

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

0499/88

CAUSE TITLE OF

NAME OF THE PARTIES Suresh Kumar Applicant

Versus

..... U.O.F. Secy Respondent

Part A.

Sl.No.	Description of documents	Page
1	Index sheet	A1
2	Check list	A2
3	order sheet	A4 to A5
4	Judgment order dt 24-8-92	A6 to A9
5	Writ Petition	A10 to A22
6	Annexure	A23 to A30
7	Index	A40
8	Canvasser Affidavit	A41 to A50
9	Rejoinder Affidavit	A51 to A58
10		
11		
12		
13		
14		
15		
16		
17		
18		

CERTIFICATE

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

Per Checkers Dated 19-9-10

Counter Signed.....

[Signature]
9/10/2011

Section Officer/In charge

[Signature]
Signature of the
Dealing Assistant

Central Administrative Tribunal
Lucknow Bench

Cause Title OA 99

1988(c)

Parties Suresh Kumar Singh Applicant.

Union of India Respondents

Part A.P.

Description of Documents

Page

Index List

A1 - A2

Order Sheet

A3 - A4

Final Judgement

dt. 24-8-92

A5 - A8

Petition Copy

A9 - A21

Annexure

A22 - A38

Power

A39

Counter Affidavit

A40 - A49

Rejoinder Affidavit

A50 - A57

B- File

B1 - B49

C- File

J.B. Promotion filed on 28.01.04

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No.

BA 99 of 198 04

(A) 1/2

APPLICANT (s)

S. K. Singh

RESPONDENT(s)

U. O. I. Officers

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent?
2. (a) Is the application in the prescribed form?
(b) Is the application in paper book form?
(c) Have six complete sets of the application been filed?
3. (a) Is the appeal in time?
(b) If not, by how many days it is beyond time?
(c) Has sufficient case for not making the application in time, been filed?
4. Has the document of authorisation, Vakalat-nama been filed?
5. Is the application accompanied by B. D. /Postal-Order for Rs. 50/-
6. Has the certified copy/copies of the order (s) against which the application is made been filed?
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed?

Yes

Yes

Yes

Yes (4 sets)

Yes

Yes

Yes No. CC 102341 @ 23.8.88
for Rs 40/-
DD 43 441490 @ 23.8.88
to 494 to Rs 10/-

Yes

Yes

- (b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly?

Yes (A) Director

C.A. 99 of 010 (C)

(B3)

S. K. Singh — Vs. D.O. & Cons.

A/S

ORDER SHEET

25.07.01
2

Hon. A. John, A.M.
Hon. G.S. Sharma, J.M.

Admit
Issue Notice. C.A. filed within a month. R.A. filed
within 15 days.

hish

28.07.01
A

DR

Sri V.R. Chaudhary takes notice for respondent.
Reply by one month. R.A. within 15 days. Put up
on 24.10.01 for hearing.

hish

24.10.01

On the request of Sri R.K. Sharma Advocate
the case may be adjourned for 23.11.01

hish
DR

24.11.01

DR

Reply not filed to-day. ~~on~~
on the request of the counsel the case
is adjourned to 23.1.02.

hish
DR

23/1/02

DR

Reply not filed. Last opportunity for
filing reply is granted by 27/3/02.

hish
DR

Order Sheet

OA 99 of 88(1)

SK Singh

vs

U.O. 9

(M)

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
---------------------------------	--	--

7-11-89

Hon. Mr. D.K. Agrawal - JM
Hon. Mr. K. Obayya - AM

On the request of both the counsel for parties the case is adjourned to 06/02/90 for hearing.

AM

De

JM

Appn apph J. Mr. VK Chaudhary is placed R 7/11

6/2

No sitting adj. to 10.4.90
Both the counsel are present

Hon. Mr. P.S. Habib Mohd. AM
Hon. Mr. J.P. Sharma - JM

On the request of both the parties case is adj. to 17.2.90

J.M.

A.JM

17.10.90

No sitting Adj. to 22.11.90

22.11.90

Hon. Mr. Justice K. Math ve
Hon. Mr. M.M. Singh AM

On account of the death of Sri P.C. Saxena Advocate, whose cremation is likely to be ~~made~~ prayer for Adjournment

Dinesh

is made on behalf of Advocate list for hearing on 31.1.91.

M.M.

AM

VC

6

T.A. NO

Date of Decision

PETITIONER.

Advocate for the Petitioner(s)

V E R S U S

RESPONDENT

Advocate for the RESPONDENT(S)

CORAM

The Hon'ble. Mr. Mr K. Bagep, A M

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether to be circulated to other benches ?

Vice-Chairman/Member

195

X
6

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

O.A.No. 99/88

Suresh Kumar Singh and others

Petitioners

versus

Union of India & Others

Respondents.

Shri P.K. Srivastava, Counsel for Applicant

Shri V.K.Chaudhary, Counsel for Respondents.

CORAM

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K.Obayya, Adm. Member.

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

The applicants started their service as Senior Technical Assistant(Geophysics) in the year 1976 and they were promoted on the post of Assistant Geophysicists between 1985 to 1987. In the year 1986, direct recruitment for the post of Assistant Geophysicist took place and a seniority list of Assistant Geophysicist was declared in August, 1987 by the Director General,G.S.I. Calcutta and the persons holding the post of Assistant Geophysicists upto 31.10.85 were included.

2. The grievance of the applicants is that (petitioners 1 and 2) they/were placed at serial Nos. 133 and 142 and other applicants were not included who joined

Ab

-2-

X/X

on 31.10.85. The list contained the name of those direct recruits who were included and joined upto 31.10.85 and in the list the names of direct recruits which could not have been included, were subsequently included. The applicants have prayed that the order dated 10.12.87 contained in Annexure -4 may be quashed and the respondents may be directed to determine the seniority of direct recruits as well as promotees on the posts of Assistant Geophysicists in the Geological Survey of India on the basis of date of joining and they may be directed to modify the seniority list. According to the applicant, the seniority list has not been made in accordance with law and they were entitled to seniority on the basis of the decision given by the Central Administrative Tribunal, Calcutta Bench and they have thus, been discriminated. A reference has made to the decision of Calcutta Bench of the C.A.T. in T.A. No. 1784/86 which is as follows:

"In view of the above analysis we are of the opinion that the petition should be allowed and hence we allow it, we direct the respondents that the impugned gradation list of Assistt. Chemist published on 18.12.1984 showing their seniority as 1.6.1984 be modified immediately giving effect to the seniority on the basis of their dates of continuous

W

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A/g

appointment as Asstt. Chemist. The question of further provision to the post of Chemist (Jr.) shall be decided on the basis of the review of the gradation list as directed above."

3. The respondents have resisted the claim of the applicants and according to them a gradation list in the grade of Asstt. Geophysicist was drawn as on 31.10.85/as per Ministry of Personnel, Public and Grievances O.M.dated 7.2.86/the order of Calcutta Bench of the C.A.T. were not followed and the direct recruits who werenot in position were assigned the above promotees seniority/who joined earlier. In the gradation list the ratio of determining the seniority 1 : 1 has not been followed and two direct recruits have been assigned seniority side by side. List, according to the respondents was drawn as per Ministry of Home Affairs OM dated 22.12.1959 which was amended, and which was applicable in the year 1985. According to the respondents, the seniority is assigned as per recommendations of U.P.S.C/ D.P.C. and not from the date of joining. According to the respondents, the gradation list in the grade of Asstt. Geophysicist has been drawn as per approved Recruitment Rules in the grade of Asstt. Geophysicist, G.S.I. In the gradation list the direct recruits have been assigned seniority one after another where one promotee between the two direct recruits has either resigned or left the post at his own vilitation. It has been stated that Shri R.S.Acharya has been recommended

W

AB

A/D

both by the D.P.C. and U.P.S.C for promotion and appointment to the post of Asstt. Geophy. But as his seniority in direct recruitment quota is favourable than the promotion quota, he has been assigned seniority in direct recruitment quota. In the promotion quota his seniority would be much lower. It may happen that in between the two direct recruits or promotees one promotee or one Direct recruit candidate may resign or leave the post on his own accord. In that case the seniority of the two direct recruits or two promotees are assigned one after another and the reasons for such assignment of the seniority are given in the remarks column. In the case of the applicant there has been deviation by the respondents.

4. The seniority list was published in the year 1987. Till the year 1985 no direct recruitments were made and the impugned seniority list was published in the year 1987. As the seniority list was published in the year 1987, the list of 1987 was unnecessarily taken into account. The O.M. of the year 1986 was not taken into account. It is true that that the O.M. of the year 1986 was not taken into account.

5. The respondents are directed to re-consider the matter and fix the seniority of promotees and direct recruits inter se taking into consideration the O.M. of 1986. No order as to costs.

Adm. Member.

Vice Chairman.

Shakeel/

Lucknow: Dated 24.8.92

Central Administrative Tribunal
Lucknow Bench, Lucknow.

.....
O R D E R SHEET

O.A./T.A. No. _____

Date Office Report /

Order

MANISH/-

Filed on 23-11-11

(A9)

8/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Additional Bench at Allahabad

Lucknow Circle, Lucknow

Application No. of 1988

Suresh Kumar Singh & ors.

...

APPLICANTS

V/s.

Union of India & anr.

...

OPP. PARTIES

I N D E X

Sl. No.	C o n t e n t s	Annexure No.	Pages
1.	Application		1-12
2.	Extract of Gradation List circulated vide letter dt 12.8.87	1	13-21
3.	Order dt 7.2.86 laying down principles for determination of inter se seniority	2	22-28
4.	Representation dt 8.9.87 made against wrong gradation list	3	29-31
5.	Order dt 10.12.87 rejecting representations	4	32-33
6.			34

Dated, Lucknow,

the July 1988.

23 August



(P.K. Srivastava)

Advocate

MS-151 Sector D Aliganj Extn
Lucknow-226 020

Done & sealed
Per 25/8/08
[Signature]
23/02/00

810

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Additional Bench at Allahabad

Lucknow Circle, Lucknow

Application No. of 1938

1. Suresh Kumar Singh,
aged about 39 years,
son of Late Sri Raj Narain Singh;
2. Ramesh S. Acharya,
aged about 36 years,
son of Sri M. Srinivas Acharya,
3. Mridula Chauhan,
aged about 31 years,
wife of Dr. Y.K. Singh;
4. Ram Pratap Singh,
aged about 31 years,
son of Sri K.N. Singh;
5. Ram Kumar Singh,
aged about 31 years,
son of Sri Ram Badan Singh

सुरेश कुमार सिंह

Petitioners 1 to 5 - all Assistant
Geophysicists, Geological Survey of India,
Northern Region, Lucknow ...

APPLICANTS

V/s.

1. Union of India
through the Secretary,
Department of Steel and Mines,
Government of India, New Delhi;

2. Geological Survey of India
through its Director General,
Nehru Road,
Calcutta-700 016 ...

OPP. PARTIES

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNALS ACT 1985

DETAILS OF APPLICATION:

1. Particulars of the applicants:

i) Name of the applicants : 1. Suresh Kumar Singh
2. Ramesh S. Acharya
3. Mridula Chauhan
4. Ram Pratap Singh
5. Ram Kumar Singh

ii) Name of applicants' father/ 1. Late Sri Raj Narain Singh
husband 2. Sri M. Srinivas Acharya
3. Dr. Y.K. Singh
4. Sri K.N. Singh
5. Ram Badan Singh

सुरेश कुमार सिंह

812

- 3 -

iii) Designation and office
in which employed

All Assistant Geophysicists in
Geological Survey of India,
Northern Region, Lucknow.

iv) Office address

G.S.I. Complex, Aliganj,
Lucknow.

2. Particulars of the respondents:

i) Name and/or designation
of the respondent

1. Union of India through the
Secretary, Department of Steel
and Mines, New Delhi.

2. Geological Survey of India
through its Director General,
Nehru Road, Calcutta-700 016.

ii) Office address of the
respondents

As above.

iii) Address for service of all
notices

As above.

3. Particulars of the order against which application is made:-

i) Order No. 4436B-A 23011/2-AG/85-195

ii) Date 12. 8. 1987

iii) Passed by Director General, G.S.I., Calcutta

iv) Subject in brief - Fixation of seniority of Assistant Geophysicists.

4. Jurisdiction of the Tribunal:

The applicants declare that the subject matter of the order
against which they want redressal is within the jurisdiction of the
Tribunal.

5. Limitations:

The applicants further declare that the application is within

सुरेश कुमार सिंह

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- 4 -

the limitations prescribed in Section 21 of the Administrative Tribunal Act, 1985.

14

6. Facts of the case:

The facts of the case are given below:-

1. That the applicants were initially appointed on the post of Senior Technical Assistants (Geophysics) in the year 1976, and respectively.
2. That subsequently, the petitioners were given promotion on the post of Assistant Geophysicists with effect from 22.8.87, 1.1.86, 1.1.86, 30.12.85 and 2.1.86 respectively.
3. That in the year 1986, a direct recruitment for the post of Assistant Geophysicist took place through Union Public Service Commission.
4. That in August 1987, a seniority list of Assistant Geophysicist was declared by the Director General, G.S.I., Calcutta and in this list, persons holding the post of Assistant Geophysicists upto 31.10.85 were included.
5. That in the aforesaid seniority list, the names of petitioners Nos.1 and 2 were placed at Sl.Nos. 133 and 142 respectively while the names of other applicants were not included as the other petitioners joined the post of Assistant Geophysicists beyond 31.10.85. A true extract copy of the seniority list dated August 1987 is annexed as Annexure-1 to this application.
6. That although as indicated in the aforesaid seniority list, the names of only those Assistant Geophysicists were included who joined the post upto 31.10.85 but surprisingly it contained

सुख कुमार सिंह

names of those direct recruits also who were appointed in the year 1986 i.e. subsequent to 31. 10. 1985.

7. That in view of the aforesaid submissions, it is clear that in respect of promotees, the seniority list was prepared only upto 31. 10. 1985 while in respect of direct recruits, the names of those persons who joined subsequently have been included.
8. That it would not be out of place to mention that ^{under} ~~the~~ recruitment rules for the post of Assistant Geophysicists, 50% quota is reserved for promotees as well as direct recruits.
9. That it is submitted that as would appear from the Seniority List contained in Annexure-1, one Sri Rama Kant Misra who joined on 28. 4. 1986 on the post of Assistant Geophysicist was placed at Sl.No.78 i.e. at the top of list of 1985-86 appointees while the applicants 1 and 2 who joined much earlier i.e. on 22.8.81 and 1.1.86 on the post of Assistant Geophysicists were relegated back at Sl.Nos. 133 and 142 respectively.
10. That the applicants fail to understand as to on what basis the seniority list has been prepared.
11. That from the seniority list it becomes clear that without taking into consideration, the dates of joining on the post of Assistant Geophysicist, the opposite parties have placed two direct recruits and thereafter a promotee in the seniority list and in this process it so happened that a promotee Assistant Geophysicist though joined earlier has been placed at a lower position.

915

- 6 -

12. That the aforesaid procedure for fixing seniority adopted by the opposite party No.2 is arbitrary and beyond the scope of Rules as even if the quota of direct recruits vis a vis promotees is taken into account, then also the names of direct recruits and the promotees who have been placed alternatively.
13. That had the seniority list been prepared in accordance with the dates of joining on the post of Assistant Geophysicists then the names of the applicants would have been placed above the first direct recruits in the year 1986 i.e. Sri Rama Kant Misra at Sl.No.78 who joined only on 28. 4. 1986.
14. That on 7. 2. 1986, the Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training issued an order and provided that where recruitment on a particular post is made in the ratio of 50:50 then the seniority would be determined in the ratio of 1:1 i.e. one promotee and one direct recruit. A true copy of the order dated 7. 2. 1986 is annexed as Annexure-2 to this claim petition.
15. That it is asserted that although the said order dated 7.2.1988 contained in Annexure-2 is also erroneous but even this order has not been followed for determining inter se seniority of Assistant Geophysicist in the G.S.I.
16. That it is asserted that the principle of determination of seniority in the ratio of 1:1 would be applicable in a case where promotion and direct recruitment have been made

सुरेश कुमार सिंह

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- - 7 -

simultaneously but this principle would have no application in a case where promotees have joined long back or much prior to joining of direct recruits.

17. That due to long interpretation of Rule regarding seniority of Assistant Geophysicist, the direct recruits who were not even appointed in the G.S.I. on the post of Assistant Geophysicist prior to 1986 have been given a merge over those promotees who were working on the post of Assistant Geophysicist when direct recruits entered the Department.
18. That the applicant No.1 represented against fixing of seniority on 8. 9. 1987 and all other petitioners represented as such on 30.11.87 to the Director General, G.S.I., Calcutta. A true copy of one of the representations dated 8.9.87 which is almost identical to other representations is annexed as Annexure-3 to this application.
19. That on 10. 12. 1987, the Director General, G.S.I., Calcutta addressed a letter to the Deputy Director General, Northern Region, G.S.I., Lucknow and informed him that the representations preferred by the applicants against the inter se seniority cannot be allowed on the ground that their case is neither covered by the order of the Central Administrative Tribunal, Calcutta Bench nor by the Office Memorandum dated 7.2.86 as the period is prior to 1.3.1986. A true copy of the order dated 10.12.87 communicating decision of the Director General is annexed as Annexure-4 to this application.
20. That as would appear from the letter dated 10.12.87, the Director General refused to implement even the decision

सुरेश कुमार सिंह

417

- 8 -

of the Government of India dated 7. 2. 1986 on the ground that the seniority list has been prepared upto 31.10.85 and in this way the Director General failed to take into account that the seniority list was declared subsequent to 7.2.86 and, therefore, at least the principle given in the order dated 7.2.86 should have been applied for determining inter se seniority of Assistant Geophysicist.

21. That further the Director General though aware of the decision of the Administrative Tribunal, Calcutta Bench laid down the same principle for determination of seniority which is being sought by the applicants but the request was turned down on the plea that that case related to Assistant Chemists and Geologist (Junior).
22. That it would not be out of place to mention here that the Hon'ble Central Administrative Tribunal sitting at Calcutta in T.A. No.1784 of 1986 passed the following order:-

"In view of the above analysis we are of the opinion that the petition should be allowed and hence we allow it. We direct the respondents that the impugned gradation list of Assistt.Chemist published on 18.12.1984 showing their seniority as 1.6.1984 be modified immediately giving effect to the seniority on the basis of their dates of continuous appointment as Asstt.Chemist. The question of further provision to the post of Chemist(Jr.) shall be decided on the basis the review of the gradation list as directed above."

23. That the aforesaid decision has not been applied in the case of the applicants only on the ground that the applicatnts are

सुरेश कुमार सिंह

holding a different post although the ratio and the law laid down by the Central Administrative Tribunal sitting at Calcutta is the same and to make it more clear it is asserted that the question of law is the same and, therefore, the Director General should not have refused to implement the decision of the Hon'ble Central Administrative Tribunal, Calcutta in the case of determining seniority of Assistant Geophysicist also.

24. That now, therefore, feeling aggrieved and finding no departmental remedy, the applicants challenges the legality, validity and correctness of the seniority list dated 10. 12. 1987 on the following amongst other grounds:-

G R O U N D S

- I) Because the seniority list has not been prepared in accordance with rules.
- II) Because the applicants have good record of service and therefore they are also entitled to get their seniority in accordance with the decision given by the Central Administrative Tribunal, Calcutta Bench.
- III) Because the case of the applicants could not be discriminated with those equally placed.
- IV) Because the applicants made representations against their wrong allotment of place in the Gradation list but to no avail.
- V) Because the impugned order of seniority is no order in the eyes of law and therefore deserves to be quashed.

सुरेश कुमार सिंह

VI) Because the opposite parties have not followed the quota reserved for promotees as well as direct recruits while determining their seniority.

VII) Because the representations made by the applicants have not considered on the basis of merits.

VIII) Because the procedure adopted by the opposite parties in fixing seniority is arbitrary and not as per Rules.

7. RELIEFS SOUGHT:

In view of the facts and the grounds mentioned in paragraph 6 above, the applicants pray that the Hon'ble Tribunal be pleased -

- i) to quash the order dated 10. 12. 1987 contained in Annexure-4 to this application; and
- ii) to direct the opposite parties to determine the seniority of direct recruits as well as promotees on the posts of Assistant Geophysicists in the Geological Survey of India on the basis of date of joining on the post i.e. on the basis of their dates of continuous appointment as Assistant Geophysicists; and
- iii) to direct the opposite parties to modify the seniority list of August 1987 contained in Annexure-1;
- iv) to pass any other order or direction appropriate in the circumstances of the case and deem just and proper alongwith the costs of the present application.

सुरेश कुमार सिंह

8. Interim order, if prayed for:

Pending final decision on the application, the applicants seeks issue of the following interim order:-

- NIL -

9. Details of the remedies exhausted:

The applicants declare that they have availed of all the remedies available to them under the relevant service rules etc.

10. Matter not pending with any other court, etc:

The applicants further declare that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

11. Particulars of Bank Draft/Postal order in respect of Application Fee:

1. Name of the Bank on which drawn

2. Demand Draft No. $\frac{CC}{4}$ 10234, $\frac{D}{43}$ 441490, to 94

OR

1. Number of Indian Postal order(s) - Six.

2. Name of the issuing post office High Branch P.O.

3. Date of issue of postal order(s) 23/01/88

4. Post office at which payable G. P. O. Allahabad

सुरेश कुमार सिंह

A21

- 12 -

12. Details of Index:

An index in duplicate containing the details of the documents to be relied upon is enclosed.

13. List of enclosures

In verification:

I, SURESH KUMAR SINGH, son of Sri LATE RAJ NARAYAN SINGH working as Assistant Geophysicist resident of GEOLOGICAL SURVEY OF INDIA, NORTHERN REGION, LUCKNOW do hereby verify that the contents from 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Place: Lucknow

सुरेश कुमार सिंह

Dated: July, 1988.

Signature of the Applicants

To

The Registrar
Central Administrative Tribunal
Northern Circle, Lucknow
Lucknow

S. K. Khandelwal
AK

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Additional Bench Allahabad

Lucknow Circle, Lucknow

Suresh Kumar Singh & ors.

..

Applicants

V/s.

Union of India & anr.

..

Opp. Parties

Annexure-2

Copy of O.No. 35014/2180-East(D) dated 7-2-1986
from Ministry of Personnel, Public Grievances &
Pensions Department of Personnel and Training

Sub: General Principles for determining the seniority of various
categories of persons employed in Central Services.

As the Ministry of Finance etc., are aware, the General Principles for determination of seniority in the Central Services are contained in the Annexure to Ministry of Home Affairs O.M.No. 9/11/55-RPS dated 22nd December, 1959. According to paragraph 60 of the said Annexure, the relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between the direct recruits and the promotees which will be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the recruitment rules. In the explanatory Memorandum to these principles, it has been stated that a roster is required to be maintained based on the reservation of vacancies for direct recruitment and promotion in the recruitment rules. Thus where appointment to a grade is to be made 50% by direct recruitment and 50% by promotion from a lower grade, the inter-se-seniority of direct recruits and promotees is determined on 1:1 basis.

सुरेश कुमार सिंह

2. While the above mentioned principle was working satisfactorily in cases where direct recruitment and promotion kept pace with each other and recruitment could also be made to the full extent of the quotas as prescribed in cases where enough number of direct recruits or promotees did not become available, there was difficulty in determining seniority. In such cases, the practice followed at present is that the slots mentint for direct recruits or promotees, which could not be filled up, were left vacant and when direct recruits or promotees became available through later examinations or selections, such persons occupied the vacant slots, thereby became senior to persons who were already working in the grade on regular basis. In some cases where there was shortfall in direct recruitment in two or more consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly long years of regular service already to their credit. This matter and also come up for consideration in various Court cases both before the High Courts and the Supreme Court and in several cases the relevant judgment had brought out the inappropriateness of direct recruits of latter years becoming senior to promotees with long years of service.

This matter which was also discussed in the National Council has been engaging the attention of the Government for quite some time and it has been decided that in future, while the principles of rotation of quotas will still be followed for determining the inter seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years thereby giving them unintended seniority over promotees who are already in position would be dispensed with. Thus, if adequate number

सुरेश कुमार सिंह

P29

- 3 -

of direct recruits ~~be dispensed with~~ do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits not available, the promotees will be bunched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits vacancies would however be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter, in that years while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en-block below the last promotee (for direct recruit at the case may be) in the Ministry of Finance etc., are requested to bring these instructions to the notice of all the attached/subordinate offices under them to when the general principles of Seniority contained in O.M. dated 22.12.1959 are applicable within 2 weeks as these orders will be effective from the next month.

Illustration

Where the recruitment Rules provide 50% of the vacancies in a grade to be filled by promotion and the remaining 50%

सुरेश कुमार सिंह

by direct recruitment, and assuming there are 10 vacancies in the grade arising in each of the years 1986 and 1987 and that the grade arising in each of the years 1986 and 1987 and that 2 vacancies intended for direct recruitment remained unfilled during 1986 and they could be filled during 1987 the seniority position of the promotees and direct recruits of these two years will be as under:-

<u>1986</u>		<u>1987</u>	
1.	P1	9.	P1
2.	D1	10.	D1
3.	P2	11.	P2
4.	D2	12.	D2
5.	P3	13.	P3
6.	D3	14.	D3
7.	P4	15.	P4
8.	P5	16.	D4
		17.	P5
		18.	D5
		19.	D6
		20.	D7

4. In order to help the appointing authorities in determining the number of vacancies to be filled during a year under each of the method of recruitment prescribed, a vacancy register giving a running account of the vacancies arising and being filled from year to year may be maintained in the proforma enclosed.

5. With a view to curbing any tendency of under-reporting/ suppressing the vacancies to be notified to the concerned

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- 5 -

authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share falling to the promotion quota prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share falling to the promotion quota based on the corresponding figure notified for direct recruitment would be treated only as ad-hoc promotees.

6. The General Principles of seniority issued on 22nd December 1959 referred to above may be deemed to have been modified to that extent.

7. These orders shall take effect from 1st March 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the issue of this O.M.

VACANCY REGISTER

1986 1987 1988 ETC

1. Total number of vacancies
arising during the year.

2. By Direct Recruitment

(1) No. of vacancies to be filled

सुरेश कुमार सिंह

- 6 -

- a) Vacancies of the year
(as per quota prescribed)
 - b) Vacancies of the previous
years brought forward
 - c) Total
- ii) No. of vacancies actually filled
 - iii) No. of vacancies carried forward:
3. By promotion
- i) No. of vacancies to be filled
 - a) Vacancies of the year (as
per quota prescribed)
 - b) Vacancies of previous year(s)
brought forward
 - c) Total
- ii) No. of vacancies actually filled
 - iii) No. of vacancies carried forward:

NOTE: 1. The method of recruitment mentioned above are only illustrative, those in the relevant recruitment rules will be reflected in this register.

NOTE: 2. In the cadres in which the yearly vacancies are sufficient in number to be amenable for division as per the prescribed quotas it is considered that maintenance of this Register alone will be adequate.

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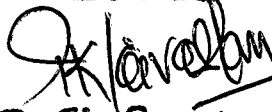
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- 7 -

In smaller cadres, however, where the number of vacancies arising is some what occasional and one or two in a year, the appointing authorities may have to maintain the recruitment roster, as at present, to be clear about the method under which a particular vacancy has to be filled.

सुरेश कुमार सिंह

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ATTESTED


P. K. Srivastava

Adv c 19

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Additional Bench at Allahabad
Lucknow Circle, Lucknow

Appln. No. of 1988

Suresh Kumar Singh & ors. ... Applicants
V/s.
Union of India & anr. ... Opp. Parties

ANNEXURE-3

From:
S.K. Singh
Assistant Geophysicist
Geophysics Division, N.R.,
Geological Survey of India
4th Floor, Plot No.2
Sector E Aliganj
Lucknow-226 020

To,
The Director General
Geological Survey of India
27, J.L. Nehru Road
Calcutta-700 016.

(Through Proper Channel)

Sub: Revision of the gradation list of Asstt. Geophysicist
as on 31.10.85.

Ref: Your circular letter No. 44498/A-23011(2-AG)/85/198 dt 12.8.1987

Sir,

I would like to bring to your kind notice the following facts
for consideration.

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I have been promoted to the post of Asstt. Geophysicist in August 1981 through D.P.C. Direct recruits, who joined as Asstt. Geophysicists during Feb./March, 1986, have been placed above me as shown in the gradation list circulated vide letter No. 4443 B/A-23011 (2-AG)/85/19B, dated 12.2.87 by A.G., for Director General, GSI. The gradation list is prepared on the basis of inter se seniority, giving the benefits of seniority to direct recruits of later year over those who were officiating in the post for more than three years. My seniority number in the gradation list is 133. In this connection, I may be permitted to draw your kind attention to the following judgments :-

1. The judgment delivered by Hon'ble judge of Calcutta High Court in the case of the Geologist (Sr.) of this deptt. (Civil Order No. 1220(W)/85);

"In that connection the supreme court observed that even though there was violation of quota rule, the seniority could not be disturbed in respect of the persons promoted earlier and the direct recruits who are appointed in such later years, would not be allowed to score a march over the promotees who are promoted in earlier years." para-27.

2. The judgment delivered by C.A.T. Calcutta bench in the case of Asstt. Chemists of this deptt. pertaining to the seniority (Order No. TE 1784 of 1986).

"In view of the above analysis we are of opinion that the petition should be allowed and hence we allow it. We direct the respondents that the impugned gradation list of Asstt. Chemist published on 18.12.1984 showing their seniority

सुरेश कुमार सिंह

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- 3 -

as 1.6.1984 be modified immediately giving effect to the seniority on the basis of their dates of continuous appointment as Asstt. Chemist. The question of further provision to the post of Chemist (Gr.) shall be decided on the basis the review of the gradation list as directed above."

3. Supreme court decision in case of G.S. Lamba and others vs union of India reported in A.I.R. 1985, S.C. 1019.

"It is being clearly a case either of non-implementation of quota rule or mal-functioning of the quota rule and yet the quota rule being adhere to, both impfeasible under the rule as well as unjust unfair and iniquitous being violative of article 14 and 16. The seniority list was liable to be quashed. In such case assuming the quota rule mandatory in character its departure must permit rejection of quota rule as a valid principle of seniority." para -23.

4. Supreme Court order on seniority to the central government (Hindustan Times dated 11th Feb. 1986); for class-I Officer of IES and ISS.

"The direct recruit shall be given seniority w.e.f. the date on which they were recommended by UPSC for appointment to such grade report as provided in clause (A) of rule of the rules governing the two services" the court said.

Therefore, I request you to kindly to revise the above gradation list with consideration of the judgments and my due seniority please be given by placing me above these later appointees.

Thanking you,

Yours faithfully,

Place: Lucknow

Dated: 8.9.87

Sd/-S.K. Singh

Assistant Geophysicist

TRUE COPY

ATTACHED

P. K. Srivastava

सुरेश कुमार सिंह

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Additional Bench At Allahabad

Lucknow Circle, Lucknow

Appln.No. of 1988

Suresh Kumar Singh & ors.

Applicants

V/s.

Union of India and anr.

Opp. Parties

ANNEXURE-4

Copy of letter no.6570B/W-23011(2-AG)/85/19B dt 10.12.87
addressed to Dy.D.G. N.R. GSI, Lucknow received from the
Director General, Geological Survey of India, Calcutta.

Sub: Representation against inter se seniority of the
Asstt. Geophysicist in the Gradation list drawn
as on 31.10.85.

I am directed to inform you that the gradation list in the
grade of Assistant Geophysicist as on 31.10.85 has been
drawn as per Department of Personnel O.M. dated 22.12.59.

As the Department of Personnel O.M. dated 7.2.86 is effective from
1.3.86 it is not applicable in this case. Moreover, the Department
of Personnel O.M. dated 22.12.59 for drawl of interse seniority
has subsequently been revised on 7.2.86 and such revision is in the
line of the decision of the Supreme Court and High Court given in
some cases in this regard.

The decision of the Calcutta High Court is restricted to for
drawl of seniority of Geologist(Jr) of this department and the
decision of the Central Administrative Tribunal, Calcutta Bench

सुरेश कुमार सिंह

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is for Assistant Chemist, GSI. These decision cannot be Universally applicable to other grades unless of officers belonging to other categories obtain such a decision from the Central Admn. Tribunal. Pending such decision of any Central Admn. Tribunal in favour of the Assist. geophysicists the O.M. dated 7.2.86 read with the same Ministry's O.M. dated 22.12.59, would not be applicable and that too from 1.3.86.

Therefore, the representations submitted by the Assistant Geophysicists of your region against the interse seniority assigned in the Gradation List of Assistant Geophysicist as on 31.10.85, do neither cover by the order of the Court nor by the Department of Personnel O.M. dated 7.2.86, as the period is prior to 1.3.86. The concerned Assistant Geophysicist of your region may please be informed accordingly.

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TRUE COPY
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P. K. Srivastava

Advocate

ब अदालत श्रीमान् *In the Central Administrative Tribunal*
Additional Bench at Allahabad महोदय
Judge and Civil Lucknow

वादी अपीलान्त

Surekh Kumar Singh and ors का

प्रतिवादी रेस्पान्डेन्ट

वकालतनामा

O.A.N. — of 1988 (2)



Surekh Kumar Singh and ors

(वादी मुद्दै)

बनाम

Union of India and ors

प्रतिवाद मुद्दाअलेह

न० मुकद्दमा

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नाम अदालत	नाम मुकद्दमा	नाम फरीकन
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ऊपर लिखे मुकद्दमा में अपनी ओर से श्री **पी० के० श्रीवास्तव**, एडवोकेट

Subodh Datt एम० एस-१५१, सेक्टर-डी, अलीगंज विस्तार, लखनऊ महोदय को अपना 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 रुपया वसूल करें या सुलह-नामा 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 रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त [दस्तखति] रसीद से लेवें या पंच नियुक्त करें वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता हूँ अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी। इसलिए यह वकालत-नामा लिखे दिया कि प्रमाण रहे और समय पर काम आवे।

1. सुरेश कुमार सिंह 2. राम कुमार सिंह

हस्ताक्षर *Subodh Datt* 3. मृदुला चौधन
 4. रामेश्वर एम्. आचार्य 5. राम प्रताप सिंह

साक्षी [गवाह]

साक्षी [गवाह]

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

O.A. No. 99 of 1988 (L).

Suresh Kumar Singh
and others

... Petitioner

versus

Union of India and others.....

Opp. Parties.

COUNTER AFFIDAVIT ON BEHALF OF OPP. PARTIES.

1988
AFFIDAVIT
62 M
DIST. COURT
U. P.

I, Shri S.C. Balmiki aged about 56 years 8 months son of

Loh Shri Babu Lal

presently post-ed as

Senior Administrative Officer, Northern

Region, Geological Survey of India, Aliganj,

Lucknow do hereby solemnly affirm and state as

under:-

1. That the deponent have been authorised to

file this counter affidavit on behalf of all the

opposite parties.

2. That the deponent has read and understood

the contents of the application filed by the

applicant as well as the facts deposed to herein

under in reply thereof.

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3. That before giving parawise comments
it is pertinent to give brief history of the
case as detailed below:

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(a) That Shri Suresh Kumar Singh and
others, Asstt. Geophysicist were
appointed in the grade of S.T.A. (Geophysics)
and were subsequently promoted to the post of
Asstt. Geophy. ~~during~~ the years 1981 and 1986.

(b) That a gradation list in the grade of Asstt.
Geophy. has been drawn as on 31.10.85 and in the
said gradation list the principle of determining
the seniority as per the Ministry of Personnel.

Public Grievances and Pensions, Department of
Personnel and Training order dated 7.2.86 and
the order of the CAT Calcutta of 1986 have not
been followed and the direct recruits who were
not in position at the time of drawal of the
gradation list in the grade of Asstt. Geophy.
have been assigned seniority above the
promotees who joined earlier than those
direct recruits. In the said gradation list
the ratio of determining the seniority 1 : 1



SP Balakrishna

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has not been followed and two direct recruits have been assigned seniority side by side.

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(c) That it may be stated that the applicants joined this Department as S.T.A. (Geophysics) and were subsequently promoted to the post of Asstt. Geophy. during the years 1961 and 1986.

(d) That a gradation list in the grade of Asstt. Geophy. as on 31.10.85 was drawn as per Ministry of Home Affairs O.M. dated 22.12.1959, assigning seniority of the candidates 1:1 (one direct recruit/one promotee). At the time of drawal of the said gradation list as the recommendation of the U.P.S.C. for 55 posts of Asstt. Geophy. was received, their names have been shown against the U.P.S.C. quota. But, at that time as the recommendation of the D.P.C. was not received, the names of the D.P.C. candidates were not shown. The seniority of the officers is fixed as per the recommendation of the U.P.S.C./D.P.C. and not from the date of their joining. Hence, the claim of the



S. P. Salunke

applicants for assigning the seniority of the promotees who joined earlier than the direct recruits does not stand. Moreover, as the gradation list pertains to the period 31.10.85, the order of the Department of Personnel and Public Grievances O.M. dated 7.2.86 is not applicable in this case.

The order of the CAT, Calcutta quoted in the application is applicable for the posts of Asstt. Chemist. This has no bearing with the case of Asstt. Geophysicist.

(e) That the gradation list in the grade of Asstt. Geophysicist has been drawn as per approved Recruitment Rules in the grade of Asstt. Geophysicist, G.S.I. In this gradation list the direct recruits have been assigned seniority one after another where one promotee between the two direct recruits has either resigned or left the post at his own volition.

4. That the contents of para 1 of the application are incorrect as stated and in reply it is submitted that Shri SK Singh was



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appointed to the post of Senior Tech. Asstt. in the year 1976 and the others in the years 1980, 81 & 82.

5. That in reply to the contents of para 2 of the application it is submitted that the date of promotion of the applicant would be 22.8.1981 and not 22.8.87 as mentioned in the application.

6. That the contents of para 3 of the application are incorrect as stated and in reply it is submitted that the requisition for 57 ~~xxx~~ direct recruitment posts of Asstt. Geophy. was sent to the UPSC in the year 1983 and the recommendation was received in 1985.

7. That the contents of paras 4 & 5 of the application are not disputed.

8. That in reply to the contents of of para 6 of the application it is submitted that the gradation list in the grade of Asstt. Geophy.

is as on 31.10.1985, the names of officers in the grade as on date were included in the list.

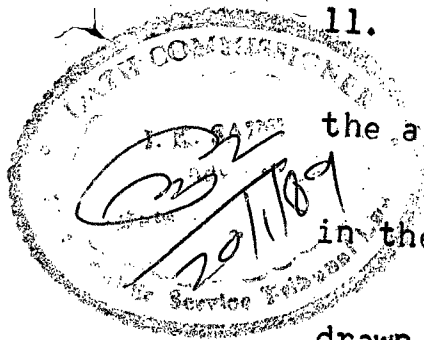
SP Balumita
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As the recommendation for 57 posts of Asstt. Geophysicist was received on 30.6.85, the names of the recommended candidates against the UPSC quota were shown, but the columns in the gradation list have been kept blanks as most of them have not joined at that time.

9. That the contents of para 7 of the application are not admitted in view of the fact stated in para-8 above. As the recommendation of the DPC was not received at the time of drawal of gradation list as on 31.10.85, the names of the promotees who joined later was not shown in the said list.

10. That the contents of para 8 of the application need no comments.

11. That in reply to the contents of para 9 of the application it is submitted that the gradation list in the grade of Asstt. Geophysicist as on 31.10.85 has been drawn as per Ministry of Home Affairs O.M. dated 22.12.1959, assigning seniority 1: 1. However, it may be stated that Shri R.S. Acharya has been recommended both the DPC and UPSC for promotion and appointment to the post of Asstt. Geophy., and actually took over charge as promotee with effect from 1.1.1986. But as his seniority in direct recruitment quota is favourable than the promotion quota, he has been assigned seniority in direct recruitment quota. In the promotion



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quota his seniority would be much lower.

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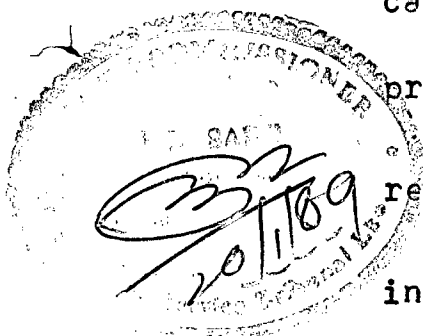
12. That in reply to the contents of para 10 of the application it is submitted that the gradation list in the grade of Astt. Geophy. as on 31.10.85 has been prepared as per principle laid down in the Ministry of Home Affairs O.M. dated 22.12.1959.

13. That the contents of para 11^{& 12} of the application are incorrect as stated and in reply it is submitted that the seniority is assigned as per the recommendation and not from the date of joining.

It may happen that in between the two direct recruits or promotees one promotee or one Direct recruit candidate may resign or leave the post at his own accord, in that case the seniority of the two direct recruits or two promotees are assigned one after another and the reasons for such assignment of the seniority are shown in the remarks column.

14. That the contents of para 13 of the application are incorrect as stated and in reply it is submitted that as per existing principle seniority of the officers can not be fixed from the date of joining.

As such, the question of placing seniority of the applicants above the direct recruits does not arise.



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15. That the contents of para 14^{& 15} of the application are incorrect as stated and in reply it is submitted that the gradation list is prior to 7.2.86, the order quoted in this para is not applicable in the instant case. However, in the said gradation list the ratio of fixing seniority is 1:1 as per existing rules.

16. That in reply to the contents of para 16 of the application it is submitted that as per recruitment rules in the grade of Asstt. Geophy, the ratio for filling up of the post is 1:1, this principle has been followed while fixing seniority in the said gradation list.

17. That in reply to the contents of para 17^{& 18} of the application it is submitted that the seniority ~~between~~ the direct recruits and promotees are to be assigned as per ratio of the existing Recruitment Rules.

18. That the contents of para 19 of the application are not disputed.

19. That the contents of para 20 of the application are incorrect as stated and in reply

20/11/89

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it is submitted that the gradation list was circulated after 7.2.86 but as it shows the position of 31.10.85, the question of following the principle as laid down in the O.M. dated 7.2.86 does not arise.

20. That the contents of para 21 of the application are reiterated the reply given against para 20 of the application as above.

21. That in reply to the contents of para 22 of the application it is submitted that the order is applicable for the posts of Asstt. Chemist only.

22. That the contents of para 23 of the application it is submitted that the order is applicable for the posts of Asstt. Chemist only.

23. That the contents of para 24 of the application need no comments.

24. That in view of the facts and circumstances stated above, the application filed by the applicant is liable to be dismissed with costs.

SP Salunke

SP Salunke
Deponent.

Lucknow,

Dated: 20-1-1989

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Verification.

I, the above deponent do hereby verify that
the contents of para 1 to 2 are true to my
personal knowledge and belief and those of
paragraphs 3 to 24 are believed by me to be
true on the basis of records and information gathered
and those of paragraphs 25 to 27 are
also believed by me to be true on the basis of legal
advice. No part of this affidavit is false and
nothing material has been concealed.

S. P. Balmaini
Deponent.

Lucknow,

Dated: 20-1-1989

I do identify the deponent who has
signed before me and is also personally known to me

S. P. Balmaini and signed on _____ at _____ am/pm in the court
compound at Lucknow.

V. K. Chaudhari

(V. K. CHAUDHARI)

Advocate, High Court
Addl. Standing Counsel for Central
Government.

Counsel for the Opp. parties.



C-262 m
7.00 pm
also in the
Court

S. C. Balmaini
V. K. Chaudhari
per

Dep. _____
this _____
signed by me. *S. P. Balmaini*

Commissioner of Police
Lucknow
Date: 20/1/89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Lucknow

O.A. No. 99 of 1988

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Filed today
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(9/1)

Suresh Kumar Singh & ors. .. APPLICANTS

V/s.

Union of India & anr. .. OPP. PARTIES

REJOINDER ON BEHALF OF THE APPLICANTS

I, Suresh Kumar Singh, aged about 40 years, son of Late Sri Raj Narain Singh, resident of Sector 'E' Aliganj, Lucknow, do hereby solemnly affirm and state on oath as under:-

- 1) That the deponent is the applicant No.1 in the abovenoted case and pairoker of other petitioners/applicants who have also been authorised by the other petitioners to file the present rejoinder on their behalf also.
- 2) That the contents of paragraphs 1 and 2 of the counter affidavit need no reply.
- 3) That the contents of paragraph 3 of the counter affidavit as are contrary to the averments and facts disclosed in the application are incorrect, hence denied. But in reply to paragraph 3(d) it is asserted that:-

सुरेश कुमार सिंह

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- 2 -

- (a) The title of the gradation list is clearly PROVISIONAL GRADATION LIST OF OFFICERS IN THE GRADE OF ASSISTANT GEOPHYSICISTS IN THE GEOLOGICAL SURVEY OF INDIA as on 31.10.1985. X
/SN
- (b) In the case of direct recruits whose names were recommended by UPSC on 30.6.1985, all the columns except 1 and 2 of the said gradation list are left blank.
- (c) The column 4(a) of the said gradation list shows 'Date of continuous appointment in Government service and designation and the office in which employed' and 4(b) shows 'First joining GSI' which are totally left blank in case of direct recruits of 30.6.85.
- (d) Simply recommendation of names for any post by UPSC does not guarantee appointment until unless the offer of appointment is made by the appointing authority and the person recommended accepts and joins the post in the said department.
- (d) How a list can contain simply the name of a person whose entrance in the cadre has not been materialised till the date of drawal of the said gradation list?
- (e) The unexplainable delay in circulation of the gradation list is also questionable. In the case of Assistant Chemists (No. TA 1784 of 1986), the date of drawal of gradation list is 1.6.1984 and the date of circulation is 18.12.1984.
- (f) In this case these dates are 31.10.1985 and 12.8.1987 respectively and it is understood that both orders, i.e. Ministry of Personnel, Public Grievances and Pensions, Deptt.

अरेश कुमार सिंह

AS2

- 3 -

of Personnel training order date of 7.2.86 and order No. T.A. 1784 of 1986 could have been followed in drawing the said gradation list.

(h) How much time should be allowed for the circulation of a list after it has been finalised?

- 4) That in reply to paragraph 4 of the counter affidavit, it is stated that the statements of para. 1 of application and para 4 of the counter affidavit are same and not contradictory.

As their first appointment in G.S.I. as S.T.A (Geophysics) M/s. S. K. Singh joined on 9.7.1976, R.S. Acharya on 30.1.1980, Dr. Mridula Chauhan on 26.5.1982, Ram Pratap Singh on 7.1.1981 and Ram Kumar Singh on 9.1.1981.

- 5) That in reply to paragraph 5 of the counter affidavit, it is mentioned that dates of promotion to the post of Assistant Geophysicist through Departmental Promotion Committee of the petitioner No. 1 whose date of promotion has been wrongly typed as 22.8.1987 instead of 22.8.1981 by mistakes and not intensionally.
- 6) That the contents of paragraph 6 of the counter affidavit are incorrect, hence denied and the contents of paragraph 3 of the application are reiterated to be true. It is, however, submitted that if in the case of direct recruits simply sending requisition to and getting recommendations from a mere recruiting body (UPSC) is the criteria for fixing seniority, why not the date of sending first proposal to UPSC/concerned Ministry/other offices for holding Departmental Promotion Committee meeting should be considered for fixing seniority in the case of promotees.

- 7) That the contents of paragraph 7 of the counter affidavit need no reply.

सुरेश कुमार सिंह

AS3

- 4 -

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- 8) That in reply to paragraph 8 of the counter affidavit it is submitted that in the aforesaid gradation list the names of only those Assistant Geophysicists were included who joined the post upto 31.10.1985, simply recommendation by a recruiting body does not mean that direct recruits have joined the Government service on 30.6.1985. In the last sentence of the para 8, it is clearly mentioned that 'but the columns in the gradation list have been left blank as most of them have not joined at that time.'
- 9) That the contents of paragraph 9 of the counter affidavit as stated are incorrect, hence denied and the contents of paragraph 7 of the application are reiterated to be true. It should also be made clear that how long a promotee recruit should wait for recommendation of the direct recruitment for fixing the seniority in the grade in the ratio of 1:1 as per recruitment rules.

As such the petitioners No.1 who joined on the post of Assistant Geophysicist as a DPC promotee on 22.8.1981 had to wait for his seniority fixation upto 30.6.1985 i.e. till the recommendation of direct recruit by UPSC.

It is also urged that as per recruitment rules for promotion from Assistant Geophysicists to Geophysicist(Jr.) by DPC, an Assistant Geophysicist with 3 years service in the grade rendered after appointment thereto on a regular basis is eligible for promotion.

The unexplainable delay in seniority fixation debarred petitioner No.1 of this privilege for the betterment of his service career.

सुरेश कुमार सिंह

AS4

- 5 -

4/5

- 10) That the contents of paragraph 10 of the counter affidavit need no reply.
- 11) That the contents of paragraph 11 of the counter affidavit are incorrect that the seniority list has been drawn as per O.M. dated 22.12.1959. It is, however, submitted that in the aforesaid seniority list a vacant (by resignation or own volition) promotee post between two direct recruits has been filled by a direct recruits but a vacant direct recruit post between two promotee posts is filled only by a direct recruit post and not by a promotee post. As such 1:1 ratio in seniority has not been maintained. //

Moreover, a candidate whose name has been recommended both by DPC and UPSC will surely like to join the post which is favourable to him regarding his seniority.

It is also not clear from the gradation list how UPSC post and not the DPC post is favourable to Sri R.S.Acharya, the petitioners No.27. Was it wise for him not to join the DPC post on 1.1.1986 and wait till 12.8.1987 the circulation date of the aforesaid seniority list for knowing his favourable seniority? Though the name of Sri R.S.Acharya was recommended by UPSC for selection as Assistant Geophysicists in GSI, he has not received any such offer from GSI till date which will help him in deciding his better seniority.

- 12) That the contents of paragraph 12 of the counter affidavit are incorrect that the seniority list is in accordance with the instructions of the Home Ministry order dt 22.12.1959.
- 13) That the contents of paragraphs 13 of the counter affidavit as are contrary to the averments of paragraphs 11 and 12 of the application are incorrect, hence denied. It is, however,

सुरेश कुमार सिंह

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A/56

- 6 -

submitted that it is the burden of the opposite parties to prove that the seniority list has been prepared in accordance with the Rules. It is further stated that in case of vacancy falling due to resignation of a promotee or a direct recruit between two direct recruits or two promotees, the seniority of two direct recruits or two promotees are assigned one after another which is not in accordance with the rule of 1:1 ratio.

- 14) That the contents of paragraph 14 of the counter affidavit are incorrect, hence denied and the contents of paragraph 13 of the application are reiterated to be true. It is stated that the seniority should be fixed amongst the candidates who are already in that cadre on the date of drawal of the gradation list. Direct recruits who did not join the said post on the drawal date of the list can on what basis be included in the seniority list.
- 15) That the contents of paragraph 15 of the counter affidavit are incorrect, hence denied and the contents of paragraphs 14 and 15 of the application are reiterated to be true. It is however submitted that if the principle of 1:1 ratio is strictly followed, the promotee or a direct recruit post should have been filled by a promotee or a direct recruit only, which is not followed in the aforesaid list. The order dt 7.2.86 would have been very well followed had the gradation list revised ^{before} ~~as~~ circulated ⁱⁿ.
- 16) That the contents of paragraph 16 of the counter affidavit as are contrary to the averments of paragraph 16 of the application are incorrect, hence denied. It is submitted that ^{had the ratio of 1:1} strictly followed, the promotee or a direct recruit post should have been filled in time, which is not followed in the said list.
- 17) That in reply to paragraph 17 of the counter affidavit, it is submitted that recruitment rules have been recently incorporated and interpreted by the opposite parties.

सुरेश कुमार सिंह

ASB

A/57

- 7 -

- 18) That the contents of paragraph 18 of the counter affidavit need no reply.
- 19) That the contents of paragraphs 19 and 20 of the counter affidavit are incorrect, hence denied and the contents of paragraphs 20 and 21 of the application are reiterated to be true.
- 20) That the contents of paragraph 21 of the counter affidavit are incorrect, hence denied and the contents of paragraph 22 of the application are reiterated to be true. There cannot be two principles for determination of seniority of Assistant Chemists and Assistant Geophysicists in one organisation and on the same set of rules.
- 21) That the contents of paragraph 22 of the counter affidavit are incorrect, hence denied and the contents of paragraph 23 of the application are reiterated to be true. The posts of Assistant Chemists and Assistant Geophysicists are equivalent posts in all manner.
- 22) That the contents of paragraph 23 of the counter affidavit need no reply.
- 23) That the contents of paragraph 24 of the counter affidavit are incorrect, hence denied.

That for the facts and the circumstances stated above and in the original application, the applicants are entitled to the reliefs prayed for and the application deserves to succeed.

सुरेश कुमार सिंह
DEPONENT / APPLICANT

Dated: July 1989.

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8/58

- 8 -

VERIFICATION


I, the deponent named above, do hereby verify that the contents of paragraphs 1 to 23 above are true to my personal knowledge. No part of it is false and nothing material has been concealed, so help me God.

Signed and verified this the day of July 1989
at Lucknow.

सुरेश कुमार सिंह

DEPONENT

I identify the deponent who has signed before me and personally known to me


(P.K. SRIVASTAVA)
Advocate