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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application Nos. 191/92, 623/92 & 691/92

~~XXXXXXXXXXXXXX~~

Date of decision 25.6.93

Sh. V.N.Karandikar & Ors. Petitioner

Sh.B.N.Zamre

Sh.V.H.Sakhalkar & Ors.

Sh.C.U.Singh, Sh.J.L.Pimple, Advocate for the Petitioner

Versus

Union of India & Ors. Respondent

Sh.A.I.Bhatkar for Sh.M.I.Sethna Advocate for the Respondent(s)

Smt.P.D.Anklesaria, Shri Kanade.

Coram :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble ~~Shri~~ Ms.Usha Savara, Member (A)

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

[Signature]
(M.S.DESHPANDE)
Vice Chairman

(7)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 191/92, OA.NO. 623/92 & OA.No. 691/92

1. Shri V.N.Karandikar & Ors.
2. Shri B.N.Zamre
3. Shri V.H.Sakhalkar & Ors.

Applicants

V/S.

Union of India & Ors.

Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Ms. Usha Savara

Appearance

Shri C.U.Singh
Advocate
for the Applicant in
OA.NO. 191/92.

Shri J.L.Pimple
Advocate
for the Applicant in
OA.NO. 623/92.

Applicant in person
in OA.NO. 691/92.

Shri A.I.Bhatkar
for Shri M.I.Sethna
Advocate for Respondent No.1.

Smt.P.D.Anklesaria
Advocate for Respondent No.2.

Shri Kanade
Advocate
for Respondent No. 10.

JUDGEMENT

Dated: 25th June 93.

(PER: M.S.Deshpande, Vice Chairman)

It will be convenient to decide these three cases together as they raise common questions of law and fact, the reliefs claimed in the three applications being identical, namely, a direction to the Respondent No. 1 & 2 to change the year of allotment of the applicants from 1975 to 1974, refixing of their seniority by placing all the promotees in the 1978 select list en block above the officers directly recruited and assigned 1975 as the year of allotment and consequentially amending the gradation list.

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2. The applicants in OA.NO. 191/92 V.N.Karandikar, B.M.Ambhaikar, B.B.Patil & S.V.Joshi, B.N.Zamre applicant in OA.NO. 623/92 and applicants in OA.NO. 691/92 V.H. Sakhalkar, G.B.Pingulkar and R.R.Kulkarni who belong to the Maharashtra State Civil Service, figured amongst 22 officers in the select list as approved by the UPSC on 31.1.1979, although some of them came to be appointed in the cadre post before that date. Three out of the officers who were from that select list G.R.Bedge, S.K.Sagane and V.P.Rane filed OA.NO. 421, 422 & 423 of 1988, for getting 1974 as the year of allotment in place of 1975 which had been assigned to them and by the order dated 1.7.1991 this Tribunal directed the change of the year of allotment in their case from 1975 to 1974. It was further directed that Sagane and Rane be given seniority on the basis of that year of allotment and be placed above the officers who were promoted to senior time scale after the officiation in the senior cadre post but that benefit was not to be available to G.R.Bedge. As far as Bedge's seniority was concerned, the seniority of the respondents who had been placed above him was not to be disturbed but the consequential relief was to be granted to all the three. The applicants feel aggrieved by the alteration of seniority in respect of these three persons, who have ^{been} joined as Respondents No. 3 to 5 in OA.NO. 191/92, as they were also entitled to the same relief under the I.A.S. (Recruitment) Rules, 1954. According to them, the inter se seniority of all the promotee officers promoted from the State Civil Service follows the order in which their names appear in the Select List, coupled with their dates of appointment to the IAS. The order of seniority as in the list of 1978 could not be disturbed, as there were a large number of vacancies in the cadre in 1978. All these 22 senior officers were selected to the senior posts by the State Govt. under Regulation 8 of the I.A.S. (Appointment by Promotion) Regulations 1955, (Promotion Regulations for short). Though

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some of the applicants were placed above the Respondents No. 3, 4 and 5, the latter were appointed to officiate in cadre posts a short while prior to these applicants in contravention of Rule 9 of the I.A.S. (Cadre) Rules, 1954 (Cadre Rules for short) read with Regulation 8 of the Promotion Regulations. According to the applicants the deviation from the order of merit as shown in the select List was unwarranted, unlawful and void and the applicants were deemed to be officiating in cadre posts prior to the 3rd, 4th and 5th respondents, and in any event, the latter cannot be derive any special benefit or seniority vis-a-vis the applicants. The 22 Select List officers came to be appointed by the Central Government, Respondent No. 1 under three different Notifications dated 19.6.1979, 1.8.1979 and 7.9.1979.

3. The last directly recruited officer, Baaldev Chand, who was assigned the year of allotment 1974 officiated continuously in a senior post from 18.1.1979, while C.B.Bhave (Respondent No. 6) who was allotted 1975 as the year of allotment, started officiating continuously in a senior post from 8.5.1979. It is, therefore, urged that the entire batch of promoted officers was entitled to 1974 as their year of allotment, and not 1975. Respondents No. 3 to 5 had started officiating in the cadre posts between December, 1978 ^{and} March, 1979, though the seniority of the officers was to be fixed on the basis of the order in which their names appeared in the Select List. The 2nd applicant, Ambhaikar made a representation on 4.5.1991 to the Government of India for himself and for other similarly situated officers and sought a change in the year of allotment, but that representation was rejected. By the decision in Union of India vs. G.N.Tiwari (AIR 1968 SC 364), it was clarified that the commencement of officiation is the determinative factor in allocation of the year of allotment

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under Rule 3(3)(b) of the Seniority Rules, and the promoted officers were entitled to have the entire period of continuous officiation in a senior post counted for the purposes of fixing their year of allotment. The aforesaid judgement of the Supreme Court clearly operated in rem, and the 1st and 2nd respondents were under a mandatory and binding duty to apply the same uniformity for the fixation of seniority of all officers promoted to the IAS under Regulation 8(1) of the Promotion Regulations. The Govt. of India, however, decided to reopen and refix the seniority of all officers appointed to the IAS by promotion under Rule 8(1) of the Promotion Regulations on or after 11.10.1985 and did not give the benefit to officers appointed prior to that date. It is urged that the choice of 11.10.1985 as ^{the} cut-off date for implementation of the law laid down by the Supreme Court was patently arbitrary, unreasonable and unsustainable. This choice of date bore no nexus to the attainment of any ^{represented} lawful or reasonable objective. Once again, the 2nd applicant ^{for} and himself and other similarly situated persons, ^{sought} uniform application of the law laid down by the Supreme Court but that was rejected on 16.2.1988. In OA.NOs. 421 to 423 of 1988 the Respondents No. 3 to 5 to this application were granted 1974 as the year of allotment in place of 1975. There was, however, no direction in the decision of this Tribunal to alter the seniority inter se of the promotees and all the promotees were required to be moved up en block while preserving their inter se seniority. A fresh representation was made by the 2nd applicant on 9.7.1991 but on 24.7.1991 the 1st Respondent issued a Notification refixing the year of allotment only in respect of Respondents No. 3 to 5. By the amendment of the OA., it was urged that even the seniority of Respondent No. 4 Bedge, was refixed despite the direction of the Tribunal to the contrary and he came to be granted promotion to Super Time Scale vide letter dated 29.1.1992 along with Respondents No. 3 and 5. It was also urged that one Shri S.P.Raje was also

(11)

granted the fixation of seniority inspite of the decision taken regarding the cut-off date for the implementation of the law as laid down by the Supreme Court and since a pick and choose policy was adopted by the respondents, the applicants have approached this Tribunal.

4. The Respondent No. 1, Union of India and Respondent No. 10, Rajiv Agarwal denied that the applicants were entitled to claim seniority over the Respondents No. 6 to 15 and that they were entitled to be allotted the year 1975 as the year of allotment. They denied that the applicants had continuously officiated in the cadre post prior to the appointment of Respondents No. 6 to 15 and were entitled to the year of allotment 1974 immediately after the last of the direct recruit of the 1974 batch. With regard to the decision of the Supreme Court in Tiwari's case, it was urged that in the judgement delivered in 1985 there was no occasion to consider the later amendments made in the relevant rules and the law laid down in that case would not be applicable to the case of the applicants. Though in the judgement delivered by this Tribunal in OA. 421 to 423/88 there is a reference to the amendment by insertion of a proviso to sub-rule 2 to rule 9 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 which requires prior concurrence of the Central Government to the appointment of non-selection officer or a select list officer who is not next in order in the select list, that position was not considered while referring to the entitlement of Bedge, Sagane and Rane. The direct recruits challenged the decision in these OAs. before the Supreme Court and were granted Special Leave to Appeal. In the absence of prior concurrence of the Central Government to the appointment of the applicants for a period exceeding 3 months, the period of officiation by them cannot be regarded as valid and continuous after the select list of the promotees was prepared and they would not be entitled to rank as seniors to those direct recruits. It is also urged that the applicants



were guilty of laches in not making representations since the date of their appointment and fixing of their seniority and had not approached the Tribunal for relief, and the relief granted to the 3 applicants in OAs. 421 to 423/88 cannot give a cause of action to the present applicants. They urged that there is nothing arbitrary about the cut off date that was fixed for rearranging the seniority in the light of Tiwari's case and the position which had come to be settled earlier could not be disturbed.

5. The 2nd Respondent, the State of Maharashtra while raising identical contentions urged that the decisions rendered in Tiwari's case and by this Tribunal in OAs. 421 to 423/88 were based on the facts of those cases and cannot be regarded as judgements in rem or for urging that the applicants were similarly situated and should have been treated in the same manner as the other petitioners who succeeded before this Tribunal. In fact the relief granted to Bedge was limited only to his eligibility for promotion because of the laches on his part in not making representations against the fixation of seniority. It was further contended that in view of the challenge by the regular recruits before the Supreme Court, the State Government preferred to wait for the decision of the Supreme Court because there would be further complications if the view taken by this Tribunal was not accepted by the Supreme Court. It was also urged that since the applicants were given all the due promotions and are working in super time scale and are likely to retire shortly, they could be given the deemed dates of promotion if directions to that effect are given by the Supreme Court, instead of unsettling the present position.

6. The controversy has to be resolved with reference to the I.A.S.(Cadre) Rules, 1954, I.A.S.(Recruitment) Rules, 1954, I.A.S. (Appointment by Promotion) Regulations 1955, I.A.S. (Regulation of Seniority) Rules 1954. It was observed in Union of

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India vs. G.N.Tiwari, AIR 1986 SC 348,

"Where a person other than a cadre officer is appointed to the Service by promotion in accordance with sub-r.(1) of R.8 of the I.A.S. Recruitment Rules, the year of allotment of the juniormost amongst the officers recruited to the service in accordance with R.7 of the I.A.S. Recruitment Rules who officiated continuously in a senior post from a date earlier than the commencement of such officiation by the former, is the determinative factor in allocation of the year of allotment under R.3(3)(b) of the Seniority Rules. Proviso thereto enjoins that the year of allotment of an officer appointed to the Service in accordance sub-r.(1) of R.8 of the I.A.S. Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the Service in accordance with R.7 so started officiating, shall be determined adhoc by the Central Government in consultation with the State Government concerned. Explanation 1 to R.3(3)(b) interdicts that in respect of an officer appointed to the service by promotion in accordance with sub-r.(1) of R.8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for purposes of determination of his seniority, count only from the date of inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post, whichever is later. Explanation provides that an officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from the date of his confirmation in the senior post he continued to hold without any break or reversion the senior post otherwise than as a purely temporary or local arrangement."

7. Rule 9 of the I.A.S.(Cadre)Rules, 1954 prior to the amendment read as follows:-

"Temporary appointment of non-cadre officers to Cadre posts -- (1) A cadre post in a State may be filled by a person who is not a cadre officer if the State Government is satisfied --

- (a) that the vacancy is not likely to last for more than three months, or
- (b) that there is no suitable cadre officer available for filling the vacancy.

(2) Where in any State a person otherthan a cadre officer is appointed to a cadre post for a period exceeding three months, the State Government shall forthwith report the fact to the Central Government together with the reasons for making the appointment.

(3) On receipt of a report under sub-rule (2) or otherwise, the Central Government may direct that the State Government shall terminate the appointment of such person and appoint thereto a cadre officer, and where any direction is so issued, the State Government shall accordingly give effect thereto.

(4) Where a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months, the Central Government shall report the full facts to the Union Public Service Commission with the reasons for holding that no suitable officer is available for filling the post and may in the light of the advice given by the Union Public Service Commission give suitable direction to the State Government concerned."

8. The Supreme Court observed in Para 15 in Tiwari's case that the power to direct termination of the appointment of a non-cadre officer in a senior post is distinct from the power to direct curtailment of his period of officiation. There was no such provision made in the Cadre Rules empowering the Central Government to direct the curtailment of the period of officiation of a non-cadre officer on a cadre post for purposes of reckoning his year of allotment under R.3(3)(b) of the Seniority Rules. A proviso was added after sub-rule(2) of Rule 9 of the Cadre Rules by the Notification dated 30.9.1976. Proviso to sub-rule(2) provided that a non-select list officer, or a select list officer who is not next in order in the select list, shall be appointed to a cadre post only with the prior concurrence of the Central Government.

9. The submission on behalf of the respondents was that the ratio of G.N.Tiwari's case would not apply after the amendment dated 30.9.1976. There the appointment of each of the respondents who was a person other than a person in the cadre list ^{ed} continued for a period of one year or more contemplated by sub-rule (1). The High Court had observed in K.L.Jain's case (1984 Lab IC 374) as has been mentioned in para 12 of the report of G.N.Tiwari's case that :

"the Central Government never directed the State Government to terminate the petitioner's appointment. It is also not the case that the U.P.S.C. tendered any advice to the Central Government that the appointment be terminated. It is true that there is no specific approval of the Central Government to the appointment of the petitioner but that is not a condition precedent for a valid appointment under Rule 9 and the petitioner's officiation in a senior cadre post from 10th November 1975 to 30th September 1976 cannot be ignored on the ground that the appointment was not specifically

approved by the Central Government. The petitioner's said officiation cannot also be ignored on the ground that there was no vacancy during this period in the promotion quota of the cadre officers."

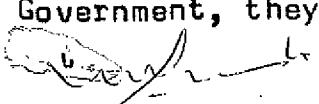
10. Since the basis has now changed by the insertion of proviso after sub-rule (2), the applicants herein cannot draw support from the observations in G.N.Tiwari's case. This Tribunal also did not consider the effect of the change of Rules in its' judgement dated 1.7.1991 but merely followed the proposition laid down under Tiwari's case. Since the prior concurrence of the Central Government is necessary if the appointment is ~~in~~ excess of a period of 3 months, any officiation in excess of 3 months would not enable the applicants to urge that their officiation was continuous or regular. As observed by Shri G.P.Singh in Principles of Statutory Interpretation 3rd Edition page 675, Requirement of prior approval or sanction, if any, prescribed by the enabling Act will be held to be mandatory. It is also mentioned that in some cases enabling Acts contain provisions which lay down the requirement of previous consultation with some named agency and requirement of this provision is mandatory. The requirement of the proviso to sub-rule (2) is even more stringent and what is required is ~~not~~ mere consultation but prior concurrence. In view of this change in the Rule, it is obvious that the applicants were not entitled to count the period of their officiation for a period exceeding 3 months.

11. The junior most regular recruit who got the allotment year 1974 was Shri Baldev Prasad who was promoted on 12.12.1978. The Respondent No. 6, C.B.Bhave was appointed to the cadre post on 8.5.1979, Ramesh Kumar, Respondent No. 7 who got the allotment year 1975 was appointed on 25.4.1979 and rest of the Respondents No.8 to 13 were appointed from 15.6.1979 onwards. Bedge, Sagane and Rane joined respectively on 9.1.1979, 8.1.1979 and 9.1.1979 and had completed their officiation for three months on 8.4.1979, 7.4.1979 and 8.4.1979. Applicants No. 1 to 4, Karandikar, Ambhaikar,

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Patil and Joshi joined in the cadre posts on 4.1.1979, 11.1.1979, 26.2.1979 and 13.3.1979 respectively and had completed the period of officiation respectively on 4.4.1979, 11.4.1979, 26.5.1979 and 13.6.1979. The Select List was approved by the UPSC in respect of the promotees on 31.1.1979. To get the benefit of continuous officiation under sub-rule (2) stated above, prior concurrence of the Central Government is necessary, and the State Government wrote a letter to the Central Government on 22.3.1979 to accord its approval for further period of 3 months but that proposal was rejected on 28.3.1980. The submission on behalf of the applicants was that since the approval did not come even before the permanent appointment was granted to the applicants, there was a tacit concurrence. This argument, however, over looks the mandatory requirement of having prior concurrence. In the absence of prior concurrence the officiation of the applicants in the cadre post cannot entitle them to get the benefit in the present case. The direct recruits had been promoted to the senior time scale during 1978, 1979 prior to the appointments of the applicants on 19.6.79 & 1.8.79.

12. It is not open to us to consider the correctness or otherwise of the relief granted to Bedge, Sagane and Rane by including them in the year 1974 batch in OA.Nos.421 to 423/88. Against that decision the Special Leave Petition has been admitted. However, the applicants would not be entitled to the same reliefs as were granted to them because we cannot over-look the mandatory requirements of the proviso to sub-rule(2) and the corresponding provisions. Under Explanation 1 of Rule 3(3) of the (Regulation of Seniority) Rules, 1954 in respect of an officer appointed to the service by promotion in accordance with sub-rule (1) of Rule 8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority, count only from the date of the inclusion of his name in the Select List and this could be only from 31.1.1979 and since in the present case, the appointments of the applicants though they lasted for periods exceeding three months, have not been made with the concurrence of Central Government, they cannot get the benefit of that officiation.



13. From the list of dates (Ex. 'E' to the petition) on which the applicants and respondents were appointed to officiate on the cadre posts, it is apparent they were not appointed to officiate in the order in which their names appeared in the select list, in the cadre posts and in view of this departure from the select list, action ~~as~~ required under the proviso of sub-rule 2 of Regulations Act, I.A.S. (Appointment by Promotion) Regulations 1955 was necessary. Since this requirement was not ~~met~~, the applicants would not be entitled to ask for seniority over the regular recruits Respondents No. 6 to 15.

14. The learned counsel for the applicants urged that since the decision in OA.421 to 423/88 was rendered after the amendment and the relevant provisions have been set out in the judgement, we would be bound by the proposition of law laid down therein. With great respect the decision in Tiwari's case which was rendered by the Supreme Court was prior to the amendment and this was not noticed in the decision in OA. 421 to 423/88. Since the amended provisions have been over-looked, with great respect, the decision rendered on 1.7.1991 was per incuriam ~~and~~ cannot be of assistance to the applicants. We have pointed out that the whole scheme of the rules and regulations which governed the Indian Administrative Service in the matter of the recruitment, appointment by promotion, Regulation of Seniority and the cadre give a dominant role to ~~the~~ Central Government and the Central Government's actions are also circumscribed by the reference which it is required to make to the Union Public Service Commission. Unilateral appointment by the State Government without reference to the Central Government and Union Public Service Commission would not validate the course adopted by the State Government.

The period of officiation of the occupants which was ~ applicants ~ not in accordance with the mandatory, rules would not vest any rights in the applicants and consequently cannot validate the continuous period of officiation if it were contrary to the rules and regulations.

15. The learned counsel for the applicants urged that whatever benefit was conferred on Bedge, Sagane and Rane should also have been made available to the applicants and since the applicants were similarly circumstanced, they should also be given the benefit of the decision in OA. 421 to 423/88 as they would be judgements in rem. It is difficult to see how the decision in OA. 421 to 423/88 can be regarded as a judgement in rem because it was only a decision with regard to the rights and entitlement of the 3 applicants therein. Though the law as laid down by the Supreme Court will be binding on all Tribunals throughout India, that decision was also not one in rem though it ^{explained} L the legal position under the unamended provisions. This Tribunal in its decision on 1.7.1991 pointed out with regard to Bedge :-

"As has been seen Shri Bedge obviously remains satisfied with the year of allotment which was assigned to him. He did not make any representation like his other colleagues and it was only when the others approached this Public Service Tribunal he also approached the Tribunal without raising his voice against the year of his allotment or assiging of seniority earlier. He is thus guilty of delay and laches and this disentitles him from unsettling the settled state of affairs. Obviously, his year of allotment may be corrected, but that will not disturb the seniority which has been earned by any one because of the delay and laches and silent acquiescence on his part. The order of allotment or the change in the year of allotment may only result in giving him benefit in future promotion by way of selection that arises. Obviously, the year of allotment could be considered but not for disturbing the seniority which has come to stay."

However, at the end of para 19, it was stated :-

"In view of what has been said above this application deserves to be allowed and accordingly it is directed that the year of allotment in case of applicants in the case of S/Shri G.R.Bedge, S.K.Sagane and

V.P.Rane may be changed from 1975 to 1974."

In the operative portion of the order, the direction was that :-

"So far as Shri Bedge is concerned the seniority of the officers who were placed above him will not be disturbed vis-a-vis Shri Bedge, and the said officer. It is further directed that the consequential relief may also be granted to the applicants, may be for higher grade or including the higher grade or post."

There is nothing in that decision to indicate that the present applicants were also to be covered by it.

16. Exception was taken to the State Government having given relief to Shri Bedge inspite of the observation by this Tribunal but it is apparent that what was given to Bedge was in accordance with the directions given in the judgement and the State Government or the Central Government cannot therefore be blamed ~~of~~ any discrimination.

17. Though it was stated in the application that Shri Ambhaikar had made a representation for himself or other similarly placed at all times, such was not the position. Ambhaikar sought the relief only for himself and that was not granted to him. He did not act on behalf of others. The other applicants never made such representations as was done by Sagane, Rane before filing OA. 421 to 423/88. Bedge's inaction was taken into account for not granting him the full relief that was asked for. In the present case, the applicants did not move the authorities for reconsidering their position immediately after the decision in Tiwari's case nor did they file any application before this Tribunal for getting the relief as the applicants in OA. 421 to 423/88. Ambhaikar did not take any action after the Central Government sent him a reply rejecting his representation on 16.2.1988. All the applicants waited till after the decision in OA. 421 to 423/88 and then filed the present petitions.

18. The learned ~~counsel~~, Government Pleader for Respondent No. 1 State of Maharashtra rightly commented that the applicants were also guilty of ~~try~~ to steal a march over the others who were in the same select list/claiming the benefit only for themselves and individually and they cannot therefore find fault with the applicants in OA. 421 to 423/88 for bringing individual action. Only because they succeeded in their attempt, the applicants would not be entitled to get the same relief in view of the laches and inaction.

19. Reliance was placed on behalf of the applicants in A.K.Khanna & Ors. vs. Union of India & Ors. A.T.R. 1988(2) there C.A.T. 518. It was held that the benefit of judgement can be extended to those similarly placed and were governed by the same rules and not extending similar benefit would amount itself to a discrimination violative of Articles 14 and 16 of the Constitution. The question of laches and inaction was not considered in that case, as well as in Parmod Kumar Bhargava & Anr. vs. Union of India & Ors. OA.NO. 444-PB-88 decided by the Chandigarh Bench of this Tribunal on March 2, 1989, It was held in the latter case that deemed promotion cannot be ordered by the court as it depends upon vacancy, suitability and seniority etc. In P.K.Sahasrabudha vs. Union of India & Ors. 1992(19) ATC 724, it was held that when a court enunciates law after considering rival pleas and allows certain reliefs, normally it behoves the government to extend them to other similarly situated employees but this does not apply when the claim is time barred or in a subsequent decision it is held that all facts were not apprised in earlier decision otherwise the conclusion would have ^{been} different. In Y.Ramanjaneyulu vs. State of Andhra Pradesh & Ors. AIR 1985 SC 928, where the appellant was entitled to the benefit of the rule of reservation as set out in G.O.Ms.599 of May 4, 1961 and was eligible

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for promotion in 1965, in view of the fact that he moved for an effective relief after a long unexplained delay, an order holding that the appellant was entitled to monetary compensation was passed as otherwise it would create chaos in service and many promotions and reversions would be required to be effected.

20. In the present case the cause of action cannot ~~not~~ be held to accrue when the decision was in OA. 421 to 423/88 but when the respondents came to be promoted initially. If the applicants had any grievance, they should have approached the Tribunal during the period provided by Section 21(1)(3) of the Administrative Tribunals Act. A reference in this respect may be made to the decision of a seven member bench of the Supreme Court in S.S.Rathore vs. State of Madhya Pradesh AIR 1990 SC 10.

21. On behalf of the applicants reliance was placed on Lt. Governor of Delhi & Ors. vs. Dharampal & Ors. 1990 SC cases (L&S) 568 for the proposition that similarly circumstanced persons with identical claim should be granted the same relief. However, the question of laches did not arise for consideration there. In Roshan Lal & Ors. vs. International Airport Authority of India & Ors. AIR 1981 SC 597, it was held that the court will not be justify^{ed} in reopening the question of legality of an appointment of respondents several years after their appointment. We need not go into this aspect of this case any more, because as we have pointed out, on merits, the applicants are not entitled to claim the benefit of their officiation on account of amendment in the rules. Though it was argued on behalf of the applicants that the cut-off date of 11.10.1985 was selected by the Respondents No. 1 & 2 arbitrarily for redetermining the question of seniority, it appears to



us that it had a nexus with the object to be achieved in view of the law laid down in Tiwari's case (AIR 1986 SC 348) which came to be decided on 11.10.1985. The learned Government Pleader submitted that the State Government waited for moving in the matter as an SLP had been admitted by the Supreme Court against the decision in OA. 421 to 423/88 and it did not wish to up-set the position so far settled and this stand was reiterated on behalf of Respondent No. 1, Union of India in the reply dated 29.7.1992. No exception can be taken to this course in view of the circumstances to which we have made reference above.

22. In the result, we see no merit in the three applications. OA.NO. 191/92, 623/92 and 691/92 are dismissed. There will be no order as to costs.

U. Savara
(MS.USHA SAVARA)

MEMBER (A)

M.S. Deshpande
(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.