the promoted post due to his retirement before such seniority list is finalised. 

74. Mr. Maitra has also quoted the ruling of the Madras Bench of this Tribunal in the case of P.V. Subramanian -vs-UOI & Ors as reported in (1987) 3 ATC 598. In that case it was noted that the recruitment rules prescribed a minimum period of service as pre-condition for promotion. In the context of this, where retrospective promotion from the feeder post had to be given under the judicial pronouncement, it was held that even without actually working therein, such period would count towards fulfilment of such pre-condition. In line with this decision, we have already directed that in case the petitioners or any of them, even though they may retire in the meanwhile, is or are found to be entitled to retrospective promotion to higher posts, then the pre-condition of service for a minimum period in the feeder post, if any, as per recruitment rules, should be deemed to have been fulfilled even though they may not actually work in that grade.

75. Mr. A. Ali, the ld. counsel for the respondents has also relied in support of his contentions on the judgement of the Hon'ble Supreme Court in the case of S.K. Saha & State of M.P. -vs- Prem Prakash & Ors as reported in 1994(1) SCC 431. In that case it was held by the Hon'ble Supreme Court that notional seniority from a



retrospective date affecting interest of those who have already entered service is not permissible. Well, this principle has already been dealt with by the Full Bench at Principal Bench at para 76 of its judgement dt. 22.12.95 and we need not discuss it further in this judgement.

FINDINGS ON THE CASE OF OA 756 OF 1995 :

76. We may now deal with the case OA 756/95. Here the issues are simpler. Here, the case of the petitioners is based upon the decision of the Calcutta Bench in the case s O.A. 282/89 ( Bimal Baran Chakraborty) decided on 25/4/90 and O.A. 495/86 (Birendra Nath Sahoo) decided on 1.3.89. Both these cases (wrongly mentioned as OA 289/89 instead of OA 282/89) have been discussed in the Full Bench judgement at Principal Bench. These judgements have been described and analysed in full at paragraphs 36, 37, 38, 51(v), 64, 65, 66, 67, 68, 69 and 70 ibid. Through a well reasoned analysis the Full Bench (PB) has disposed of these cases in 6 paragraphs viz. paras 64, to 70. we can do no better than quoting the same verbatim as follows :

" 64. That takes us to a consideration of item (v) of para 51 at this stage itself as the items (iii) and (iv) are inter linked. This contention of the Ramesh Darda, at first blush, appears to be a plausible explanation of the decision of Government to recall the seniority list issued in 1987 in favour of he Senior Draftsman. However, on closer scrutiny, we do not find much merit in this argument.

65. In the first place, the judgements delivered by he M>P. High Court in the Senior Draftsman's cases and consequential orders of



seniority issued on 9.4.87 are all anterior to the orders of the various Benches of the Tribunal regarding seniority in the case of Supervisors A. Secondly, unlike the M.P. High Court's judgements in the Senior Draftsman's case, where the main issues whether seniority should be given from 1.1.73 on the ground that the same pay scale has already been given from the date was deliberated at length on merits. There is no such discussion in the orders of the Tribunal in the cases of Supervisors A about the issues of seniority. The orders appear to have been passed on the basis of the consent given by Government. As a matter of fact, in one case (TA 440/86 of the New Bombay Bench) (para 35 refers), it was later found in review that no such consent had been given by the respondents. Nevertheless the bench itself gave a direction in this regard.

66. What is more important is that in none of these cases, two important facts were brought to the notice of the Benches. Government's failure in this regard is inexplicable. They failed to inform the Benches that in the case of Senior Draftsman, the High Court of MP has already passed specific orders that they should be given seniority from 1.1.73 as Chargeman, II and Government should therefore have sought further suitable directions from the Benches as to how the inter se seniority of Senior Draftsman should be fixed vis-a-vis the Supervisors A and allied categories in whose favour the Benches gave a similar decision by consent.

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67. In our view, the most serious default of Government was its failure to bring to the notice of the Benches that a regular order absorbing of the Supervisors A and allied groups as Chargeman, Gr. II w.e.f. 1.1.80 had been issued by Govt. by their order dt. 30.1.80 (para 38 refers) and that none of the Supervisors Gr. A had questioned the validity of that order of absorption in any proceeding. In the circumstances that order remains unchallenged and is final.

68. It may be recalled here that the case of the Supervisors A and allied groups is quite different from that of the 50% of the Senior Draftsman. The Third Pay Commission did not recommend that they should be given the scale of Rs. 425-700/- from 1.1.73. They along with the remaining 50% of the Senior Draftsman were placed on a lesser pay scale Rs. 380-560/-. Thereupon, they felt aggrieved and represented to Government, who voluntarily agreed to offer the pay scale of Rs. 425-640/- from 1.3.77 vide their order d. 21.5.77. This was not accepted and four OAs were filed in the Jabalpur, New Bombay and Calcutta Benches wherein the main claim was that they should be given the revised pay scale of Rs. 425-700/- from 1.1.73. It is while disposing of these petitions that, at least in 2 cases, Government also appear to have given its consent that seniority may also be fixed from 1.1.73. These have been referred to in paras 34 to 37 supra.

69. In the circumstances, we are of the view that the orders of the Tribunal (paras 34 to 37 refer),



in so far as they concern grant of seniority to Supervisors A as Chargeman, II w.e.f. 1.1.73, have to be treated as having been given per incuriam ignoring the most important document, namely the absorption from 1.1.80 only of Supervisors as Chargeman, II which remains unchallenged. We have already expressed our view (para 59) that even in the case of Senior Draftsman, the proper order ought to have been to direct Govt. to first issue an order of their absorption in the cadre of Chargeman, II. It is, therefore, strange that neither the order of absorption of Supervisors A from 1.1.80 was challenged by any of the applicants in the above OAs, nor was it referred to by Govt. Hence, those orders cannot confer seniority on Supervisors-A from a date anterior to the date of their absorption as Chargeman-II and they cannot disturb the seniority lawfully conferred on Senior Draftsman from 1.1.73." We need not add anything further to the aforesaid decisions.

77. In the instant case, the petitioners cannot, therefore, even take a plea that the Full Bench judgement has been delivered at their back or without considering their case. In fact, at para 4.15 of their petition, the petitioners have themselves mentioned that the case has been referred to the Larger Bench and that their (applicants') case was considered as third category of Chargeman, Gr.II by the Division Bench of Jabalpur Bench for fixing their seniority by the Full Bench. The petitioners' grievance was that they had unnecessarily been referred to the larger bench. The notice given to them by the OFB dt. 27.4.95 regarding the Full Bench has been annexed to the petition as

Annexure-A10. If the petitioners had any grievance against reference of their case before the larger Bench, they could have agitated the matter before the Full Bench itself and they cannot agitate the issue before this Bench at this stage. For our purpose, the Full Bench at Principal Bench in detailed consideration of their case has given its judgement as already indicated. It has an element of finality about the final integrated inter se seniority amongst all groups of Chargeman, 11 recruited from diverse source. If compliance of this order of the Full Bench (PB) implies further recasting of the order of seniority decided by the Deptt. earlier because of previous judicial pronouncement, the petitioners cannot have any legitimate grievance. We, therefore, find no merit in OA 756/95 and it is liable to be dismissed.

#### CONCLUSIONS

78. In the result, in overall consideration of all the relevant facts and rival contentions and the Full Bench judgement at Principal Bench, we dispose of both the OAs as follows :

- i) O.A. 789 of 96 and related MA 222/96 is disposed of with this orders, that the respondents may fill up the vacant posts upto the level of Dy. General Manager on ad hoc basis till finalisation of inter se seniority position of different groups of Chargeman, 11 in terms of the Full Bench judgement dt. 22.12.95 and the consequential refixation of seniority/promotions into all other relevant feeder grades upto the post of Dy. G.M. under the relevant rules.



ii) While finalising such revised seniority list, for deciding inter se seniority vis-a-vis the 26 petitioners of OA 789/96, who have been identified by the official respondents as similarly circumstanced with the successful applicants of T.A. 1069 of 1986 (Purnendu Mukhopadhyay & Ors -vs- UOI & Ors) and have accordingly been notified as such by the official respondents through their notifications

dt. 14.8.95 and 13.11.95 vide Annexures E and F

~~marked with D.G.O.F. notification dt. 23-2-1996, Annexure G, in OA 222/1996, dt.~~

respectively to OA 789/96, it will be necessary that they are treated as belonging to the group described at para 80(i) of the Full Bench (PB) judgement dated 22.12.95, reproduced at para 51(1) above, in the instant judgement. In other words, they would be in the first category of employees who were appointed as Chargemaen, Gr.II prior to 1.1.1973.

We do not pass any order as to the remaining petitioners of OA 112/94, who have not been identified as similarly circumstanced.

iii) If before finalisation of the said seniority list, any or all the petitioners retire from service, then, after such seniority list is finalised, if it is found that any or all the petitioners are entitled to any promotion to higher posts, they shall be given such retrospective promotions with reference to the date their immediate juniors got such promotion with all actual monetary benefits including revision of pension and pensionary benefits. In giving such promotion, if there is any precondition of minimum service in a

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feeder post as per rules, then even if they do not actually work in such feeder post, such service will count towards the fulfilment of the said precondition.

It is, however, added that such benefits of arrear pay/pension shall be available only to promotion posts above the level of Chargeman, Gr.II and not at the level of Chargeman, Gr.II.

iv) Considering the complex nature of the work, we do not pass any order regarding finalisation of seniority list as per Full Bench judgement within a stipulated time frame. But we hope that the respondents will finalise the seniority list and give appropriate promotion retrospectively as per entitlement of the petitioners according to such lists within a reasonable time. If, however, such matters are finalised after 1.1.98, then the beneficiaries shall be additionally entitled to payment of interest on the relevant arrear pay/allowances and/or difference in pensionary benefits at the rate of 12% per annum on such arrear/differential amounts, from the date of entitlement till the date of actual payment. No such interest is to be paid by the official respondents to the extent an employee's matter has been finalised by 31.12.1997.

(v) O.A.756/95 is rejected subject to the decision of the Full Bench (Principal Bench) dt. 22.12.95 as already indicated in the body of this judgement at paras 76 and 77 supra. above.



- vi) The interim orders passed in both the cases stand vacated.
- vii) There will be no orders as to costs in either the cases.

*M.S. Mukherjee*  
12/12/1996  
(M.S. MUKHERJEE)

MEMBER (A)

*A.K. Chatterjee*  
12/12/1996  
(A.K. CHATTERJEE)

VICE-CHAIRMAN