

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 99/87 199
~~XXXXXX~~

DATE OF DECISION 30.8.90

K.D.Tungare Applicant (s)

Mr.C.N.Ramachandran Nair Advocate for the Applicant (s)

Versus

Secretary, Min. of Finance, Respondent (s)
Deptt. of Revenue and 6 others.

Mr.V.Krishnakumar (for R1 & R2) Advocate for the Respondent (s)

CORAM: Mr.K.Ramakumar (for R7)

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 2nd February, 1987 and as amended on 8th December, 1989, the applicant who has been working as Assistant Director in the Directorate of Enforcement under the Department of Revenue of the Ministry of Finance, Government of India, has prayed that the (Exbt.D) impugned order rejecting his representation dated 12.3.86 (Exbt.C) should be set aside and respondents directed to revise his seniority in the grade of Assistant Director in the seniority list issued on 2.4.86 by placing him at Sl.No. 14 and directing demotion of respondents 3 to 6 by correcting the undue seniority given to them on the

basis of their irregular promotion as Enforcement Officers. He has also prayed that the seniority of respondent-7, Shri M.Jeevaratnam who had been given seniority above respondents 3 to 6 by the Madras High Court should be properly fixed after respondents 3 to 6 are demoted and given proper seniority. He has ^{further} prayed that respondents 1 and 2 should be directed to fix seniority of respondents 3 to 7 after considering the Madras High Court's finding that respondents 3 to 6 were not eligible for promotion as Enforcement Officers in 1972. His further prayer is that Review DPCs should be held as in 1976 for promotion as Chief Enforcement Officer and in 1982 for promotion as Assistant Director taking into consideration the fact that respondents 3 to 6 were not eligible for such promotion. His further prayer is that respondent-1 should be directed to hold Review DPC for the years 1974 onwards for promotion to the posts of Chief Enforcement Officer if there were sufficient number of vacancies during 1974 and 1975. His other prayer that the Review DPCs of 1976 and 1982 should take into account the principles laid down by the Central Administrative Tribunal that 'good,' 'very good' and 'outstanding' are to be considered equivalent cannot be considered as there is no such principle laid down by the Tribunal ~~as has been~~ brought out before us.

23

remaining
The other ⁶prayers that the UPSC should be directed
to hold Review DPC and action should be completed in
fixing seniority within six months, being procedural
in nature, need not be considered independently of the
main reliefs. The brief facts of the case are as follows:

2. In the Directorate of Enforcement the hierarchy
of promotion levels relevant to our case starts from that
of Assistant Enforcement Officers (AEO) who are promoted
as Enforcement Officer (EO) and then as Chief Enforcement
Officer (CEO) and then as Assistant Director (AD).

The applicant was appointed as AEO on 22.11.61, as
EO on 1.11.64, as CEO on 11.4.77 and as AD on 18.12.85.

The 4 respondents, i.e. R3 to R6, were working in the
Directorate on deputation and were absorbed as AEO on
a regular basis by an order dated 26.5.72 with retros-
pective effect from 1.5.71 ⁶ that is 10 years after the applicant. ⁶
It appears that when the
order was issued on 26.5.72 the Service Rules had already
been promulgated on 1.1.72 in accordance with which there
was no provision for filling up the post of AEO by
absorption on deputation. This difficulty ^{was} attempted
to be met by giving the order of absorption of respondents
3 to 6 retrospective effect from 1.5.71. The Recruitment
Rules for the next post of EO provided that AEOs could
be promoted only after 5 years of regular service as AEO.
In spite of this provision respondents 3 to 6 were
promoted as EO in 1972 when they had hardly one year of

B2

regular service on the basis of their retrospective absorption as AEO with effect from 1.1.72. Respondent-7 who was regularly appointed as AEO with effect from 26.11.64 was however promoted as EO on 30.4.73, that is, later than respondents 3 to 6. Subsequently, respondents 3 to 6 were promoted as CEO on various dates between 20.5.75 and 2.6.76 while the applicant was promoted as CEO on 16.8.77 and respondent-7 was promoted as CEO on 7.5.80. On the basis of the dates of their promotion, in the seniority list of CEOs, both the applicant before us who was promoted on 16.8.77 and respondent-7 who was promoted on 7.5.80, were placed in the seniority list of CEOs below respondents 3 to 6. Shri Jeevaratnam, (R-7) represented to the Directorate of Enforcement against the fixation of his seniority below respondents 3 to 6 who had initially joined the Directorate on deputation basis and subsequently absorbed as EOs. As indicated earlier, his contention was that while appointing these officers on transfer basis, the absorption was effected ~~xxx~~ from an earlier date and they were not eligible to be appointed as EO in 1972 and as CEO in 1976. The representation of respondent-7 was rejected by the Directorate vide their memo dated 26.10.83. Against this rejection respondent-7 filed a writ petition in the High Court of Madras which allowed the writ petition and directed the Directorate of Enforcement to quash the decision conveyed in the memo

23

/ dated 26.10.83 and ~~directed~~^R "to fix the petitioner's (i.e. Shri Jeevaratnam, R-7) seniority over and above the seniority of the 4th respondent in the seniority list of Chief Enforcement Officers published by the Directorate in their letter No.A-15/3/73 dated 4.4.83."

In pursuance of the directions of the Court, a revised seniority list of CEOs as on 8.4.83 was issued on 6.11.85. While in the original unrevised seniority list respondents 3, 4, 5 and 6 were at Sl.Nos. 2, 5, 6 and 7 respectively and the applicant before us was at sl.No.9 and respondent-7 at sl.no. 20, in the revised seniority list, ostensibly in the implementation of the judgement of the Madras High Court, respondent-7 Shri Jeevaratnam jumped over not only respondents 3 to 6, but also over the applicant and several others between sl.no.8 and 19 and was placed above respondent-3 at sl.no. 2.

3. It is this action of respondents 1 & 2 to place respondent-7 not only above respondents 3 to 6 but above the applicant also, that has caused the grievance of the applicant Shri K.D.Tungare. Shri Tungare and all those CEOs between sl.no.8 and 19 in the unrevised seniority list over whom respondent-7 was placed, were never a party in the writ petition. The applicant's contention before us is that the judgement of the Madras High Court simply stated that the seniority of respondent-7 should be fixed above respondent-3 Shri B.N.Choudhury

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who was respondent-4 in that writ petition. The Madras High Court did not direct that Shri Jeevaratnam ^(R-7) should be placed immediately above Shri B.N.Choudhury at Sl.No.2 nor was there any direction that respondent-7 should be placed above the applicant who was not a party in that writ petition. The contest before the Madras High Court was between Shri Jeevaratnam, R-7 and respondents 3 to 6 and by the non-recognition of their eligibility as EO in 1972 and absorption in the Directorate in 1971, respondents 3 to 6 were to go down below respondent-7 Shri Jeevaratnam. His further contention is that promotions from AEO to EO and EO to CEO being on the basis of selection through DPC, respondent 1 & 2 should have on de-recognition of the seniority of respondents 3 to 6 placed their cases before Review DPCs, first for promotion as EO and then for promotion as CEO and thereafter re-fix their seniority in these grades. Instead, by mechanically and unthinkingly placing the names of respondent-7 above respondent-3 and the applicant, respondent 1 & 2 have done great injustice to the applicant who was throughout as AEO, EO and CEO several places senior to respondent-7. By placing respondent-7 above him on the plea of the judgement of the Madras High Court before whom he was not a party, the order of the Madras High Court has been misapplied and misdirected against the applicant. Since respondent-7 had never challenged the applicant's seniority before the

2

Madras High Court but had only challenged the seniority of respondents 3 to 6, respondent-7 could not be placed above the applicant on any count. What should have been done in implementation of the order of the Madras High Court is to place respondents 3 to 6 as junior to and ^{below} 2 respondent-7 in the seniority list of CEOs without disturbing the inter se position between respondent-7 Shri Jeevaratnam and the applicant.

4. The applicant's further grievance is that because of the distortion of his seniority vis a vis respondents 3 to 6 and respondent-7, he lost his promotion as AD in 1984 or earlier. Having been promoted as AD on 18.12.85, he has lost his seniority in that grade also vis a vis respondent-7.

5. Respondent-1 has stated that respondents 3 to 6 had come over the Directorate on deputation and were absorbed as AEO in 1971 before the Recruitment Rules came into force from 1.1.72. Because of their earlier appointment, according to the respondents, the condition of 5 years of regular service as AEO for eligibility for promotion prescribed in the Recruitment Rules does not apply to them. The Directorate implemented the order of the Madras High Court by placing respondent-7 over and above respondents 3 to 6. Since that Court had not ordered ~~xxx~~ 2 any review of the promotion of respondents 3 to 6, no action was taken in that regard. It has also

23

been stated that since promotion as CEO and AD is made on the basis of selection and not on seniority alone the question of demoting respondents 3 to 6 did not arise.

6. Respondent-7 who was the petitioner in the writ petition before the Madras High Court has given an elaborate reply to the application before us. He has argued that the applicant along with others were considered by the DPC for promotion as CEO in 1976, but while respondents 3 to 6 were found fit for promotion the applicant was not found fit. Accordingly, even if the applicant is given seniority over respondents 3 to 6, he cannot get promotion on that basis. He had not challenged his supersession in 1976 and accordingly he cannot challenge the same now. The applicant cannot challenge the seniority of respondent-7 as AD also because (R-7's) a Review DPC considered his case in 1987 when his seniority in that lower grade of CEO was revised and he got the promotion as AD with retrospective effect. His not further argument is that the applicant did not challenge the judgement of the Madras High Court delivered in 1985 (the applicant) and he cannot challenge the same now. His prayer is that Review DPCs in the past years of 1974, 1975 or 1982 the law of cannot be granted now because of Limitation.

7. In his rejoinder the applicant has rebutted the arguments advanced by respondent-7. He has argued that his representation dated 12.3.86 was rejected by the Secretary, Ministry of Finance in October 1986 and December 1986 without giving him any reason of rejection. That rejection order has been challenged in this application which cannot be said to be time barred. He has conceded that the posts of EO, CEO and AD are selection posts and stated that he was never found unfit for promotion, but he was overlooked by the DPC. His contention is that he was regularly promoted as EO in 1964 and was 2nd place above respondent-7 in that cadre. He became eligible for promotion as CEO in 1969, but no DPC met till 1973. In the 1973 DPC he was not selected, but again, there was no DPC held in 1974 and 1975, even though there are instructions that DPCs should meet annually. The applicant conceded through that ⁶ the 1976 DPC respondents 3 to 6 were selected superseding the applicant, but he had always been representing. He stated that he represented against the revised seniority given to respondent-7 on 19.11.85 but no decision has been taken on his representation. He was informed on 26.2.85 that he could prefer an appeal against the order of the Madras High Court. He represented again on 17.1.86 without evoking any response. The applicant's contention is that he has no

23

grievance against the judgement of the Madras High Court, but his grievance is against the manner in which the judgement has been interpreted and applied against him. He has counter argued that when the ~~the~~⁶ DPC met in 1977, while the applicant was selected, respondent-3 was not selected and accordingly the latter cannot get seniority over him. The applicant has gone on to say that respondent-7, Shri Jeevaratnam, had challenged the selection of respondents 3 to 6 by the DPC in 1972 for the post of EO by his representation which was rejected by the order dated 26.10.83. The writ petition before the ⁶ Madras High Court which he filed was against the order of rejection challenging selection of respondents 3 to 6 in 1972. The Madras High Court set aside the order of rejection dated 26.10.83 and accordingly the selection made by the DPC in 1972. If the respondents 1 and 2 had kept that aspect of the order also in view, they would not have maintained the position of respondents 3 to 6 in the revised seniority list of CEOs above the applicant. Since respondent-7 had not challenged the seniority of the applicant above him in the CEOs grade, nor did the High Court give ⁶any direction to place respondent-7 above the applicant, respondents 3 to 7 cannot be placed above him in the revised seniority list of CEOs.

23

8. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The main grievance of the applicant arose from the fact that in implementation of the judgement of the High Court dated 10.9.89 in writ petition No.11749/83 (Exbt.B) respondent-7 who was earlier placed below the applicant in the seniority list of CEOs was placed far above him. This happened ^{even} when in the writ petition respondent-7 had not challenged the applicant's seniority nor did he claim to be placed above the applicant nor was the applicant a party in that writ petition. We have carefully gone through the judgement of the Madras High Court. In the writ petition before them, respondent-7 had impleaded respondents 3, 4, 5 and 6 before us as respondents 4, 8, 7 and 5 respectively. From the judgement, it is clear that respondent-7 had sought quashing of the order dated ^{his} 26.10.83 by which ^{his} representation dated 17.10.72 had been rejected, and also had prayed that ^{his} seniority should be fixed over and above the seniority of Shri B.N.Choudhury (Respondent-3 before us) in the seniority list of CEOs published on 8.4.83. In the representation dated 17.10.72 respondent-7 before us had challenged the irregularity and illegality in the matter of absorption and promotion of the deputationists like respondents 3 to 6 before us. The writ petition

22

was allowed by the High Court holding that absorption of respondents 3 to 6 before us in the Directorate with retrospective effect from 1.5.71 by the order passed on 26.5.72 in violation of the Recruitment Rules which had come into force from 1.1.72 was illegal. The High Court further held that if their absorption was illegal, their promotion to the grade of EO also cannot be sustained in law. The High Court also held that respondents 3 to 6 could not be promoted as EO in 1972 before completion of 5 years of service as AEO as prescribed in the Recruitment Rules. ^{logical} The result of these findings of the High Court would have been that the promotion of respondents 3 to 6 as EO from 1972 and as CEO on various dates during 1975-76 would have been quashed. But, in para 25 of the judgement, the Court observed as follows:

"25. The prayer in the writ petition is to quash the order of the 3rd respondent dated 26.10.83 rejecting the representation of the petitioner dated 17.10.72 and to direct the respondents to fix the seniority of the petitioner over and above the 4th respondent in the seniority list of Chief Enforcement Officers published by the Directorate on 8.4.1983. The petitioner is not interested in challenging the appointment of respondents 4 to 8 as Enforcement Officers and further promotion as Chief Enforcement Officers. His grievance, as seen above, is only that he ought not to have been considered for appointment as Enforcement Officer along with respondents 4 to 8, and because of such consideration, his interests were prejudicially affected and he will be satisfied if his seniority is recognised. If the respondents 4 to 8 had not been considered for appointment as Enforcement Officers along with the petitioner, the petitioner would have been appointed earlier as the D.P.C. had found him fit for promotion. To that limited extent, without setting aside the orders of promotion, the petitioner is entitled to the relief."

(emphasis supplied) 2

82 The concluding part of the judgement which is the foundation

of the impugned action of the respondent-1 in placing respondent-7 above the applicant reads as follows:

"In the result, the writ petition is allowed with costs. The proceedings of the 3rd respondent in A 34/14/83 dated 26.10 83 is quashed and the respondents 1 to 3 are directed to fix the petitioner's seniority over and above the seniority of the 4th respondent in the seniority list of Chief Enforcement Officers published by the Directorate in their letter No. A.15/3/73 dated 8.4.83. Counsel's fee Rs.1000/- Respondents-1 to 3 are further directed to give effect to this order within six weeks from the date of the receipt of the order "

(emphasis added)

In compliance of the judgement of the Madras High Court the respondents 1 & 2 revised the seniority list of CEOs which ^{had been} published on 8.4.83, by mechanically placing respondent-7 above all ^{the} CEOs between Sl.No. 2 and 19 in that list. The picture that emerged is as follows:

<u>As per original seniority list of 8.4.83</u>	<u>As per revised seniority list after the Court's judgement (6.11.85)</u>
1. B.K.Das	1. B.K.Das
2. B.N.Choudhury (R3)	2. M.Jeevarathnam (R7)
3. K.P.Desai	3. B.N.Choudhury (R3)
4. A.K.Banerjee	4. K.P.Desai
5. H.C.Gulati (R4)	5. A.K.Banerjee
6. T.M.V.Chari (R5)	6. H.C.Gulati (R4)
7. N.K.Roy (R6)	7. T.M.V.Chari (R5)
8. S.G.Salvakar	8. N.K.Roy (R6)
9. <u>K.D.Tungare (applicant)</u>	9. S.G.Salvakar
10. G.I.Sirgurch	10. <u>K.D.Tungare (Applicant)</u>
11. P.K.Bhattacharya	11. G.I.Sirgurch
12. D.K.Mitra	12. P.K.Bhattacharya
13. B.K.Bose	13. D.K.Mitra
14. R.M.Murugappan	14. B.K.Bose
15. D.K.Das	15. R.M.Murugappan
16. A.B.Chakraborty	16. D.K.Das
17. Swinder Singh	17. A.B.Chakraborty
18. M.S.Malhotra	18. Swinder Singh
19. Balkar Singh	19. M.S.Malhotra
20. <u>M.Jeevaratnam (R7)</u>	20. Balkar Singh
21. K.V.Lele	21. K.V.Lele

9. The applicant feels justifiably terribly aggrieved by the manner in which the judgement was implemented in as much as respondent-7 who was 11 place below him was placed 7 places above him in the cadre of CEO, even though the applicant had been promoted as CEO on 16.8.77 and respondent-7 had been so promoted about 3 years later on 7.5.80. The applicant was not a party in the writ petition and respondent-7 never challenged the applicant's seniority above him. The High Court did not direct that the name of respondent-7 should be placed above respondent 3 Shri B.N.Choudhury in the seniority list. The High Court as quoted earlier simply directed that respondent-7 should gain seniority over respondents 3 to 6. Considering the fact that the High Court themselves had come to the conclusion that the absorption and promotion of respondents 3 to 6 as AEO and EO were illegal, not to speak of their promotion as CEO, respondents 3 to 6 should not have, strictly speaking, been allowed to figure in the seniority list of CEO and should have been reverted back as AEO. But, considering the fact that respondent-7 did not contest their promotion, but expressed his desire to be satisfied if he was given seniority over them, the High Court of Madras allowed respondents 3 to 6 to stay as CEO on the condition that respondent-7 would gain seniority over them. In the above context, the only method by which

23

the judgement should have been implemented without harming those who were not a party to the writ petition was that, short of deleting respondents 3 to 6 from the seniority list of CEO, they should have been placed en bloc either below respondent-7 at sl.no.20 or, keeping in view the illegality of their appointment and as E.O. and C.E.O., promotions/ they should have been kept en bloc at the bottom of the seniority list. This would have avoided disturbing the settled inter se seniority between respondent-7 and others above him in the seniority list of 1983 including the applicant. Since the appointment and promotion of respondents 3 to 6 as EO and CEO themselves have been found by the High Court of Madras to be illegal, they had no locus standi to remain in the list of CEOs merely because respondent-7 who was the petitioner before the High Court would have been satisfied if he were placed above them. But the fact of illegality of their appointment and promotions as EO/CEO cannot be ignored. That illegality exists not only vis a vis the petitioner but all other regularly appointed CEOs including the applicant. The respondent-7 could not justifiably, without impleading the applicant and others above him in the seniority list of CEOs, or 'quid pro quo' as it were ~~he~~ strike a bargain/with respondents 3 to 6 to the effect that if he gets over them in the seniority list he will not object to their continuance as CEO. If

22

that bargain has to be continued and accepted, it could not be at the cost of the applicant and others senior to respondent-7 who have all suffered without being a party in that writ petition and doubly so. They have suffered not only by the maintenance of illegally appointed and promoted respondents 3 to 6 as CEO above them, but also by the fact of respondent-7, far junior to them, being placed above all of them.

10. In the above context, we are impressed by the argument of the applicant that respondents 1 and 2 by placing respondent-7 above respondent-3 in the seniority list of CEO, though technically complied with one part of the judgement regarding seniority list, they have overlooked the consequences of the other part of the ⁶the impugned order dt.26.10.83 was set aside on the ⁶judgement by which ⁶the absorption and promotions of ⁶respondents-3 to 6 as AEO/EO had been declared to be illegal. If their appointment as AEO/EO have been illegal, it goes without saying that their promotion as CEO during 1975-76 should have been declared as non est in the eye of law. Short of their being deleted from the seniority list of CEO, they should have been placed either at the bottom of the list or at least below respondent-7.

11. The contention of respondent-7 that the applicant cannot claim his seniority in the CEOs cadre because he was rejected by the DPC in 1976 while respondents 3 to 6 were selected has no force in the context of the illegality

ground that

52

of appointment of respondents 3 to 6 as EO ^{in the feeder cadre.} Respondent-7
that
has omitted to mention ^{that} he himself was not included
in the panel for promotion as CEO in 1977 when the
applicant was included and it was only on 7.5.80
that he got promotion as CEO. On that basis, he cannot
have any justification whatsoever to be listed in the
seniority list of CEOs above the applicant. We cannot
also ignore the fact that in the seniority list of
EOs, respondent-7 was 21 places below the applicant.
While the applicant was promoted as EO on 1.11.64,
respondent-7 was promoted as EO 9 years later on 30.4.73
and respondents 3 to 6 also were promoted 9 years later
than the applicant in 1973.
settled
12. It is true that ^{that} seniority lists should not
be disturbed but the fact remains ^{that} the applicant
has been continuously representing about his grievance
and it is the respondents who revised the seniority list
of 8.4.83 on 6.11.85 in respect of the applicant who
had been promoted to that cadre 8 years earlier, by
who
placing respondent-7 ^{who} had been promoted 5 years earlier
above him. The applicant has been continuously repre-
(Exbt.C)
senting. His last representation dated 12.3.86 ^{having}
been rejected in October 1986 (Exbt.D), this application
is well within time. The applicant's grievance is not

22

against the judgement of the High Court of Madras, but against

the manner it was implemented by respondents 1 & 2.

We have no doubt in our mind that the manner in which the judgement has been implemented is thoroughly unjust and unfair to the applicant and others who were not a party before the High Court of Madras. The judgement of the Madras High Court can be implemented in letter and spirit by placing respondents 3 to 6 below respondent 7 in the original seniority list of C.E.O. published on 8.4.83 as extracted in para 8 above, instead of placing respondent 7 above respondent-3 and thereby above the applicant and many others who were senior to respondent-7 and whose seniority had never been challenged by respondent-7. The service rendered by respondents 3 to 6 before they became eligible to be promoted as C.E.O. in accordance with the Recruitment Rules cannot be taken into account for giving them benefit of seniority over the applicant. Consequent upon the revision of their seniority in the cadre of C.E.O., respondent-7 will be placed immediately below the applicant in the seniority list of Assistant Director and respondents 3 to 6 will rank below respondent-7 in that list. The notional seniority given to respondent-7 with effect from 4.5.84 vide the order dated 3.3.87 after this main application had been filed to be on 10.2.87 is also set aside in consequence of revision of his seniority in the cadre of C.E.O.

22

13. As regards the challenge to the promotion of respondents 3 to 6 as C.E.O , we feel that since they were promoted between March and June 1976 and they were not directed to be reverted by the Madras High Court and the applicant challenged their promotion after a decade, their promotion as C.E.O. need not be reviewed. As regards their ^{as} promotions [✓] Assistant Director on 15.3.1982 for respondent-3 and in 1985 for respondents-4, 5 and 6, we feel that since the applicant had challenged them in his representation dated 12.3.86 which was summarily rejected without any speaking order by the impugned order dated October 1986, that impugned order has to be rejected and the respondents could be directed to review the DPC meetings on the basis of which promotions were made as Assistant Director in 1982, 1984, 1985 and 1987. This, ^{all} however, will entail complete reversal of [✓] the promotions made as Assistant Directors between 1982 and 1987 and upset the seniority list of Assistant Directors as on 1.4.89 in regard to 16 out of 20 Assistant Directors who ^{even} figure in that list. Many of them are not [✓] implicated in this case. Our task, however, is made easier by the fact that not only the applicant but also respondents 3 to 7 have all been promoted as Assistant Director between 1982 and 1985 and have been placed within the first 9 positions in the seniority list of Assistant Directors as on 1.4.89. In the interest of justice, therefore, and practical

22

considerations, it will suffice if, in view of the revised position of their seniority in the feeder cadre of C.E.O., within the first 9 positions in the seniority list of Assistant Directors as on 1.4.89, list respondent-7 is placed immediately below the applicant, and respondents 3 to 6 immediately thereafter. By this dispensation, those who are not a party to this application will not be affected. The existing and the revised position of the inter-se seniority amongst the applicant and respondents 3 to 7 as Assistant Directors would be as follows:

Existing seniority as on 1.4.89			Revised inter-se seniority		
S1. No.	Name	Actual date of appointment as AD.	S1. No.	Name	Actual/ Notional date of appointment
1.	B.N. Chaudhury (R3)	15.3.82	1.	J.C. Makhija	8.11.82 (actual)
2.	J.C. Makhija	8.11.82	2.	K.P. Desai	31.7.84 (actual)
3.	M. Jeevaratnam (R7)	27.3.87	3.	A.K. Banerjee	4.5.84 (AN) (actual)
4.	K.P. Desai	31.7.84	4.	K.D. Tungare (applicant)	30.12.85 (actual)
5.	A.K. Banerjee	4.5.84 (AN)	5.	M. Jeevaratnam (R7)	27.3.87 (actual)
6.	H.C. Gulati (R4)	28.12.85	6.	B.N. Chaudhury (R3)	27.3.87 (notional)
7.	T.M.V. Chari (R5)	12.2.86	7.	H.C. Gulati (R4)	27.3.87 (notional)
8.	N.K. Roy (R6)	29.7.85	8.	T.M.V. Chari (R5)	27.3.87 (notional)
9.	K.D. Tungare (Applicant)	30.12.85	9.	N.K. Roy (R6)	27.3.87 (notional)
10.	D.K. Mitra	30.3.87	10.	D.K. Mitra	30.3.87 (actual)
(10 th onwards unchanged)			(10 th onwards unchanged)		

In the revised seniority position, the notional dates of appointment as Assistant Director have been indicated against R3, R4, R5 and R6 to accord with the judgement of

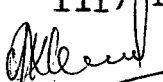
the Madras High Court by which they were made junior to R-7. Since they had been actually promoted in 1985/86 they have to be placed above Shri D.K.Mitra who was promoted on 30.3.87.

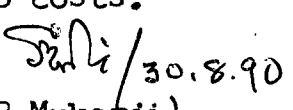
14. In the facts and circumstances, we allow this application to the extent of and on the lines indicated below:

i) The revised seniority list (vide para 8 supra) of C.E.Os as issued on 6.11.85 is set aside so far as the applicant and respondents 3 to 7 are concerned. Respondent-7 should be placed at his original position between Shri Balkar Singh and Shri Lele and respondents 3, 4, 5 & 6 should be placed en bloc immediately below respondent-7. In effect, the original seniority of 8.4.83 (vide para 8 supra) is restored only with the modification that respondents-3, 4, 5 & 6, who had been placed at Sl.No. 2, 5, 6 & 7 in that list, are to be placed en bloc between respondent-7 Shri M.Jeevaratnam (Sl.No.20) and Shri K.V.Lele (Sl.No.21) in that list.

ii) The impugned order of October 1986 rejecting the representation of the applicant dated 12.3.86 to the extent it challenges the higher seniority given to respondents 3 to 7 in the seniority list of Assistant Directors is also set aside. The revised inter-se seniority as Assistant Directors in so far as the applicant and respondents 3 to 7 are concerned will be as indicated in the preceding para.

iii) There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman