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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,  
J\_O\_D\_H\_P\_U\_R.

Date of Order : 25.1.2001.

O.A. No. 239/1999

S. Saxena S/O Late Shri Laxmi Narain Saxena, aged about 58 years, R/O 2-S-38, Madhuban Colony, Basni, Jodhpur, at present employed on the post of Head Clerk in Kendriya Vidyalaya No.2, Air Force, Jodhpur.

... Applicant

Vs

1. Union of India, through the Secretary Ministry of Education, Government of India, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, 92 Gandhinagar Marg, Bajajnagar, Jaipur.

... Respondents

Mr. J.K. Kaushik, Counsel for the Applicant.

Mr. U.S. Bhargava, Counsel for the Respondents Nos. 2 & 3.

None is present for Respondent No.1.

CORAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

O\_R\_D\_E\_R

( PER HON'BLE MR. GOPAL SINGH )

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicant S. Saxena, has prayed for a direction to the respondents to assign correct seniority to the applicant on the post of Head Clerk from the date of his ad hoc promotion i.e., 17.1.'78 and to consider his case for promotion to the post of Office Superintendent from the due date as per his so corrected seniority

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or at least from 17.6.'95 at par with his junior with all consequential benefits. In the alternative, the applicant has sought a direction to the respondents to consider his representation pending before respondent No.2 on merits.

2. Applicant's case is that he was initially appointed to the post of Senior Clerk on 11.11.'65, but for about 1½ month he was paid the salary in the scale of pay of Lower Division Clerk and the actual scale of pay of Upper Division Clerk was given to him with effect from 01.1.1966. He got his further promotion to the post of Head Clerk on 17.1.'78 on ad hoc basis and from 18.1.'82 on regular basis. It is the contention of the applicant that though he was eligible for promotion as Head Clerk on regular basis w.e.f. 17.1.78, his Confidential reports were not made available to the DPC in time and, therefore, his regular promotion was delayed. It is the contention of the applicant that his ad hoc promotion to the post of Head Clerk was followed by regular promotion without any interruption and, therefore, he should have been accorded seniority as Head Clerk from 17.1.'78. The applicant also contends that his case for promotion to the post of office Superintendent was also not considered by the DPC in the year 1995, because his Confidential reports were not available. The applicant represented on 03.6.'97 against his supercession. It is also contended by the applicant that one Shri Gulab Chand Sharma, who was promoted alongwith the applicant on regular basis, but the said Gulab Chand Sharma was placed at Sl. No. 47, while the applicant was placed at Sl. No. 59 of the seniority list circulated vide letter dated 06.5.83. Shri Gulab Chand Sharma, got his further promotion to the post of Office Superintendent w.e.f. 17.6.'95. The applicant again submitted his representation on 5.12.'97, but to no avail. Hence, this application.



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3. In the counter, the respondents have contested this application on the ground of limitation. It has also been stated by the respondents that as per the then Recruitment Rules, posts were filled up 40% by promotion from UDCs in Kendriya Vidhyalaya on the basis of seniority subject to rejection of unfit, and 60% by merit from among UDCs, who have put in five years of service, merit was to be assessed by holding merit test. It has been submitted by the respondents that the name of the applicant was considered by duly constituted DPC in its Meeting held on 10.11.'81, and accordingly, he was promoted to the post of Head Clerk in January 1982. The seniority list of Head Clerks has been prepared as per the instructions in the ratio of 2:3, and not according to the date of joining. Shri Gulab Chand was offered a promotion to the post of Head Clerk vide letter dated 13.1.'82 on the basis of departmental examination, whereas the applicant was promoted as Head Clerk on the basis of seniority. It has, therefore, been averred by the respondents that the claim of the applicant for seniority over Shri Gulab Chand is without any foundation. It has further submitted by the respondents that Head Clerk upto seniority No. 56 were considered for promotion to the post of Office Superintendent and Head Clerks upto seniority No. 53 were offered promotion to the post of Office Superintendent against .8 posts meant for general category. The applicant was at Sl. No. 59 and, therefore, he could not be empanelled for promotion to the post. It has, therefore, been submitted by the respondents that the application is devoid of any merit and is liable to be dismissed.

4. We have heard the learned Counsel for the parties, and perused the records of the case carefully.

*Counsel for*

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5. The applicant is seeking seniority in the cadre of Senior Clerk (Upper Division Clerk) w.e.f. 17.1.'78, the date on which he was promoted as UDC on ad hoc basis, through <sup>the</sup> present O.A. The respondents have rightly contested this application filed in the year 1999 after more than 20 years of the event. The applicant had all along been sleeping over his rights. We are, therefore, of the view that his prayer for granting seniority as UDC w.e.f. 17.1.'78 is hopelessly barred by limitation and, therefore, cannot be entertained. In regard to his seniority vis-a-vis Shri Gulab Chand, it has been pointed out by the respondents that the seniority list dated 6.3.'83 had been prepared on the basis of the following criteria :



- "(I) The seniority list of Head Clerks appointed upto 30.4.80 has been prepared by combining the promotion Panel and Departmental Competitive Panel in the ratio of the recruitment viz : 25:75 in accordance with the merit position of the individuals in the above panel.
- (II) The seniority list of Head Clerks appointed after 30th April, 1981 has been prepared by combining the promotion Panel and Departmental Competitive Panel in the ratio of the recruitment viz : 40:60."

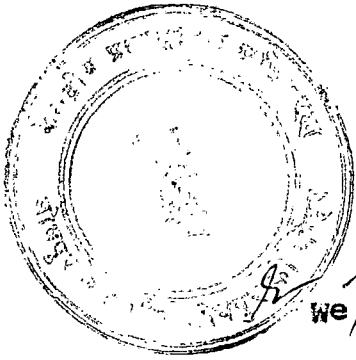
It has also been pointed out by the respondents that Shri Gulab Chand was accorded seniority on the basis of merit in the departmental examination, whereas the applicant was accorded seniority as a promotee and, therefore, as per provision above, Shri Gulab Chand has become senior to the applicant. Moreover, seniority list published in 1983, cannot be challenged at this stage.

6. Learned Counsel for the applicant has cited the following cases in support of his contention :

*Cupak S. J.*

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(1) SLJ 1996 (1) SC 113-Kuldeep Chand Vs UOI & Ors.

(2) 1999 (8) Supreme Today 579 S.L. Chandrakishore Singh etc., Vs. State of Manipur & Ors.

*have*  
We ~~carefully~~ gone through these judgments and find that the facts of the case in hand are distinguishable and, therefore, we do not consider it necessary to discuss these judgments.

7. In the light of above discussion, we find that the application is devoid of any merit and deserves dismissal.

8. The Original Application is accordingly dismissed with no order as to costs.

*Gopal Singh*  
( GOPAL SINGH )  
Adm. Member

*BS*  
( B.S. RAIKOTE )  
Vice Chairman

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Part II and IM destroyed  
in my presence on 2-2-3-07  
under the supervision of  
section officer as per  
order dated 19/2/07

Section officer (Record)