

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

OAR/RA/CP/MAT/.....250.....of 20.90

A.T.Tharmadas.....Applicant(S)

Versus

U.O.S.....Respondent(S)

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Certified that the file is complete in all respects.

Signature of S.O/16/200

Signature of Deal. Hand

13/6/12

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 25c of 1989 96(L)

APPLICANT(s) H. T. Thomas

718192

RESPONDENT(s) C. C. G.

718192
21

Particulars to be examined Endorsement as to result of examination

1. Is the appeal competent ? Yes
2. a) Is the application in the prescribed form ? Yes
b) Is the application in paper book form ? Yes
c) Have six complete sets of the application been filed ? Yes
3. a) Is the appeal in time ? Yes
b) If not, by how many days it is beyond time ? Yes
c) Has sufficient cause for not making the application in time, been filed ? Yes
4. Has the document of authorisation/ Vakalatnama been filed ? Yes
5. Is the application accompanied by S.O./Postal Order for Rs.50/- Yes
6. Has the certified copy/copies of the order(s) against which the application is made been filed ? Yes
7. a) Have the copies of the document/relied upon by the applicant and mentioned in the application, been filed ? Yes
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ? Yes
c) Are the documents referred to in (a) above neatly typed in double space ? Yes
8. Has the index of documents been filed and page no. done properly ? Yes
9. Have the chronological details of representation made and the cut come of such representation been indicated in the application ? Yes
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal ? Yes

Particulars to be ExaminedEndorsement as to result of examination

11. Are the application/duplicate copy/spare copies signed ? *yes*

12. Are extra copies of the application with annexures filed ? *yes*

a) Identical with the Original ?
b) Defective ?
c) Wanting in Annexures
Total _____ pages Nos _____ ?

13. Have the file size envelopes bearing full addresses of the respondents been filed ? *No*

14. Are the given address the registered address ? *yes*

15. Do the names of the parties stated in the copies tally with those indicated in the application ? *yes*

16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ? *yes*

17. Are the facts of the case mentioned in item no. 6 of the application ? *yes*

a) Concise ?
b) Under distinct heads ?
c) Numbered consecutively ?
d) Typed in double space on one side of the paper ?

18. Have the particulars for interim order prayed for indicated with reasons ? *yes*

19. Whether all the remedies have been exhausted. *yes*

dinush/*S. S.*

11-9-90

~~Hon'ble Justice K. Nath, V.C.~~
~~" / Mr. M.M. Singh A.M.~~
 Due to sick demise of
 Hon'ble Justice K. Nath, V.C.
 Case is adjourned to 12.9.90

~~Mr. M.M. Singh~~

V.C.

~~(S)~~

B.O.C.

12.09.1990.Hon'ble Mr. Justice K. Nath, V.C.Hon'ble Mr. M.M. Singh, A.M.

Admit.

Issue notice. C.A. may be filed within four ~~months~~^{weeks} and R.A. may be filed within two weeks thereafter. List before Dy. Registrar on 31.10.1990 for fixing a date for final hearing.

Sd/-
A.M.Sd/-
V.C.

Ms/

Notice issued
R
24-9-90

6.11.90
D.R.

This case has been taken up today, because 31.10.90 was declared holiday due to disturbance. Counter has not filed by C.P. Due to resolution of Bar Association case is adjourned to 3.12.90.

O.A. 250/90 (L)

15.3.91
D. R.

Shri M. K. Shukla

appears for the
applicant. O.P. is
absent today.

In this case C.A./R.A.

have been exchanged

Now this case is
ready for F. H. Hence

this case is listed
before the Hon'ble

Bench, on 15.4.91

F. H. 18/3/91

15.4.91

No Siting Adj to 2.8.91

J

2.8.91

No Siting adj to 12.8.91

J

12.8.91

No Siting adj to 24.9.91

J

24.9.91

No Siting adj to 14.11.91

J

14.11.91

No Siting adj to 01.92

J

01.92

No Siting adj to 19.2.92

J

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (ALLAHABAD BENCH)
ALLAHABAD.

C.A. NO. 250/90
F.A. NO.

CF * 199

Date of decision:--

A. T. Thomas Petitioner

M. K. Shukla Advocate for the Petitioner.

Versus

G. O. I. D. O. S. Respondent

V. K. Chaudhary Advocate for the Respondent(

XXX: XXXXXXXXX: XXX

CORAM:--

The Hon'ble Mr. V.C. Srinivasan, V.C.

The Hon'ble Mr. P. Abayya, 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 all other Benches ?


Signature

Naqvi/

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH LUCKNOW.

O.A.No.250 of 1990.

A.T.Thomas.....Applicant.

Versus

Union of India & others Respondents.

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

Hon'ble Mr.K.Obayya,A....

(By Hon'ble Mr.Justice U.C.Srivastava,V.C.)

The applicant, who entered the Military Engineer Services as Lower Division Clerk after intervening promotions which he also got by passing the departmental examination, was opted for promotion in the Office Superintendent Cadre and he became fullfledge member of Office Superintendent Cadre. In the All India seniority of Stenographers' list, the name of the applicant was shown at S.No.56. The Departmental Promotion Committee selected the applicant and promoted him to the post of Office Superintendent Cadre II and his name was shown at S.No.18. Subsequently a person who is junior to the applicant, was promoted to the post of Office Superintendent Grade I from the post of Office Superintendent Grade-II and the name of the applicant was by-passed. When the applicant contacted the authority concerned, he was told that the notional seniority has been given to the persons junior to the applicant and as such they were promoted. The name of such juniors have also been given by the applicant. After exhausting departmental remedy, the applicant filed representation against the same with Army concerned before the Army Headquarter which was also dismissed. Thereafter, the applicant approached this tribunal making the grievance of non-consideration of his case and promotion to the juniors and in this

W

connection, a reference has been made to the decided by the Central Administrative Tribunal Bench. The applicant has prayed that a direct issued to the respondents to promote him to the higher post of Administrative Officer Grade-I give all the service benefits to him from the which the persons junior to him were promoted direction be also issued to the respondents to the compliance of the judgment dated 5.12.86, by the Central Administrative Tribunal, Madras the other orders including rejection of his -tion be also quashed.

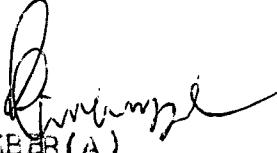
2. The respondents have resisted the claim of the applicant and justified their action that a notional seniority was given to the persons who were juniors and consequently, they became senior to the applicant, that is why they were promoted to the higher grade. The Madras Tribunal directed the department not to fix interse seniority on the basis of notional promotion and further directed the department to fix the seniority of the respondents taking into account the period of their office on the post of Office Superintendent Grade I adhoc basis. In this case, discrimination has been done to the applicant and a favour has also been done to the respondents. Accordingly, this application is allowed to the extent that on the basis of notional seniority, which was not rightly given to the juniors, the applicant cannot be passed over. It is also directed that a review D.P.C. shall consider the case of the applicant and shall give him from the date his juniors have been promoted to the higher post of Office Superintendent Grade I seniority, and the seniority of the applicant shall also be given initially.

1/

and the seniority of the applicant shall also be disturbed.

..3..

Let it be done within a period of three months from
the date of communication of this order. No order
as to costs.


MEMBER(A)

DATED: JULY 15, 1992

(ug)


VICE CHAIRMAN.

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APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNALS ACT, 1985.

O. A. 250/90 (L)

A.T.THOMAS

-----Applicant

Versus

Union of India and others.

-----Respondents

I N D E X.

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3.	" No.2: Representation by the petitioner to Engineer- in-Chief Army H.Q., New Delhi, dt.16.2.84.	24-26
4.	" No.3: Letter dt.28.3.84 issued by Chief Engineer, Central Command.	27
5.	" No.4: Representation by the petitioner to Engineer- in-Chief, Army H.Q., New Delhi, dt.20.9.86.	22-29
6.	" No.5: Judgment dt.5.12.86 of Central Administrative Tribunal, Madras.	30-47
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9.	" No.8: Representation by the petitioner to Engineer- in-Chief, Army H.Q., New Delhi, dt.22.3.88	50-51

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10.	Annexure No.9: Letter of Engineer-in-Chief's Branch Army HQ DHQ PO New Delhi dt.18.7.88.	52
11.	" No.10: Representation by the petitioner to the Secy. Govt.of India,Ministry of Defence,New Delhi, dt.16.9.88.	53-54
12.	" No.11: Letter of Engineer-in-Chief's Branch Army HQ dt.11.10.88.	55
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14.	" No.13: Representation by the petitioner to Engineer-in-Chief, Army HQ, New	57-59
15.	" NO.14 Delhi,dt.1.3.90. Rejection of Representation	60

A. G. Thomas S.

APP LIC ANT.

For use in Tribunal's Office:

Date of filing:

or

Date of Receipt by Post

Registration No.

Signature.

for Registrar.

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH.

Central Administrative Tribunal
A. Lucknow
7.8.190
P. T. P.
21

Deputy
S. P.

B E T W E E N :

A.T. THOMAS.

-----Applicant

A N D

1. Union of India, through the Secretary,
Ministry of Defence, New Delhi-110001.
2. Engineer-in-Chief, Army Head Quarter,
P. G. Kashmir-House, P.O. D.H.Q.
New Delhi-110011.
3. Chief Engineer, Central Command,
P.O. Dilkusha, Lucknow.

-----Respondents

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DETAILS OF APPLICATION:

. Particulars of Applicant:

A. Thomas

- i) Name of the applicant : MES/261011
a.k.a A. T. Thomas.
- ii) Name of father/husband : Shri Joseph Thomas.
- iii) Age of the applicant : 55 years.
- iv) Designation and
particulars of office : Office Supdt. Grade-I
Chief Engineer
Central Command
Lucknow.
- v) Office address : Chief Engineer
HQ Central Command
Lucknow.
- vi) Address for service
of notices. : Chief Engineer
H.Q. Central Command
Lucknow.

. Particulars of Respondents:

i) Name of the Respondents: 1. Union of India.
2. Engineer-in-Chief.
3. Chief Engineer,
Central Command,
Lucknow.

ii) Name of father/husband : NA.

iii) Age of Respondents. : NA.

iv) Designation and parti- : Engineer-in-Chief,
culars. Army Head Quarter,
P.S. Kashmiy House,
P.O. D.H.Q., New Delhi.

v) Office address : Engineer-in-Chief,
Army Head Quarter,
P.S. Kashmiy House, P.O.
D.H.Q., New Delhi.

vi) Address of service of : 1. Union of India
notifies. through Secretary,
Ministry of Defence,
New Delhi-110001.
2. Engineer-in-Chief,
Head Quarter, P.S.
Kashmiy House, D.H.Q.
New Delhi-110011.
3. Chief Engineer,
Central Command,
P.O. Dilkusha,
Lucknow.

1. . Particulars of the order against
which application is made:

J. G. K. S.
The application is against the following order:

i) Order No. 915114/2/659/E10B (Adm)
with reference to Annexure No. 14

ii) Date: 11 April 1990

iii) Passed by: Engineer-in-chef (Respondent No. 2)

iv) Subject in brief: The applicant has been
deprived from his rightful
claim as being promoted on
the higher post. The persons
juniors to the petitioner
has been promoted while the

name of the applicant was not considered in most arbitrary, illegal manner.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of this Tribunal.

3. Limitations:

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case:

The facts of the case are given below :-

(1) That the ~~patiki~~ applicant was recruited in the Military Engineer Services as Lower Division in the year 1958 and he was posted to the Commander Works Engineers, Calcutta. The applicant joined on the said post on 24th March, 1958.

(2) That thereafter the applicant being fully eligible and entitled was promoted on the post of Stenographer on 11th January, 1963, and after passing the requisite examination for the permanancy for the

of Services

same. The applicant was declared permanent on the said cadre.

(3) That thereafter the applicant passed the Upper Division Clerks Examination conducted by the College of Military Engineer in the year 1967. After passing the said U.D.C. Examination, the applicant became eligible and entitled for the option for promotion in the Office Supdt. Cadre. The applicant opted for the promotion in the Office Supdt. Cadre and he became ~~fulfilled~~ fullpledge member of Office Supdt. Cadre and thus he became fully eligible entitled for his promotion in the said Office Supdt. Cadre.

(4) That the All India seniority of Stenographers was circulated in the year 1980 and the name of the applicant was shown at serial number 56 and that circulated in December, 1981 shown at serial number 8.

(5) That the Departmental Promotion Committee was held at Engineer-in-Chief's Branch, Army Head Quarters in the year 1982 and the applicant was selected and promoted to the post of Office Supdt. Grade-II. The name of the applicant was also shown at Sl. No. 18 of the Promotion Panel circulated by



Engineer-in-Chief's Branch letter dated 8th March, 1982. The photostat copy of the said letter is annexed as Annexure No.1 to this petition. Thereafter in view of that selection the applicant was promoted and placed in position as Officer Supdt.-II on 30th March, 1982.

(6) That the applicant joined on the said post of Officer Supdt.-II on 30th March, 1982 and since then he was continuously working and his work and conduct was always appreciated by the concerned authorities.

(7) That but to the utter shock and surprise to the applicant, the opposite parties promoted most arbitrarily, illegally and discriminating manner persons junior to the applicant on the post of Office Supdt. Grade-I from the post of Office Supdt. Grade-II. It is very important to mention here that the name of the applicant was by-passed and the applicant was deprived from his rightful claim of being promoted as Officer Supdt. Grade-I in the year 1983.

(8) That the applicant met the concerned authorities personally and submitted his representation stating therein as not to deprive the applicant from his rightful claim of being promoted to the Office Supdt., Grade-I.

(9) That the applicant was informed by the opposite parties that they have given notional seniority to the persons junior to the applicant as such the persons junior to the applicant were promoted. The applicant was very much shocked and surprised to know that the persons junior to the applicant on the post of Office Supdt., Grade-II, were promoted to Office Supdt., Grade-I, on the pretext and in the name of "Notional Seniority" to them. It is also very relevant to mention here that it has already been settled by Hon'ble Supreme Court and Central Administrative Tribunal to give notional seniority to juniors, is most illegal, unlawful, invalid, arbitrary act and it is also against the principles of natural justice.

(10) That the opposite parties most arbitrarily, illegally and most discriminatory manner with malafide intention and with ulterior motive did not count the period of actual officiation of the applicant as Office Supdt., Grade-II.

of G. Shams
(11) That the names and details of the persons junior to the applicant, who were given notional seniority while the applicant was deprived from his rightful claim being promoted to the higher post, is given as under :-

S.No.	Name	Date of appointment	All India Seniority Stenographer. 80 - 81	Sl.No. in Office Supdt.-II from Office Panel of 82	Notional Seniority assign from 1975.
1.	A. T. Thomas (Applicant)(Steno)	11.1.63	56	8	18
2.	Smt. Sarla Menon.	7.2.63	57	9	30
3.	Sri R. K. Sharma.	15.3.63	58	10	32
4.	Sri Kishan Lal	11.4.63	60	11	33
*	5. Sri Surendra Kumar	20.4.63	63	13	34
*	6. Sri P.C.Joshi	26.4.63	64	14	35
					66

(12) That aggrieved by the action of the opposite parties, the applicant submitted his representation on 16.2.84, stating therein that the applicant has been deprived from his rightful claim-while the persons much junior to him were promoted to most illegal manner by giving unlawful and invalid and illegal notional seniority. Thee applicant was informed by the Chief Engineer, Central Command vide his letter No. dated 28.3.1984 stating therein that the subject matter has become subjudice in the High Court as certain persons had filed writ petitions against the Panel of ^{June} January, 1983. The photostat copy of the said representation dated 16.2.1984 and the letter dated 28.3.1984 issued by Chief Engineer, Central Command are annexed as Annexures No.2 and 3 to this petition respectively.

St. J. J. Kaur

(13) That opposite parties most arbitrarily did not consider the claims of the applicant and also did not pay any heed to the representation made by the applicant. As such after waiting for more than 2 years the applicant submitted his another representation on 2.9.86 to the Army Head Quarters, New Delhi, stating therein to consider and promote the applicant to the higher post and also to give relief against following grievances :-

(a) Not to assign illegal and arbitrary Notional Seniority to the persons junior to the petitioner w.e.f. 11.12.75.

(b) Consider and promote the applicant as Office Supdt., Grade-I on the date on which he was entitled but his juniors were promoted against the claims of the applicant.

(c) Consider and promote the applicant as Administrative Officer-II on the post on which the persons junior to the applicant were promoted but again to the shock and surprise of the applicant, the ^{said} ~~send~~ representation dated 2.9.86 which has neither been disposed off nor did the applicant was informed any thing in this connection

J. S. Rawat

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till today. Photostat copy of the said representation dated 20.9.86 is annexed to this petition as Annexure No.4.

(14) That in similar facts and circumstances transfer application No.177, 465 and 427 of 1986 and original application No.287 of 1986 which were previously filed before the Hon'ble High Court at Madras but thereafter transferred before Central Administrative Tribunal, Madras Bench for ~~hon'ble~~ their judgment. The ~~hon'ble~~ Central Administrative Tribunal, Madras was pleased to allow the said applications and directed the authorities concerned not to give Notional Seniority to the junior persons. It was further held by the Central Administrative Tribunal, Madras that the Notional Seniority is absolutely illegal, unlawful, invalid and against the principles of natural justice. It was further held by the Central Administrative Tribunal, Madras that the Notional Seniority is absolutely illegal, unlawful, invalid and against the principles of natural justice. It was also further directed by the Central Administrative Tribunal, Madras that the seniority could only be fixed after taking into account their continuous officiation in the cadre of Office Supdt. Grade-II. It was also decided and directed

A. S. Khan

-10-

by the Central Administrative Tribunal, Madras not to fix inter seniority on the basis of Notional promotion from 11.12.1975. The photostat copy of the said judgment dated 5.12.1986 is annexed with this petition as Annexure No.5.

(15) That thereafter the petitioner submitted his representation to the opposite parties requesting therein to consider the claim of the applicant on the basis of principles laid down in the Central Administrative Tribunal, Madras dated 5.12.1986.

(16) That the opposite parties did not consider the claims of the applicant but on the other hand vide letter dated 4.12.1987, the opposite parties informed the applicant that the claims of the applicant could not be considered as the applicant was not the applicant of that case which was referred against which the applicant claimed parity on the basis of the same principle, which was laid down by the Central Administrative Tribunal, Madras. Copy of the said letter dated 4.12.1987 is annexed to this petition as Annexure No.6.

A. S. Khan

(17) That after considering the said judgment dated 5.12.1986 of Central Administrative Tribunal, Madras, as it was held by it

that Notional Seniority was illegal, unlawful and arbitrary. The opposite parties revised the seniority of the persons much junior to the applicant. In compliance of the said judgment dated 5.12.1986, the opposite parties promoted such junior persons to the applicant on the regular basis. It is also pertinent to mention here that such junior persons never officiated on adhoc basis. The names and details of such junior persons are given under :-

Sl.No. of the seniority list.	Name	Date of continuous service on the O/s Gr.-II.	Remarks.
54 A	Shri R.Balasubramanion.	17.9.82	Seniority re-fixed as per judgment of
54 B	Sri N.Mahadevan.	9.10.82	Central Adminis- trative Tribunal,
54 C	Sri P.Sethimadhavan.	29.10.82	Madras Bench, dt.5.12.86.

(18) That it is also pertinent to point out that the above said persons juniors to the petitioner were not found place in the Review Departmental Promotion Panel like applicant for assigning Notional Seniority either from December, 1975 or for from 04 July 80 so as circulated vide Engineer Chief Brand Army Head Quarters dated 18.6.1983 and 20.4.1984 respectively but these junior persons shown in the list of assigning

J. S. Khan

Notional Seniority dated 8.3.1982. Copy of Review D.P.C. Panel dated 20.4.1984 is annexed as Annexure No.7 to this petition.

(19) That the applicant again made representation on 22.3.1988 showing the parity to those persons who were junior to the applicant but they were given seniority on the basis of the principle laid down by the said judgment dated 5.12.1986 but again the opposite parties in their own manner informed the applicant. The seniority of persons junior to the applicant had been revised in pursuance to the said judgment dated 5.12.1986. A copy of the said representation dated 22.3.1988 and its reply dated 18.7.88 are annexed herewith as Annexures No.8 and 9 respectively.

(20) That again the applicant has always been pursuing his claims for the promotion to the higher post and for the revision of his seniority and the applicant has always been requesting to the opposite parties to adopt uniform criteria as directed by the Central Administrative Tribunal, Madras Bench dated 5.12.1986. As such the applicant had to move again his representation dated 16.9.1988 to the Secretary, Ministry of Defence, New Delhi but again in most arbitrarily, illegal and unjust manner it was turned down vide letter



dated 11.10.1988 by simply saying that the applicant has not brought any fresh point. True copy of the said representation and reply thereto are annexed as Annexures No.10 and 11 respectively.

(21) That the applicant was informed from the office of the opposite parties that the promotion to the post of Office Supdt., Grade-I and Administrative Officer, Grade-II are being made on the basis of physical completion of 5 years service and 8 years service as Office Supdt., Grade-II/Office Supdt., Grade-I respectively and not on the basis of Notional Seniority whatsoever. Accordingly the applicant was promoted to the post of Office Supdt., Grade-I vide letter dated 2.8.1988. Since the promotion to the Administrative Officer, Grade-II were also made on the basis of physical completion of 8 years. Now the relevant rules were annex amended as such 7 years service was Supdt.- required as Office/II/I instead of 8 years.

A. J. Khan S
(22) That as such the applicant made his representation dated 25.10.1989 requesting therein to consider the claims of the applicant to the post of Administrative Officer, Grade-II as the applicant has completed the required period of 7 years as Office Supdt., Grade-II/I as he had been continuously working from

30.3.1982 and he was fully eligible and entitled for being promoted to the post of Administrative Officer, Grade-II. Photostat copy of the said representation dated 25.10.1989 is annexed as Annexure No.12 but again the opposite parties in most arbitrary manner did not consider the claims of the applicant for promotion but on the other hand vide their letter dated 1.2.1990 informed the applicant that they have drawn the fresh seniority list of Office Supdt., Grade-II which had been circulated vide their letter dated 2.11.1989.

(23) That the claims of the applicant were not considered while the applicant was continuously agitating since the year 1984 as the applicant was deprived of his rightful claim for the promotion while the persons junior to the applicant was promoted. The applicant again submitted another representation dated 1.3.90. The copy of the said representation is annexed as Annexure No.13 to this petition.



(24) That the opposite parties most arbitrarily, illegal manner turned down the issue of representation of the applicant without considering his rightful claims.

(25) That now aggrieved by the most arbitrary and illegal action of the opposite parties as to deprive him from being promoted to the higher post and to promote persons junior to the applicant on their own pick and choose basis in arbitrary manner. The applicant is also aggrieved by the most illegal and arbitrary act of the opposite parties as to give Notional Seniority to the persons junior to the applicant without considering the physical service rendered by the applicant in the capacity of Office Supdt., Grade-II.

(26) That the Central Administrative Tribunal, Madras Bench has already declared that the said Notional Seniority which was given to the juniors to the applicant from the year 1975 as illegal, arbitrary, invalid and against the principles of natural justice and it was also held that as such Notional Seniority is not sustainable in the eye of law.

(27) As such aggrieved by the action of the opposite parties, the applicant is compelled to file the instant petition for consideration of his rightful claim for which he is fully entitled.

A. J. Kanu

(28) That to deprive the applicant from his claim for the promotion to higher post

and to give most arbitrarily notional or hypothetical seniority to the persons junior to the applicant is absolutely illegal and void and also against the Article 14 and 16 of the Indian Constitution. As such it could not sustain any spur of the moment.

(29) That it has already been settled in number of Supreme Court decisions and also by the decision dated 5.12.1986 (Annexure No.5) passed by the Central Administrative Tribunal, Madras Bench that only the date of entry into the grade will determine the question of seniority in between the persons of the cadre and further any notional or hypothetical seniority is absolutely illegal and invalid and against the rules in this connection.

(30) That first opposite parties deprived the applicant for being considered and promoted on the higher post while the persons junior to him were promoted. Now again the opposite parties are going to promote the persons very shortly (say within 15 days) and again going to deprive the ~~not~~ applicant from rightful claim for being considered for promotion.

A. J. Thomas

(31) That the applicant is going to retire in the near future and as such irreparable loss and injury will cause to the applicant's career in service.

6. Details of the remedies exhausted:

The applicant declares that he has availed of all the remedies available to him under the relevant service Rules, etc.

7. Matters not previously filed or pending with any other Court:

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court of law or any other authority or any other Bench of the Tribunal and nor any such application, writ petition or suit is pending before any of them.

8. Relief(s) sought :

In view of the facts mentioned in para 6 above the applicant prays for the following relief(s) :-

As a applicant being deprived from his rightful claim for being considered for the promotion, he prays for the following relief:-

A. S. Jaiswal

(a) to issue a direction commanding the opposite parties to promote the applicant to the higher post of Administrative Officer, Grade-I and to give all the service benefits to the applicant from the date on which the persons junior to the applicant were promoted.

(b) to issue a direction commanding the opposite parties to make compliance of the judgment dated 5.12.1986 passed by the Central Administrative Tribunal, Madras (Annexure No.5) and to follow and apply the same principle which was laid down in the said judgment and has already been applied for the persons junior to the applicant in the department;

(c) to quash the order dated 11 April 1990 (Annexure No.14) cancelling the representation of the applicant;

(d) to issue any other direction, order command to the opposite parties to which this Hon'ble Tribunal deem fit, just and proper in favour of the applicant;

(e) to issue a direction commanding the opposite parties to give seniority to the applicant on the basis of original Panel which was held in the year 1982 and not to give any Notional (Hypothetical) Seniority for the year 1975 to persons who are junior to the applicant.

Ati Jhawal

9. Interim order, if any prayed for:

For the facts, reasons and circumstances stated in the accompanying application, the

applicant most respectfully prays that this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to consider and promote the applicant as Administrative Officer, Grade-I during the pendency of the present application.

11. Particulars of Bank Draft/Postal Order in respect of the Application Fee: B 02 414212

(1) Number of Indian Postal Order(s): ~~One~~

(2) Name of the issuing Post Office: P.O. High Court Bench, Lucknow

(3) Date of Issue of Postal Order(s): 26.6.90

(4) Post Office at which payable:

12. List of enclosures:

1. List of UDCs and Stenographers for promotion to office Supdts.-II dt.83.1982.

2. Representation by the petitioner to Engineer-in-Chief Army H.Q., New Delhi, dt.16.2.84.

3. Letter dt.28.3.84 issued by Chief Engineer, Central Command.

4. Representation by the petitioner to Engineer-in-Chief, Army H.Q., New Delhi, dt.29.9.86.

5. Judgment dt.5.12.86 of Central Administrative Tribunal, Madras.

6. Letter of opposite party dt.4.12.87.

7. Review D.P.C. Panel dt.20.4.84.

8. Representation by the petitioner to Engineer-in-Chief, Army H.Q., New Delhi, dt.22.3.88.

A. Khan

9. Letter of Engineer-in-Chief's Branch Army HQ DHQ PO New Delhi dt.18.7.88.
10. Representation by the petitioner to the Secretary, Govt. of India, Ministry of Defence, New Delhi. dt.16.9.88.
11. Letter of Engineer-in-Chief's Branch Army HQ dt.11.10.88.
12. Representation by the petitioner to Engineer-in-Chief, Army HQ DHQ PO New Delhi, dt.25.10.89.
13. Representation by the petitioner to Engineer-in-Chief, Army HQ, New Delhi, dt.1.3.90.

Verification.

I, A.T.Thomas, son of Mr.Joseph Thomas, working as Office Superintendant, Grade-I in the Office of Chief Engineer, Central Command, P.O. Dilkusha, Lucknow, do hereby verify that the contents of paras 1 to 29, 31 _____ are true to my personal knowledge and those of paras —30 _____ are believed to be true on legal advice and I have not suppressed any material fact.

A.T.Thomas

Dated: .6.90

Place: Lucknow.

A.T.Thomas
APPLICANT.

To,

The Registrar,

Ind. Central Admin. Standards Tribunal Circuit Re. 60
Lok. No.

C. A. No

1990

A. T. Thomas

Reddison Hotel 3C

VS

Union of India & others

Opposite Shanti Bhawan

Amritsar No. 14

Tele: Mily : 2834

915114/2/659/E10B(Add)

11 Apr 90

E10B(Add)

ALL INDIA SENIORITY LIST OF OFFICE SUPDT GDE II

1. Reference your ION No 909010/298/E1R (Add) dt 01 Mar 90.
2. A copy of Engineer-in-Chief's Branch, AHQ letter No 41270/E1R (Sub) dated 27 Mar 90 is forwarded herewith.
3. The individual may please be informed suitably.

Sd / x x x
(UB Singh)
AO II
Add Officer

E1R

A copy of E-in-C's Br, AHQ letter No 41270/E1R (Sub)
dated 27 Mar 90.

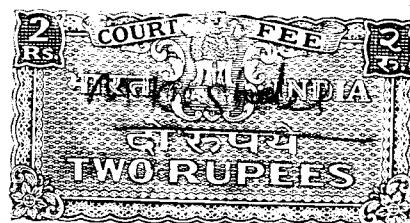
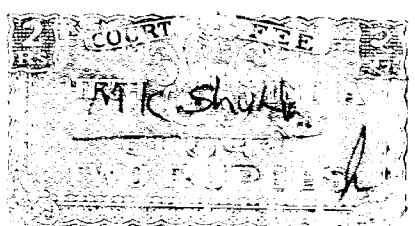
Subject : AS ABOVE

1. Reference your letter No 909762/OS/VII/46/E1D (2)
dated 14 Mar 90.
2. The representation dated 01 Mar 90 in respect of
Shri AT Thomas has been examined in detail.
3. The individual has not brought out any fresh point.
As such, the contents of our letter No 41270/E1R (Sub)
dated 01 Feb 90 hold good.

4. However, it is further clarified that the original
DPC of 1975 was reviewed in May 83 and DPCs of 1980 and
1982 were reviewed in Dec 83. With the issue of review
DPCs panel, the original panels of 1980 and 1982 DPCs
stand superseded. The individual should compare his
position with the individuals shown in the review DPC panels
and not with that of shown in original panels as the same
stand superseded. The individuals who have been promoted
as AO I/AO II as brought out by the individual, were selected
as O/S II against the vacancies of 1975 by the review DPC
of May 1983, whereas Shri AT Thomas was selected by the
review DPC of Dec 83. (ie review of 1980 and 1982 DPCs).
The individuals may be suitably informed at your end.

RL Sharma
Sd / x x x x
(RL Sharma)
AO II
SO 3 (E1R (Sub)
Engineer-in-Chief

VAKALTNAMA
In the High Court of Justice
at Allahabad
SITTING AT LUCKNOW



Union of India Versus & Others

No. of 19

I/We the undersigned do hereby nominate and appoint Shri.....
.....425/11. Bimal Sahani, M.A., N.I.A., Allahabad, Lucknow.....
.....

M. K. Shukla, High Court,

be counsel in the above matter, for me/us and on my/our behalf appear plead act and answer in the above Court or any Appellate Court or any Court to which the business is transferred in the above matter, and to sign and file petitions, Statements, accounts exhibits, compromises or other documents whatsoever, in connection with the said matter arising therefrom, and also to apply for and receive all documents, or copies of documents, depositions, etc, etc, and to apply for issue summons and other writs or subpoena and to apply for and get issued any arrest, attachment or other execution, warrant or order and to contact any proceeding that may arise thereout; and apply for and receive payment of any or all sums or submit the above matter to arbitration.

Provided, however, that, if any part of the Advocate's fee remains unpaid before the first hearing of the case or if any hearing of the case be fixed beyond the limits of the town, then and in such an event my/our said advocate shall not be bound to appear before the Court; Provided ALSO that if the case be dismissed by default, or if it be proceeded ex parte, the said advocate shall not be held responsible for the same, and all whatever my/our said advocate shall lawfully do, I do hereby agree to and shall in future ratify and confirm.

Accepted :

- Advocate.
- Advocate.

Signature : *M. K. Shukla*

before the Central Administrative Tribunal Circuit Bench

CA No: 1990

A.T. Thomas

Union of India & others

Sum No - 1

21
-- Petition / Application
-- Off. & Spend out

Appendix 'A' to EAC's Br.
letter No 41205/81/EAC dt
08 Mar 82

LIST OF UDCs AND STENOGRAPHERS FOR PROMOTION TO OFFICE SUPDTS.

S. No	MES No	Name
1.	6144	S' Shri
2.	11219	Kuldeep Singh
3.	1836	S. Nallasivan
4.	426015	Naresh Chandra Ganguly
5.	8463530	Kuldeep Singh Bakshi
6.	8464528	Nand Kishore Bakshi
7.	302526	Ram Paul Aggarwal
8.	8463567	Parshotam Lal Khanna
9.	303134	Narenjan Nath Kaul
10.	8773	David Chuni Lall
11.	305702	Gurbaksh Singh
12.	202160	Dharam Paul Chowdhry
13.	460342	Darshan Singh
14.	445345	Uttam Chand
15.	430145	Madan Mohan Marwah
16.	450018	AL Culati
17.	407242	Udai Bir Singh
18.	261011	PB Rajurkar
19.	407201	AT Thomas
20.	103040	S Nagarajan
21.	150733	Bhim Rao Narayan Patil
22.	153477	Sunder Lal K Chugh
23.	175036	SV Kuppuswamy
24.	103266	VK Shahane
25.	152270	M Antony Samy
26.	103028	Ganesh Narhar Joshi
27.	160071	K Srinivasan
28.	146022	T Venkatesan
29.	152280	K Rajagopal Rao
30.	165089	R Sivathanu
31.	14007	Smt Sarla Menon
32.	445207	Som Nath
33.	8463654	Radha Krishan
34.	306723	Krishan Lal
35.	129404	Surendra Kumar
36.	400467	PC Joshi
37.	303537	R Balasubramanian
38.	400467400079	Inder Singh Verma
39.	148230	K Krishna Worriger
40.	237053	P Sethumadhavan
41.	305500	Gulab Singh Verma
42.	112049	Anand Parkash Gupta
43.	134013	TA Karunakaran Kutty
44.	141010	N Mahadevan
45.	8464074	Lanka Ram Mohana Shastri
46.	101427	Harbans Lal Rao
47.	302264	Dharam Bir
48.	445221	Kedar Nath Dutta
49.	400416	Gour Chandra Saha
50.	440625	Chaman Lal
		Mohd Ismail Siddiqi

S. J. Shaw

..2..

- :2 :-

Appx 'A' (contd.)

S. No.	MESe No.	Name
51.	255026	S ^t Shri Umesh Prasad Patel
52.	400352	Harak Singh
53.	305200	Tarvinder Singh Uppal
54.	304026	Parma Nand
55.	6799	Marinal Kanta Mookherjee
56.	165028	HK Narayana Iyer
57.	9280	Beroy Krishnakor Chowdhury
58.	10922	Anil Kumar
59.	10084	JK Das
60.	8460482	Hari Dhar Basu
61.	8458737	P Kothanda Raman
62.	8462044	VS Sekharanarayanan
63.	148120	Vedasir Devolla
64.	100020	P Silas — 264
65.	8462421	Madan Lal Chopra
66.	400090	KL Gulati
67.	11076	AK Dey
68.	8464204	Gurditta Ram Akers
69.	10463	Madan Singh Bedi
70.	8463337	Tulsi Dutt
71.	302612	Kuldip Singh Saini —
72.	8464598	Ved Parkash Bhardwaj
73.	302234	Sham' Lal Sharma
74.	8463440	Harbans Singh
75.	8463829	Nathuram Bhatia
76.	302953	Jagdishwar Datta Grover
77.	8464220	Ujjal Singh Mudhar
78.	302379	Virendra
79.	4837	Gopal Chand Mehra
80.	302521	Soh Parkash Sharma
81.	302286	Raj Kumar Markanday
82.	8459898	Mehar Singh
83.	8458595	Charanjit Singh
84.	8464454	Nirmal Kumar Ghai
85.	8464441	Kartar Singh
86.	305432	Jegdish Singh
87.	8464014	Hardit Singh
88.	305188	Jai Dutt Sharma
89.	302501	Prem Sagar Sharma
90.	309500	Bhagat Ram Vohra
91.	8464711	Madan Lal Gupta
92.	8464060	Narendra Paul Sharma
93.	8464623	Om Parkash Ghai
94.	302954	Prem Bhushan Sawhney
95.	8464627	Tilak Raj Gulati
96.	303272	Gurdial Singh
97.	8464497	Gurdial Singh
98.	302072	Om Parkash
99.	302003	Ishwar Dayal Sharma
100.	302581	Shiv Ram Saini
101.	303483	Dilwar Singh Pathania
102.	303517	Prem Nath Sharma
103.	303698	M Venugopalan
104.	305194	Rajender Kumar Sahni
105.	17383	RK Banerjee

..3..

234

S. No.	MES No.	Name	Remarks
106.	26341	S' Shri	
107.	407264	Om Parkash Mehta	
108.	7313	MP Tiwari	
109.	430024	Amrik Singh Gulati	
110.	8462720	Anant Ram Sudan	
111.	8463046	Santokh Singh	
112.	403018	Narinder Nath Mehtani	
113.	405018	Dwarika Choubey	
114.	4060007	Dinesh Chandra Dubey	
115.	4000174	Kanaklal Singh	
116.	460066	YN Bansode	
117.	346012	KN Sinha	
118.	413642	Margain Dutt Dubey	
119.	415020	Mahima Ranjan Mukhopadhyaya	
120.	450014	Prafulla Kumar Nath	
121.	450079	Hira Singh	
122.	415327	Charan Singh	
123.	445222	Hans Raj	
124.	426186	KK Mukherjee	
125.	409815	Ezij Mohan Lal	
126.	458015	Prabhakar Ambedas Shrikhandkar	
127.	428003	Mallesh Chandra Shrivastava	
128.	440608	Surendra Singh	
129.	455402	Padma Dutt Sharma	
130.	445148	Bhupal Dutt Pant	
131.	405068	Ranvir Prasad Sharma	
132.	8463131	NVSS Murthy	
133.	306832	Dharam Chand	
134.	304621	Karori Lal Jain	
135.	255956	Kishan Singh	
		Curdas Ram Siddhu	

Note: From Sl Nos 34 to 39 and 41 are selected against Scheduled Caste/Scheduled Tribes vacancies from Stenographers and Sl No 92 to 133 are selected against vacancies reserved for SC/ST candidates from UDCs.

Arrears
M/S/1

A. G. Khan

before the Central Administrative Tribunal Circuit Bench Lucknow

OA No: _____ 1990

(345)

A.T. Thomas

v

Union of India & others

-- Petition/Applicant

-- Off Pay/Respondent

Annex no 2

In Inter-in-Chief
Army Headquarters
Delhi PO
New Delhi-11.

Through Proper Channel

Sir, PROMOTION OF UDCS/STENOS TO OFFICE SUPTD GRADE II

Your kind attention is invited to the various DPCs conducted in 1980, 1982 and 1984 for promotion to Office Supdt Gde II and also DPCs of 1983 and 1984 for assigning notional seniority from 1975, 1980 and 1982.

2. A perspective analysis of these panels reveals that justice has not done to senior UDCs/Stenos while fixing the so called notional seniority to the office supdt. The criteria adopted by these DPCs for affixing notional seniority to these Office Supdts, it appears, differ and not within anybody's comprehension. The intention of the Government was to give notional seniority to Office Supdt whereas in practice, the JPC has given seniority to even those UDCs/Stenos who had never been holding such post of Office Supdt and as a result of this, certain UDCs/Stenos superseded their seniors. Ironically enough some of these UDCs/Stenos had never worked as Office Supdt and still not promoted/placed in position. The phenomenon of giving notional seniority to these UDCs/Stenos is not understood and therefore, the DPCs are defective in nature.

3. I am enclosing herewith a list of Stenos, who are junior to me in service as Stenos and also in the Promotion JPC of 1982 but found a place in the panel of June 83 assigning notional seniority from 1975. Again in the panel of Office Supdt, promotion order of which is still awaited, circulated under your letter No.41205/85-E1R dated 20 Jan 84 (Appendices A and B) it is surprising to note that certain individuals, who are still UDCs, have been given notional seniority from 1980 whereas those senior UDCs/Stenos who have already been promoted in 1982, have not been given that benefit.

4. In addition to above, I may also point out that the JPC panel of 1980 was out in Jul 80 but insertions and interpolations of names in the panel were done frequently upto Feb 1981, which itself clearly shows that the 1980 DPC has not considered the whole aspects before finalizing the panel and thereby it was defective.

S. G. Lala

*Attended
JPC*

....

5. It is also abundantly clear from the various CPCs conducted for promotion/assigning notional seniority that justice has not been done to senior UDCs/Stenos and different norms have been adopted to benefit a few, ignoring the services rendered by the senior UDCs/Stenos. I would also like to emphasise that notional seniority should have been given to existing Office Supts based on their performance instead of assigning notional seniority to an individual who has not yet been promoted/placed in position.

6. In the light of the above, I would request you to consider my case for assigning notional seniority from 1975 as given to my juniors and insert my name in the appropriate place, just above the following individuals, who are junior to me in service as well as in the promotion panel of 1982:-

1. Smt. Sania Menon (Sl.No.61)
2. Shri Yogender Kumar (Sl.No.62)
3. Shri RK Sharma (Sl.No.63)
4. Shri Krishan Lal (Sl.No.64)
5. Shri Surender Kumar (Sl.No.65)
6. Shri P.C.Joshi (Sl. No.66)

7. I am sure, your goodself will consider my this appeal and do justice as requested for, to safeguard the interest of clerical cadre as a whole.

Yours Thanking you,

Yours faithfully,



(A.T.Thomas)
MFS 261011
Office Supt Gde II
Office of Chief Engineer
Central Command
Lucknow.

Lucknow
dated 16th February, 1984.

18/1/84
MMS

18/1/84
MMS

(26)

CHRONOLOGICAL LIST OF STENOS WHO HAVE SUPERSEDED SHFT AT THOMAS STENO, WHILE ASSIGNING NOTATION SENIORITY

Sl No	Name	All India Seniority	Date of SI	SI No	SI No	SI No	SI No	SI No	SI No	SI No
			SI Capital	SI Select	SI Select	SI DPC Jun	SI DPO 83	SI panel 84	SI for 84	SI Panel 84
1	Shri Al Thomas	56	11.1.63	-	18	-	-	-	-	1.
2	Shri. Sarala Menon	57	7.2.63	-	30	-	61	NA	NA	
3	Shri Yogender Kumar	58	15.3.63	6	-	32	62	NA	NA	
4	Shri RK Sharma	59	25.3.63	-	-	32	63	NA	NA	
5	Shri Krishan Lal	60	11.4.63	-	33	-	64	NA	NA	
6	Shri Surender Kumar	63	25.4.63	-	34	-	65	NA	NA	
7	Shri PC Joshi	64	26.4.63	-	35	-	66	NA	NA	
8	Shri SK Ganguly	61	1.4.63	7	NA	-	-	8	NA	
9	Shri Parma Nand	69	15.6.63	8	NA	-	-	9	NA	
10	Shri KV Chacko	74	23.7.63	9	NA	-	-	10	NA	
11	Shri G K Gupta	76	17.8.63	10	NA	-	-	11	NA	
12	Shri KS Parameeswaran	83	22.11.63	11	NA	-	-	12	NA	
13	Shri BK Luther	92	18.1.64	12	NA	-	-	13	NA	
14	Shri PL Sharma	102	17.3.64	12A	NA	-	-	14	NA	
15	Shri GD Kaura	103	26.3.64	12B	NA	-	-	15	NA	
16	Shri Jagmohan Lal	104	30.3.64	13	NA	-	-	16	NA	
17	Shri Kartar Singh	105	1.4.64	14	NA	-	-	17	NA	

Before the Central Administrative Tribunal Circuit Bench Lucknow (27)
OA No: _____ 1990
A.T. Thomas
Union of India & others
Amne No - 3
-- Petitioner/Applicant
-- Opp. Party/Respondent

Annexure No-3

Tele 677

915144/2/90/E10B(Adm)

28 Mar 84

ENGINEER BRANCH
E10B(ADM)

PROMOTION OF UDC/STENO TO O/S II

1. Reference your No 909010/1/364/E1R(Adm) dated 17 Feb 84.
2. E-in-C's Branch have intimated that the subject matter has become subjudice, as certain ~~individuals have~~ individuals have filed writ petitions against the panel issued vide E-in-C's Branch letter Nom 41205/75-82/E1R dated 18 Jun 83 and no action on the representation is called for till final outcome of the court cases.

Please inform ~~the~~ Shri AT Thomas, O/S II accordingly.

Sd/-

(AP Sapre)
AE
Adm Officer

E1R(Adm)

2/5/84
S/ J. P. Choudhury

ATD
M/S

before the Central Administrative Tribunal Circuit Bench Lucknow (28)

OA No: _____, 1990

A.T. Thomas

Union of India & others

Engineer-in-Chief
Army Headquarters
CIN HQ PO
New Delhi.

-- Petitioner/Applicant
... Off Pay/Respondent

Annex No - 4

Ex-Officer-in-Chief NO.
901710/75-82/1/43/E1D(L)
12/9/86.

Through Proper Channel

PROMOTION OF ULCS/STENOS TO OFFICE SUPTD
SUITTY GDF II : NOTICIAL SENIORITY

Sir,

1. Reference my representation dated 16th February 1984 (copy enclosed for ready reference)

2. On my above representation, Chief Engineer, Central Command, Lucknow has informed me vide E1OB(Adm) ION No 915144/2/90/E1OB(Adm) dated 28th March 1986, as under:-

"E-in-C's Branch have intimated that the subject matter has become subjudice as certain individuals have filed writ petitions against the panel issued vide E-in-C's Branch letter No 41205/75-82/1R dated 18 Jun 83 and no action on the representation is called for till final outcome of the court cases".

3. Though I was not convinced of the contention, I had to wait patiently for the last 2 years on the sanguine belief to hear something from you; but it is regretted that nothing has been communicated to me nor my representation has been considered. As a result of this, my case for further promotion to O/S Cde I and A/C II has remained in the nutshell and could not become eligible for promotion not being completed the requisite period of 3 years and 8 years respectively as per Recruitment Rules. What has perturbed me more is the fact that a large number of ULCS/Stenos who have been physically promoted after me and junior to me, have got their Notional Seniority of 1975 and 1980 and became O/S I and AOs. To site an example I give below the details of a few stenos who were not only junior to me in the cadre of steno but also junior in the cadre of Office Supdt, as they were promoted and placed in position on a subsequent date.

Sl No	Name	Sl No of Notional Seniority 75	Seniority in promotion panel of 1982
1	Shri A.T. Thomas	75 Found in list	18
2	Shri. M. Ali Khan (not. no. 12)	51	30
3	Shri Yogender Kumar(")	62	-
4	Shri A.K. Sharma(")	63	32
5	Shri Krishan Lal. A. II	64	33
6	Shri Surender Kumar(")	65	34
7	Shri P.C. Joshi (")	66	35

The above individuals have now been promoted resulting in irreparable damage to the career of the undersigned in the department apart from humiliation on account of the injustice done to me. Other than the above mentioned stenos a large number of others, who were promoted as O/S Cde II on a subsequent date got their notional seniority either in 1975 or in 1980 and superseded me and became O IIs. As a consequence of these promotions I am left with no alternative but to work under my juniors, who have become OIs and put the undersigned in dilemma.

5. What is not understandable to me is how the so called 'Notional seniority' has been given to some O/Ss when the intention of the Government was to give Notional seniority to Office Supdt II in order to make them eligible for promotion to AO II. To aggravate my case it is also seen that those who have physically promoted in the year 1984 have given seniority of 1980 whereas though I have been promoted as O/S Gde II in 1982 as appeared at Sl No 18 of the 1982 promotion panel, my seniority stands on the same year ie March 1982; the date I was physically promoted, without any change in the seniority. This is rather a strange phenomena and seems to be vindictive in nature. Had my performance not been upto the expected standard then I could have never become O/S Gde II in 1982 and have found a place at Sl No 18.

6. Since the court cases alleged to have been filed in Court have been finalised/withdrawn, I may please be permitted to approach your goodness to consider my case afresh in the correct perspective and restore my seniority of 1975 alongwith other seniors/ O/S above Sl No 61, as Smt. Sarla Menon (now AO II) is not only junior to me in the cadre of Steno but also junior in the panel of 1982 promotion; myself being at Sl No.18 and herself at Sl No 30. As you will appreciate, the damage to done to me in my career in the department is incalculable but your kind intervention at this belated stage will definitely help me to get my seniority of 1975 in the appropriate place and thus make me eligible for further promotion as O/S Gde I and O. Officer II.

7. I request for review of my case and redressal in the following manner:-

- (a) Assign me Notional seniority at par with my juniors in the proper place wef 11 Dec 75.
- (b) Consider my case as supplementary and promote me as Office Supdt Gde I on due date.
- (c) Consider my case as supplementary and promote me as O II physically with the batch of Aug 1986.

► I sincerely hope that this time, your honour will not dishearten me so that I will continue to serve the department with the same spirit of enthusiasm and devotion to duty.

► Thanking you,

Yours faithfully,

A. S. Thomas

(A. S. Thomas)
Office Supdt II

Lucknow:
2nd September, 1986.

Central Jail, Lucknow
Central Prison, Lucknow

A. S. Thomas

W. K. D.
(W. K. D.)

before the Central Administrative Tribunal Circuit Bench, Lucknow

(30)

CA No: _____ 1990

A.T. Thomas

Union of India & others

-- Petitioner/Applicant

Amr. No. 5 -- Opp. Party/Respondent

CENTRAL ADMINISTRATIVE TRIBUNAL

ORDER

MADRAS BENCH

Friday, the 5th day of December, 1986

PRESENT

Justice Shri C. Ramanujam

Vice-Chairman

and

Shri C. Venkataswamy

Administrative Member

Transferred Application Nos. 177, 465 and 427 of 1986
and

Original Application No. 287 of 1986

(Writ Petition Nos. 11388 of 1983, 9295 and 7302 of 1984 on the file of the
High Court, Madras).

Transferred Application No. 177 of 1986

V. Balachandran

Applicant

-Vs-

1. Union of India, represented by
Secretary, Ministry of Defence,
New Delhi.

Respondents

2. Engineer-in-Chief,
Army Headquarters,
New Delhi - 110 011.

3. The Garrison Engineer,
Willington, Nilgiris.

Transferred Application No. 465 of 1986

K. K. Sreedharan

Applicant

-Vs-

1. Union of India represented by
the Secretary, Ministry of Defence
New Delhi - 110 001.

Respondents

2. Engineer-in-Chief,
Army Headquarters,
Military Engineer Services,
DHQ PO New Delhi - 110 011.

3. Chief Engineer,
Southern Command, Pune - 411 001.

SP. T. L. C. S.

Att'd
M/s... 2/-

-2-

Transferred Application No. 427 of 1986

1. N.Mahadevan

2. R.Balasubramanian

3. P.Sethumadhavan

Applicants

-Vs-

1. Union of India represented by Secretary,
Ministry of Defence,
New Delhi - 110 011.
2. Engineer-in-Chief,
Military Engineer Services,
Army Headquarters, DHQ PO,
New Delhi - 110 011.
3. M.N.Thenkappa Panicker
4. C.Srinivasulu
5. Virendra Kumar Sood
6. Shamlal Verma
7. Rajkumar Markandey
8. Prem Bishan Suhaj
9. Smt.N.Ranganayaki
10. Santlal Rawat
11. Prem Vir Singh Verma
12. Benoy Krishnakar Choudhury
13. A.G.Krishna Sarma
14. Shiv Charan Lal
15. Inderjit Jain
16. Harbans Lal Rao
17. B.K.Choudhury
18. P.Kothandaraman
19. K.L.Gulati
20. Tulai Dutt
21. Kuldip Singh Saini
22. Ved Prakash Choudhury
23. Harbans Singh
24. Nathuram Bhatia
25. Ujjal Singh Mudhar
26. Virendra

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M/S

27. S. Omprakash Sharma
 28. Mohar Singh
 29. Charanjit Singh
 30. Nirmal Kumar Ghai
 31. Koster Singh
 32. Jagdish Singh
 33. Hardit Singh
 34. Jai Dutta Sharma
 35. Prem Sagar Sharma
 36. Bhagat Ram Vobra
 37. Madan Lal Gupta
 38. Shri Narendrapal Sharma
 39. Omprakash Ghai
 40. Thilakraj Gulati
 41. Gurdial Singh
 42. Gurdial Singh
 43. Om Prakash
 44. Shivram Saini
 45. Promnath Sharma
 46. Dilwar Singh Pathania
 47. Dwarika Choubey
 48. Brij Mohanlal

Respondents

Original Application No. 287 of 1986

K. Hariharan

Applicant

-vs-

1. Union of India, represented by
 the Secretary,
 Ministry of Defense,
 New Delhi - 110 001.

2. Engineer-in-Chief, Army HQ,
 JHQ PO, New Delhi - 110 011.

3. Chief Engineer,
 Southern Command, Pune - 1.

Respondents

...4/-

S. S. Ghais

Affidavit
M.L.

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For the Applicant in
T.A.No.177/86

Mr.T.Chongalvarayan

For the Applicant in
T.A.427 and 465/86 and
O.A.287/86

Mr.S.Sampathkumar

For Respondents in T.A.177,
427 and 465/86

Mr.C.Krishnan,Additional
Central Government Standing Com.

For Respondents in
O.A.287/86

Mr.Peter Sunnasekaran,
Central Government

ORDER

(Order pronounced by Justice Shri G.Ramanujam - Vice-Chairman)

The first three cases were originally filed as writ petitions Nos.11388/83, 9295/84 and 7302/84 respectively before the High Court of Judicature at Madras and later transferred to the Tribunal and numbered as transferred applications Nos.177,465 and 427 of 1986. Application No.287 of 1986 was filed before the Tribunal directly, Original Application, under Sec.19 of the Central Administrative Tribunal Act 1985. Since the issues raised in all these cases are substantially the same, they are dealt with together.

The circumstances under which the applicants filed the writ petitions before the High Court seeking the relief of certiorari and mandamus for quashing the Departmental Promotion Committee's proceedings in 1982 and to issue a direction to the respondents to consider their promotion after giving them due seniority as per the original Departmental Promotion Committee's proceedings held in the year 1980, based on the All India Seniority List, may briefly be noted,

The applicants in all the above four cases were working as Office Superintendent-Gr.II on adhoc basis in the Office of the Government Engineer, Wellington. The Nilgiri under the Military Engineering Services (MES for short) of the Ministry of Defence. Shri V.Balachandran, the applicant in T.A.No.177 of 1986 was first appointed in General

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Reserve Engineers' Service as Stenographer on 11.12.1960 and after completion of five years of service there, he applied for and obtained appointment on 10.1.1966 in MES as Stenographer through proper channel. The other applicants were directly recruited as Stenographers in the MES. The avenue of promotion to UDC and Steno is office superintendent Grade-II. For filling up 314 posts of Office Superintendent-Gr.II, which fell vacant during the years 1970 to 1975 and which could not be filled up for want of recruitment rules which were being framed, Departmental Promotion Committee (DPC for short) proceedings were held in 1975, and selection was made. Subsequently the said DPC proceedings were challenged in the Allahabad High Court on the ground that there is no common integrated seniority of stenographers, that the DPC proceedings which are based on the unit-wise seniority, is bad and that the DPC proceedings should be held only on the basis of All India common integrated seniority of stenographers. The Allahabad High Court held that as each unit was having a separate seniority list of stenographers, any selection to the post of Office Superintendent-Gr.II from stenographers should be after the preparation of common integrated seniority List. In that view, the DPC proceedings of the year 1975 were quashed, with a direction that proper DPC be held for the said 314 vacancies, without changing the gradation of the candidates already made in the 1975 DPC proceedings. Based on the said direction of the Allahabad High Court, a DPC was held in the year 1980. In that DPC proceedings, selection was made not only for the 314 vacancies that were existing in 1975, but also for the 286 vacancies which arose after 1975 and before 1980. This DPC proceedings was held to be bad by the Ministry of Defence for the reason that clubbing of vacancies that existed before 1975 with those that arose after 1975 and till 1980, was not proper, and that such clubbing will be not only contrary to the decision of the Allahabad High Court but unduly enlarge the zone of consideration. Later another DPC was held on 19.6.1982 for filling up only 314 vacancies that were in existence in 1975. This time the DPC changed the gradings of the candidates which was not contemplated by the judgement of the Allahabad High Court. Further, the select list prepared by the DPC proceedings on 19.6.82 also included dead that there were only unit-wise seniority of stenographers,

J. S. Shrivastava

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and retired persons. Hence this DPC proceedings were also set aside by higher authorities and a review DPC was held on 18.6.83 for filling up 314 vacancies that were in existence in 1975. Again on 2.12.1983, a separate DPC was held for filling up 160 vacancies that between 1976 and 1980. After 1980 and upto end of 1983, 135 vacancies arose and for filling up those vacancies a separate DPC was also held in 1984 and selections had been made.

The complaint of the applicants herein is that one of them (in T.A.No.465 of 1980) considered and selected in the 1975 DPC proceedings that the rest of them were considered in the 1980 DPC proceedings included in the select list. But later when the review DPC was held in 1983, their names have been omitted, while some of their juniors were placed in the select list. It is only in the DPC held on 18.6.83, all of them had been selected, but they are put below their juniors in the select list. One of them had been selected only in the DPC held in December 1983. According to the applicants, they have been functioning as Office Superintendent-Gr.II on ad-hoc basis right from 1975, 1982 and 1973 respectively and they were duly qualified to be considered for selection by the DPC held in the year 1975 and therefore all of them should have been considered for selection by the DPC, even in 1975. There was no justification for non-inclusion of their names in the select list of 1982 and for inclusion of the names of their juniors in that list. In these circumstances, the main prayer of the applicants are (1) to quash the review DPC proceedings held in 1982 and (2) to direct the respondents to give them due seniority in the DPC of 1983 taking note of the fact that they were eligible for consideration for selection even in the DPC proceedings in 1975 and that their inclusion in the select list prepared by the review DPC proceedings in the year 1983, below their juniors as a result of which many of their juniors became Office Superintendent-Gr.II on a regular basis long earlier to the applicants, is not legally tenable.

In the counter affidavit filed by respondents, it is stated that it is not open to the applicants to invoke the extraordinary writ jurisdiction of the High Court for quashing the various panels drawn by the DPC proceedings properly and bonafide, that all stenographers

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including the applicants have been considered and some of them assigned to positions in successive higher grades with reference to merit obtained by them on the basis of the overall assessment of their service record, and the applicants who were considered, but failed to make a grade to find a place in the panel, can have no cause for grievance.

It is further stated in the counter affidavit that establishment in the Military Engineering Services comprises civilians and militarised cadre personnel where the service conditions in respect of civilians and service personnel are laid down by Government separately and therefore there is no question of discrimination of civilians as against the military cadre personnel. That as per the relevant recruitment rules issued in SRO 235 of June 1977, the post of Office Superintendent-Gr.II is 'Civilian' in Defence Service Gr.'C' -Non-Gazetted- Ministerial in the pay scale of Rs.425-700 and the method of recruitment to the said post, the age limit, qualifications have all been provided in the rules and the post of Office Superintendent-Gr.II (O.S. for short) is a selection post. According to the relevant recruitment rules, 90 per cent to the cadre of O.S.Gr.II should be selected from Upper Division Clerks, with five years service in the General Reserve Engineers Service, and 10 per cent from stenographers, with seven years of regular service and the selection is to be made by Grade 'C' DPC, consisting of the Appointing Authority (Chairman), The Senior Administrative Officer - Establishment (Member) and a Civilian Gazetted Officer/Commissioned Officer un-connected with the Department (Member). According to the respondents, the applicants except the applicant in T.A.465 of 1986 did not come within the zone of consideration when the DPC proceedings was held in 1975 for selection of Office Superintendent-Gr.II, for filling up 314 vacancies, of which 31 had to be selected from the category of stenographers. It is no doubt true that in the 1980 DPC proceedings, some of the applicants found places in the select list as they came within the zone of consideration at that stage. But since the 1980 DPC proceedings has been set aside on the ground that the selection was contrary to the direction given by the Allahabad High Court, another DPC proceedings was held in 1982 which was also held to be contrary to the judgement of the Allahabad High Court as the DPC had altered the gradings of the candidates. It is only in June 1983, a proper DPC was held, and in

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A.M.J.

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that DPC three of the applicants got in. The fact that some of the juniors found a place in the year 1983 above the applicants is due to the higher grading obtained by them. The applicants cannot, therefore, question the assessment made by the DPC merely on the ground that persons placed above them were their juniors. Thus, according to the report the DPC proceedings held in June 1983 were correct and proper and they cannot be questioned on any of the grounds urged by the applicants.

We have heard the counsels on both sides and perused the various DPC proceedings held in the year 1975, July 1980, June 1982 and June and December 1983 and the connected records. The following facts from the pleadings and the records produced,

The applicant in TA 177 of 1986 Thiru. V. Balachandran, originally joined as a Stenographer on 11.12.1960 in the General Reserve Engineer Force. He later joined the Military Engineer Services on 10.1.61. As per the recruitment rules framed on 5.5.1975, a ratio of 9:1 was fixed for recruitment of UDCs and Stenographers respectively to the post of Office Superintendent-Gr.II and they also provided that UDCs with five years of continuous service in that grade and stenographers with 7 years of continuous service, are qualified for appointment as Office Superintendent Gr.II. Though Mr. Balachandran had completed seven years of continuous service in the MES department in 1975 as he was not within the zone of consideration, the DPC held in 1975 did not consider his claim for promotion to the post of Office Superintendent Gr.II. Later on 21.12.1979, he was granted the benefit of his past service in the General Reserve Engineer Force with effect from 10.1.61. He was, however, selected only in the DPC held in 1980 for the post of Office Superintendent Gr.II. Later in the review DPC held in June 1983 his name did not find a place in the select list, but some of his juniors were found included. Apart from raising the general ground of attack against the various DPC proceedings, stating that the assessment by the DPC was not fair and proper, he has raised the following two additional grounds:-

(i) For eliminating and superseding his name which originally found a place in the select lists of 1980 and 1982, he has not been given any show cause notice and this will vitiate

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the select list prepared by the DPC in 1982 and the select list prepared on 19.6.83 in view of the decision of the Supreme Court - (AIR-1981-SC 1915) - Umacharan's case)

(ii) the service rendered by him in General Reserve Engineer Force from 11.12.60 had not been taken into consideration in considering his claim for promotion in the DPC held for the years 1980, and 1982.

As already pointed out, only on 21.2.1979, the respondents passed an order granting the benefit of past services in General Reserve Engineer Force and stating that the Respondent will count the applicant's past service in GREF. In this case as already stated, in the 1975 DPC, his name was not considered on the ground that he has not within the zone of consideration, and only in the subsequent DPCs he had been considered.

We have perused the DPC proceedings and they show that the applicant's performance was assessed as 'Very Good', while the persons selected were graded as 'outstanding'. Though the learned counsel of the applicant contends that there has been no fair assessment of the applicant's service and that there is no proper grading given by the DPC, we are not in a position to interfere with the assessment and the grading given by a duly constituted DPC, especially when the applicant has not either questioned the legality or the propriety of the constitution of the DPC itself or had attributed malafides on the part of the DPC.

As regards the question as to whether the issue of a show cause notice is necessary when the applicant's name got eliminated in the DPC proceedings held in 1982 as contended by the counsel for the applicant, we are of the view that no show cause notice is necessary in view of the fact that the earlier DPC proceedings in the year 1982 has been set aside on the ground that it had not strictly followed the directions given by Allahabad High Court. When the entire DPC proceedings of the year 1982 had been set aside and a fresh review DPC was held in 1983, no question of issuing an individual show cause notice to the applicant will arise. The question of issuing such a show cause notice to the applicant will arise only if the applicant's name alone is proposed to be removed from that list and not when the entire list is set aside for some irregularity or illegality.

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The applicant in TA 465 of 1986 is Mr. K. Sridharan, who was appointed as Stenographer in the Military Engineer Services on 30.8.1955. He was appointed on 31.3.1973 as Office Superintendent-Gr. II on ad hoc basis. In the DPC proceedings held in 1980, he was graded as ... and selected as No. 6. He was also selected in the 1980 list. In the subsequent DPC proceedings held in 1982 and June 1983 he was not selected. It is only in December 1983 he got selected for one of the posts of Office Superintendent-Gr. II out of 286 vacancies that arose from 1976 to 1983. His main grievance is that the assessment by the DPC was not proper and having regard to the fact that he has been officiating in the post of Office Superintendent-Gr. II on ad hoc basis from 31.3.1973, he should have been selected in the subsequent DPCs held in June 1983 for filling up 314 vacancies. However, we are not inclined to agree with the contention of the learned counsel of the applicant that the 1983 DPC which has been duly constituted has not acted fairly and reasonably while assessing the merits of the candidates as the gradings assigned.

The learned counsel of the applicant in this behalf raised the contention that when ever the applicant got himself selected in the proceedings held in December 1983 for filling up 286 vacancies, on a regular basis, the period of adhoc service rendered by the applicant from 31.3.1973 should be taken for purpose of fixing the seniority of the applicant. According to him, though he was selected on a regular basis by the DPC in December 1983, his seniority should be counted from 31.3.1973 when the applicant started officiating in the post of Office Superintendent-Gr. II on basis. Since this question is common to all the applications, it will be dealt with in detail later.

The applicants in TA 427 of 1986 N. Mukundan and two others, joined on 31.12.1965 as Stenographers and were promoted as OS-Gr. II on ad-hoc basis on 17.8.1982. In the DPC proceedings of 1975 they were not considered as they were not within the zone of consideration, having regard to their position in the seniority list of stenographers. They were considered and selected only by the DPC held in June 1983. According to the applicants, many of their juniors in the cadre of stenographers have overtaken them in the seniority list, and the fact that they were officiating on ad-hoc basis from 17.8.1982 has not been

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taken into account at all either at the selection or in fixing the seniority. It is submitted by the applicants that once they are selected and regularly appointed as OS Gr.II, their continuous officiating service in that cadre prior to their regular selection should be taken into account for fixation of seniority in O.S. Gr.II. The applicants rely on certain decisions of the Supreme Court in support of the said submission that officiating service should be added to regular service in a cadre for purposes of fixing seniority.

The applicants have also made a general submission that the assessment made by the DPC has not been just and fair and that if the DPC has been held each year with reference to the vacancies that arose in that year, he would have been in the zone of consideration and he would have been selected. His complaint is that non-holding of DPC during each of the years 1976 to 1980 in respect of the vacancies that arose in each year has deprived him of his right to get promotion earlier than December 1983.

The question is whether non-holding of proper DPC in each of the years from 1976 to 1980 will enable the applicants to get seniority over others who were selected in the various review DPCs held.

The applicant in TA 287/86 is one Haribhan Singh who was appointed as Stenographer in the Military Engineer Services on 19.12.1955. He was promoted on 31.3.1973 as Office Superintendent Gr.II for a period of six months. However he continued to hold the post by virtue of extension orders issued once in six months. In the DPC held during 1975 for preparing a panel of 314 names of UDCs/Stenographers, the applicant's name did not find a place. As already stated, the Allahabad High Court quashed the panel by its judgement dated 2.5.1979 on two grounds.

- (i) for not following uniform procedure in different commands to fix seniority; and
- (ii) discrepancy in fixing the field of choice.

In the review DPC held on 4.7.1980, after the judgement of the Allahabad High Court, the DPC prepared a panel and in that panel the applicant's name found a place. There was a slight modification of the DPC proceedings prepared on 4.7.1980 in August 1980 by shifting one Narendrapal Singh, stenographer from Sl.No.49 to Sl.No.3(A). There

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was again a member of the DPC proceedings of 1980 in January 1981 by adding eight stenographers and 5 UDCs based on their representations. In the revised DPC held on 19.6.1982, the applicant's name again found included at Sl.No. 1. In the final DPC on 18.6.1983, for preparing a panel of 314 names as against the vacancies that arose between 1970 to 1975, the applicant's name was found omitted. Later by an order dated 5.9.1985, all those selected for the 314 vacancies were given national seniority in the grade of Office Superintendent Gr.II from 11.12.1975, as a result of which many of the juniors in the cadre of stenographers have become his seniors. The applicant has urged two additional grounds, apart from the general grounds that the DPC has not assessed the merit of the candidates properly and the grading given by it cannot be accepted.

The additional grounds put forward by the applicant are,

- (1) that in any event, grant of national seniority to all those found in the panel prepared on 18.6.1983 from 11.12.1975, is irregular, illegal; and void and
- (2) that in any event he having functioned as Office Superintendent Gr.II from 31.3.1973 his officiating service from that date should be taken into account for purposes of seniority, once he has been appointed on a regular basis, pursuant to the proceedings of the DPC assessment held in December 1983 and notified on 2.1.1984.

Thus the common questions that arise for consideration in all such applications are the following:-

- (1) Whether the national seniority given by the order dated 5.9.1985 from 11.12.1975 to some of those selected on June 1983 is legally valid and tenable?
- (2) Whether the applicants are entitled to credit their officiating service in the cadre of Office Superintendent Gr.II for purposes of seniority, once they have been regularly selected and promoted.

As regards the first point, we find that the national seniority has been given to some of the selected candidates found in the panel dated 18.6.1983, consisting of 314 names on the ground that if a proper DPC has been held in the year 1975 itself for the 314 vacancies that arose between 1970 and 1975, some of the applicants who were qualified at that point of time would have been promoted as Office

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Superintendent Gr.II and that the delay in making the selection should not prejudice their claim for the post. Thus merely on the ground that some of the selectees would have found a place in the select list if one had been correctly prepared in the year 1975, the notional seniority has been given. The question is whether such grant of notional seniority on hypothetical considerations is legally valid.

It has been held by the Delhi High Court in Union of India - Vs. - Srivatsava (1979-(3)-SLR-724) that the DPC was not competent to make retrospective promotions without the aid of any rule, justifying it. The DPC can only indicate the order of merit at the time of selection and the seniority of the promotees in the order in which they were recommended for promotion. Normally, the seniority of persons considered fit for promotion at the time would be the same, as the relative seniority in the lower grade, except when the DPC gives a different banking.

Further, the notional seniority conferred on some of the selectees found in the DPC list of June 1983, without reference to the question as to whether they actually functioned in that post virtually contravenes the normal and well established practice, according to which the date of entry into the grade will decide the question of seniority. In this connection, the learned counsel for the applicants relied on the decision of the Supreme Court reported in Sant Ram - Vs. - State of Rajasthan (AIR 1967-SC-1910) to support his legal plea that where the rules are silent and do not enable the promotions being made retrospectively, the procedure laid down in the statutory rules cannot be modified or amended or superseded by administrative instructions providing for proforma promotions from an anterior date. Besides the right to count the officiating service for purposes of seniority when once he is regularly selected to the post of Office Superintendent Gr.II stands affected by the grant of notional seniority to some of the selectees who never functioned as O.S. Grade II even on adhoc basis.

Coming to the second question as to whether the applicants who had ultimately been selected and promoted on a regular basis as Office Superintendent Gr.II, can count their officiating service in that grade for purposes of fixing their seniority, it is not disputed that

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the respondents have fixed the seniority of all the applicants, except those who had been granted proforma promotion from 11.12.1975, based on the date of selection to the higher grade - Office Superintendent Gr.II, without reference to their officiating service. The question is whether the applicants who have been holding the post of Office Superintendent Gr.II, though on ad hoc basis, for a long period, could be deprived of their officiating service merely on the ground that they were selected to that post on a regular basis only later and that their seniority should therefore be fixed only with reference to the date of their regular selection.

The Supreme Court in D.R.Nir - Vs. - Union of India (AIR 1967-1301) has observed,

"When an officer has worked for a long period as in this case for nearly fifteen to twenty years in a post and had never been reverted it cannot be held that the officer's continuous officiation was a mere temporary or local or a stop gap arrangement even though the order of appointment may state so. In such circumstances the entire period of officiation has to be counted for seniority. Any other view should be arbitrary and violative of Articles 14 and 16(1) of the Constitution because the temporary service in the post in question is not for a short period intended to meet some emergent or unforeseen circumstances".

In Dowal's case (AIR 1984-SC-1527), their Lordships of the Supreme Court has clearly laid down that normally there are two independent principles for determining the seniority -

- (i) seniority to be reckoned from the date of substantive appointment;
- (ii) from the date of first appointment, if such appointment is followed by confirmation and that persons appointed on adhoc basis had been subsequently promoted or confirmed, their past service could not be ignored for determining their seniority.

The following observations of their Lordships of the Supreme Court in that case are pertinent.

"15. Now if there was no binding rule of seniority it is well settled that length of continuous officiation prescribes a valid principle of seniority. The question is : from what date the service is to be reckoned? It was urged that any appointment of a stop gap nature or pending the selection by Public Service Commission cannot be taken into account for reckoning seniority. In other words, it was urged that to

be in the cadre and to enjoy place in the seniority list, the services rendered in a substantive capacity can alone be taken into consideration. We find it difficult to accept this bold and wide submission. Each case will depend upon its facts and circumstances. If a stop-gap appointment is made and the appointed appears before the Public Service Commission when the latter proceeds to select the candidates and is selected, we see no justification for ignoring his past service.

In fact, if once a person appointed in a stop gap arrangement is confirmed in his post by proper selection, his past service has to be given credit and he has to be assigned seniority accordingly, unless a rule to the contrary is made".

The decision in Janardana's case (AIR 1983-SC-769) and the decision in Singla's case (AIR 1984-SC-1595) are also to the same effect.

.. In Lamba's case (AIR 1985-SC-1090) the Supreme Court felt that even in respect of employees coming from different sources on the basis of specific quota, if the appointments had been made from one sources in excess of its quota, the quota-rota rule will not apply and the general rule that the seniority has to be fixed on the basis of the length of officiation in the cadre will have to apply. In that case, there were three sources from which recruitment has to be made and the quota was fixed for each category.

- (i) the first category is from direct recruitment by competitive examination;
- (ii) the second category is from the lower category by conduct of limited competitive examination; and
- (iii) the third category is to be filled up by promotion purely on the basis of seniority.

The direct recruitment was not however resorted to for years and the limited competitive examination has also not been held for years and promotions on the basis of seniority were alone resorted to.

Thus, even in cases where quota rule applies but promotions had been made in excess of the quota, the Court felt that it should be presumed that excess appointment by promotion had been made in relaxation of the quota-rota rules, since there was power to relax the rules, and that once there is power to relax the quota-rota rule,

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appointment made in excess of the quota from any given source would not be illegal or invalid, but would be valid and legal, as held by the Supreme Court in Chauhan's case (AIR 1977-SC-251) and that promotion of the promotees in excess of their quota should be to be regular legal on account of the fact that such promotion was made to meet the exigency of service and that relaxation of the quota-rota rule can be presumed.

In a recent decision of the Supreme Court in Narendor Chandra and others - vs. - Union of India and others (AIR 1985-SC-138), the Supreme Court has again, after referring to all its earlier decisions on the point, has clearly laid down that in a case where persons have been allowed to function in higher posts for a number of years, after due deliberation, it would be certainly unjust to hold that they have a sort of claim to such posts, particularly where the Government is endowed with powers to relax the rules to avoid unjustifiable action. In that case, the rules provided for a direct recruitment. But without resorting to direct recruitment, a large number of persons in the feeder posts were promoted to posts in Grade-IV from time to time from 1962 onwards, although orders promoting them stated that they had been promoted temporarily. All those promotees held these posts continuously, without being reverted to feeder posts. Later direct recruitment was resorted to. A question arose as to how the inter-service seniority between promotees and direct recruits is to be fixed. In deciding that question, the Supreme Court has observed that, when an officer has worked for a long period in a post and had never been reverted, it cannot be held that the officer's continuous officiation was a mere temporary or a local stop-gap arrangement, even though the order of appointment may state so and that in such circumstances the entire period of officiation has to be counted for seniority and that otherwise it would be violative of Art.14 and 16(1) of the Constitution because temporary service in the post in question is not for a short period intended to meet some emergent or unforeseen circumstances.

The facts of this case would fairly attract the above decisions of the Supreme Court in Lamba's case (AIR 1985-SC-1090) and Narendra Chandra's case (AIR 1986-SC-638). In this case, pending framing of the

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recruitment rules, the post of Office Superintendent Gr.II were filled up by making ad hoc promotion from UDCs/Stenographers. After framing of the rules, regular selection on the basis of the rules was held in the year 1975. But as the selection was set aside by a judgement of the Allahabad High Court, a review was undertaken twice - once in the year 1980 and again in the year 1982. Since both the review DPCs were found to be defective, a review was again made in June 1983 in which some of the applicants got selected. The rest of the applicants got selected in a regular DPC held in December 1983 in respect of the vacancies that arose between 1975 and 1980. For this, the process of selection commenced in 1975 and ended in December 1983, and as a result of the delay in making proper selection, ad hoc appointments continued and the adhoc appointees have been functioning in the higher posts for periods ranging from 7 to 10 years. It is therefore unfair to ignore such long period of officiation in the higher cadre in the matter of fixation of seniority, especially when they had been actually selected to the higher post on a regular basis. Normally, date of entry into the grade will determine the question of seniority as between persons in the cadre. This rule should be taken to have been relaxed having regard to the earlier continuous officiation in the said cadre by some of the persons who have been appointed earlier on ad hoc basis. As pointed out by the Supreme Court in Lamba's case, if the entire period of officiation is ignored for purpose of fixing seniority, it will result in the violation of Art.14 and 16(1), because their temporary service in the post of office superintendent-Sr.II is not for a short period, intended to meet some emergent and unforeseen circumstances and that their continuous officiation is for sufficiently a long period and the delay in making the selection cannot be attributed to the persons like the applicants who have been officiating in the higher posts.

We have to therefore hold, based on the said decisions of the Supreme Court in Lamba's case (AIR 1985-SC-1090) and Narendra Chadha's case (1986-SC-638) that the notional promotion given to some of the persons found in the panel prepared in June 1983, without reference to their actual officiation in the higher cadre is invalid and that the applicants are entitled to be given their seniority, taking into account their continuous officiation in the cadre of Office

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Superintendent Gr.II.

The respondents are therefore directed not to fix the inter-se seniority on the basis of notional promotion from 11.12.1975, as contemplated in the letter dated 5.9.1985; but to fix the seniority of the applicants taking into account the period of their officiation in the post of Office Superintendent Gr.II, on ad hoc basis.

The directions contained in this order will have to be given effect to by the respondents within a period of three months from the date of receipt of a copy of this order.

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8.1/-xxx
(VENKATARAMAN)
Administrative Member
5.12.86

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(G. RAMANUJAM)
Vice-Chairman
5.12.86

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Copy received on 09/12/86
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from the Central Administrative Tribunal Circuit Bench Lucknow

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CA No. _____ 1990

A.T. Thomas

Union of India & others

11

Answer No. 6

-- Petitioner/Applicant
-- Off Pay/Respondent

INTER OFFICE NOTE

E7 (Adm)

916218/2/164/E10B (Adm)

04 Dec 87

PROMOTION OF UDCs/STENOs TO O/S :
NOTIONAL SENIORITY

An extract of E-in-C's Branch letter No. 41205/E1R/SUB dated 24 Nov 87 is reproduced as under for the information of the individual :-

" 1. Reference your letter No. 901710/75-82/V/43/E1D(I) dated 12 Sep 86 and 901710/75-82/V/94/E1D(I) dated 13 Jun 87.

2. The representations dated 02 Sep 86 and 18 May 87 in respect of MES/261011 Shri AT Thomas, Office Supdt Gde II have been examined in detail.

3. The post of Office Supdt Gde II is a selection post and promotions are made on seniority-cum-merit basis. The name of Shri AT Thomas was considered by the duly constituted DPC against the vacancies 1975, but due to his low merit position as assessed by the DPC based on his recorded performance as reflected in his ACRs, his name could not find a place in the select panel. His name was considered by the Review DPC of Dec 1983 and his name has been included in the panel at the appropriate place based on his recorded performance as reflected in the ACRs and assessed by the DPC. Notional seniority wef 11 Dec 75 has been given only to those individuals who have been selected in May 1983 Review DPC. As the individual has been selected by Review DPC of Dec 1983, he cannot be given seniority wef 11 Dec 75.

4. The judgement of CAT Madras dated 05 Dec 86 has been implemented in its true spirit in consultation with Min of Defence/DP & T. As per the directions of the CAT Madras and advice of Min of Def, no benefit of the judgement accrues to the individual as neither he was petitioner in the case nor served on adhoc basis prior to his selection as regular basis. The individual may be suitably informed at your end."

Sd/- x x x x
(UB Singh)
AO II
Adm Officer

E1R (Adm)

Ch. of Admin
Allied
Min

A.T. Thomas

Union of India & others

-- Petitioner/Applicant

Summ No - 7

... Opp. Party/Respondent

Annexure No-7

List of Stenographers (S.C./S.C.C./S.C.C.C./S.C.C.C.C.) dated 20 Jan 34

Except on 1 Jan 34 to 11/01/34-32/34 dated 20 Jan 34

1. Jatin Lal Mohan Markandey (Steno) 27
2. M. Sinde (Steno) 36
3. Nanohar Lal Kalra (Steno) 41
4. K. Kankdale (Steno) 45
5. S. Srinivasan (S.C.) 47
6. Sunil Kumar Ganguly (Steno) 61
7. Farla Ladd (Steno) 69
8. NV Chacko (Steno) 74
9. Giraj Kishore Gupta (Steno) 76
10. MS Parameswaran (Steno) 77
11. Bal Krishan Luther (Steno) 72
12. Parkash Lal Sharma (Steno) 102
13. Gurcharan Dass Kaura (Steno) 103
14. Jagdish Lal (Steno) 104
15. Kartar Singh (Steno) 105
16. Dhirendra Nath Dose (Steno) 1
17. Mant Ganesh Joalekar (Steno) 2
18. KM. Gredhaan (Steno) 3
19. Kewal Krishan Sharma (Steno) 4 (424)
20. K. Narikaran (Steno) 5
21. Lachhmi Narain (Steno) 7 (430)
22. Smt. Sarda Bhutt (Steno) 9 (426)
23. X X X
24. DB Potnis (Steno) 16
25. Dinkar Govind Bhakta (Steno) 18
26. DR. Mukarni (Steno) 20
27. Abhey Singh Lala (Steno) 23
28. Krishan Chand Kapoor (Steno) 25
29. SP Dhorangam (Steno) 26
30. V Balachandran (Steno) 28
31. Bhawan Singh (Steno) 31
32. N. Sundereswaran (Steno) 32
33. K. Neenakshi Sundaram (Steno) 34
34. S. Biswas (Steno) - 35
35. Raj Kumar Saidki (Steno) 43
36. to 233 (S.C.C.s)
37. Jaster Syamram (S.C.) (Steno)
38. Charan Dass Lala (S.C.) (Steno)
39. to 212 (S.C.C.s)
40. Bhirender Kumar Das (S.C.) (Steno)
41. Limansu Bishesh Nazundar (S.C.) (Steno)
42. to 232 (S.C.C.s)
43. S. K. Hardong (S.C.) (Steno)
44. S. K. Kanchanji Subbiah (S.C.) (Steno)
45. R. Riva (S.C.) (Steno)

Except on 1 Jan 34 to 11/01/34-32/34 dated 20 Jan 34

1. A. Thomas (Steno) 56
2. S. Chakravartian (Steno) 65
3. Kader Singh Lala (Steno) 66
4. K. Krishan Narine (Steno) 67
5. K. Settimadibavan (Steno) 68
6. Nand Narayan (Steno) 70

7 to 100 (S.C.C.s)

S. K. Kanchanji
(S.C.)

R. Riva
(S.C.)

A.T. Thomas

Union of India & others

CA No. _____ 1990

Anne No

8

-- Petitioner/Applicant
-- Off Pay/Respondent

Engineer-in-Chief
Army Headquarters
DHQ PO, NEW DELHI-11.

ALL INDIA SENIORITY LIST OFFICE SUPDT GDE II

Sir,

Reference your letter Nos 41205/EIR Sub dated 24 Nov 87 regarding Notional Seniority and 41205/CP/EIR (Sub) dated Feb 88 circulating All India Seniority List of Office Supdt Gde II.

2. I am not at all convinced with your above reply to my varicus representations, after a lapse of 3 years, since the points raised in my representations have never been covered.

3. Now the revised All India Seniority List of Office Supdt Gde II has given me yet another shock as it is seen from the same that those promoted to Office Supdt Gde II after me have been given an elevated position in the Seniority List and exalted to the post of AO, though I am promoted and physically working as Office Supdt earlier than them ie 30 Mar 82. Of course, CAT Madras directed not to fix inter seniority of the Office Supdt Gde II on the basis of notional promotion from 11 Dec 75 but to fix seniority of the applicants taking into consideration the period of their officiation in the post of Office Supdt Gde II on adhoc basis. But what is beyond my comprehension is that if CAT Madras judgement is made applicable to the petitioners; why the same criteria cannot be made applicable to others who are physically promoted and working as Office Supdt Gde II on regular basis. In other words, our Department and the Government are encouraging their employees to approach judiciary for getting their grievances redressed instead of settling the issues by themselves based on the judgement of similar cases and this is a strange phenomenon to my mind.

4. Moreover, a close watch of the revised All India Seniority list of Office Supdt Gde II circulated vide your letter under reference reveals that the same has been prepared in a haphazard manner without paying due attention to this vital issue and without taking into account the correct spirit of the verdict of CAT Madras. To quote an example - Col 7 (promoted by the DPC held on) is not correctly filled against the following serials Nos.

- (a) Sl No 1 to 334 : Dec 83/May 83
- (b) Sl No 335 to 479 : 04 Jul 80
- (c) Sl No 480 to 572 : 08 Mar 82

....2/-

Nic
Nik

19/1/88

(51)

whereas none of the individuals has been promoted by DPC held on DEC 83/MAY 83, since it was a review DPC assigning notional seniority and not promotion to Office Supdt Gde II and many of the individuals mentioned at serial Nos 335 to 479 and 480 to 572 have not been promoted in Jul 80 and Mar 82 respectively but by a DPC held subsequently in Mar 82 and 1984 respectively.

5. My name now appears only at Serial No 480. Since individuals, who were at serial Nos 481 and 484 have been brought to 54A and 54C, are junior to me not only in the cadre of Stenographers but also promoted and placed in position as Office Supdt Gde II after me ie 17 Sep 82 and 29 Oct 82 and myself was promoted and placed in position on 30 Mar 82, there is no justification in ignoring my name for elevation. I would therefore, request you to consider my case sympathetically and delete my name from serial No 480 and bring it up above the name of Shri R Balasubramanian at Serial No 54A.

6. However, in case you will not be able to do justice to an employee who has served the department for 30 years, I have no alternative but to seek fair justice through Central Administrative Tribunal.

Lucknow

21 Mar 88

AT Thomas
(AT Thomas)
Office Supdt
Office of Chief Engineer
HQ Central Command
Lucknow

AT Thomas
AT Thomas

AT Thomas

Before the Central Administrative Tribunal Circuit Bench Lucknow

CA No. _____ 1990

(52)

AT Thomas

Union of India & others

78

-- Pehlwan / Appellant

Answer No - 9

-- Chh Day / Respondent

A copy of E-in-C's Branch Army HQ DHQ PO New Delhi letter No 41270/E1R (Sub) dated 18 Jul 88.

ALL INDIA SENIORITY LIST OF OFFICE SUPDT
GDE II

1. Reference your letters No 909763/OS/IV/92/E1D(2) dated 2 Apr 88 and 909762/OS/V/S/E1D (2) dated 16 Apr 88.
2. The representations dated 22 Mar 88 and 25 Mar 88 in respect of MES/261011 Shri AT Thomas and MES/4226017 Shri Diwani Ram respectively have been examined in detail.
3. Both of the individuals have represented against the revision of the seniority of S/Shri V Balachandren, R Balasubramanian, N Mahadevan and P Sathumadhavan. In this connection, it may be intimated that their seniority has been revised pursuant to the directive of the Cat Madras Judgement dated 5 Dec 86 delivered in TA No 177,465,427, and 287 of 1986. The seniority given in keeping with court's Judgement cannot be altered by us.
4. The individuals have further represented that they should also be given seniority from the date of officiation in the grade in keeping with the Cat Bombay judgement dated 9 Feb 88 in CA No 521/86 filed by Shri AG Joglakar Versus Union of India. Cat Bombay have directed in their aforementioned judgement that seniority from date of officiation on adhoc basis be given to all similar cases.
5. As consequence of CAT Bombay judgement, the case was reexamined and it was found that in addition to Shri AG Joglakar two more Office Supdt Gde II namely S/Shri Abhe, Singh Rana and Nathu Ram Chack had served on adhoc basis since 1972 and 1975 respectively prior to their regularisation as OC Gde -II. Their seniority was therefore revised and they have been promoted as OS Gde I/AO-II/AOI. Since cases of all the above mentioned individuals are not similar to those of S/Shri RK Sreedharan K Hariharan, AS Rana AG Joglekar and Nathu Ram Chack, their seniority seniority cannot be altered.
6. All the individuals may please be informed suitably.

Sd/ x x x

(Madan Singh)

AO II

SO III/F1R (Sub)

Engineer-in -Chief

Madan Singh

SO III/F1R

from the Central Administrative Tribunal Circuit Bench Lucknow
CA No: _____ 1990

53

A T Thomas

Union of India & others

-- Petitioner/Applicant

Amr. No - 10 -- Opp. Party/Respondent

The Secretary
Government of India
Min of Defense
New Delhi

Through Proper Channel

ALL INDIA SENIORITY LIST OF OFFICER SUPIT CDE II

1. Reference E-in-C's Branch Army Headquarters New Delhi, letter No 41270/EIR (Sub) dated 18 Jul 86 (copy enclosed)

2. The contention of E-in-C's Branch letter quoted above in reply to my representation dated 22 Mar 86, a copy of which is enclosed, is not at all convincing in so far as it concerned to para 3 and 4; hence I approach your goodself for kind intervention in getting justice to a subordinate staff of MES department.

3. My intention of representing to E-in-C's Branch the highest authority of our department was to get justice as given to S/Shri V Balachandran, R Balasubramanian, N Mahadevan and P Sethumadhavan and never requested for altering the seniority of these individuals. On the contrary, I had only requested to extend the same benefit as given to the above individuals by virtue of CAT Madras Judgement, merely on the ground that I am senior to them not only in the cadre of stenographer but also in the cadre of Office Supt Cde I since I was promoted and placed in position earlier than them i.e on 31st March, 1982 and my name appears at Sl No 18 of the panel of Promotion to Office Supt II issued under E-in-C's Branch letter No. 41205/31/EIR dated 08 Mar 82 whereas the names of the undermentioned individuals appears in the said panel at serial Nos noted against each:

(a) Shri R Balasubramanian	-Sl No 36
(b) Shri P Sethumadhavan	-Sl No 39
(c) Shri N Mahadevan	-Sl No 43.

4. In this connection I crave reference to CAT Madras Judgement wherein the Hon'ble Court in an unambiguous terms have given its verdict and directed not to fix inter-seniority on the basis of 'National Promotion from 11 Dec 75, but to fix seniority taking into consideration the period of of service in the post of Office Supt and when the said direction of the CAT Madras judgement has made applicable to the petitioners, similarly affected individuals could have been given the benefit of Court's direction.

5. The crux of the case generation from the fact that 'National Seniority' has been assigned to certain Stenos/UDOs before their promotion date as Office Supt without taking into consideration of the physical service rendered by others as Office Supt. As a result of this assignment of 'National Seniority' without any criteria jeopardised the interest and promotion scope of sufficiently senior Officers, who were promoted and placed in position mentioned, these juniors by virtue of their seniority and experience. If these juniors were so competent and better in their performance then us; how then these individuals were not come up in the panel of 1980 and 1982 since a few have come in 1982 original panel but below my name.

All the
M/S

A. G. Thomas

..2.

6. Because of the dual policy adopted by the department myself is suffering from irreparable loss in the service career and become demoralised. As a result of the above faulty fixation of 'notional seniority' apart from a large number of stenos who are junior to me and promoted after me to the rank of Office Supdt Gde II but also many UDCs who were junior to me in the original panel of 1982 and promoted in 1984 panel have got their seniority of 1975 and 1980 and many have become AO II/AO I. I also apprehend that those Office Supdt promoted as per original panel of 1984 may also become AO II though none of them has become Office Supdt Gde I in the panel recently circulated vide E-in-C's Branch letter No 41206/E1R(Sub) dated 20 Jun 1988 as they have been given notional seniority of 1980 whereas I have not been given the seniority but the date of my actual promotion and placing in position has been taken as my seniority. If a DPC for promotion to AO II is now held, as understood by me, based on the so called 'National Seniority' and not on the basis of actual promotion, I will be deprived of the benefit and many of my juniors, though they have not become O/S I, will become AO IIs.

PRAYER

1. Notional Seniority may be assigned to me also as done in the case of 4 individuals mentioned at para 3 above and my such seniority may be fixed at Serial No.54A, as Shri R Balasubramanian at Sl No.54A of the seniority list circulated vide E-in-C's Branch letter No. 40205/CP/E2R(Sub) dated 12 Feb 88, is junior to me in the cadre of Steno and also as Office Supdt Gde II as he was placed in position as Office Supdt Gde II on 17 Sep 82 and in the Promotion panel of 1982 at serial No 36 whereas I assumed the post of Office Supdt Gde II on 30 Mar 82 and my name appeared in the promotion panel of 1982 at serial No 18.
2. Promotion to AO II may be made based on the physical service rendered by Office Supdts and not based on 'Notional Seniority' assigned to them.

However, in case both my above prayers are not agreed to, I gregret, I have no other alternative but to approach the Central Administrative Tribunal and therefore, hereby give notice to the department that if a satisfactory reply to my this representation is not received by 15 Oct 88, I will be moving to CAT for redress of my genuine grievances. This may please be treated as my prayer and notice.

It is also brought to your kind notice that after passing the stipulated time, any consequences, if occurred on the above subject, I am not responsible for the same.

Thanking you,

Yours faithfully,

(A.T. Thomas)
MES 261011
Office Supdt Gde I
Office of Chief Engineer
Central Command, Lucknow

6th September, 1988.

W.M.T.
M.T.C.

14 Sept 1988

... before the Central Administrative Tribunal Circuit Bench Lucknow

(55)

OA No: _____, 1990

A.T. Thomas

Union of India & others

-- Petitioner/Applicant

Army No - 11 ... Off Pay/Respondent

Copy of E-in-C's Branch Army HQ letter No
41270/E1R (Sub) dated 11 Oct 88

1. Reference your letter No 909762/06/V/52/E1D (2) dated 26 Sep 88.

2. The position has already been explained in detail vide our letter even No of 18 Jul 88. As the individual has not brought out any fresh point, the contents of our above quoted letter hold good.

Sd / x x x
(Madan Singh)
AO I
SO 3 E1R (Sub)
Engineer-in-Chief

Ch. G. J. Khan

Ans
Ans

... in the Central Administrative Tribunal Circuit Bench Lucknow

CAT No: _____ 1990

(56)

A.T Thomas

Union of India & others

-- Petitioner/Applicant

Annex no - 12

-- Obj. Party/Respondent

Engineer-in-Chief
Army Headquarters
DHQ PO
New Delhi- 11

FIXATION OF SENIORITY : PROMOTION
FROM OFFICE SUPDT TO AO II

Reference correspondence resting with your letter
No 41270/E1R(Sub) dated 11 Oct 88.

2. It is seen now that only those Office Supdt Gde II, who have completed 5 years' requisite physical service, are being considered and promoted to Office Supdt Gde I. Similarly, only those Office Supdts Gde I/II, who have completed 8 years' service as Office Supdt physically, are being considered and promoted to AO II.

3 It is abundantly clear from the above that the Department has now realised that only those worked on the ground is more competent and eligible than those simply assigned the 'Notional Seniority' and therefore, not made them eligible.

4 You will kindly appreciate that I have been promoted to Office supdt Gde II and placed in position on 30 Mar 1982 since my name appeared at Sl No 18 of the Original DBC Panel circulated vide Appendix 'A' to your letter No 41205/81/E1R dated 8 Mar 82.

5 As you are aware, many of my juniors in the above panel, who have promoted and placed in position as Office Supdt Gde II after me are now become AO I, though they have not even completed the physical service of 8 years even today; what to talk of at the time of their promotion.

6 Since I will be completing my requisite 8 years physical and continuous service as Office Supdt Gde II/ Gde I in Mar 90, you are requested to consider my case for promotion to AO II by fixing my seniority at the appropriate place, taking in-to consideration the physical continuous officiation in the post rather than considering the mere aspect of 'Notional Seniority', as already given to other effected Office Supdts by virtue of CAT decision in their favour.

7 I have every hope that your goodself will consider my case sympathetically in the proper perspective and extend your helping hands in getting natural justice from the Department.

Thanking you,

Yours faithfully,

(A.T. T.)

(A.T. T.)
Office
Office of
HQ Central
Lucknow- 2

Lucknow
Dated: 25th Oct. 1989

A.T. Thomas

A.T. Thomas
Union of India & others

.....v. Central Circuit Bench Lucknow
OA No: _____ 1990

(57)

To

Amur No 13

-- Petitioner/Applicant
-- Off Pay/Respondent

The Engineer-in-Chief's Br
Army Headquarters
New Delhi

Sir,

FIXATION OF SENIORITY: PROMOTION FROM
OFFICE SUPDT TO AO I

Reference your letter No 41270/EIR(Sub) dated 1.2.90.

2. The reply to my representation dt 25 Oct 89, communicated to me vide above quoted letter is not at all convincing and acceptable to me and the contents thereof seem to be more like a jargon. On the one hand the Department agreed to restore my seniority as per the original DPC but on the other hand the names of other individuals who were junior to me in the same panel, have been considered and promoted to AO II/AO I ignoring seniors like me. In this connection I crave reference to my various representations by which I was emphasising the fact that I have been promoted and placed in position in Mar 82. Since my name appeared at Sl No 18 of the said original DPC the seniority should have been assigned to me on the basis of DPC panel for all purposes including promotion to higher post, whereas my juniors in the same panel whose names appeared at Sl No 19 onwards of the said original DPC have been considered and promoted to AO II/AO I. An extract of DPC panel circulated vide E-in-C's Branch letter No 41205/81/EIR dated 08 Mar 82 is enclosed for your ready reference. It is not understood as to how my name has not been considered by the DPC for promotion to AO II/AO I when as per your above quoted letter, my seniority has been restored on the basis of original DPC and when my juniors in the same DPC panel have been promoted to AO II/AO I.

3. I would also like to draw your kind attention to the verdict of CAT Madras, wherein in an unambiguous terms the court directed not to fix inter seniority of the O/S II on the basis of notional promotion from 11 Dec 75 but to fix seniority taking into consideration the period of their officiation in the post of OS II. Accordingly apart from many of my juniors the following individuals who are both junior to me in service as well as in the rank of O/S II have been brought at Sl Nos 2, 3 and 4 of the revised seniority list circulated vide your letter No 41270/EIR(Adm) dated 02 Nov 89 and my name still reflects at Sl No 131, which logic is not understood:-

- (a) Shri R Bala Sabramanian (Sl No 2)
- (b) Shri N Mahadevan (Sl No 4)
- (c) Shri P Sethumadhavan (Sl No 3)

Contd.....2/-

W.M.T.
M.M.T.

4. Moreover, the words "date of original DPC in which selected" appearing in Col 5 of the fresh seniority list circulated under your letter No 41270/EIR(Adm) dated 02 Nov 89 is not clear. As far as I remember DPC have been conducted for promotion to O/S only in Jul 80, Mar 82 and Mar 84 and also subsequent dates and most of the names now appearing in the fresh panel did not exist in the original DPC of Jul 80 but were in the original DPC of 1982 and 1984 and all these individuals are junior to me in the rank of Office Supdt. It is also pointed out that the names of individuals at 2,3, and 4 are not reflected either in the original DPC of 1980 or in the review DPC of Dec 1983 assigning notional seniority but their seniority was fixed in Mar 82. It is also not clear as to how those UDC/Stenographers promoted to O/S in 1984 have found a place in 1980 when they were only UDC and promoted after 2 years of my promotion.

5. In case the Department is not prepared to assign the seniority commensurate with my physical service as O/S as given to my juniors mentioned at the enclosed list and SI Nos 2, 3 and 4 of the revised seniority list, I have no alternative but to approach CAT for redress of my grievances as others did and gained. I expect a reply from E-in-C's Branch by 30 Mar 90, after which I may proceed to knock the doors of Tribunal.

Yours faithfully,

At. S. Thomas

Dated: 01 Mar 90

(MES/261011 AT Thomas)
O/S Gde I

Chief Engineer
HQ Central Command
Lucknow.

At. S. Thomas
At. S. Thomas

50

Thus hundreds of Office Supdts junior to me have been given seniority for no fault of mine without any substantial reason ~~XXXXXX~~ and against the direction of CAT Madras and other Tribunals.

At 165' 10" of the
Jefferson

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RECEIVED THE STATE OF UTTAR PRADESH

RECEIVED STATE, LUCKNOW

C.A. NO. 250 of 1990

f. f. 16.1.91

AT Thomas .. Applicant

-versus-

Union of India and others .. Opposite parties

COUNTER AFFIDAVIT OR STATEMENT OF DEFENDANT.

I, Lt Col Ranbir Singh

1990
AFFIDAVIT
47 M
DISIT. COURT
U.P.

aged about 45 years, son of Late Shri Hanohar Lal
at present posted as Staff Officer I (Pers)
in the office of the Chief Engineer, Central
Command, Lucknow (Respondent no. 1) do hereby
solemnly affirm and state as under:

C. S. 15.1.91

Sign 15.1.91

1. That the deponent is the Respondent no. 1 in the
above mentioned application and he has been
authorised to file this counter affidavit on behalf
of all the Respondents.
2. That the deponent has read and understood
the contents of the application and he is well
conversant with the facts of the case and the
facts deposed hereinunder in regard thereto.
3. That before giving any adverse comments it is
necessary to give brief history of the
case as detailed below:

(a) That the applicant was appointed as IDC on 24 March 1958 (A/H) and posted to CTE

Calcutta, He passed the recruitment test of stenographer and thus appointed as Stenographer on 11 January 1962.

(b) That Office Suptd. Cde. TT is a selection grade post and promotions are made on seniority-cum-merit basis. The applicant was promoted to the post of Office Suptd Cde. TT vide S-in-C's Branch, Army H panel bearing No. 41205/81/ST dated 8 March 1982 (Annexure -T to writ petition) and placed in position on 30 March 1982. Prior to this panel, two DPCs were held at S-in-C's Branch, Army H during 1976 and 1980. The applicant could not find place in the select panels for the year 1975 and 1980 due to his low seniority and merit.

Panel issued by S-in-C's Branch, Army H, during 1975 was quashed by Lucknow Bench of Allahabad

High Court during 1979. As such revised DPCs were held at S-in-C's Branch, Army H, during Jul. 1980 to select IDCs/Stenos for promotion to Office Suptd Cde. TT for the vacancies of 1975 and 76 to 1980 which was also revised to select 314 IDCs/Stenos against the vacancies of 1975 by a review DPC held during May 1982. The applicant could not find place in the select panel of review DPC

held during Mar 1982 due to his low seniority and merit. A Review DPC was again held at S-in-C's Branch, Army HQ during Dec 82 to select IDCs' names for promotion to Office Guard Gde "I" against the vacancies of 1980 and 1982 by superseding the select list of Mar 82. In this review DPC the eligible candidate appeared in Jul 1980, Mar 82 panels and others were considered. The applicant could only find place in the select panel against the vacancies of March 1982 due to his low seniority and merit (Annexure 7 to writ petition refers). The original panels of 1975, 1980 and 1982 stand superseded by these two review DPC panels viz Mar 1982 an' Dec. 82. The applicant should have compared his merit with the review DPC panels of Dec 82 and not with the original panels of 1975, 80 and 82 which stand superseded.

(b) That the applicant has represented a number of times regarding above and he was suitably replied explaining the above position and correct ruling.

(d) That the judgement of CAT dated (Annexure 5 to the writ petition) have directed the Department not to fix the inter se seniority on the basis of national promotion for 11.12.1975 as contemplated in the letter dated 5 Sept 85 but to fix the seniority of applicant taking into account the

period of their officiation in the post of office surdt Gde II on adhoc basis (last but one para of judgement Annexure-5 of Unit petition refers) and the judgement of C/T Madras has been implemented in its true spirit in consultation with Minister of Defence /DFT & T in the case of its applicants.

(e) That the applicant's seniority as per the original panel held on 8.3.1982 has not been disturbed. The persons selected in "Review DRC May 1983" for the vacancies of 1975 have been given seniority from 1975 or in the review panel issued in May 1983 therefore, he has correctly been assigned seniority as office surdt Gde II with effect from March 1982 as he was promoted against the vacancy of 1982.

(f) That in view of the facts stated above there is no injustice done to the applicant by the Department and the case is liable to be dismissed.



4. That the contents of para 1 & 2 of the application need no comments.
5. That in reply to the contents of para 3 of the application it is submitted that in para 1 of the application the applicant is referring E-in-C's letter No. 915314 2/651/513 (ADM) dated



11 April 1990 is only in order to bring the case in limitation whereas this letter of 11 Apr 90 is a decision given on his representation dated 01 Mar 1990. In this representation also he has objected against giving seniority to the persons selected in revised DPC held in May 1987 with effect from 1.1.1975 after a lapse of 7 years as was objected in his earlier representation dated 2.9.1986 which has already been considered and rejected. Therefore, filing a case on a matter which is 7 years old is time barred and therefore the application is liable to be rejected on the ground of limitation.

6. That the contents of para 4.1. of the application are admitted except that applicant joined the said post on 21 March 1958 (Afternoon).
7. That the contents of para 4.2 of the application are admitted ~~except~~ ~~text~~ ~~except~~ that the applicant was appointed and not promoted asstenorarher on 11 Jan 1983.
8. That in reply to the contents of para 4.3 of the application it is submitted that the applicant passed ITC Exam. during 1967. As per para 4.1 of the application the applicant avers that he was initially appointed as LDC in the year 1958 in

in Military Envelope Service and that he has been promoted to stenographer in January 1961 as per para 4.2. This statement is incorrect. LDCs are never promoted to the post of stenographer in LSS. Direct line promotion of LDCs in the post of LDC only. The applicant has further stated that he becomes eligible for promotion to the post of GS-Grade II having passed LDC examination in the year 1967 and exercising option for promotion for Office Guard cadre which is incorrect. He was appointed as stenographer in the year 1962 and he became eligible only after rendering 7 year service as stenographer as per recruitment rules for consideration for promotion to GS-II. Having passed a LDC examination does not make him eligible as contended by him unless he completes requisite service in the grade.

9. That the contents of para 4.4 of the application are matter of records as such needs no comments.

10. That the contents of para 4.5 of the application are not disputed.

11. That the contents of para 4.6 of the application are partly admitted to the extent that he assumed the post of Office Guard Grade II on 30 March 1962. With regard to his prior conduct which has already been stated in the concerned

authorities as brought out by the applicant in this para is of self evaluation and cannot be agreed to unless specific mention of such assessment is recorded in his annual confidential reports.

12. That the contents of para 4.7 of the application are incorrect as stated hence denied and in reply it is submitted that the applicant was promoted to the post of 22 Gde. II based on his selection in Mar 1982 D.G. Office Lyndt Gde. II becomes eligible for consideration to the higher grade of G.I-I only after rendering 5 years continuous service in the grade as per recruitment rules—accordingly he was considered and selected for promotion to 22 Gde. I in the D.G. held in June 1982 and his name is at sl No. 02 in the panel. Therefore, his claim that his name was left out and he was deprived from his rightful as 22 Gde. I in the year 1982 is not based on any facts but only on presumptions. It is further added that in 1974 a panel of 1120 Posts/Stamp was issued for the vacancies available upto including 1975. This panel has been later cancelled as per the judgment of Allahabad High Court in a civil writ petition filed by Sri Ritesh Singh vs. Union of India. In the year 1980, a fresh panel of 1200 Posts was issued based on revised seniority list. This panel included the vacancies of 1975 and subsequent vacancies available upto 1980. The applicant was not in the select list of 1975 or 1980 D.G. In the year 1982 a panel of 125 Posts/Stamp was issued for

subsequent vacancies and in this panel the applicant was selected for the promotion to CG 3de T against the quota fixed for steam rankers and he was accordingly promoted against the vacancies of 1980. In May 1983, the panel of 1975 was reviewed and a fresh panel of 114 were issued for the vacancies available for and including 1975. This panel of 114 persons consisted persons selected in 1980 and 1982 DPCs. As a result of this DPCs of 1980 and 1982 have also been reviewed in Dec. 1983. With the issue of review DPC panel, the original panel of 1980 and 1982 DPCs stand superseded. The applicant should therefore compare his position with the individuals shown in the review DPC panels and not with that of shown in original panels as the same stand superseded. The individuals who were promoted to CG 3de T in 1983 were selected CG 3de T against vacancies of 1975 in the review DPC of May 1983 whereas the applicant was selected by the review DPC of Dec 83 (ie. review of 1980 and 1982 DPC). No person junior to the applicant in the review DPC panel issued vide letter No. A1005/25-82/STR dated 20.1.1984 has been superseded and promoted to CG 3de T earlier than him.

13. That in reply to the para 4.8 of the application it is submitted that despite applicant has been informed by the authorities personally he has also been informed in writing the correct position as his

representation whenever I learned conveying him that he has not been deprived of any rightful promotion to Grade I as brought out by him in this para. The individual has been considered and selected for promotion to Grade I on becoming eligible as per Recruitment Rules in the DPM held on 20.6.1980 and he has been promoted to Grade I in 1980.

14. That the contents of para 4.9 of the application are incorrect as stated, hence denied and in reply it is submitted that the original panel seniority of 1975 DPM was given to those 314 selected in review DPM held in May 1982 for vacancies available for upto and for 1975. Shri AT Thomas was not in the panel of 314 persons selected in the review DPM held in May 1982. He was only selected in the review DPM held in Dec 82 for vacancies available for 1982. Therefore, any person promoted from earlier panel has to reckon seniority to those promoted from subsequent panel. As already brought out in reply to para 4.7 above it is again submitted that the original DPM held in 1975 has been revised in May 1982. 314 persons selected in this review DPM are for the vacancies available upto and for 1975. This panel consisted no one selected in 1981 and 1982 DPM. As a result of this the DPM of 1980 and March 1982 have also been revised in D.P. 1982. As the issue of revised DPM panel, the original panel of 1980 and March 1982 D.P. stand superseded. Therefore the applicant should come to his position with the individual shown in the review DPM panels and opt with that above.

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shown in the original panel of Jan 82 as the same stand unrepresented. The individuals who have appealed to Ombuds I in 1982 to a selection to Ombuds II against 1975 vacancies in the revised list of May 1981. Whereas the applicant was selected in the revised list of Dec 82 (i.e. revision of original lists of 1980 and May 80). In person therefore junior to the applicant as far as the 1975 appeal is concerned while this list has been unrepresented and unselected to Ombuds I earlier than the applicant.

15. That ~~xxxxxxxxxx~~ the contents of para 4.16 of the application ~~xxxx~~ are incorrect as stated, hence denied and in reply it is submitted that it is incorrect to say that the opposite parties were unrepresented allegedly and most discriminatory against the candidate intention and in this ultimate motive did not come to this period of actual officiation of the applicant no office should be I. In this connection it is further submitted that the actual date of appointment to the do of Ombuds I is effect from 1.1.1982 and the position as such and in the panel issued 1.1.82 has not been disturbed.

Revised
General

16. That in reply to the contents of para 4.11 of the application it is submitted that the individuals mentioned at sl no.2 to 6 in this para are others who are junior to the applicant. These 5 individuals were also in the zone of consideration in 1975-81 and have higher merit of assessment by the Ombudsman the applicant. Mention to Ombuds II is a selection not

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from the senior categories of IAS officers at the ratio of 3:1. The original No. of 1975 has been cancelled as a result of Allahabad High Court judgement. In 1980 panels of 51, 120 & 69 stenos were issued for consolidated vacancies from 1970-75 & 1976-1980. Since Dep'tt. was not having eligible person for further promotion to Grade I IAS, case was referred to Ministry who have advised to review the panel of 1975 and select persons for 1975 vacancies based on the same original assessment. Accordingly, a review of 1975 panel was held in Jan 1982 in which the persons qualified in this panel have come in the select list based on their higher merit. The applicant could not make up his grade in select list of stenos for 1975 vacancies due to his low grading. The applicant could make his grade only in the IEC held in Mar 82 which was later reviewed in Dec 1983.

17. That in reply to the contents of para 4.12 of the application it is submitted that the extent applicant has submitted representation dated 16.2.1984 and the applicant has informed his Chief in India Central Council vide his letter dated 20.7.1984 stating therein that the subject matter has become sub judice in the High Court as certain person had filed writ petition against the panel of June, 1982 are correct. Whereas what he has brought out in his application stating that he has been deprived



from his rightful claim. While the reasons given to him are protracted to most illegal manner, his claim is unlawful and invalid and illegal additional security are irrelevant and not based on facts in the light of our early already Summons in para 4.7 and 4.9.

18. That the contents of para 4.12 of the application are incorrect as stated, hence denied and in reply it is admitted that the representation dated 14.2.1984 of the applicant referred to in para 4.12 of application has been replied by the respondent under their letter dated 20.2.1984. This fact has been admitted by the applicant in para 4.12 of the application. In this connection please refer to annexure 3 to the application. Therefore, it is not most incorrect for the applicant to say that his representation has not been replied and he had submitted another representation dated 2.2.1986.

In para 4.1 (~) of the application the applicant further stated that upon his representation dated 14.2.1986 which neither been responded nor did the applicant was informed any time later this is also most incorrect. In this connection the Plaintiff is pleased only like to refer to Annexure 6 to the application in which last call representation dated 12.2.1986 and also representation dated 18 Mar 1987 both have been

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examined and the applicant has been informed by the letter No. 41205/ST dated 24.11.1987 concerning all the issues covered in his representations. That the office staff Code 77 is a selection panel and promotions are made on seniority - concurrent basis. The applicants name was considered by the duly constituted CPB against the vacancies 1975 till due to his low merit position as assessed by the DDCB and on his record performance as reflected in his AGPs his name could not find a place in the select list panel. His name was considered by the revised DDC of Dec 1980 and his name has been included in the panel at appropriate place based on his recorded performance as reflected in the AGPs and assessed by the DDCB - seniority - concurrent effect from 11 Dec 1975 has been given only to individuals who have been selected in by 1980 revision. As the individual has been selected in revision 71 of Dec 1981, he cannot be given seniority - concurrent effect from 11 Dec 75. The applicant has also been informed in this letter that judgment of CAT Madras dated 5.12.1986 has been relied in its true spirit in consultation with

Ministry of Defence/DP ST - As per advice given in first try of Defence no benefit of the judgment according to the applicant as neither he was notified nor he served on whom basis prior to his selection on regular basis. Based on this reasoning individual should have convinced his eligible position in final

copy to
Arif Ali

filling a writ petition for which he has no ground. It is also further added that the applicant was selected in revised DSC Dec. of 1980 and no one junior to him in this panel has been promoted to higher grade earlier than him.

19. That in reply to the contents of para 4.14 of the application it is submitted that the directions given by CAT Madras in their judgement dated 5.12.1986 on transferred application Nos.177, 465, & 427 of 1986 and original application No.287 of 1986 as brought by the applicant in this para are not correct. The CAT Madras has neither held that notional seniority is absolutely illegal, invalid and against the principles of natural law nor they directed the authorities concerned not to give notional seniority to the junior personnel as brought out by the applicant in this para. CAT Madras have directed the Department not to fix the internee seniority on the basis of notional promotion from 11.12.1975 as contemplated in the letter dated 1.2.86 but to fix the seniority of applicant taking into account the period of their officiation in the post of Office Guard Grade II on revised basis."

S. Balasubramanian
Consequently seniority of Shri M. Krishnam and
Shri Paribahan has revised based on the judgement of
the CAT Madras as they had served as office Guard
Grade II with effect from 72/73 on revised basis. The

other petitioners got the benefit because they were co-petitioners in the case and they got seniority in relation to the adhoc/offg service as office supt. grade-II. Thus the judgement of CAT Madras dated 5.12.86 has been implemented in its true spirit in consultation with Ministry of Defence (DST) in the case of applicant.

20. That the contents of para 4.15 of the application are incorrect as stated, hence denied.

21. That in reply to the contents of para 4.16 of the application it is submitted that the contents of this para are partly correct to the extent that the opposite parties (Department) did not consider the claim of the applicant i.e. to consider his case on the basis of principles laid down in CAT Madras dated 5.12.1986 as brought in para 4.15 above.

The further statement of the applicant in this para that vide letter dated 4.12.1987 the opposite parties informed the applicant that the claims of the applicant could not be considered as the applicant was not the applicant of that case which was referred against which the applicant claimed parity on the basis of the same principle which was laid down in the C.A. That is not what actually happened to the applicant after examining his representation in detail.

The applicant has been informed via letter dated 4.12.1987 that the post of office supt. The post of office supt Grade II is a selection post and promotions are made on seniority -cum-merit basis.

The name of the applicant is as considered by the duly constituted DFC against the vacancies 1975, but to his low merit position as assessed by the DFC based on his recorded performance as reflected in his ACRs, his name could not find a place in the select panel. His name was considered by the review DFC of December 1986 and his name has been included in the panel at the appropriate place based on his recorded performance as reflected in the ACRs and assessed by the DFC. National seniority ref 11 Dec 1975 has been given only to those individuals who have been selected in any 1977 Review DFC. As the individual has been selected in Review DFC of Dec 1986, he cannot be given seniority ref 11 Dec 75. The judgement of CAT Andras dated 5 Dec 86 has been implemented in its true spirit in consultation with Min of Defence (CAT). As per the directions of the CAT Andras and advice of Ministry of Defence, no benefit of the judgement accrues to the individual as neither he was participant in the case nor served on adhoc basis prior to his selection as regular basis. ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~


22. That in reply to the contents of para 4.17 of the application it is submitted that CAT Andras held in their judgement dated 5.12.86 that the national seniority was illegal, unconstitutional. In this connection please refer to our reply furnished against para 4.14 of the application. In fact CAT Andras has directed to fix the seniority of the applicant taking into account the period of

officiation in the post of office Guard Grade II on adhoc basis. Based on the direction seniority of V. Thri M. Greedharan and K. Aniheran was reviewed as they had served as Office Guard Grade II with effect from 72/73 on adhoc basis. S. B. S. Alasubramanian, T. Lakshman and P. Rathnamadhaven and other petitioners got this benefit as they were co-petitioners in the case decided by C.A.T. London and got seniority in relation to the adhoc offic service as office Guard Grade II. Accordingly seniority of individuals mentioned by the applicant in this para has also been revised in the seniority list issued in Feb 86 as per direction of C.A.T. London. It is also submitted that in the revised seniority list issued in Feb. 88 as per direction of C.A.T. London, the seniority of petitioners has been revised as per advice of Ministry of Defence. No other change was made to earlier seniority list. Therefore, any objection of the applicant in that account is uncalled for, unmerited and baseless.

22. That the contents of para 4.12 of the application are incorrect as stated, hence denied and in reply it is submitted that the no. 200 departmental promotion panel dated 20.4.1984 as sought by the applicant has been issued. The correct date is 20.1.1984. Likewise the date stated as 20.4.84 in the copy of major 200 panel as annexed to the petition is also incorrect, whereas the correct date of the panel is 20.1.1984.

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It is again submitted that the seniority of persons mentioned in this para has been modified pursuant to the direction given by CAT Madras in their judgment dated 5.12.96. Therefore, the seniority given in keeping with Court judgment can not be altered by the Department. The whole position is explained in para 4.17 above.

24. That in reply to the contents of para 4.18 of the application it is submitted that the applicant has made a representation dated 22.7.1998 as indicated out in this para also in parit; to those persons who have been given seniority on the principles laid down in CAT Madras judgment dated 5.12.1996. The representation of the applicant dated 22.7.1998 has been examined also with the similar representation of another person have been examined and informed under letter No.41270/FIR(Su) of 18 Jul 1998 (Annexure 9 to the application).

25. That in reply to the contents of para 4.20 of the application it is submitted that the applicant again submitted a representation dated 10.7.1998 addressed to the Secretary, Ministry of Defence on the same issue what has been brought in his representation dated 10.7.1998 (Annexure 10 to the application). Since the applicant has not brought out any new points in this application, the applicant

has been accordingly under letter No. 41270'

MR (Sgt) dated 11 Oct 88 informed that the position
has already been explained in detail via letter
dated 19 Jul 88. As the applicant has not brought out
any fresh point the contents of the above quoted
letter hold good.

26. That the contents of para 4.21 of the
application are not misquoted.

27. That in reply to the contents of para 4.22
of the application it is submitted that with regard
to the request made in his representation dated
25.10.88 to consider his claim to the post of
Administrative Officer, Grade-II on the plea that the
applicant has completed the required period of 7 years
as office junior Grade-II 'I' as he had been continuously
employed from 2.2.1980 and he was fully eligible and
entitled for being promoted to the post of Grade Administrative
Officer Grade I-, it is submitted that sufficient
experience service in the senior cadre alone does not
entitle a person to the next higher rank unless

~~the post~~ has been selected by a JCO having a camp in the zone
of consideration based on the vacancies. Promotion to

~~any~~ Administrative Officer Grade-II is a selection post and
cannot be claimed on its own.

Accordingly via letter No. 41270 dated

25.12.1988 the Department has informed the

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The applicant in reply to his representation dated 25.10.1982 to refer the seniority list of Ode.II-II circulated with letter dated 2.11.82 in order to ascertain his position in the seniority list based on which further promotion will be made. It is further submitted that the applicant was promoted to Ode.II-II in 1982 and Office Guard to I in 1986 as per panel issued with list no. 10.41206 '87(Bu') dated 20 June 1988. Further it is stated that applicant was considered for promotion to Administrative Officer Ode.III in the DPC held in 14.6.88. But due to his low seniority and for want of more vacancies his name could not come in the select list of panel issued by the DPC held on 14.6.1988.

22. That the contents of para 4.20 of the application are incorrect as stated, hence denied and in reply it is submitted that ~~xxxxxx~~ the representation dated 1.9.82 referred to para para 17 to the application has been examined although he has not brought any fresh point it is felt that ~~xxxxxx~~ had already been brought out in his earlier representation dated 25.10.1982 for which reply has been furnished to him as stated in the foregoing paragraphs. The individuals who have been promoted to Ode.II-II as brought by the individual were selected as Office Guard. Ode.II against the vacancies of 1987 in view of list 1088 names the applicant as selected in previous DPC of Dec 88 (it is revision of 1986 and 1988 list).

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22. That the contents of para 4.24 of the application need no comments in view of the reply furnished above against para 4.23 of the application.

23. That in reply to the contents of para 4.25 of the application are reiterated the reply given above against para 4.7 of the application. It is further submitted that no other person junior to the applicant as per previous DPS panel issued with Appendix-2 to letter No. 41205/75-22 'SI' dated 20 January 1984 has been superseded and promoted earlier than the applicant. It is also added that the applicant was given the seniority in the grade 21.

From the date of issue of original panel ie. 15th August 1982 which was reviewed in Dec. 1983. The actual officiation in the grade of the applicant is 30.1.1982 and the applicant should not have any objection regarding his seniority in the grade of C3 Grade II.

24. That in reply to the contents of para 4.26 of the application it is reiterated the reply given above against para 4.14 of the application and there is no new point brought out by the applicant in this regard.

25. That the contents of para 4.27 of the application are incorrect as stated, hence deleted and in reply it is submitted that the applicant has no merit in his case to file the instant application as no action by which the applicant could seek to be reviewed in the light of remarks furnished to the various paras above.

33. That in reply to the contents of para 4.28 of the application it is submitted that the applicant's contention in this para that he has been deprived of his claim for promotion to higher post and most arbitrarily notional and hypothetical seniority given to persons junior to the applicant is absolutely illegal and void and also against Article 14 and 16 of Indian Constitution is not ~~as~~ correct and not based on any fact.

In this connection reply furnished by us in paras 4.23 and 4.25 are relevant.

34. That the contents of para 4.29 of the application are incorrect as stated, hence denied and in reply it is submitted that the original DPC of 1975 was reviewed in May 1983 and DPC of 1980 and 1982 reviewed in

~~CONT'D~~ December 1983. With the issue of review DPCs panel, the original panels of 1980 and 82 stand superseded. As per position given in the review DPC panel of Dec. 1983 issued on 20.1.1984 no person junior to the applicant has been promoted earlier than the applicant. Therefore, the allegation as brought out in this para are baseless in view of the facts stated in the foregoing paragraphs.

4.

35. That in reply to the contents of para 30 of the application it is submitted that the contents of this paragraph again not agreed. It is again submitted that original DPC of 1975 was reviewed in May 1983 and DPC of 1980 and 1982 were reviewed in Dec. 1983. With the issue of review DPCs panel, the original panels of 1980 and 1982 DPCs stand superseded. The applicant should compare his position with the individuals shown in review DPC panels and not with that of shown in original panels as the name stand superseded. The individuals who have been promoted are those who were selected as OS Gde II against the vacancies of 1975 by review DPC of May 1983 and also based on the judgement of CAT Madras in the case of petitioners Shri AT Thomas was selected by the review DPC held in Dec. 1983. As per position given in the review DPC panel of Dec. 1983 issued on 20.1.84 no person junior to the applicant has been promoted earlier than the applicant. Therefore the allegation as brought in this para are baseless.

36. That in reply to the contents of para 4.31 of the application it is submitted that the ~~applicant~~ applicant has 3 years service more ~~to attain the age of superannuation at the age of 58 years.~~ The applicant has already been promoted as OS Gde I in 1990. He was also considered for promotion to AO Gde II in the DPC held on 14.6.1990. But due to his low seniority and for want of more vacancies his name could not be come in the select list of panel issued. He will be again considered for promotion to AO Gde II based on his seniority and merit.

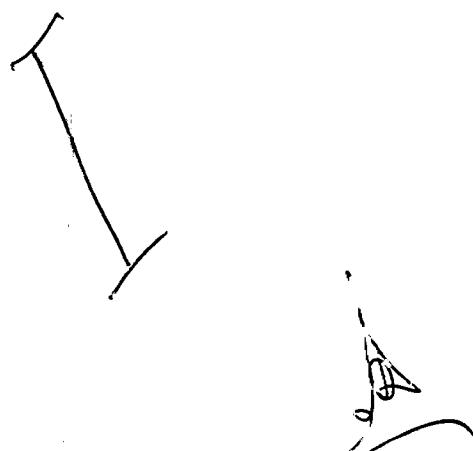
37. That the contents of para 6 and 7 of the application need no comments.

38. That in reply to the contents of para 8(a) of the application it is submitted that the applicant was not in the select list of Review DPC of May 1983.

As such he has no claim for seniority at par with the individuals selected in review DPG of May 1983. The applicant was selected in review DPG held in Dec. 1983. As per seniority position of the applicant in the review DPG panel issued on 20.1.1984 no person junior to him has been promoted earlier. Therefore, the applicant is not entitled to claim promotion to the higher post of Administrative Officer Gr. I and is also not entitled to any service benefits as claimed by him in this para.

37. *A* That in reply to the contents of para 8 (b) of the application it is submitted that the CAT Madras in their judgement dated 5.12.1986 has directed to fix the seniority of the petitioner taking into account the period of their officiation in the post of office supt gr II in adhoc basis. Whereas the applicant had not served on adhoc basis or other basis prior to his regular selection in 1982. As such he has no claim for promotion under those judgement and no benefits as a consequence of this judgement accrue to him. Therefore, his claim ~~at par with the individuals selected in review DPG~~ be rejected.

38. *A* That in reply to the contents of para 8 (c) of the application it is submitted that the order dated 11 April 1990 cannot be passed as it contains the factual position of the applicant's case explained in the foregoing paras.



2. That in reply to the contents of para 2(d) of the application it is submitted that the applicant has no cause of grievance to approach the Minister DTC in the light of the information furnished to the applicant and therefore the case to be decided in favour of the applicants contention.

3. That in reply to the contents of para 2(e) of the application it is submitted that the applicants seniority as per the original panel held on 8.7.1975 has not been disturbed. The person selected in Review DTC May 81 for the vacancies of 1975 has been serving continuously from 1975. Since the person selected is not in the original panel issued in 1975 or in the Review panel issued in May 81, his objection to AYB is invalid for and to be rejected.

4. That in reply to the contents of para 2 of the application it is submitted that the

Review DTC of 1975 was reviewed in May 1980 and DTC of 1980 and 1982 are also reviewed in Dec. 1981. With the issue of DTC panel, the original panels of 1975 and 1980 DTC stand disengaged. The individuals who have been promoted as Officer II are those selected as Officer II against vacancies of 1975 by review DTC of 1981 whereas the applicant as selected by the review DTC of Dec 1981 (i.e.

review DPC of 1980 and 1982 (DPCs). The applicant should compare his position with the individuals shown in review DPC panel and not with that shown in original panel as the same stand superceded. In relation to the applicant he has been promoted earlier than the applicant as per the position assigned to him in the review DPC panel issued vide Appendix "B" to Letter No. 1007/75-22 (SIR) dated 20.1.1984. The applicant has also not carried in addition to his prior to his regular selection in the grade of OIC.

10. That the reliefs sought by the applicant are not tenable in the view of law and the applicant is not entitled to get any relief.

11. That in view of the ~~submissions made~~ and ~~circumstances~~ ~~stated~~ in the following paragraphs the application filed by the applicant is liable to be dismissed with costs to the opposite parties.

Parital
Lokman,
Dated: 09/04/91

RAGHUWINDER LAL
RAGHUWINDER LAL (ponent).
R
CMD
Dated: 09/04/91

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Verdicts and awards.

2, the above named defendant do hereby declare that the contents of para 1 & 2 of this affidavit are true to my personal knowledge, those of paragraphs 3 to 11 of the affidavit are matter of records and information gathered from the official records and those of paragraphs 12 & 13 are believed to be true on the basis of legal advice. No part of this affidavit is false and nothing material ~~left~~ has been concealed.

RAGHUVINDER LAL
LAWYER
CHAMBERS
H.Q.C.L. LAL & COMPANY
LUCKNOW-22602

לְרַבִּים,

Dated: १५ फावू ४१

I identify the document which has signed
before me and is also personally known to me.

Ad'l. Steadip. for Ad'l. Com'l. Court
(Com'l. for the Ad'l. parties)

Colonial affirmed before me by the Lt Col Rander Col.
Swami at this 9th day of Jan 1978 at 5:30 pm
who has been identified by Dr. V. S. Rander, Mysore,
Karnataka, Lucknow.

I have carefully read the foregoing affidavit and
do not find it necessary to controvert the contents of this
affidavit which have been read over to me and explained
to me by me.

 9/1/91
D. B. S. 9/1/91

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

O.A. NO. 250 of 1990

A.T. Thomas

.. Applicant

- Versus -

Union of India and Others

.. Opposite Parties.

REJOINDER AFFIDAVIT TO THE COUNTER
AFFIDAVIT FILED BY THE OPPOSITE
PARTIES

AFFIDAVIT

I, A.T.Thomas, aged about 55 years S/o late
 Shri Joseph Thomas, R/O Gopal Bhawan, Kumarwali
 Galli, Hussainganj, Lucknow do hereby solemnly affirm
 and state as under:

1. That the Deponent is the Petitioner in the above noted claim petition and as such he is fully conversant with the facts and circumstances of the case deposed hereunder.
2. That the contents of para 1 need no comments.
3. That the contents of para 2 need no comments.
4. (a) That the contents of para 3(a) need no comments.
 (b) That the contents of para 3(b) are absolutely wrong and misleading and are denied. The Respondents are deliberately with ulterior motive creating confusion in the name of different Departmental Promotion Committees held in different years. The Petitioner hereby wants to make very clear before this Hon'ble Tribunal that the correct Seniority

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position was assigned to the Petitioner in the year 1982 and it was also circulated to all the concerned authorities and persons. But in the year May 1983 the Respondents in most illegal and unlawful manner and with ulterior motive with a view to accommodate the persons of their own choice the Respondents gave Notional(Hypothetical) Seniority from December 1975 to the persons who are juniors to the Petitioner and the Petitioner was deprieved and discriminated. And thereafter, was again discriminated in December 1983 when the Respondents again in illegal and unlawful manner did not give Notional Seniority to the Petitioner from 1975 and the Seniority position wad disturbed without any reason.

Ch. of Home S

- c) That the contents of para 3(c) are wrong and denied. In reply thereof it is submitted that the specific point raised by the Petitioner by which he was discriminated and deprived by the Respondents as they gave Notional(Hypothetical) Seniority to persons junior to him in the year May 1983 and December 1983 and deprived the Petitioner without any reason was never considered and no reasoned order was ever passed communicating the same to the Petitioner.

(d) The contents of para 3(d) are absolutely false, wrong and denied. In reply thereof it is submitted that the CAT Madras Judgement clearly laid down a principle not to fix Interse Notional Seniority from 11.12.1975 and to count the period of actual officiat on of Office Supdt Gde II at the time of assi n-
ment to the incumbents. But the said principle was clearly violated and the Respondents deviated from the said settled principles of CAT Madras Judgement at the time of Notional Senioirty to the persons junior to the Petitioner from the year 1975 in the year 1983 and deprived the Petitioner from the benefit of the same without any reason. As such it is ~~wrong~~ obvious that the CAT Madras Judgement was never implemented in the case of the Petitioner.

Ch. G. J. M. A.

(e) That the contents of para 3(e) are absolutely false, wrong and misleading and are denied. In reply it is again submitted that the Respondents again creating confusion in the name of DPCs of different years with ulterior motive. It is again clarified that the Petitioner is aggrieved by the action of the Respondents that they discriminated the seniority position in the year 1983 of the Petitioner by giving (Notional(Hypothetica.) Seniority to the persons junior to the Petitioner from the year 1975 in the year 1983 and deprived and discriminated the Petitioner from the benefit of the same and as such the Petitioner could not be promoted on the post of Administrative Officer Gde II

On date on which the juniors were promoted.

(f) That the contents of para 3(f) are false, wrong and denied. In view of the facts and circumstances stated in this Affidavit and that great injustice has been done to the Petitioner by the Respondents, the Petition is deserved to be allowed with cost.

5. That the contents of para 4 need no comments.

6. That the contents of para 5 of the Counter Affidavit are wrong and denied. In reply thereof it is submitted that the Petitioner is well under limitation. The Respondents rejected the representation on 11th April, 1990 and the Petitioner has continuous cause of action as the persons junior to him are still working on the higher post and the Respondents always falsely assured the Petitioner to give him his rightful claims by giving him his original seniority.

7. That the contents of para 6 of the Counter Affidavit need no comments.

8. That the contents of para 7 as stated are not admitted. In reply thereof the contents of para 4.2 of the Claim Petition are re-iterated.

9. That the contents of para 8 as stated are not correct. In reply thereof the contents of para 4.3 are re-iterated. It is further submitted that as mentioned by the

A. J. Francis

Respondent in their answering para that the Petitioner became eligible for promotion to the post of Office Supdt Gde II having passed UDC Examination in the year 1987 and exercising for promotion for the post of Office Supdt Gde II is absolutely wrong incorrect and denied. In reply thereof it is submitted that the Petitioner passed the UDC Examination in the year 1967 and not in the year 1987 as mentioned by the Respondents in the answering paragraph, the Petitioner became fully eligible for promotion to the post of Office Supdt Gde II after passing UDC Examination in the year 1967 and exercising his option.

A. S. Thomas

10. In reply to para 9 the contents of para 4.4. of the Petition are re-iterated.
11. That the contents of para 10 need no comments.
12. In reply to para 11 the contents of para 4.6 of the Petition are re-iterated.
13. That the contents of para 12 are incorrect wrong and are denied. In reply thereof it is submitted that the correct position of seniority to the Petitioner and his colleagues were given in the year 1982 when D.P.C. was held for the purpose of promotion. But surprisingly in the year 1983 in most illegal and arbitrary and discriminating manner the Respondents disturbed the said

seniority position of the Petitioner and in most arbitrary, illegal and in discriminating manner gave Notional Seniority to the other persons and the Petitioner was made junior to them in most unjust and illegal manner. Rest of the contents of para 4.7 are re-iterated.

14. That the contents of para 13 are false, wrong and are denied. In reply thereof the contents of para 4.8 of the Petition are re-iterated.

15. That the contents of para 14 are incorrect, false and are denied. In reply thereof the contents of para 4.9 of the Claim Petition is reiterated. It is further submitted that the Respondents in most illegal and arbitrary manner and with ulterior motive to accmmodate some persons of their own choice disturbed the settled seniority position in the Seniority List of the year 1982 to few colleagues who are much junior to the Petitioner on the pick and choose basis they were treated senior in the name of Notional Seniority in May 1983. It is very important to mention here that the seniority position was assigned to the Petitioner by the DPC in the year 1982 and the Petitioner was placed at Sl No.18 of this Panel and the seniority position of the Petitioner could not be disturbed in any manner. It is absolutely baseless to say that the

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seniority position of 1982 was reviewed and they gave Notional Seniority to persons junior to the Petitioner.

16. That the contents of para 15 of the Counter Affidavit as stated are not correct and are denied. In reply it is again submitted that the Petitioner is aggrieved by the action of the Respondents as they gave Notional Seniority to the persons junior to the Petitioner from the year 1975 and did not count the period of actual officiation on the post of Office Supdt Gde II of the Petitioner and the seniority position which was assigned in the year 1982. Further, the act of the Respondents disturbing the fixed senior ty of the Petitioner by giving Notional Seniority to persons junir to the Petitioner cannot be sustained in the eye of law.

17. That the contents of para 16 are absolutely false wrong baseless and are denied. In reply thereof the contents of para 4.11 of the Application are reiterated. It is further submitted that the Petitioner has given names and other details of 5 junior persons in para 4.11 of his Claim Petition, which clearly shows that those persons are junior to the Petitioner in all respects ie on the basis of date of appointment, date of joining on the post of Office Supdt Gde II and also All India Seniority position of the year 1980 and 1981 and also on the basis of seniority position of Office Supdt Gde II of the panel of 1982. But surprisingly without

any reason or justification the persons junior to the Applicant were made senior in the name of Notional Seniority. It is very important to mention here that to give Notional Seniority is most illegal act of the Respondents and in case (without admitting) it was necessary to give Notional Seniority to persons junior to the Petitioner then the Petitioner has his first claim to get the same as the Petitioner could not be deprived from the same benefit which was given to the five persons.

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18. That the contents of para 17 as stated are not correct and in reply thereof the contents of para 4.12 are reiterated. It is again submitted that as stated in the foregoing paragraph of this Affidavit, the Petitioner was deprived from his rightful claims as persons junior to him were given Notional Seniority while the Petitioner was deprived of the same.
19. That the contents of para 18 as stated are incorrect, wrong and denied. In reply thereof the contents of para 4.13 of the Application are reiterated. It is further submitted that the Petitioner raised specific point in his representations that the Notional Seniority could not be given to the persons junior to him and if at all (without admitting) it was necessary to give Notional Seniority to the persons junior to him in all respects to give the same seniority to the Petitioner

in the same way; but this point was neither considered nor ever replied by the Respondents till today. It is again submitted that it is absolutely wrong to say that the Judgement of the CAT Madras Judgement dated 5th December 1986 has been implemented in its true spirits as the principle laid down in it to give Notional Seniority has not been implemented for the Petitioner.

20. That the contents of para 19 as stated are wrong, incorrect and are denied. In reply thereof the contents of para 4.14 are reiterated. It is further submitted that as admitted by the Respondents in the answering paragraph that the CAT Madras had directed the Department not to fix Interse Seniority on the basis of Notional Promotion from 11.12.75 and further to fix seniority taking into account the period of actual officiat on in the post of Office Supdt Gde II. The Petitioner is senior on the basis of his date of appointment and also on the basis of selection/appointment on the post of Office Supdt Gde II and the period of officiation/ working on the post of Office Supdt Gde II is higher than the persons junior to him.

21. That the contents of para 20 are incorrect wrong and denied and in reply thereof para 4.15 of the Application are reite#ated.

22. That the contents of para 21 are wrong, incorrect and are denied. In reply thereof the contents of para 4.16 are reiterated. It is further submitted that the Petitioner could not be deprived of the benefit of the said Judgement of CAT Madras by saying that the Petitioner was not the Petitioner in that case, as there was a principle laid down on the said Judgement that the Notional Seniority could not be given from the year 1975 without taking into consideration the period of officiation in the post of Office Supdt. The Petitioner was deprived of the benefit as the persons junior to him were given Notional Seniority while the Petitioner was denied the said benefit. It is further submitted that as stated by the Respondent they gave Notional Seniority to persons who were selected in May 1983 and not to the persons selected in Dec 1983 is absolutely illegal and arbitrary act of the Respondents.

23. That the contents of para 22 as stated are wrong and denied. In reply thereof the contents of para 4.17 are re-iterated. It is further submitted that the CAT Madras in its said Judgement clearly directed to fix Notional seniority taking into account the period of officiation on the post of Office Supdt Gde II only and not to give any Notional Seniority as per Notional Promotion but the said principle was not

complied with in the case of the Petitioner.

24. That the contents of para 23 is not denied. It is submitted that the date of Review is 20.1.1984 but there was a typographical error and it was printed 20.4.84 instead of 20.1.84. The rest of the contents of para 4. 18 are reiterated. It is further submitted that the Petitioner was deprived by the benefit of the said Judgement of CAT Madras in most arbitrary and discriminating manner.

25. That the contents of para 24 as stated are not admitted. In reply thereof it is submitted that the party and the benefit was asked for by the Petitioner on the principles laid down by the CAT Madras Judgement at the time of fixing Interse Seniority of ~~the~~ the persons junior to him. But this point was not considered and no reasoned order passed by the Respondents. As such it could not be said that the point raised by the Petitioner in his representations have been considered and decided.

26. That the contents of para 25 as stated are denied. In reply thereof it is submitted that as the points raised by the Petitioner in his representations were not considered and no reasoned order was passed giving any reason for not promoting the Petitioner but it was turned down simply by saying that he had brought no fresh points. As such it is

again submitted that the question of giving parity by the Said CAT Madras Judgement and other points raised by the Petitioner were never considered.

27. That the contents of para 26 need no comments.

28. That the contents of para 27 are wrong, false and are denied. The contents of para 4.22 of the Claim Petition are reiterated. It is again submitted that the Petitioner was aggrieved by the action of the Respondent that in illegal and arbitrary manner they give Notional Seniority to those persons who were much junior to the Petitioner from the year 1975 in May 1983; but they deprived the Petitioner in most illegal and arbitrary manner from the benefit of the said Notional Seniority, which they had already given to the persons junior to the Petitioner. As such the Petitioner's seniority position of 1982 was disturbed in most illegal manner and with ulterior motive and the Petitioner was deprived of from his claim being promoted to higher posts.

29. That the contents of para 28 are false, wrong and denied. The contents of para 4.23 of the Claim Petition are reiterated. It is again submitted that the Petitioner moved his representation dated 1.3.90 as he was aggrieved by the action of the Respondents that they disturbed the senior ty of 1982 by giving

the most illegal and unlawful manner the Notional Seniroty to the persons junior to the Petitioner from the year 1975; but they deprived this benefit to the Petitioner without any reason. It is very important to mention here that the Petitioner is aggrieved by the action of the Respondent that they discriminated the Petitioner as they did not give Nortional Seniority to the Petitioner from 1975 while they gave this benefit to the persons junior to the Petitioner. As such here the question involved is that the Petition was discriminated by depriving him of the benefit of Notional Seniority from the year 1975 and not the question of DPC of May 83 or Dec.83.

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30. That the contents of para 29 as stated are denied. In reply thereof the contents of foregoing para 29 of this Affidavit are re-iterated.
31. That the contents of para 30 are wrong and denied. The contents of para 4.25 of the Claim Petition are reiterated. It is again submitted that in the Review Panel of May 83 and Dec 83 the hostile discrimination was made against the Petitioner by the Respondents as they gave Notional Seniority to the persons junior to the Petitioner, while they deprived the Petitioner from the benefit of the same without any reason as such the seniority position of the Petitioner of the year 1982 was disturbed and he

Petitioner could not be promoted to higher posts.

32. That the contents of para 31 as stated are denied. In reply thereof the contents of para 4.26 of the Claim Petition are reiterated.
33. That the contents of para 32 are wrong and denied. In reply thereof the contents of para 4.27 of the Claim Petition are reiterated.
34. That the contents of para 33 are denied. In reply thereof the contents of para 4.28 of the Claim Petition and foregoing paras of this Affidavit are reiterated.
35. That the contents of para 34 are absolutely false, wrong and are denied. In reply thereof the contents of para 4.29 of the Claim Petition are re-iterated. It is again submitted that it is absolutely wrong to say that in May 1983 DPC they reviewed the DPC of 1975 only. On the other hand, the Respondents reviewed the seniority panel of 1980 and 1982 also and they gave Notional Seniority to persons junior to the Petitioner in the year 1982, while they deprived this benefit of Notional Seniority to the Petitioner. As such without any reason the seniority position of the Petitioner was disturbed on the whims of the Respondents and the Petitioner has suffered.

36. That the contents of para 35 of the Counter Affidavit are absolutely false, wrong and denied. In reply thereof the contents of para 4.30 of the Claim Petition are reiterated. It is again submitted that the Respondents are deliberately misleading this Hon'ble Tribunal by creating confusion in the name of Review DPC of May 1983 and December 1983. It is again clarified that the Respondents in most illegal and unlawful manner gave Notional Seniority to persons junior to the Petitioner from the year 1975, while they deprieved the Petitioner from this benefit without any reason and again when they fixed the seniority position of the Petitioner in Dec 83, they made hostile discrimination against the Petitioner and the Respondents deprieved the Petitioner from the benefit of Notional Seniority from the year 1975 and as such the Petitioner was deprieved from his rightful claim for being promoted to the higher posts.

37. That the contents of para 36 as stated are wrong and denied. The contents of para 4.31 are reiterated. It is again

submitted that the Petitioner could not be promoted to the post of Administrative Officer Gde II and I as the Respondents gave Notional Seniority to the juniors in an unlawful and illegal manner but deprieved the same to the Petitioner. The Petitioner is fully entitled and eligible for the post of Administrative Officer II on the date on which the persons junior to him were promoted.

38. That the contents of para 37 need no comments.

39. That the contents of para 38 are absolutely false, wrong and denied. In reply thereof it is submitted that the seniority position of the Petitioner for the year 1982 was disturbed by the Respondents in most illegal and unlawful manner firstly in May 83 by Review DPC of May 83 when they have Notional (Hypothetical) Seniority to the persons junior to the Petitioner from Dec 75 and deprieved the Petitioner from the same without any reason and secondly the Petitioner was again discriminated in Dec 83 when the Respondents again in most illegal and unlawful manner did not give the Notional Seniority from the year 1975 which they had given to persons junior to the Petitioner and as such the seniority position of the Petitioner which was fixed in 1982 was disturbed in most

A. J. Hoffman

illegal and unlawful manner and the Petitioner was deprived from being promoted to the higher posts from the date on which persons junior to him have already been promoted.

A. S. Khan

40. That the para number of the Counter Affidavit is wrongly numbered from para 38 onwards wherein instead of 39 the para is numbered again from 37. That the contents of para 37 (to be 39) are false, wrong and are denied. It is again submitted that the CAT Madras laid down specific and clear principle to give Notional Seniority and the Notional Seniority given without considering the period of officiation of the post of Office Supdt Gde II is illegal and unlawful. The Respondent clearly deviated from the said principle and violated the said principle laid down by the Madras CAT Judgement as firstly they gave Notional (Hypothetical) Seniority to the persons much junior to the Petitioner and secondly they deprived the Petitioner this benefit to the Petitioner without any reason in most arbitrary manner and as such the seniority position of the Petitioner of the year 1982 was disturbed and the Petitioner could not be promoted to the higher posts on the date on which his juniors were promoted.

41. That the contents of para 38 (should be 40 of the Counter Affidavit) are absolutely wrong and denied. In reply thereof it is submitted that the Order dated 11.4.90 is

is most illegal and arbitrary and deserved to be quashed in view of the facts and circumstances explained by the Petitioner in the foregoing paragraphs of this Affidavit.

42. That the contents of para 41 (wrongly numbered 39 of the ~~XXXXXX~~ Counter Affidavit) are absolutely wrong and denied. In reply thereof it is submitted that great injustice has been done with the Petitioner and the Petitioner has been discriminated by the Respondents and the Petitioner has every right to get relief and justice from this Hon'ble Tribunal.

43. That the contents of para 42 (wrongly numbered 40) of the Counter Affidavit are absolutely false and denied. The contents of para 8((e)) of the Claim Petitioner are re-iterated. In reply thereof it is submitted that the seniority position of the original panel dated 8.3.82 was clearly disturbed and hostile discrimination was made again to the petitioner firstly in May 83 as the Respondents in most illegal and unlawful manner gave Notional (Hypothetical) seniority to the persons junior to the Petitioner from Dec. 1975 and secondly the Respondents again discriminated the Petitioner in Dec 83 when they deprived the Petitioner from the said Notional Seniority without any reason in most illegal and unlawful manner.

44. That the contents of para 43 (wrongly numbered 41) of the Counter Affidavit are absolutely false wrong misleading and therefore denied. In reply thereof it is submitted that the Respondents deliberately withheld ulterior motive creating confusion in the name of Review DPC of May 1983 and Dec 83. It is again submitted by the Petitioner that the seniority was fixed in the year 1982 and the Petitioner is aggrieved by this action on the part of the Respondents that firstly in most illegal and unlawful manner they gave Notional (Hypothetical) seniority to the persons junior to the Petitioner from 1975 and in May 83 and deprived the Petitioner from the same benefit and again the Petitioner was discriminated by the Respondents in Dec. 83 when the Respondents again in an illegal and unlawful manner deprived the Petitioner from the benefit of giving Notional Seniority from Dec 1975 and the seniority position was disturbed in most arbitrary manner and as such the Petitioner could not be promoted to the posts of AO II and AO I from the date on which the persons junior to him were promoted.

45. That the contents of para 44 (wrongly numbered 42) of the Counter Affidavit are wrong and denied. In reply thereof it is submitted that the Petitioner has been discriminated by the Respondents and great injustice had

been done to him and the Petition is deserved to be allowed with cost and the Writ Petition is full of merits.

46. That the contents of para 45 (wrongly numbered 43) of the Counter Affidavit are wrong and are denied. In reply thereof it is submitted that in view of the facts and circumstances of the stated facts in the Petition and this Affidavit, the Petition deserves to be allowed with cost and the same is full of merits.

A. T. Thomas

I, the above named deponent do hereby verify
that the contents of paras 1 to 46
of the Affidavit are true to my personal knowledge,
those contained in paras — of the
Affidavit are matter of records and information
gathered from the official records and those
of paras — are to be
believed to be true on the basis of legal advice.
No part of this Affidavit is false and nothing
material fact has been concealed.

A. Solmeny
Applicant

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

M.K. Starket

Solmenly affirmed before me by the
deponent this day of 1991
at who has been identified by

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

A. Solmeny