

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

TS. NO. 1031/87

CAUSE TITLE TS. NO. 1210/82 OF

NAME OF THE PARTIES R.C. Saccena Applicant

Versus

U.C.F. Dns

Respondent

Part A.

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CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

This file received from record room

Checked on Dated 13/10/11....

Counter Signed.....

Rajiv
14/10/2011

Section Officer/In charge

m
Signature of the
Dealing Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench, Lucknow
Opp. Residency, Gandhi Bhawan, Lucknow

INDEX SHEET

CAUSE TITLE

1031

of 19

87

NAME OF THE PARTIES

R. C. Saxena

Applicant

Versus

U. O. 5

&

Respondent

Part A, B & C

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CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench, Lucknow
Opp. Residency, Gandhi Bhawan, Lucknow

APPLICATION No. 1031 of 19 87

TRANSFER APPLICATION No. _____ of 19

OLD WRIT PETITION No.: 1210 of 82

CERTIFICATE

Certified that no further action is required to taken
and that the case is fit for consignment to the record room (decided).

Dated :

COUNTER SIGNED :

21/2/91
4-12-91
Signature of the
dealing Assistant

Section Officer/Court Officer

SIDE

GENERAL INDEX

(Chapter XLI, Rules 2, 9 and 15)

A
1

Nature and number of case.....C.O.P. 1310-82

Name of parties.....Ramesh Chandra Saksena vs The Union of India

Date of institution.....15.3.82

Date of decision.....

no.	Serial no. of paper	Description of paper	Number of sheets	Court-fee		Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper, if any
				Number of stamps	Value			
	2	3	4	5	6	7	8	9
					Rs. P.			
A	1	General Index	1	—	—			
A	2	Order sheet	1	—	—			
A	3	Write with Affidavit & annexes.	31	10	103			
B	4	Power.	1	3	5			
A	5	Comm 2488 (W)-82 An Stay	1	3	5			
	6	Com-P. (W)-82-5	—	—	7.00			
	7	Comm. 3777 (W) 88	1	—	5.00			
	8	Memo.	1	—	—			
	9	Short C.A.	11	—	2.00			

I have this

day of

198 ,

examined

I have the record and compared the entries on this sheet with the papers on the record. I have made all necessary corrections and certify that the paper correspond with the general index, that they bear Court-fee stamps of the aggregate value of Rs. that all orders have been carried out, and that the record is complete and in order up to the date of the certificate

Munsarim

Clerk

File no.	Serial no. of Paper	Description of paper	Number of sheets	Court-fee		Date of admission of paper to record	Condition of document	Remarks including date of destruction of paper if any
				Number of stamps	Value			
1	2		4	5	6	7	8	9
					Rs. P.			
	10-	ack sheet	5	—	—			
	11-	Bank Copy	1	—	—			

I have this

day of

198 , exami

the record and compared the entries on this sheet with the papers on the record. I have made all necessary corrections and certify that the papers correspond with the general index, that they bear Court-fee stamp the aggregate value of Rs. , that all orders have been carried out, and that the record is complete in order up to the date of the certificate.

Date.....

Munsarim

Clerk

ORDER SHEET

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

W.P.

No. 1210

of 1982

10/1

Ramesh Chandra Saxena vs The Union of India & Ors.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
15.3.82	Hon K.S.V.T. Hon SS. Ahmad, J. Admtd, Notice on behalf of opposite parties has been taken by the Chief Standing Counsel. Sd K.S.V. sdss. Ahmad C.M. An. No. 1488-C of 1982 Hon K.S.V.T. Hon SS. Ahmad, J. Notice, Notice has been taken by the Chief Standing Counsel. He may be his application for orders immediately after three weeks. Sd K.S.V. sdss. Ahmad 15.3.82 Service report in W.P. & stay appls. Sd B.L. Shukla, advocate, Standing Counsel, Central Govt. has accepted notice on behalf of all the opp. parties. Office to proceed in O.C. SP 23-3-82	

24/3/82
2/4/82

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned	
1	2	3	
13.4.02	<p>13.4.02 Inam</p> <p>Corr 14000000</p> <p>The V.C.S.J.</p> <p>Learned counsel for Union of India prays for and is allowed one week's time to obtain instructions. List immediately after one week.</p> <p>by ✓</p> <p>13.4.02</p> <p>1</p>	<p>at 10</p>	
22.4.02	<p>22.4.02</p> <p>Ann 14000000 was</p> <p>In view of</p> <p>An application has been moved on behalf of the State stating that for three months they are not going to make any promotion. In view of this statement list this application after three months i.e. in the last week of July 1982.</p> <p>by ✓</p> <p>22.4.1982</p> <p>8</p>	<p>at 10</p>	
27.7.82	<p>27.7.82</p> <p>Inam</p>	<p>at 10</p>	

10
A
3

ORDER SHEET
IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

No. 126

of 198

vs.

Date	Note of progress of proceedings and routine orders	Dated which case adjourned
1	2	3
	<p><u>Hon. M. Sivastava J.</u></p> <p>List after three weeks to enable the counsel for Union of India to obtain instructions. But till then in view of the undertaking given by the learned counsel ^{case} no promotions ^{small} will be made.</p> <p style="text-align: right;">by 27-7-1982 S</p>	
23.8.82	<p>23.8.82 - M. P.</p> <p><u>C.A. Juddu</u> Hon. V.C.S.J.</p> <p>No time left. Adjourned B.O. etc.</p> <p style="text-align: right;">by B.S. 27.8.82</p>	
27.8.82	<p><u>C.A. Juddu</u> - 24.8.82 - 82 hrs Hon. V.C.S.J.</p> <p>Four weeks' time is allowed to file counsel A & B's draft.</p> <p style="text-align: right;">by 27-8-82</p>	

ORDER SHEET

IN THE HIGH COURT JUDICATURE AT ALLAHABAD

No. 1210 of 1982

25.

10/5
D
6

Date	Note of progress of proceedings and routine orders	Date of which case is adjourned
<p>1</p> <p>10/10/84</p>	<p>10.10.84 2nd floor</p> <p>Case 3777/1983 2nd Division</p> <p><u>Hon'ble G. B. Singh, J.</u></p> <p>The application for stay and other application for vacating it have been wrongly listed for today. The order dated 10.9.84 is to the effect that no further modification in the stay order is called for and the case be listed for hearing after Counter Affidavit and Rejoinder Affidavit within a period specified. That period has not expired so far. Let the case be listed for hearing in accordance with that order when the Counter Affidavit and Rejoinder Affidavit are filed.</p> <p><u>Agarwal</u> 10/10/84</p>	<p>3</p> <p>et al</p>

OK

①

21-11-90

②

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S

TA 1031

Hon Mr. Justice K. Nath, re
Hon Mr M M Singh AM

③

Short Counter is on record.
Shri Ak Chaturvedi says that
he has not received a copy
thereof. The learned counsel
for the respondents will
deliver one copy of the
same to Shri Ak Chaturvedi
within 2 weeks. Rejoinder
may be filed within 2 weeks
thereafter but for final
hearing on 9-1-91.

+

M H L
AM.

No R.A. filed.
S. P. H

L
7/11/91

⑨

Mr

Ve

9-1-91

D. R.

RA has not
been filed.

Applicant
is to file rejoinder
by 21/2/91

⑩

21-2-91

D. R.

Applicant's side is
absent. Applicant
did not file R.A.
till today. He is
ordered to file it
by 4/3/91. O.P. is
also absent today.

AKS

21/2/91

SO.

(11)

22.4.91

D.R.

A/C

(10)

8.5.91

Hon Mr Justice - v. c. Srivastava - v. c.
Hon Mr A B Gauthi

Both the parties are present today. Applicant

Put up tomorrow for hearing
On 9.5.91

files Rejoinder today.
Now CA/RA have been
exchanged in this
case Hence this case

is to be listed before
the Hon. Bench on

8.5.91 for final

Honbl. Mr Justice - v. c. Srivastava v. c. hearing.
Honbl. Mr A. B. Gauthi. A.M.

Argument heard - Judgment on
10.5.91

A.M.

Recd Copy of

Judgment

Done on

9.7.91.

Applicant

Recd Copy
Moham Lal
Choi OK Thacker
10.7.91

Group A15 (E)

1967

$\frac{A}{10}$

IN THE HON'BLE HIGH COURT OF JUDICATURE, AT ALLAHABAD:

LUCKNOW BENCH, LUCKNOW.

WRIT PETITION NUMBER 12/0 OF 1982.

$\frac{A}{11}$

Ramesh Chandra Saxena. Petitioner.

Versus.

The Union of India and Others.Opposite Parties.

I N D E X.

<u>Particulars.</u>	<u>Page Numbers.</u>
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2. Affidavit.	9 to 10
3. Annexure No. 1 (Copy of notification dated 12th April, 1978 <i>Confirmation order.</i>)	11 to 11
4. Annexure No. 2 (Copy of Notification dated 22nd December, 1969).	12 to 29
5. Annexure No 3 Circular dated 12.4.78 -	30 to 31

DATED: LUCKNOW:
MARCH 15, 1982.

A. Mannan
Counsel for the Petitioner.

INDIA COURT FEE

60 Rs.



one Imp. Rs. 60.00
 800 Rs. 40.00
 Total Rs. 100.00
 15/3



In the Hon ble High court Lucknow

12/0-02

R. C. Saxena -- Petitioner

vs.

Union of India for. -- opp.

A. Praman

Xs D
12

IN THE HON'BLE HIGH COURT OF JUDICATURE, AT ALLAHABAD:

LUCKNOW BENCH, LUCKNOW.

WRIT PETITION NUMBER 1210 OF 1982.

Ramesh Chandra Saxena, aged about 44 years, Son of Shri Ram Chandra Saxena, Resident of 244/84, Yahiyaganj Road, Lucknow. Petitioner.

Versus.

1. Union of India, through Secretary, Ministry of Communication, New Delhi;
2. The Director General, Post & Telegraph, New-Delhi;
3. The General Manager, Tele-Communications, U.P. Circle, Lucknow. Opposite Parties.

WRIT PETITION UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA
.....

The above named Petitioner most respectfully submits as under :-

1. That the Petitioner was selected on Circle Level Uttar Pradesh, for the post of the Time-Scale Clerk in the Post & Telegraph Department, Government of India, and after said selection he was sent for training for 3 months, and on successful completion of the said training, the Petitioner was allotted, to the Telegraph Division, Kanpur for posting and in the said Division, he was posted at JHANSI with effect from 3rd February, 1962, and the Petitioner performed his duties on the said post honestly and efficiently.



Ramesh Chandra Saxena

MEMO.

one impressed Rs. 60.00
right Adhesive Rs. 40.00
Total Rs. 100.00

Correct but final Court fee report
will be made on receipt of lower
Court record.

In time up to

Papers filed. Copy of P. 2,
should also be filed.

Single - Bench.

Surjined order (R-3) dt
12-4-72.

Release
15/10/82.
S O CO.

Remand copy
of N-1/173
for 15/3/82

for 15/3/82
to Sir B. L. Shukla
Advocate
15/3/82

33

Don K S Verma

Don S S Ahluwalia

Admit.

Notice on behalf

of opposite parties has been
taken by the Chief Standing
counsel.

dt. 15-3-1982
Amr

Signature

A
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2. That in the year 1967, the Petitioner sought his transfer from Kanpur Division to Lucknow Telephone Division, as the Petitioner, himself, requested for the said transfer, under para 38 of the Post & Telegraph Manual, Volume IV, the Petitioner had to opt for the bottom seniority among the men of the same cadre in the Telephone Division, Lucknow, and the said transfer was granted and the Petitioner joined in the said capacity of clerk in Telephone Division, Lucknow, with effect from 4th December 1967, and since then the Petitioner is holding the said post in Lucknow Telephone Division, so far. The Petitioner has never been warned, censured, or punished in any manner.

3. That it is necessary here to point out that for the purposes of the regular promotion to the post of the Sectional Supervisor, from the posts of the Clerk, the seniority is taken on a Circle level, comprising of, several divisions and districts. However, the local promotions and casual promotional arrangements are also made on division basis and for that purpose, the seniority is taken among the clerks of that very division. But the seniority at the divisional level is not material for the purpose of regular promotions which are made on Circle Level and the entire State of Uttar Pradesh comprises of one Tele-Communication Circle, headed by the Opposite Party number 3.

4. That it is to be further asserted that the option and request transfers between the two divisions/district in the same circle, that is in U.P. Circle, is material and effects the seniority only in the matter of casual and stop-gap promotions as in the other division one opts the bottom seniority on request transfers, but



Ramesh Chandra Saxena.

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the regular promotions are made in Circle level are not effected by it in any manner, as the seniority on the Circle Level remains intact and unaffected by transfers even on request within the same Circle.

5. That the confirmations on clerical posts are made among the clerks on the basis of allocation of permanent posts among the various divisions, as such often the confirmations are made in respective divisions on divisional ~~seniority~~ basis ignoring the length of service.

6. That after the transfer of the Petitioner in the year 1967 in Lucknow Telephone Division, his confirmation was delayed by number of years, though there is nothing adverse on the service record to prevent the confirmation of the Petitioner, it was delayed due to the administrative reasons not connected with the Petitioner's suitability or fitness.

7. That the Petitioner was confirmed on the post of the Clerk through an order dated 30th December, 1978, with effect from 1st March, 1978, the relevant extracts of the said order are annexed herewith as Annexure Number 1 to this Writ Petition.

8. That the question of the seniority of the clerical cadre of the Central Government Department remain in dispute and litigation for several years and it was disputed that whether the seniority is to be determined on the Principles laid down in the Office Memorandum of the Ministry of Home Affairs, dated 22nd June, 1949, or it is to be determined on the criterias laid down in the Office - Memorandum, Ministry of Home Affairs, Union, dated 22nd December, 1959.



Ramesh Chandra Saxena

9. That the matter ultimately reached to the Hon'ble Supreme Court and it was held by the Hon'ble Supreme Court, that since the office memorandum of the Home Ministry dated 22nd December, 1959, does not touch those clerks, who have been appointed prior to the said date of the Office- Memorandum that 22nd December, 1959, the respondents in that case were the appointees of the date prior to 22nd December, 1959, they continue to be governed in the matter of seniority by the earlier Home Ministry's Office- Memorandum, dated 22nd June, 1949, which provide the determination of the seniority on the basis of length of service and not the confirmation. It may be further clarified that the later office memorandum of the Home Ministry dated 22nd December, 1959, provided the determination of the seniority from the date of confirmation.

10. That the said Judgment of the Hon'ble Supreme Court, reported in A.I.R. 1972 Page 671, did not touch the question of the validity of the office memorandum dated 22nd December, 1959, nor it considered the question that as to whether the determination of the seniority on the basis of the dates of confirmation which results into the cutting down of the period of service, rendered by the person concerned in the matter of seniority, is valid and legal order or not, and to what extent the terms and conditions of the employment can be regulated or varried by the Government was considered by the Hon'ble Supreme Court.

11. That on the strength of the Supreme Court Judgment referred above, the Opposite Party number 2, issued directions to all the Circles of the Tele-Communication department, that to the effect that in the light of the



Ramesh Chandra Sharma

Supreme Court Judgement, those who were appointed prior to 22nd December, 1959, and after 22nd June, 1949, be given seniority on the length of service and not from the date of confirmation, while the seniority for the others remains on the basis of date of confirmations. A copy of this Circular^{22.12.59} of the Opposite Party number 1 is annexed as Annexure Number 2 to this Writ Petition.

12. That from time to time, the gradation list of the class III staff of the U.P. Circle has been issued, the last of which was issued in the year 1977, corrected upto January, 1977, in this list of clerks, the Petitioner's name did not find place possibly due to the circumstances that the Petitioner was not confirmed till that date.

13. That in this list of U.P. Circle large number of persons found place, who were appointed several years later than the Petitioner, in this list among the Time-Scale Clerks, in which the Petitioner is, the last person has entered into this grade on 30th October, 1974, more than 12 years later than the Petitioner - Shri P.K. Pradha but was confirmed on 1st March, 1977. And the Petitioner could not find place in it.

14. That the effect of counting seniority on the basis of date of confirmation is that the Petitioner has to loose more than 15 years of service in the matter of the determination of the seniority, which obviously effects his chances of future promotion, very adversely.

15. That it is also to be clarified that no specific criteria or uniform scale is followed on the Circle Level in the matter of confirmation and the confirmations are ordered among the Time-Scale Clerks as the permanent



Ramesh Chandra Sharma

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vacancies are created or allotted to the various divisions and often in the matter of allotment of the permanent vacancies the time gap is very long.

16. That the next promotion from the post of the Time Scale Clerk is to the post of the Sectional Supervisor, the said regular promotion is due which is made on the basis of the seniority subject to the rejection of unfit on the Circle level seniority, if the Petitioner's seniority is rightly counted on the basis of the length of service, but it is not being so then the Petitioner will be deprived of the promotion for long number of years.

17. That the Petitioner has also made representations to the higher authorities for the confirmation and seniority, but without any result.

18. That in view of the law declared by the Hon'ble Supreme Court in the Patvardhan's case, as well as in the case of Chauhan and Baleshwar Dass, the confirmation alone cannot be the criteria for the determination of the seniority, as the same is neither based upon merit nor seniority is wholly arbitrary.

19. That the orders contained in the Circular dated 12th April, 1978, are wholly arbitrary, they provide two criterias, in the same class among the employees similarly situated and similarly placed having same qualifications and experience have been differently treated. Those who joined before 22nd December, 1959 are entitled to seniority with their total length of service, irrespective of the confirmation, while those who joined later are to lack behind and they can count for the seniority only from the date of confirmation. *a copy of the Circular dated 12.4.78 is annexed as annexure no 3 to this Petition.*



Ramesh Chandra Datta

~~date of confirmation.~~

20. That the notification of the Director-General, dated 12th April, 1978, is ~~entirely~~ wholly arbitrary and discriminatory and it provides two scales of seniority in the same class of persons without any tangible or distinguishable criteria and without any reasonable or rational basis for the differential treatment.

21. That the sole criteria of ~~seniority~~ confirmation for the purpose of the seniority is wholly arbitrary does not stand the test of reasonableness and results into the forfeiture of long period of service of the Petitioner without any basis.

22. That the Petitioner has wholly unblemished career of service and will be promoted, but for the only criteria of seniority.

23. That in this view of the matter, the Petitioner has no any other equally effective remedy, but to evoke the jurisdiction of this Hon'ble High Court among others on the following -

G R O U N D S :-

(A) Because, the circular of the Ministry of the Home Affairs, dated 22nd December, 1959, and the circular of the Director-General dated 12th April, 1978 are wholly arbitrary and discriminatory and violates the Fundamental Rights of the Petitioner guaranteed under the provisions of Article 14 and 16 of the Constitution of India.

(B) Because, the two circulars results into the curtailment of the valueable long period of service of



Ramesh Chandra Sankar

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the Petitioner and others without any rational basis as such they are arbitrary and mala fide and also results in the curtailment and delaying the chances of promotion of the Petitioner.

(C) Because, the two scales of seniority in the same class are also violative of the provisions of Article 14 and 16 of the Constitution of India.

(THEREFORE, it is most humbly prayed that this Hon'ble High Court may be pleased to issue :-

(i) A Writ, Order or Directions in the nature of Certiorari, to quash the notifications dated 22nd December 1959 and 12th April, 1978, being void, after summoning their originals from the records of the Opposite Parties

(ii) A Writ, Order or Command in the nature of Mandamus, commanding the Opposite Parties to count the seniority from the date of appointment and make promotions accordingly, with all consequential benefits.

(iii) Any other writ, order or directions deemed proper.

(iv) Waive off the notice to the Opposite Parties as the matter is MOST URGENT.

(v) Allow the Writ Petition with costs.

DATED: LUCKNOW:
MARCH 15, 1982.

Ramesh Chandra Sanyal

A. Channan
Counsel for the Petitioner.

There is no defect in
This writ Petition.

A. Channan

- : 9 : -

(A/3)

D/20

IN THE HON'BLE HIGH COURT OF JUDICATURE, AT ALLAHABAD:
LUCKNOW BENCH, LUCKNOW.

WRIT PETITION NUMBER OF 1982.



Ramesh Chandra Saxena. ... Petitioner.

Versus.

Union of India and Others. Opposite Parties.

A F F I D A V I T.

I, Ramesh Chandra Saxena, aged about 44 years,
Son of Shri Ram Chandra Saxena, Resident of 244/84, Yahiya-
Ganj Road, Lucknow, states on oath as under :-

1. That the deponent is the Petitioner in the above
mentioned Writ Petition, as such he is fully conversant
with the facts and the circumstances stated in the said
Writ Petition.

2. That the contents of paragraph number 1 to 22
of the Writ Petition are true to my own knowledge.

3. That the deponent, himself, has compared the
Annexure Number 1 to 3, either with the copies maintained
by him, or served upon him, or as could be fetched by him,
and they are their true copies.

DATED: LUCKNOW:
JANUARY, 1982.

March 14

Ramesh Chandra Saxena
(Ramesh Chandra Saxena)
Deponent.



- : 10 : -

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VERIFICATION.

I, the above named deponent do hereby verify that the contents of paragraph number 1, 2 and 3 of this affidavit are true to my own knowledge. Nothing in it is wrong and nothing material has been concealed, so help me GOD.

DATED: LUCKNOW:
JANUARY 14, 1982.
March

Ramesh Chandra Saxena
(Ramesh Chandra Saxena)
Deponent.

I know the deponent, identify him, who has signed before me.

DATED: LUCKNOW:
JANUARY 14, 1982. Clerk to Shri Abdul Mannan, Advocate
March Counsel for the Petitioner.

D. N. Tewari

Solemnly affirmed before me on this the 14th day of ~~January~~ *March*, 1982, at 8 a.m./p.m., by Shri Ramesh Chandra Saxena, the deponent, who has been identified by the clerk to Shri Abdul Mannan, Advocate, Allahabad High Court, Lucknow Bench, Lucknow.

I have satisfied myself by examining the deponent that he fully understands the contents of this affidavit, which has been read out and explained by me.



Kneel
OATH COMMISSIONER,
High Court, Allahabad,
Lucknow Bench

No. 318 of 1982
Date 14-3-1982

भारतीय डाक-तार विभाग
कार्यालय जिला प्रबन्धक टेलीफोन लखनऊ -226001

xx

Annexure No I

संख्या: ज्ञा०सं०-सस०टी०-37/10/142

लखनऊ में दिनांक- 30/12/78

निम्नलिखित समय मान लिपिकों को उनके सम्मुख अंकित तिथि से स्थायी/अन्तर्लयेन किया जाता है तथा उनके सम्मुख दृश्य स्थानों में अनन्तिम रूप से व्यवस्थापित किया जाता है। यदि किसी कर्मचारी को इस संबंध में यदि कोई आपत्ति हो तो वह लिखित रूप में साक्ष्य सहित इस पत्र के प्राप्त होने के एक माह के अन्दर इस कार्यालय को भेजे समय व्यतीत हो जाने पर इस संबंध में कोई कार्यवाही नहीं की जायेगी तथा इस सूची को अन्तिम रूप दे दिया गया है।

क्रम सं०	नाम	तिथि	रिक्त स्थान
46	श्री. रमेशा चन्द्र सक्सेना	रू 1-3-78 स्थायी	इस कार्यालय के ज्ञा०सं०सस०टी०-115/ 2/11 दिनांक-13-12-78 स्वीकृत

यह आदेश उच्च न्यायालय इलाहाबाद लखनऊ बेंच में निपटारे के लिए विचाराधीन श्री. सुरेश चन्द्र तिवारी वगैरह बनाम भारत सरकार रिट पेटिशन नं०-62/1974 में लिए गये निर्णय के अनुसार परिवर्तित कर दिया जायेगा।

मंडलीय अभियन्ता फोन्स
लखनऊ टेलीफोन

प्रतिलिपि :-

समस्त इकाई अधिकारी लखनऊ टेलीफोन्स - अतिरिक्त प्रतिलिपि सहित संबंधित कर्मचारियों से पावती लेकर दे दिया जाये तथा इसकी प्रतिलिपि सूचना पटल पर भी लगा दी जाये x। यदि कोई प्रतिवेदन प्रप्ति हो इस कार्यालय को एक महीने के अन्दर अवश्य भेज दिया जाये।

-- लेखाधिकारी टी०एस० लखनऊ टेलीफोन्स को अतिरिक्त प्रतियों सहित कर्मचारियों की वैयक्तिक पत्रावली एवं सेवा पुस्तिका में प्रविष्टी हेतु।

-- जिला प्रबन्धक टेलीफोन कानपुर।

-- समस्त मंडलीय अभियन्ता फोन्स/तार उ०प्र० परिमंडल।

-- समस्त प्रान्तीय मंत्री युनियन लखनऊ टेलीफोन।

मंडलीय अभियन्ता फोन्स -
लखनऊ टेलीफोन

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Provided that where persons promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their promotion, seniority shall follow the order of confirmation and not the original order of merit.

(ii) Where promotions to a grade are made from more than one grade, the eligible persons shall be arranged in separate lists in the order of their relative seniority in their respective grades. Thereafter, the Departmental promotion Committee shall select persons for promotion from each list upto the prescribed quota and arrange all the candidates selected from different lists in a consolidated order of merit which will determine the seniority of the persons on promotion to the higher grade.

Note:- If separate quotas for promotion have not already been ^{prescribed} ~~prescribed~~ in the relevant recruitment rules, the Ministries/Departments may do so now, in consultation with the commission wherever necessary.

6. Relative seniority of Direct Recruits and Promotees

The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

7. Transferees:

- (i) The relative seniority of persons appointed by transfer to a Central Service from the Subordinate Offices of the Central Government or other Departments of the Central or State Government shall be determined in accordance with the order of their selection for such transfer.
- (ii) Where such transfers are effected against specific quotas prescribed in the recruitment rules therefore, the relative seniority of such transferees vis-a-vis direct recruits and promotees shall be determined according to the rotation of vacancies which shall be based on the quotas reserved for transfer, direct recruitment and promotion respectively in the recruitment rules.
- (iii) Where a person is appointed by transfer in accordance with a provision in the recruitment rules providing for such transfer in the event of non-availability of a suitable candidate by direct recruitment or promotion, such transferees shall be grouped with direct recruits or promotees, as the case may be, for the purpose of para 6 above. He shall be ranked below all

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direct recruits or promotees, as the case may be, selected on the same occasion.

8. Persons appointed on ad-hoc basis to a grade without consultation with the U.P.S.C. under Regulation 4 of the U.P.S.C. (Exemption from Consultation) Regulations, 1958 are to be replaced by persons approved for regular appointment by direct recruitment, promotion or transfer, as the case may be, Until they are replaced, such persons will be shown in the order of their ad-hoc appointment and below all persons regularly appointed to the grade.

Explanatory Memorandum

General Principle 4: The Union Public Service Commission invariably indicate the order of preference at the time of selection and it will not, therefore, be different to determine the relative seniority of persons recruited through the Commission. In order to obviate difficulties in determining the relative seniority of direct recruits recruited otherwise than through the U.P.S.C., the selecting authority should indicate the order of merit at the time of selection.

General Principle 5(i): Where promotions are made on the basis of selection by a D.P.S., the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior, such person shall not if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.

General Principles 5(ii) : Illustration: Where 75% of the vacancies in the grade of ~~Upper Division Clerk and~~ Head Clerk are reserved for promotion from the grade of Upper Division Clerk and 25% from the grade of Store-Keeper, the eligible Upper Division Clerks and Store-Keepers shall be arranged in separate lists with reference to their relative seniority in those grades. The D.P.C. will make selection of three candidates from the list of U.D.C. and 1 from the list of Store-Keepers. Thereafter the selected persons from each list shall be arranged in a single list in a consolidated order of merit assessed by the D.P.C. which will determine the seniority of the persons on promotion to the higher grade.

General Principles 6: A roster should be maintained based on the reservation for direct recruitment and promotion in the Recruitment Rules. Where the reservation for each method is 50%, the roster will run as follows:-

(1) Promotion, (2) Direct Recruitment (3) Promotion, (4) Direct recruitment and so on. Appointment should be made in accordance with this roster and seniority determined accordingly.

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and Ganapathi Kini respondents should be length of service in accordance with the office Memorandum dated June 22, 1949 issued by the Ministry of Home Affairs, as claimed by the said respondents or whether it should be the date of confirmation, as claimed by the appellants, is the main question which arises for decision in civil appeals Nos. 1845 and 1846 of 1968 which have been filed by the Union of India and two others by special leave against the judgement of Mysore High Court. Similar question arises in respect of the seniority of Suresh Kumar and Tara Chand Jain respondents in Civil appeal No. 50 of 1969 which has been filed by the Union of India and two others on a certificate granted by the Punjab and Haryana High Court against the judgement of that Court reversing in Letters Patent appeal the decision of the single judge and issuing a writ in favour of those respondents. The High Court held in all the cases that the seniority of the concerned respondents should be determined on the basis of the length of service in accordance with the above mentioned office Memorandum.

Before giving the facts of the three cases, it would be pertinent to refer to two Office Memorandum issued by the Ministry of Home Affairs. One of the memoranda is dated June 22, 1949. It was mentioned in this memorandum that the Government of India and under consideration the question of the fixation of seniority of displaced government servants and temporary employees in the various grades. Employees of the Central Government who were displaced from their Offices in Pakistan, according to the memorandum, had been absorbed in offices under the control of the same administrative Ministry or nomination by the transfer bureau of the Ministry of Home Affairs in other offices. All those persons had been appointed, with a few exceptions, on temporary basis. The Ministry of Home Affairs accordingly conveyed the following decision:

consultation

'It has now been decided in ~~consultation~~ with the Federal Public Service Commission that the question of seniority in each grade should also be examined in the same context and specific rules suitable for each service prescribed in framing those instructions. The question of seniority of Assistants in the Secretariat was recently examined very carefully in consultation with all the Ministries and Federal Public Service Commission and the decisions

Respectfully Submitted,



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reached are incorporated in para 8 of the 'Instructions for the initial constitution of the grade of Assistants' an extract of which is attached. It has been decided that this rule should generally be taken as the model in framing the rules seniority for other services and in respect of persons employed in any particular grade seniority should, as a general rule, be determined on the basis of the length of service in that Grade irrespective of whether the latter was under the Central or Provincial Government in India or Pakistan. It has been found difficult to work on the basis of 'Comparable', posts ~~if~~ or grades and it has therefore been decided that 'service in an equivalent Grade' should, generally be defined as service on a range of pay higher than the minimum of the time scale of the grade concerned. The seniority of persons appointed on permanent or quasi-permanent basis before 1st January, 1944, should, however, not be disturbed.'

Direction was accordingly issued by the Ministry of Home Affairs that the principles given in the Memorandum be borne in mind in determining the seniority of 'Government servants of various categories employed under the Ministry of Finance, etc.,' On December 22, 1959 another Office Memorandum was issued by the Ministry of Home Affairs on the subject of the general principles for determining seniority of various categories of persons employed in Central Services. Material part of this memorandum was as under.

'The instructions contained in this Ministry's office Memorandum No. 30/44/48-App'tts. dated the 22nd June, 1949 were issued in order to safeguard the interests of displaced Government servants appointed to the Central Services after partition. As it was not possible to regulate the seniority of only displaced Government servants by giving them credit for previous service, the instructions were made applicable to all categories of persons appointed to Central Services. The principles contained in the 22nd June, 1949, Orders were extended to:-

(i) Ex-Government servants of Burma appointed to Central Services and

(ii) The employees of former part 'B' States taken over to the Centre as a result of Federal Financial Integration.

The instructions contained in this Ministry's office Memorandum No. 32/10/49-CS dated the 31st March, 1950 and No. 32/49-CS (C) dated the 20th September, 1952 similarly regulate the seniority of candidates with war service appointed to the Central Services.

2. The question has been raised whether it is necessary to continue to apply the instructions contained in the Office Memoranda cited above. Displaced Government servants have by and large been absorbed in the various Central Services and their seniority has been

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in the various Central Government Services and their seniority has been fixed with reference to the previous service rendered by them. Similarly, the seniority of employees of the Government of Burma and of Par 'B' States as well as candidates with war service has already been determined in accordance with the instructions cited above. As the specific objects underlying the instructions cited above have been achieved, there is no longer any reason to apply those instructions in preference to the normal principles for determination of seniority. It has, therefore, been decided in consultation with the Union Public Service Commission, that hereafter the seniority of all persons appointed to the various Central Services after the date of these instructions should be determined in accordance with the ~~General~~ General Principles annexed herewith.

3. The instructions contained in the various office memoranda cited in paragraph 1 above are hereby cancelled, except in regard to determination of seniority of persons appointed to the various Central Services prior to the date of this office Memorandum. The revised General Principles embodied in the Annexure will not apply with retrospective effect, but will come into force with effect from the date of issue of these orders, unless a different date in respect of any particular service /grade from which these revised principles are to be adopted for purposes of determining seniority has already been or is hereafter agreed to by this Ministry. Relevant parts of paragraphs 2, 3 and 4 of the Annexure to this Memorandum were as under:

"2 Subject to the provisions of para 3 below persons appointed in a substantive or officiating capacity to a grade prior to the issue of these general principles ~~and~~ shall retain the relative seniority already assigned to them or such seniority as may hereafter be assigned to them under the existing order applicable to their cases and shall en-block be senior to all others in that grade.

"3. Subject to the provisions of para 4 below, permanent officers of each grade shall be ranked senior to persons who are officiating in that grade.

"4. Direct Recruits:

Notwithstanding the provisions of para 3 above, the relative seniority of all direct recruits shall be determined by the Order of merit in which they are selected for such appointment, on the recommendations of the U.P.S.C. or ~~the~~ other selecting authority persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

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Ravi Varma, respondent No. 1 in Civil Appeal No. 1845 of 1968 was appointed as an Inspector in the Central Excise Collectrate in Madras on 27-5-1947 and was confirmed on 7-4-56. Ganapathi Kini, respondent No 1 in Civil Appeal No. 1846 were appointed as an Inspector in the Central Excise Collectorate in Madras on 28-5-47. In view of the was service rendered by Ganapathi Kini his service for purpose of seniority was computed with effect from 10-1046 and he was confirmed on 7-4-56. Ganapathi Kini and Ravi Varma were ~~shown~~ ~~xxxxxx~~

shown at serial Nos 115 and 141 in acc ordance with the length of service in seniority list of inspectors prepared in 1959. Subsequently on the directions of the Central Board of Revenue contained in letter dated October 19, 1962, a review seniority list was prepared in 1963 by computing seniority from the date of confirmation. In the ~~revised~~ ~~xxxxxx~~ ^{ccc} _{ccc} revised list Ganapathi Kini and Ravi Varma were shown as serial Nos. 149 and 150, junior to persons to whom they had been shown senior in the earlier seniority list. Ganapathi Kini and R vi Varma thereupon filed petitions under article 226 of the Constitution of India praying for quashing the revised seniority list prepared in 1963. The main ground taken in the writ petitions was that the seniority should be determined according to length of service in terms of Office Memorandum dated June 22, 1949 of the Ministry of Home Affairs. Impleased in the writ petitions as respondents were the Union of India, the Central Board of Revenue and the Collector of Central Excise as also those inspectors of General Excise who, according to the petitioners, were Junior to them but who on account of being shown senior to the petitioners in the revised seniority list has been appointed as Senior Grade Inspectors of Central Excise.

The above mentioned writ petitions were resisted by the appellants. The learned judges of the Mysore High Court referred to the moranda dated June 22, 1949 and held that the altered rule embodied in the Memorandum dated December 22, 1959 for the determination of seniority would be inapplicable to persons appointed before June 22, 1949 like Ganapathi Kini. Argument was advanced on behalf of the appellants that on July 3, 1957 the Central Board of Revenue had again adopted the rule that the date of the confirmation should from the basis for determination of seniority. This argument did not find favour

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with the learned judges and it was observed:

" But what is however clear is that in the case of a person like the petitioner who was appointed before June 22, 1949 the rule made by the Ministry of Home Affairs on that date was what constituted the basis for the determination of seniority and not the rule which was revived by the Central Board of Revenue on July 3, 1957."

Direction was accordingly issued that Ganapathi Kini's seniority should be determined on the basis of the formula contained in the office Memorandum dated June 22, 1949 and the revised seniority list be rectified accordingly.

In the petition filed by Ravi Varma the High Court made a short order wherein, after referring to the decision in the case of Ganapathi Kini, the learned Judges granted similar relief to Ravi Varma.

Suresh Kumar, respondent No.1 and Tara Chand Jain, respondent No. 2 in Civil Appeal No 50 of 1959 were appointed as Lower Division Clerks in the Medical Stores Depot, Karnal under the Directorate General of Health Services on October 9, 1950, and November 26, 1951 respectively. Both of them were confirmed on March 31, 1960. In the seniority list which was prepared in accordance with Office Memorandum dated June 22, 1949 Suresh Kumar and Tara Chand Jain, respondents were shown at Serial Nos 32 and 34 in accordance with their length of service. Subsequently Memorandum dated June 19, 1963 was received from the Directorate General of Health Services in which there was a reference to the Ministry of Home Affairs Office Memorandum from the Directorate General of Health service that scheduled castes and scheduled tribes ~~xxxx~~ candidates who were confirmed in reserved vacancies would rank senior to temporary, including quasi-permanent persons irrespective of their positions in the seniority list. A revised seniority list was thereafter prepared and a number of scheduled castes candidates who had been recruited later but had been confirmed earlier than Suresh Kumar and Tara Chand Jain were shown senior. Suresh Kumar and Tara Chand Jain were thus shown ~~senior~~ at serial Nos 40 and 42 in the revised seniority list. Suresh Kumar and Tara Chand Jain ~~xxxxxxx~~ thereafter filed petition under article 226 and 227 of the Constitution of India dated June 19, 1963 issued by the Directorate General of Health Services as well as the revised seniority list and other consequential reliefs. Impleaded as respondents in the petition were the Union of India, the Director General of

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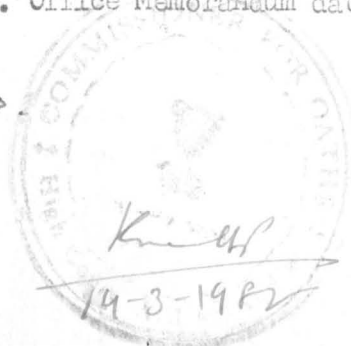


Health Services. The Deputy Assistant Director General Medical Stores, as well as 10 other scheduled castes employees of the Medical Stores Depot Karnal who had been shown senior to the petitioners in the revised seniority list.

The above petitions were resisted by the appellants and were dismissed by the learned single judge. On letters Patent appeal the judgement of the single judge was reversed and it was held that Suresh Kumar and Tara Chand Jain having appointed prior to December 22, 1959 were governed by the rule of seniority contained in the Office Memorandum dated June 22, 1949 issued by the Ministry of Home Affairs. This position in the opinion of the learned judges, was not affected by the subsequent office Memorandum issued by the Ministry of Home Affairs. So far as the Memorandum dated June 19, 1963 issued by the Directorate General of Health Services was concerned, it was found to be not in consonance with the Office Memorandum issued by the Ministry of Home Affairs on June 22, 1949 and December 22, 1959. As such, the Memorandum issued by the Directorate General of Health Services, according to the learned Judges, could not affect the seniority of Suresh Kumar and Tara Chand Jain. In the result the revised seniority list was held to be invalid and the Union of India and two other appellants were directed to prepare a revised seniority list in accordance with the Original seniority of Suresh Kumar and Tara Chand Jain.

The learned Solicitor General on behalf of the appellants has at the outset referred to Memoranda dated June 22, 1949 and December 22, 1959 issued by the Ministry of Home Affairs and has argued that after the issue of the latter Memorandum the seniority of all Central Government employees should be determined by the date of their confirmation and not on the basis of the length of service. In this connection we find that the migration of a large number of Government employees after the partition of the country from areas now forming part of Pakistan resulted in a situation wherein the Government had to review the rules relating to seniority. As most of those displaced Government servants had been employed on temporary basis and as it was felt that they should be given some weightage in the matter of seniority on compassionate grounds, the rule evolved that the seniority should be determined on the basis ~~and as it was felt that they should~~ length of service in equivalent grades. The seniority of persons appointed on permanent basis or quasi-permanent basis before January 1, 1944 was however, left undisturbed. Further, as it was not possible to regulate the seniority of only displaced Government servants by giving them credit for previous service the instructions were made applicable to all categories of persons appointed to Central services. Office Memorandum dated June 22, 1949

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was consequently issued. The above principles were also extended to other category of Government employees, including those with was service.

The matter was reviewed thereafter in 1959. The Government then found that displaced Government servants had by and large been absorbed in the various Central services and their seniority had been fixed with reference to the previous service rendered by them. Some was found to be the position of other Government servants who had been given the benefit of the principles contained in memorandum dated June 22, 1949 had been achieved and it was no longer considered necessary to apply those instructions in preference to the normal principle for determination of seniority, it was decided that the seniority of Central Government employees would henceforth be determined in accordance with the general principles contained in Annexure to the Office Memorandum issued by the Ministry of Home Affairs on December 22, 1959. One of those principles was that permanent officers of each grade would be ranked senior to persons who were officiating in that grade. The effect of that, as submitted by the learned Solicitor General, was that the seniority was to be determined by the date of confirmation and not on the basis of length ~~xxx~~ of service as was the rule contained in the office Memorandum dated June 22, 1949. ~~As the objects and underlying the instructions of June 22, 1949 had been achieved and it was no longer considered necessary to apply these instructions in prefer~~

The Office Memorandum dated December 22, 1959, however, expressly made it clear that the general principles embodied in the Annexure thereto were not to have retrospective effect. In order to put the matter beyond any pale of controversy, it was mentioned that thereafter the seniority of all persons appointed to the various Central Services from the date of these instructions should be determined in accordance with the general principles annexed hereto. It is, therefore, manifest that except in certain cases with issue which we are not concerned, the Office Memorandum dated December 22, 1959 and the provisions laid down in the Annexure thereto could not apply to persons appointed to the various Central Services before the date of ~~the~~ that Memorandum.

It may also be mentioned that while dealing with the above Memorandum, this Court in the case of Mervyn Coutinho & Ors. V Collector of Customs, Bombay & Ors () observed that these principles were not apply retrospectively but were given effect from the date of their issue, subject to certain reservations with which we are not concerned.

(1) (1966) 3 S.C.R. 600

It has next been argued by the learned Solicitor General that whatever might be the position in respect of the employees in other Central Services, so far as the clerks, supervisors and inspectors under the Central Board of



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(1) (1966) 3 S. C. R. 600

It has next been argued by the learned Solicitor General that whatever might be the position in respect of the employees in other Central Services, so far as the clerks, supervisors and inspectors under the Central Board of Revenue are concerned, a decision was taken that for purposes of promotion, the permanent employees should have precedence before non-permanent employees. Our attention in this connection has been invited to letter dated March 15, 1958 sent by the Central Board of Revenue to All Collectors of Central Excise. In this letter there was a reference to an earlier letter dated July 3, 1957 from the Board and it was mentioned that the instructions contained in the earlier letter that for purposes of promotion from ministerial grade to inspectors grade, permanent clerks would first be considered before considering persons who were non-permanent, should be followed in respect of promotions to other grades also. The Solicitor General accordingly contends that the directions contained in the Memorandum dated December 22, 1959 that it could not apply to employees appointed before that date would not hold good in the case of clerks, supervisors and inspectors functioning under the Central Board of Revenue. It is, in our opinion, not necessary to go into this aspect of the matter because we find that the Central Board of Revenue, as per letter dated August 27, 1971 addressed to all collectors of Central Excise gave fresh instructions regarding the principles of seniority. In this letter there was a reference to the Office Memorandum dated December 22, 1959 issued by the Ministry of Home Affairs and it was stated:

'In supersession of all previous orders on the subject it has now been decided that in so far as the non-gazetted staff ~~in the~~ in the Central Excise Customs and Narcotics Departments and other subordinate offices are concerned, the seniority of persons appointed to various posts and services after receipt of these orders should be regulated in accordance with the Ministry of Home Affairs O.Ms ~~referred~~ referred to above.'

It would follow from the above that so far as the non-gazetted staff in the Central Excise, customs and Narcotics Departments and ~~other~~ other subordinate officers are concerned, the question to be decided in accordance with the Office Memorandum dated 19-10-1959. As the said office Memorandum has, except in certain cases with which we are not concerned, applied the rule of seniority contained in the Annexure thereto only to employees appointed after the date of that Memorandum, there is no escape from the conclusion that the seniority of Ganapathi Kini and Ravi Varma, respondents, who were appointed prior to December 22, 1959, would have to be determined on the basis of their length of service in accordance with office Memorandum dated June 22, 1949 and not on the basis of the date of their confirmation.

In Civil appeal No. 50 of 1969 the learned Solicitor General has referred to office Memorandum dated January 28, 1952 April 20, 1961 and March 27, 1963 issued by the Ministry of Home Affairs to show a departure from the rule of seniority for the benefit of members of



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and not on the basis of the date of their confirmation.

In Civil appeal No. 50 of 1969 the learned Solicitor General has referred to office Memorandum dated January 28, 1952 April 20, 1961 and March 27, 1963 issued by the Ministry of Home Affairs to show a departure from the rule of seniority from the benefit of members of scheduled castes and scheduled tribes. Office Memorandum dated January 28, 1952 makes provision for communal representation in services for candidates belonging to scheduled castes and scheduled tribes as also the Anglo Indian Community. The Memorandum gives a model roster which should be applied in filling the vacancies. Persusal of the Memorandum shows that it relates only to recruitment and has nothing to do with the rule of seniority.

Office Memorandum dated April 20, 1961 deals with the question of seniority of direct recruits who were confirmed in an order different from the original order of merit. According to the Memorandum, it often happens that a scheduled caste or scheduled tribe candidates occupying a lower position in the merit list is appointed permanently to a reserved vacancy, while candidates occupying a lower position in the merit list is appointed permanently to a reserved vacancy, while candidates above him in the merit list are not appointed at that time. If such candidates are appointed in the following year, they are not entitled to a higher seniority on the ground that in the previous year they had obtained a higher position in the merit list. It is plain that the above office Memorandum did not deal with the question of seniority on the basis of length of service as contained in Office Memorandum dated June 22, 1949 but with the question as to what would be the effect if a direct recruit scheduled caste or scheduled tribe candidate through occupying a lower position in the merit list, is confirmed earlier in a reserved Vacancy. We are in the present case not concerned with any merit list nor with any question of seniority based on such a list. As such, Office Memorandum dated April 20, 1961 is also of not any material help to the appellants. It may be stated that the counsel ~~is~~ for the appellants in the High Court conceded that the above Memorandum had no direct relevance in the present controversy.

The third Memorandum dated March 27, 1963 referred to by the learned Solicitor General deals with the subject of maintenance of roster for giving effect to the reservations provided for scheduled

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castes and scheduled tribes in Central Government services. This memorandum has bearing only on the question of recruitment provides no guidelines for determining seniority. We thus, find that none of the three Office Memoranda relied upon by the Solicitor General is of any material assistance to the appellants.

We may now advert to the Memorandum dated June 19, 1963 issued by the Directorate General of Health Services. As mentioned earlier, it was after the receipt of this Memorandum that the seniority list of class III employees of the Government Medical Stores Depot, Kamal was revised and the seniority was determined on the ~~basis~~ basis of the date of confirmation and not on the basis of length of service. The above Memorandum from the Directorate General of Health services expressly refers to the Office Memorandum dated December 22, 1959 issued by the Ministry of Home Affairs and seeks implementation of that. It is no doubt true that a direction was given in the Memorandum of the Directorate General of Health Services that scheduled caste and scheduled tribe candidates confirmed in reserved vacancies should be ranked senior to temporary; including quasi-permanent persons, irrespective of their position in the seniority list, but such a direction went beyond the rule of seniority list, ~~but such a direction went~~ contained in the Office Memorandum dated December 22, 1959 issued by the Ministry of Home Affairs ~~in~~ in respect of employees appointed before that date. As mentioned earlier office Memorandum dated December 22, 1959 did not disturb the seniority of Central Government employees who had been appointed ~~before~~ prior to the date of that Memorandum except in certain cases with which we are not concerned. It is not disputed that according to the Government of India Allocation of Business Rules, 1961 general questions relating to recruitment, promotion and seniority in Central Services like the one with which we are concerned, have to be dealt with by the Ministry of Home Affairs. As Suresh Kumar and Tara Chand Jain, respondents, were appointed prior to December 22, 1959 their seniority was governed by the rule of length of service as contained in Office Memorandum dated June 22, 1949 and not by the rule based upon date of confirmation as contained in the Annexure to the Memorandum dated December 22, 1959.

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Reference was made by the learned Solicitor General to the case of Rosal Lal Tandon V Union of India (2) wherein it has been laid down that the service rules may be framed and altered unilaterally by the Government. No occasion for invoking the above dictum arises in this case because the learned counsel for the contesting respondents have not questioned the right of the Government to frame and later unilaterally the service rules.

In the result, all the three appeals fail, and are dismissed with costs.

One hearing fee.

Sd/- J.M. Shalat.....J.

Sd/- I.D. DuaJ.

Sd/- H.R. Khanna.....J.

Sd/- G.K. Mitter.....J.

(2) (1968) 1 S.C.R. 185

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52/ Annexure No 3

BHARTIYA DAK TAR VIBHAG.

Copy of communication letter No.45/1/74/SPB-II dated 12th April 1978 from the D.G.P&T New Delhi to the D.M.T.Lucknow etc.

Subject:-Preparation of Circle Gradation lists of officials belonging to the cadres of Clerks, Sorters, Telephone Operators etc. in the operative offices appointed during the period from 22.6.49 to 21.12.1959- Principles to be adopted.

I am directed to invite a reference to this office letter No.45/17/57-SPB-II dated the 30th April 1959 containing principles to be adopted for preparation of Circle Gradation List of clerical and allied cadres; this office letter No.45/2/72-SPB dated 7.10.1972 forwarding a copy of cabinet secretariat Department of personnel and Administrative Reforms Office Memorandum No.9/3/72-Ests(D) dated 22.7.1972 alongwith its annexure regarding general principles to be followed for determining the seniority of various categories of persons employed in Central Services consequent on the judgement of the Supreme Court dated 4.1.1972 on Civil Appeals Nos.1845 of 1968, 1846 of 1968 and 50 of 1969; and this office letter No.45/2/72/SPB-II dated 28.2.73 containing certain clarifications in respect of the instructions contained in Department of personnel and Administrative Reforms office Memorandum No.9/3/72-Ests(D) dated 22.7.72. The matter has been further examined in detail in consultation with Department of Personnel and Administrative Reforms and Ministry of Law Justice and Company affairs consequent on the judgement of Orrissa High Court date 14.8.74 in Writ Petition No.65 of 1972 and the judgement of Madras High Court dated 2.1.1974 in Writ Appeal No.240 of 1972 and the following decisions have been taken to revise the seniority of Clerks, Sorters, Telephone Operators etc. appointed in the operative Offices of the Department between the period from 22.6.1949 to 21.12.1959:-

2. The seniority of all persons appointed to the cadres referred to above during the period from 22.6.49 to 21.12.59 may be revised except in the cases of the categories mentioned below on the basis of length of continuous service in the grade as well as service in an equivalent grade in accordance with the instructions issued in Ministry of Home Affairs Office Memorandum No.30/44/48-Apptts date 22.6.49 (reproduced in Director General's General Circular No.23 dated 5.12.49).

- (a) The persons who were initially appointed as Clerks, sorters, Telephone Operators on an adhoc basis as unapproved candidates and were subsequently exempted from passing the recruitment examination by virtue of their having put in a particular service limit on a particular date.
- (b) Persons who failed to pass the confirmation examination within period and chances prescribed in the Rules.
- (c) Persons transferred from one circle to another from one arm of service to another etc. under Rule 38 of P & T Manual Volume IV after having given a declaration prescribed in the rule ibid.

The seniority of the categories of persons mentioned above as an exception to the general principle may continue to be fixed in the following manner:-

- (1) The seniority of the exempted category of persons may be fixed by counting their length of service in the grade from the date from which they were exempted from appearing in the recruitment examination.
- (2) The persons who failed to pass the confirmation examination within the prescribed period and prescribed number of chances may be fixed from the date of their passing the confirmation examination in the

Contd. on page.....2

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special chance or from the date of their being exempted from passing the confirmation examination as per the note (2) below Rule 254 of P & T Man. Volume IV.

- (3) The seniority of transferees under Rule 38 of P & T Man. Volume IV is to be fixed according to the provisions of the Rule *ibid* as amended from time to time and as it existed at the time of transfer ~~from~~ of a particular employee.

3. The promotions and confirmation made in the L.S.G. ~~xxx~~ prior to 4.1.1972 will not be affected consequent on revision of seniority in the manners mentioned above. In other words the Time Scale Clerks, Sorters, Telephone Operators etc. promoted to L.S. before 4.1.1972 and not confirmed in that grade on the basis of old seniority will not be reverted from L.S. even if they become too junior in the Time Scale cadre on the basis of revised seniority to ~~xxxx~~ be retained in the higher grade. Such of these officials as have been confirmed in L.S. after 3.1.72 on the basis of old seniority will have to be revised on the basis of their revised seniority in the Time Scale cadre. For this purpose it may be necessary in some cases to create permanent superannumery posts in L.S.G. cadres to accommodate the liens of the persons who will become senior on the basis of the revised seniority. The full details of such cases may be intimated to this office for further necessary action.

4. Expeditious and time bound action may be taken to revise the seniority gradation lists, if necessary by creating special cells in the Circle Office for the purpose. It is requested that the review of seniority in the light of the decisions being communicated in this ~~letter should be~~ letter should be completed within a period of two months from the date of issue of this letter and compliance reported to this office.

Hindi version will follow.

Sd/-

Assistant Director General (SPN)
(SPN)

Ramesh Chandra Saxena

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14-3-1972

IN THE HON'BLE HIGH COURT OF JUDICATURE, AT ALLAHABAD:
LUCKNOW BENCH, LUCKNOW.

Civil Misc. Application No. 2408 (W) of 1982:

In Re :

WRIT PETITION NUMBER 1210 OF 1982.



Ramesh Chandra Saxena. Petitioner / Applicant.

Verrsus.

Union of India and Others. Opposite Parties.

AN APPLICATION FOR THE INTERIM RELIEF.

The above named Petitioner - Applicant most respectfully submits as under :-

1. That through the above mentioned Writ Petition, the applicant has challenged the method of determination of seniority of the Time-Scale Clerks in the department of Tele-Communications and on the basis of such seniority the promotions are going to be made to the post of the Sectional Supervisors in which the applicant will suffer irreparable loss.

THEREFORE, it is most humbly prayed that the Opposite Parties be restrained from making promotions on the scale of seniority provided in the Notifications dated 22.12.1959 and 12.4.1978, for the reasons already disclosed in the Writ Petition and affidavit, pending the disposal of the Writ Petition in the interest of justice.

DATED: LUCKNOW:
MARCH 15, 1982.

A. Mannan
Counsel for the Petitioner/
Applicant.

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH), LUCKNOW.

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Civil Misc. Application No. of 1982.

In re:

Writ Petition No. 1210 of 1982.

Ramesh Chandra Saxena... ..Petitioner

Versus

Union of India and others... ..Oppo. Parties.

The humble petition of the opposite parties
respectfully sheweth:-

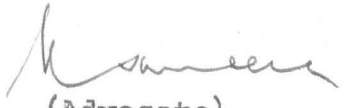
1. That in the above noted matter instructions have to be obtained from the Department of Personnel & Administrative Reforms and Ministry of Law which is likely to take some time.
2. That in the circumstances, it is desirable that hearing of admission and the stay application

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be postponed for a period of three months, during which, in order to safeguard the interest of the petitioner, an undertaking is hereby given that promotion to the "20% Lower Selection Grade" ^(Clerks) cadre will not be made.

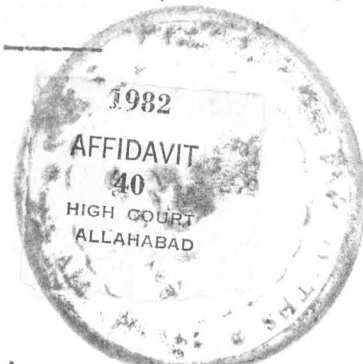
Wherefore, it is prayed that the ~~admission~~ ~~hearing and~~ the hearing of the stay application be adjourned for a period of three months on the undertaking of the opposite parties that the promotion in the "20% Lower Selection Grade" ^(Clerks) cadre will not be made in the meanwhile.

Dated: Lucknow the,
April 22 , 1982.


(Advocate)
Counsel for the Opposite Parties

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH), LUCKNOW.



Affidavit in support of

Civil Misc. Application No.

of 1982.

In re:

Writ Petition No. 1210 of 1982.

Ramesh Chandra Saxena...

... Petitioner

Versus

Union of India and others... Oppo. Parties.

AFFIDAVIT ON BEHALF OF OPPOSITE PARTIES

I, Raj Kumar Bhargava, aged about 49 years,

son of Late Shri S.L.Bhargava, resident of 6, Posts

& Telegraphs Officers Colony, Aliganj, Lucknow, do

hereby solemnly affirm and state on oath as under:-

1. That the deponent is the Divisional Engineer, Telegraphs, Lucknow Division, Bhopal House, Lalbagh, Lucknow and is well acquainted with the



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facts deposed to hereunder.

2. That in the above noted matter instructions have to be obtained from the Department of Personnel & Administrative Reforms and Ministry of Law which is likely to take sometime.

3. That in the circumstances, it is desirable that hearing ^Lof ~~admission and~~ ^Lthe stay application be postponed for a period of three months during which, in order to safeguard the interest of the petitioner, an undertaking is hereby given that promotion in the "20% Lower Selection Grade" ^(Clerks) cadre will not be made in the meanwhile.



Dated: Lucknow the,
April 21, 1982.


DEPONENT.

VERIFICATION.

I, the deponent above named, do hereby verify that the contents of para 1 of this affidavit

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are true to my own knowledge, those of para
are believed to be true on the basis of information
derived from perusal of office record whereas contents
of paras 2 & 3 are true to my belief on legal
advice. No part of it ~~is~~ is false and nothing material
has been concealed. So help me God.

Dated: Lucknow the,
April 9, 1982.

DEPONENT.

I identify the deponent who has signed in
my presence.

Shri B.L. Shukla
Clerk to Shri B.L. Shukla, Advocate, High Court Allahabad, Lucknow Bench, Lucknow.

Clerk to Shri B.L. Shukla,
Advocate, High Court Allahabad, Lucknow
Bench, Lucknow.

Solemnly affirmed before me on this 21stth
day of April, 1982 at 4.00 a.m/p.m. by the deponent
who is identified by Shri H.P. Swaraj, clerk
to Shri B.L. Shukla, Advocate, High Court Allahabad,
Lucknow Bench, Lucknow.

I have satisfied myself by examining the
deponent that he understands the contents of this
affidavit which have been explained and read by me
to him.



V. K. SINGH
JUDGE
Date 21/4/82

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In the Hon'ble High Court of Judicature at Allahabad,

at

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Lucknow.

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Civil Misc. Application No. of 1983. A/50

Filed in

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Writ Petition No. 1210 of 1982.



Ramesh Chandra Saxena. Petitioner.

Versus.

Union of India and others. Opp-parties.

2/1/84
Application for vacation of Stay order dated 22.4.1982.

That for the facts and reasons stated in the accompanying affidavit, it is prayed that the stay order dated 22.4.1982 passed on the undertaking of the opposite parties to the effect that no promotions shall be made for a period of three months shall be modified and it be ordered that the promotions may be made subject to the result of writ petition.

Lucknow dated:-

March 24, 1983.

Hari Nath Tilhari

(Hari Nath Tilhari)
Advocate.

Central Govt. Standing Counsel.

Not

Bechcopy is also being filed herewith
H. Tilhari

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In the Hon'ble High Court of Judicature at Allahabad,

at

L u c k n o w.

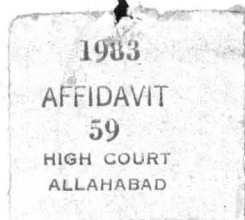
SHORT COUNTER AFFIDAVIT

In support of

Civil Misc. Application No. (W) of 1982.

In re:-

Writ Petition No. 1210 of 1982.



Ramesh Chandra Saxena.Petitioner.

Versus.

Union of India and others.Opp-Parties.

I, R.K.Bhargava, aged about 49 years, son of Shri S.L. Bhargava, Divisional Engineer Telegraphs, Bhopal House, Lalbagh, Lucknow, the deponent, do hereby solemnly affirm and state on oath as under:-



1.

That the deponent is the Divisional Engineer, Telegraphs, Lucknow Division, Lucknow and is well conversant with the facts deposed to hereunder.

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Memo

IN THE HON'BLE HIGH COURT OF JUDICATURE
AT ALLAHABAD-LUCK NOW BENCH
LUCKNOW

..... W.P. No 9290 of 19 CR

..... Petitioner,

रिनिशि 2125 एवएम

versus

..... Opposite Parties.

21-4-21 रिनिशि 2125

REGISTRAR,

I AM appearing as the Central Government
Standing Counsel, on behalf of Applicant/
Respondent/Opposite Parties.....

H. L. Lohari

Date 6..... 19 ..

Central Government
Standing Counsel.

inherently unobjectionable, should be allowed, but in order to safeguard the rights of men ~~more~~ in the gradation lists of both the offices, the official brought in should take place, in the new gradation list; that would have been assigned to him ^{in grad} ~~he~~ he been originally recruited in that unit or the place vacated by the official with whom he exchanges appointment, whichever is the lower.

Note:- Transfer of officials, who are not permanent in the grade, may, in deserving cases, be permitted without the personal approval of the Head of Circle/Administrative Office.

2. When an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order is issued, including also all persons who have been approved for appointment to that grade as on that date.

3. If the old and the new unit form parts of a wider unit ^{or} for the purpose of promotion to a higher cadre, the transferee (whether by mutual exchange or otherwise) will retain his original seniority in the gradation list of the wider unit.

Example (1):- A post office clerk transferred from Mehsara Division to Kira Division in the same circle

will not lose his seniority in the Circle Gradation list for Promotion to the lower selection grade.

Example (ii): A telephone operator transferred as an Engineering Clerk, even under the same DET will have his seniority regulated both in the Divisional and the Circle Gradation List of Engineering Clerks in accordance with sub-rule (2) as the Circle Gradation Lists of Telephone Operators and Engineering clerks is not common.

Example (III):- An RMS sorter transferred from the A. Division to the P. Division will have his seniority in the gradation list of P. Division as well of Behar Circle fixed in accordance with sub-rule (2).

Example (IV):- A Post office clerk transferred from Poona Division to the Bombay C.P.O. will have his seniority fixed in gradation list of Bombay C.P.O. ~~will have his seniority~~ as also of Bombay City Units in accordance with Sub-Rule (2) as the Bombay City Units and the Mufassil Units have separate gradation lists for promotion to lower selection grade.

Example (v):- A clerk transferred from one Zone to another in the ^{Stores} ~~Stores~~ organisation will have his seniority fixed in the gradation list of the new Zone in accordance with sub rule (2).

(4) A Permanent official transferred from one unit to another will retain his seniority in the old unit until



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he can be accommodated ^{in the} the new unit according to his position in the new unit. He will not however have any claim to go back to his old unit even though he holds lien there. A declaration to the effect that he accepts the seniority on transfer in accordance with this rule, and that, he will not have any claim to go back to the old unit, should be obtained ^{from} before an official is transferred under this rule. Any special privilege to which an official may be entitled by virtue of his position in the gradation list of the unit from which he is transferred will, ordinarily, be forfeited on his transfer to a new gradation list.

(5) The transfer of an official from one ^{in the} ~~unit~~ of service to another within or outside the Circle can be allowed only with the personal approval of the Head of Circle or Heads of Circles concerned and subject to the following conditions:-

- (a) the mode of recruitment to the Post to which the official seeks transfer is the same for the Post he is holding; and
- (b) Whenever additional qualifications are prescribed for appointment to a certain Post e.g. minimum height, freedom from colour blindness, etc. for the Post of Telephone Operators, the

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applicant should satisfy those conditions in all respects; wherever any training is required ~~xxxxxx~~ ~~xxxxxx~~ or Prescribed for the Post, the applicant must undergo that training satisfactorily and the period of such training must be covered by the official by taking leave due and permissible for the period.

21/10/53



IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT LUCKNOW

T.A. No. 19 (L)

Ramesh Chandra Saxena ... Applicant

Versus

Union of India & others ... Respondents

Rejoinder Affidavit to the Short Counter Affidavit sworn by Sri R.K.Bhargawa.

I, Ramesh Chandra Saxena, Aged about 54 years, Son of Sri Ram Chandra Saxena, Resident of 244/ 84, Yahiya Ganj, Road, Lucknow do hereby solemnly affirm and state on oath as under;

1. That the deponent is the claimant in the above mentioned application as such he is well conversant with the facts and circumstances of the case stated hereinafter. He has also read and understood the short counter affidavit filed on behalf of respondents. Parawise reply is as under;
2. That in reply to the contents of paragraph 1 of the short counter affidavit it is stated that Sri R.K.Bhargawa the then Divisional Engineer is not a party to the application nor he has been authorised by Opposite Parties 1 to 3 to file short counter affidavit on their behalf. As such the Hon'ble Tribunal may be pleased to reject the short counter affidavit.

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3. That in reply to the contents of paragraph 2 of the short counter affidavit, it is stated that the applicant has challenged the validity of the notification dated 22nd December, 1959 and 12th April, 1978 and has also prayed for determining the seniority in the clerical cadre from the date of initial appointment i.e. 3rd February, 1962 along with all consequential benefits of promotion etc.

4. That the contents of paragraph 3 of the short counter affidavit as alleged are wrong hence denied. It is stated that the notification dated 22nd December, 1959 and 12th April 1978 are bad and illegal as they prescribed that the seniority of the incumbent should be determined from the date of confirmation and not from the initial date of appointment which is contrary to the principles laid down by the Hon'ble Supreme Court in Patwardhan's case, Chauhan's case, Baleshwa Das's case. Also a constitutional bench of the Hon'ble Supreme Court has held that the seniority is to be counted from the date of his appointment and not according to his date of confirmation in direct recruit class II Engineering Officers association Vs. State of Maharashtra and others decided on 2nd May, 1990 reported in

5. That the contents of paragraphs 4 and 5 of the short counter affidavit as alleged are vehemently denied. It is stated that the validity of the office memorandum dated 22nd December, 1959 was ~~not~~ under challenge before the Hon'ble Supreme

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Court which was decided by this Hon'ble Supreme Court through a judgment reported in A.I.R. 1972 S.C. 670. The validity of the notification was not under challenge as such it cannot be said that the Supreme Court has upheld the said office memorandum .

6. That the contents of paragraphs 6 & 7 of the short counter affidavit are vehemently denied. It is stated that the notification dated 22nd December, 1959 and 12th April, 1978 are contrary to the Hon'ble Supreme Court judgment, as such it is bad and illegal. The petitioner is entitled for determination of his seniority in the clarifical cadre keeping in view his initial date of appointment i.e. 3rd February, 1962. According to rule 38 of P & T manual Volume IV, the applicant is entitled for seniority at the circle level on the basis of his initial appointment i.e. 3rd February, 1962. However, for the purposes of the divisional level seniority, it may be determined from the date of 4th December, 1967.

7. That the contents of paragraphs 8, 9 and 10 of the short counter affidavit are vehemently denied. It is stated that the applicant is entitled for seniority at the circle level keeping in view his initial date of appointment i.e. 4th December, 1967. The rule 38 of the of the P & T Vol. IV is not being

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properly understood by the respondents,
as such it is not being rightly applied in
the case of the applicant. The date of
confirmation cannot be a criterion for deter-
mination of seniority as ~~the~~ confirmation
is done keeping in view the permanent vacancy
at the local level in every offices. The
application is full of merits and deserves
to be allowed with cost.

Place: Lucknow

Dated:

Ramesh Chandra Jaiswal
DEPONENT

VERIFICATION

I, the above named deponent do hereby
verify that the contents of paragraphs 1 to 7 of
this affidavit are true to my personal knowledge.

Nothing material has been concealed and
no part of it is false, so help me God.

Signed and verified on this day of
April, 1991 at Lucknow.

Ramesh Chandra Jaiswal
DEPONENT.

I, identify the abovenamed deponent who
has signed before me.

Asit Kumar Chaturvedi
Advocate.

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH

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LUCKNOW

T.A. No. 1031/87
(W.P. No. 1210/82)

R.C. Saxena

Applicant

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. A.E. Gorthi, Adm. Member.

(Hon. Mr. Justice U.C.S., V.C.)

This is a transferred case under section 29 of the Administrative Tribunals Act, 1985. The applicant originally filed a writ petition before Lucknow Bench of the Allahabad High Court challenging the notification dated 22nd December, 1959 and 12th April 1978 as void and for a mandamus commanding the Respondents to count ^{his} ~~the~~ seniority from the date of appointment.

The petitioner started his service in the Postal and Telegraph Department of Government of India as time Scale Clerk. In the year 1967 the applicant sought his transfer from Kanpur Division to Lucknow Division on his request under para 38 of Post and Telegraph Manual with the result he was placed at bottom as per rule ⁱⁿ the new Division. According to the applicant that for promotion to the post of Sectional Supervisor from the post of Clerk in the seniority in a circle like U.P. circle is taken into account not divisional seniority in

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which even local and casual promotional arrangements are made. The confirmation on clerical posts according to the applicant are made amongst the clerks on the basis of allocation of permanent posts among the various divisions and also ignoring the basis length of service. The applicant's seniority on the basis of his confirmation in 1978.

In the Office Memorandum issued by Home Ministry Government of India dated 22nd June 1949/length of service and not confirmation to be the basis of determination of seniority while office memorandum of 22nd December, 1959 which provided determination of seniority from the date of confirmation neither touches clerks not even otherwise applies to him as he was appointed prior to 22nd December, 1959.

The validity of O.M. dated 22nd December, 1959 which he has challenged was not decided in the case of ^{Ravi} Rais Verma vs. Union of India (AIR 1972 SC 671) did not touch the question of validity and the seniority may be determined in this case as the same is arbitrary discriminatory and results into valuable long period of service, ^{lacks} asks any rational basis curtailing and delaying the chances of the promotion.

The gradation list prepared thereafter included the applicant's name and his junior including one who entered in service some 12 years thereafter was confirmed as on 1st March, 1977.

The D.G. Post and Telegraph vide circular dated 12.4.78 providing two criterion in the same class of employees and similarly placed having some qualification and experience. Those who joined before

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22nd December, 1959 are entitled to seniority with their length of service irrespective of the confirmation while those joining later can count seniority from the date of confirmation. This O.M. is confined to employees appointed between 1949 and 1959 i.e. between the dates of issuance of these O.M.s. The applicant has challenged the same also on similar grounds as O.M. of 1959.

The O.M. of 1959 is in the nature of Executive Instruction issued in exercise of powers ^{granted} ~~guaranteed~~ under Article 162 of the Constitution of India. In the absence of Rules the executive instructions partake the nature of rules. If statutory service Rules are framed under Article 309 of the Constitution of India it is the statutory rules which would prevail. But in respect of matters on which statutory Rules are silent their place would still be taken by Executive Instructions which supplement the Rules though do not supplant it. The O.M. of 1959 lays down the principles of seniority in Central Services. They have been classified into 6 categories. The first category includes Ex Government servants, employees discharged because of certain diseases and permanent displaced government servants who will continue to be governed by O.M. as noted against these categories. The second category is of those who were appointed in Substantive capacity to a grade prior to issuance of O.M. of 1959, the third category is of direct Recruits, the fourth category is of promotees, the fifth category is that of transferees and the sixth is that of persons appointed as adhoc without consultation with Union Public Service Commission. The O.M. which also deals with relative seniority between Direct recruits and promotees deals with the specific categories separated wherever necessary.

The office Memorandum of 1949 provides that one of the principles laid down in the same is that permanent officers of each grade would be ranked senior to persons who were officiating in that grade and the effect in the same was that the same seniority must be determined by the date of confirmation and not on the basis of length of service as was provided in the office Memorandum of 22nd June, 1949. The office Memorandum was in respect of those who were appointed subsequent to the issuance of the same and not those who were appointed earlier as they were to be governed by the Memorandum of 1949.

The learned counsel for the applicant contended that this office Memorandum is discriminatory and is arbitrary, hit by Article 14 of the Constitution of India in as much as it places those who were appointed earlier but for the some reason or other not confirmed to junior to those who were appointed subsequently or otherwise get confirmation earlier and in this connection made reference to certain cases decided by the Hon'ble Supreme Court of Indian.

In the case of N.K. Chauhan and others vs. State of Gujarat and others (AIR 1977 S.C. 254) in which case the dispute of seniority was between direct recruits and promotees and it was observed that seniority will depend on the length of continuous officiating service and cannot be opted by later arrival from the open market save to the extent to which excess promotees could have been pushed out as indicated earlier. This case has no relevancy to the instant case.

In the case of S.B. Patwardhan vs. State of Maharashtra (1977 (3) SCC, 399) it was ~~observed~~ also

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a case of promotion seniority between direct recruits and promotees. The court in the said case struck down Rule 8 (b) and 9 of the Recruitment Rules of Bombay Service of Engineers. The court observed that confirmation is one of the ~~is a~~ ^{is a} ~~discretionary~~ ^{uncertainty} to govt. servants depending neither with the inefficiency of the incumbent nor on the availability of substantive vacancy.....It shows that confirmation does not have to remain but in said rules whether any employee should be confirmed or not depends on the sweet will and pleasure of the Government.

In Baleshwardas vs. State of U.P and others

(1984 SCC 226) the court pointed out that for the purpose of seniority appointment to the service in a substantive capacity was necessary but this observation was made with reference to Rule 23 of U.P. Service of Engineers (Junior and Senior Scale Irrigation Branch) But the rule of continuous service will not apply to every case if the rules are to the contrary for rules that seniority is governed from the date of confirmation it is the date of confirmation which will be starting point. In the instant case there is no statutory rules and in the absence of statutory rules, the office memorandum will ^{hold good & since &} ~~the full~~ ^u ~~silence~~, the statutory rules are not there, the executive instructions are to continue to apply, ⁱⁿ In case the same are valid and not hit by Article 14 ~~of~~ and 16 of the Constitution.

In case of H.V. Pardasan and others vs. Union of India & others (1985 2, SCC, 468) it was observed that length of continuous officiation rule will not prevail

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where any other rule of seniority is prescribed. The Supreme Court has also laid down that length of service will not prevail in the case of rules provided otherwise. It was also a case of dispute between direct recruits and promotees.

In the case of Delhi Water Supply and Sewerage Disposal Committee vs. R.K. Kashyap (1989 Supplement 1, SCC 194) it was held that rule of length of continuous officiation should normally be followed if there is no statutory rules and not in violation of Article 14 and 16 of the Constitution.

In the case of V.K. Jaisawal vs. State of M.P. (1987(4) SCC 450) it was observed that normal rule of length of service would not be applicable to determine seniority in the case in the absence of statutory rule or executive memorandum or order.

In the case of Direct Recruit Class II Engineers Officers Association vs. State of Maharashtra (1990, II 715) the Constitution Bench of the Supreme Court before which the question of seniority between direct recruits and promotees ^{was} ~~were~~ in question, it was held that quota rule can be prescribed by executive instructions in the absence of statutory rules in this regard. It was further laid down in the case once incumbent is appointed to a post according to rule, his seniority is to be counted from the date of his appointment and not according to his date of his confirmation. ^{ad} Collary to the above rule is that where initial appointment is only adhoc and made as stop gap arrangement/^{officiation} for such post/cannot be taken for considering the seniority.

O.M. of 1949 undoubtedly provides that if those who were appointed on temporary basis are confirmed

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subsequently though their promotion by way of selection was on the basis of merit, the seniority shall follow the order of confirmation and not merit but the O.M. does not speak of promotion which one gets by virtue of his length of service. The confirmation rule will apply only if promotion from various grades separately or jointly is made on the basis merit and thereafter confirmation took place. In the instant case, promotion has been made from time to time on the basis of seniority subject to rejection of unfit on the circle level seniority and not that on the basis of seniority/merit or on the basis of merit and consequently O.M. of 1949 as such will not apply to the instant case and ~~it~~ it will not then be necessary for us to hold it violative of Article 14 and 16 of the Constitution or otherwise.

Promotion when made on the basis of seniority /rejection to unfit the confirmation rule will have no play and the general rule of continuous length of service as held by the Supreme Court repeatedly and by the Constitution Bench prevail, as there is no statutory rule or valid order to the contrary on this behalf. The same will thus apply to the circular of 1978 which obviously will not come in the way of the applicant. Accordingly, the seniority of the applicant and those who were promoted subsequently will be governed by the continuous length of service notwithstanding the ^{inquiries} ~~enquiries~~ uncertainty of confirmation. Even if confirmation ^{is} has taken later on seniority will be determined on the basis of continuous officiation which proved to be permanent post on which confirmation was also made.

A question has been raised as to whether in

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determining the seniority as to whether it is zonal seniority or circle seniority is to be taken into account. As has been noticed earlier that even by way of local ~~arr~~ arrangement appointments are made and zonal seniority remains in the zone itself. The service is an All India service and ~~xxxx~~ zones are part of a circle and zones in U.P. are included in U.P. Circle. In case seniority is counted zonal wise while many include adhoc or stop gap appointees. The rule of continuous officiation or even of confirmation in such circumstances may be relegated into background. In D.K. Mitra vs. Union of India (1985 SCC (Suppl) 243) it was held that zonal confirmation given to the railway Doctors cannot be valid basis for drawing up their seniority on zonal basis. It was observed that confirmation limited by legal perspective within a particular zone cannot serve legitimate basis into All India cadre. The same principle will apply in the instant matter too. The seniority is to be seen circle wise and is to be determined on the basis of continuous officiation from the date of the promotion.

In view of what has been said the application deserves to be allowed and the same is allowed. It is directed that the seniority of the applicant will be counted from the date of permanent appointment and the respondents will fix seniority within a period of 3 months from the date of receipt of a copy of this order, after taking into consideration those whose position will be lowered down. No order as to costs.

Shakeel/-


A.M.


V.C.

Lucknow Dt. 2.7.91.

determining the seniority ^{the seniority}, it is zonal or circle seniority which will be taken into account as has been noticed earlier that even by way of local arrangement appointments are made ^{and} zonal seniority remains in the zone itself. It is an All India service and every zone is a part of a circle and zones in U.P. are known as Zone, U.P. circle. The result is that seniority is given from the date of appointment. The question of seniority, there will be no rule or continuous officiation or confirmation may be relegated into background. In D.K. Mitra vs. Union of India (1985 SCC (Suppl) 243,) it was held that zonal confirmation given to the railway Doctors cannot be valid basis for drawing up their seniority on zonal basis. It was observed that confirmation limited by legal perspective within a particular zone cannot serve legitimate basis into All India Cadre, as the govt. looks into very foundation of the promotion. In the circumstances the principle of length of continuous service from the date of promotion to the post. This is said that service should not include stop gap or adhoc arrangement. Obviously the same principle applies on which seniority is to be counted circle wise and not zonal seniority.

^{In view of what has been said}
Accordingly the application deserves to be

^{the same is allowed}
allowed and it is directed that the seniority of the applicant will be counted from the date of permanent appointment and the respondents will fix his seniority within a period of 3 months from the date of receipt of a copy of this order, after taking into consideration those whose position will be lowered down. No order as to costs.

A.M.

V.C.

Lucknow Dated ,9=.

Shakeel

Seniority to be calculated is
zonal or circle seniority
of circle
Seniority
is to be
taken into
account

included
in U.P. Circle
In case seniority is
counted zonal or circle
which may include
ad hoc or stop gap
appointments. The rule of
continuous officiation
or even of confirmation
in such circumstances
may be relegated
into back ground

The same principle
will apply in the
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too. The seniority is
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is to be determined
on the basis of
continuous officiation
from the date of
the promotion

Before the Central Administrative Tribunal

ब अदालत श्रीमान Lucknow Bench महोदय

वादी

(मुद्दाई)

का वकालतनामा

प्रतिवादी



R. C. Sabena

वादी (मुद्दाई)

बनाम

Union of India vs प्रतिवादी (मुद्दाअलेह)

TA No 103/87 (2)
नं० मुकद्दमा सन् १६ पेशी की ता० १६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से

श्री यू० के० धवन एडवोकेट

महोदय

हाई कोर्ट, लखनऊ वकील

को अपता वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ
इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व
जवाबदेही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या
हमारी ओर से डिगरी जारी करावें और रूपया वसूल कर या सुलहनामा या
इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर
से दाखिल करें और तसदीक करें या मुकद्दमा उठावें या कोई रूपया जमा करें
या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रूपया अपने या हमारे
हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करे-वकील महोदय
द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी
स्वीकार करता हूँ कि मैं हर पेशी स्वयं या किसी अपने पैरोकार को भेजता
रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है
उसकी जिम्मेदारी मेरी वकील पर न होगी। इसलिए यह वकालतनामा लिख
दिया कि प्रमाण रहे और समय पर काम आवे।

Accepted
Dhan

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

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महीना

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हस्ताक्षर

(छात्र एम. खरे)
R. M. KHARE

मंडल-अभिज्ञता (विविध)
Divisional Engineer (Legal Cell)

कार्यालय मुख्य महापदस्थक दूरसंचार
Chief General Manager Telecom
Lucknow-226004

J. K. DHAON
Additional Standing Counsel
Central Government
High Court of Allahabad
(Lucknow Bench)
LUCKNOW

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench, Lucknow.

No. CAT/AKO/Jud/ 4353-4356. date the

T.A.No. 1031/87.....of 1990 (T)

Ramesh Chandra Sengupta.....Applicants. *48*

Varsus.

Union of India.....Respondents.

To (i) Union of India through Secretary
Ministry of Communication, New Delhi

(ii) the Director General Post and Telegraph

New Delhi

Whereas the marginally noted cases has been transferred
by 11C 1100.....under the provision of the Admini-
strative Tribunal Act 13 of 1985 and registered in this Tri-
bunal as above.

Writ petition No. 1210/82..
of 19.....
of the Court of 11C 1100..
arising out of
of order dated.....
passed by.....in
.....

The Tribunal has fixed date
of 26.9.90.....1990. The
hearing of the matter.
if no appearance is made
on your behalf by our some one
duly authorised to Act and Plead
on your behalf.

The matter will be heard and decided in -your
absence. Given under my hand seal of the Tribunal this
day of 30.....4.....1990.

DEPUTY REGISTRAR

Bhartiya

Recd 1,223

Both

to Shri D. S. Dandhawa

30/4/90

(iii) The General manager Tele Communication
U.P Circle Lucknow
through to

sen. D. S. Dandhawa Senior Standing Counsel

Govt of India High Court
Lucknow

By hand C/31

No. CAT/ALW/J.A/03
Central Administrative
Tribunal (Allotted Bench)
Allotted

Dr. 28.06.91

To

The Deputy Registrar,
Central Administrative Tribunal,
Circuit Bench,
Lucknow.

Subject: Transmission of files.

Sir,

Kindly refer to your letter

No. CAT/LKO/CAT/Jud./07/40-91 dated
10th. June, 1991.

2. The following case files
are sent, herewith. The draft
judgments are with Honble Shri A.B.
Gorthi, who shall be reaching
Lucknow for holding court from
Monday the 18. July 1991.

1. O.A No. 188/90(L) S.K. Mishra vs. C.O. 9. 3 files (A, B, C)
2. T.A 1087/87(T) K.P. Sinha vs. C.O. 9. 4 files (A, B, C and one copy - dossier)

P.T.O.

3. O.A no. 40/91(L) vs V. Venkatesan

VS
V.O.G.

4 files.

4. O.A no. 6/88(L) vs O.P. Agastwal

VS
V.O.G.

3 files
(A.B. & C)

5. T.A no. 1031/87 R.C. Saxena

VS

3 files
(A.B. & C)

V.O.G.

The files are being sent
under sealed cover.

Please acknowledge receipt.

Seitwan officer
(J.A.)