

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P.NO.77/96 in OA.NO.1129/94

Friday this the 5th day of December, 1997

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

L.P.Raja & Ors.

By Advocate Shri B.Ranganathan ... Applicant
V/S.

S.K.Mallick,
Dy. Director General,
Dte. of Supplies & Disposals,
5th Floor, New C.G.O. Building,
New Marine Lines, Mumbai.

By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan, CGSC ... Respondents

Tribunal's Order

M.P.No.482/97 filed by the respondents
for condonation of delay in filing the reply. The
reply shall be taken on record. Leave granted to
the applicant to file rejoinder within four weeks.

2. C.P.No.77/96. This is a petition for
contempt alleging that the respondents have not
complied with the interim order dated 18.8.1995
passed by this Tribunal in OA.NO.1129/94.

After hearing both sides, we do not find
that any ground is made out for taking any action for
contempt. The only direction in the interim order was
that all the promotions here in after shall be subject
to the result of the OA. There is no allegation that
this order was violated. The learned counsel for the
applicant submits that the interim order was not for

preparation of seniority list. If the applicant so advised, he can file a fresh M.P. in the OA. for necessary direction regarding preparation of seniority list.

3. List the case on 2.1.1998 for orders on M.P.NO. 25/97.



(P.P.SRIVASTAVA)

MEMBER (A)



(R.G.VAIDYANATHA)

VICE CHAIRMAN

mrj.

(6)

Order/Judgment despatched
to Applicant/Respondent(s)
on 15/12/97

24/12/97

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1129/94.

DATE OF DECISION: 28/7/2000

Shri L.P.Raja & 8 Ors.r & 6 Ors.

Applicant.

Shri B.Ranganathan

-----Advocate for
Applicant.

Versus

Union of India & 6 Ors.

-----Respondents.

Shri S.S.Karkera for R 1 to 3

Shri G.S.Walia for R-4 to 7

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri B.S.Jai Parameshwar, Member(J)

Hon'ble Shri Govindan.S.Tampi, Member(A)

1. To be referred to the Reporter or not? / ✓
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.

GOVINDAN.S.TAMPI
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1129/94
DATED THE 28 DAY OF JULY, 2000

CORAM: HON. SHRI B.S. JAI PARAMESHWAR, MEMBER (J)
HON. SHRI GOVINDAN.S. TAMPIL, MEMBER (A)

- | | | |
|-----------------------------|---|--------------------------------|
| 1. Mr.L.P.Raja |) | |
| 2. Mr.M.A.Mayekar |) | |
| 3. Ms.V.G.Nair |) | Lower Division Clerks in the |
| 4. Mr.Shankar Gokuldas |) | Office of the Director of |
| 5. Mr.Balkrishnan Annapalli |) | Supplies and Disposal, Bombay. |
| 6. Ms.S.S.Vedak |) | |
| 7. Ms.K.V.Chandwankar |) | |
| 8. Ms.Lizzi Thomas |) | |
| 9. Mr.R.S.Dhulup |) | ... Applicants. |

By Advocate Shri B.Ranganathan.

V/s.

1. Union of India through
Secretary,
Department of Supply, C Wing,
Nirman Bhawan, New Delhi.
2. The Director General of Supplies
and Disposal, Parliament Street,
New Delhi.
3. Director of Supplies & Disposal,
5th Floor, New C.G.O. Building,
New Marine Lines, Bombay-400 020.
4. Ms.Archana Khopkar - UDC, of the DGS&D
5th floor, New
C.G.O. Building,
Bombay - 400 020.
5. Ms.S.S.Salvi - LDC, - do -
6. Ms.M.V.Kirtikar - LDC, - do -
7. Ms.Celine Fernandes - LDC, - do -

By Advocate Shri S.S.Karkera for
Respondent Nos.1 to 3.
Shri G.S.Walia for Respondent
Nos.4 to 7.

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(O R D E R)

Per Shri Govindan.S.Tampi, Member(A)

OA-1129/94 has been filed by Shri L.P.Raja and eight others all working as LDCs in the Office of the Director of Supplies and Disposals Bombay against Union of India, DGS&D, Director Supplies, Bombay and four private respondents. The reliefs sought are as below:-

- i) quashing of the order dated 14/7/93(A-1) communicating the revised seniority list of the LDCs as irregular and against norms; and also as being violative of principles of natural justice.
- ii) denial of adhoc service in the computation of seniority for respondents 4 to 7.
- iii) declaration of seniority list circulated on 7/6/93 (A-13) only as the correct one for the purposes of promotion.
- iv) setting aside the promotion of respondent No.4 on the basis of incorrect seniority list of 14/7/93.

2. All the applicants were recruited as LDCs between December, 1981 and December 1983 on the basis of selection by Staff Selection Commission and were confirmed on completion of two years of service. On the other hand, respondents 4 to 7 were those recruited between January-August 1979 through Employment Exchange on purely adhoc basis. Suggestions for regularising the adhoc appointees as on 1/7/80 were made by Respondent No.2 but as the same was not agreed to by the Department of Personnel, Government of India, appointment^m to those who came through Staff Selection Commission were issued. Ministry of Home Affairs (DOP & AR), on 7/8/82, intimated the decision to have a special examination on 12/12/82 for the adhoc employees who had completed one year service on 1/8/82. It was also indicated that services

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of those who did not take the exams, who were ineligible to take the exams and those who fail ^{in the examination} would be terminated. Respondents 4 to 7 took the exams on 12/12/82 ^{but} did not qualify. A second examination was fixed on 18/12/83, in terms of DOP and AR's OM No.6/7/83-CS II dated 17/8/83, reiterating earlier conditions and further stipulating that those who qualified would be placed enbloc junior to those who were appointed on the results of 1982 exam. Respondents 4 to 6 cleared the 1983 exams and became eligible to be regularised and count their seniority from their passing the exam i.e. below those who were already in the seniority list like the applicants. Having not taken the exam, services of respondent No.7 were ^{liable} to be terminated. In the second final exam held on 28/7/85, in terms of DOP&AR OM NO.6/60/84-CS II dated 28/2/85, with similar conditions as earlier respondent No.7 also passed. Respondent.No.2 also had, in his letter No.A-25020/1/86-A2 dated 30/4/87, addressed to respondent No.3 that adhoc service rendered by LDCs before their regular appointment would not be counted, a fact made known to the respondents 4 to 7 as well. Seniority list published on 10/8/90, correctly showed the applicants between Sl.Nos.16 to 32 and the respondents at 33,34,35 & 39. In the meanwhile OA No.629/1987, filed by respondents 4,6 and 7 were disposed by this Tribunal, with the observation that they would have to be placed behind those who came through Staff Selection Commission, but directed the respondents to reconsider the matter. The seniority list circulated on 7/6/1993 (Annexure A-13) also showed the applicants ahead of respondents 4 to 7. This list had correctly adopted the

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regular appointment as the basis for arriving at the seniority. Subsequently for the first time on 14/7/93 (A-1) a revised seniority list was published by respondent No.3, placing the respondents ahead of the applicants, on the grounds of the decision of the Tribunal and the decision taken in other departments. Applicants representations of 19/7/93 and 27/7/93 evoked the above reply on 5/8/93. When the representation were still under consideration, respondent No.4 was promoted as UDC on the basis of the new seniority list. Respondents No.2 and 3 have not taken any steps to rectify the mistake which had been committed. Hence this application. In the MP No.25/1997 filed by the applicants the Tribunal had ordered on 18/8/95 that the promotion orders of 4 to 7, shall be subject to the result of the OA.

3. In the reply on behalf of the respondents No. 1 to 3, ^{filed} on 14/12/94, ^{they} state the following

i) respondents 4 to 7 were appointed through Employment Exchange on adhoc basis against regular/permanent vacancies in 1979 while the applicants were appointed on regular basis against regular vacancies during December 1981 to December 1983.

ii) respondents 4 to 7 ^{have} ~~have~~ rendered continuous service without any break and therefore they should get the benefit of continuous service for

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all purposes.

iii) though respondents 4 to 7 were appointed purely on adhoc basis, they had not been told that their appointment were subject to availability of candidates from Staff Selection Commission or that their regularisation was contingent on passing the examination by Staff Selection Commission. It was only after 3 years in 1982, they were asked to take exams.

iv) OA 629/87 filed by the respondents 4 to 7, was disposed by the Tribunal with the remarks "We make the observations that the Government may reconsider the matter taking into view the observations in this judgement if the applicants approach the Central Government in this regard."

v) representation by respondents 4 to 7 to have their seniority reconsidered on CAT's decision, endorsed by the Respondent No.3 was not accepted by Respondent No.2, except for the purposes of pension.

vi) respondent No.3 considered the representation of 9/6/93 by respondents 4 to 7 against the seniority list on 7/6/93, as well as the decision of 25/5/91 of the Tribunal in OA-629/87, and the fact that they had rendered continuous service in regular vacancies.

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vii) respondent No.3 also considered identical cases in many other departments/offices, including the cases of two Stenographers in his own office and accordingly issued the revised seniority list dated 13/7/93-14/7/93.

viii) Revised seniority list of 14/7/93 had been correctly prepared giving seniority to respondents 4 to 7 as they were recruited through Employment Exchange were continuously in service without any break, their case was endorsed by the Tribunal decision and also by practice elsewhere. OA in the above circumstance has to fail, plead the respondent Nos.1 to 3.

4. Points raised by respondent Nos. 4 to 7 are summarised as below:-

- a) the applicants' case is weak, vague and uncertain and hit by limitation.
- b) they have been recruited through Employment Exchange on adhoc basis but against the regular vacancies before the applicants were appointed and therefore they have been correctly given the higher seniority on the basis of the length of their continuous service.
- c) they have been given the benefit as has been done in other Department for similarly circumstanced persons and ^{it} was therefore an equitable decision.

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- d) their appointment was never on purely adhoc basis or it was a stop-gap arrangement but was made against regular vacancies.
- e) condition of the examination was imposed subsequently. Still once they passed it, they became entitled to count their entire service towards the seniority and any inference to the contrary was incorrect. Letters referred to in that context are not relevant and do not fetter on the Competent Authority to rectify mistakes.
- f) Passing of the examination was a condition to be fulfilled by the applicants, while for the respondents it gave them the benefit of seniority on the basis of their entire continuous service.
- g) Competent Authority in this case, respondent No.3 (not respondent No.2) had taken a correct decision in according them the benefit of seniority taking into consideration their entire ^{Service} ~~seniority~~ and the same cannot be questioned.
- h) the decision of the Tribunal in OA-629/97 has been correctly interpreted and implemented and no injustice or harm has been caused to the applicants in any manner. The application therefore has to fail, according to the respondent Nos. 4 to 7 also.

5. Heard the counsels on 24/7/2000. Shri Ranganathan, the learned counsel for the applicants strongly reiterated his pleas

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and indicated that his clients had been denied ^{What was due to him} ~~their~~ due by the decision of the Department in revising the seniority list by misinterpreting the Tribunal's decision in OA-629/87. Though the relevant instructions ^{communicated} ~~communicated~~ to all had, repeatedly ^{clarified} ~~classified~~ that the seniority of the respondents 4 to 7 was relatable to the passing of the examination conducted by the Department as a concession to them, respondent No.3 has taken an incorrect decision and granted those at 4 to 7 the benefit of continuous adhoc service. This was neither proper nor correct. Shri S.S.Karkera, the Learned Counsel arguing for the respondents 1 to 3 urged that their action was in pursuance of the decision of the Tribunal in OA-629/87 ^{as well as} ~~and in pursuance~~ of the practice adopted in other Departments. Shri G.S.Walia, the learned counsel for respondents 4 to 7 indicated that the decision taken by the Department was correct and correctly extended to the respondents the benefit of continuous uninterrupted service for arriving at the seniority, a principle and practice adopted elsewhere also and is sanctified by the Apex Court. He also pleaded that the conditions imposed about the passing the examination was only by way of executive instructions and nothing much turned on them. He also invited our attention to the decisions of the Apex Court in State of Maharashtra V/s. J.A.Karandikar 1989 SCC(L&S) 417 and Ram Pal Mallick v/s. State of Haryana 1994 SCC (L&S) 1423 which would, according to him cover his clients case. He therefore pleaded that the application be dismissed.

6. We have carefully deliberated on the rival contentions raised in the matter and also perused the documents brought on record. The facts in this case are not disputed. Applicants were regularly recruited during 1981-83 through Staff Selection Commission and confirmed on completion of two years and working in the Office of the Director of Supplies and Disposals, Bombay while respondents 4 to 7 were recruited early in the same capacity but as adhoc LDCs and were regularised on their passing the selection examination on a later date. The latter have been placed over the former by the revised seniority list dated 14/7/93 (A-1), giving them the benefit of continuous uninterrupted adhoc service. The point for determination in this case is whether the persons who were originally recruited on adhoc basis against regular vacancies but regularised on successful completion of selection examination on a much later date, could be permitted to have the benefit of their continuous, uninterrupted but adhoc service, for the purposes of seniority and promotion vis-a-vis those who joined, though on a later date by a regular selection by the Staff Selection Commission and confirmed on successful completion of their probation on a date prior to the regularisation of the adhoc employees. While the applicants argue that such an arrangement was improper and incorrect the respondents hold that the same is authorised by the decision of this Tribunal in OA No.629/87 and the practice elsewhere which is also endorsed by the judicial dicta in a number of cases.



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7. We have therefore to examine both the explanations before coming to a decision. OA No. 629/87 was filed by respondents 4, 6 & 7 of this OA seeking the benefit of their continuous adhoc service for their seniority while disposing the matter, the Tribunal by their order of 29/4/91 made the following remarks. We quote

"The learned counsel for the applicant contended that placing the applicants below the new recruits in the seniority who have gone through the test of Staff Selection Commission and also undergone a test at the time of entry into service would be arbitrary and violative of Articles 14 and 16 of Constitution of India. The question does not arise as such in this case in view of the acceptance of condition referred to above by applicants. Accordingly the applicants obviously have to be placed below those who have come through the Staff Selection Commission. The learned Counsel for the applicants has prayed to issue directions to the Government to reconsider the case of the applicant's seniority taking into consideration the judicial trend."

It is this direction which has been taken by the Respondent No.3, as one of the basis for revising the seniority list issued on 9/6/93 and replacing it by the Seniority list issued on 14/7/93 (A-1), impugned in this application. Trying hard as we did, we could not come across any direction in the said judgement calling for grant of seniority to the applicants in that case, above those who were recruited earlier on a regular basis through Staff Selection Commission and also confirmed before the said applicants were regularised. In that view of the matter we are not convinced that the revision of the seniority on



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14/7/93 flowed from the Tribunal's decision in the earlier OA. It is indicated in the statement by the Respondents that the appointing authority (Respondent No.3) had examined the merits of the case and paid due consideration on the observation made by the Tribunal's judgement in OA.No.629/87 dated 29/4/91 and came to the conclusion that the seniority of Respondents 4 to 7 shall be considered for all purposes from the date of their initial appointment on regular basis since, these LDCs enjoyed all the status of regular employees without any obstruction in their service from the date of their initial appointment. It is further stated that the status enjoyed by Respondents 4 to 7 from the date of their appointment is exactly similar to the status enjoyed by the applicants in the grade of LDCs. These Respondents though appointed on adhoc basis enjoyed all facilities such as all kinds of leave, LTC, Group Insurance Scheme, etc and they were placed against regular vacancies. This has also been the practice in other places and one such example related to the case of Stenographers' case in Respondent No.3's office. *Significant change here from.* Nothing ~~much~~ *decides on this.* The position is that the Respondents 4 to 7 are those who were given the benefit of regularisation in service only on the basis of the special examination which they were permitted to take as a special case so that their earlier services were not considered to be totally washed of. *The same however,* ~~that exactly~~ did not give them the benefit of ~~enjoying~~ the continuity of their adhoc service against those persons who had come through the regular channel, *for purpose of seniority / promotion etc.* It is also on record that the ~~two~~ letters A-23030/1/86-A-2 dated 30/4/87

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addressed by Respondent No.2 to Respondent No.3, the Appointing Authority, and the DO letter No.A-38015/4/91-A.2 dt 24/26-7-91 had made it clear that the adhoc service rendered by the LDCs cannot be reckoned for seniority resulting in upsetting the seniority position obtained by merit in the Competitive Examination held in earlier years. That being the case, it would be appear that the decision for revising the seniority list has been taken by Respondent No.3 without even obtaining concurrence of Respondent No.2, who controls the organisation through out the country.

8. Further it is not disputed that Respondents 4 to 7 are those who were permitted to take the examination to secure regularisation and got the benefit only from that scheme as against the applicants who were regular employees who had come through Staff Selection Commission and confirmed on due completion of probation before the respondents were regularised on the passing of special concessional examination given to them. It is also on record that in the first examination none of the respondents 4 to 7 passed and in the second examination three persons passed and respondent No.7 cleared the exam in 1985, the last and final chance. In the circumstances, to grant these persons who were given the benefit of special concession of an examination to secure their services, and who did not qualify themselves and prove themselves, in the first or second attempt the benefit of seniority over the bunch of Officers, like the applicants who joined on a regular competition through Staff

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Selection Commission would be initially would be to honour incompetence at the cost of efficiency. This is exactly what Respondent No.3 has done and we cannot agree to the situation.

9. The reliance actually placed by Respondents 4 to 7 and respondent No.3 to some extent is that the general judicial trend and practice in other departments is for grant of the benefit of continuous uninterrupted adhoc service for the purpose of reckoned seniority, if the adhoc service ended in regularisation. Quite a few incidents have also been brought to our notice. This is correct and acceptable but the present case is clearly different, as the applicants were regularly posted to regular posts on the basis of Competitive Examination held by Staff Selection Commission while Respondent 4 to 7 were selected and appointed on adhoc basis, who continued and were given special chances, not one but three to improve themselves and got regularised thereafter. For those people to turn around and state that they should get the seniority and preference over those who have joined on regular posts by passing competitive examination is to say the least totally unacceptable.

10. Our attention had been drawn by the Learned Counsel appearing for respondents 4 to 7 to decisions of the Hon.Apex Court in the case of State of Maharashtra V/s.J.A.Karandikar 1989 SCC(L&S) 417 and Ram Pal Mallick v/s. State of Haryana 1994 SCC (L&S) 1423. In the first case, the Apex Court had indicated that lowering of the seniority in the promotional post of

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Superintendents because of late passing of departmental examination for promotion-incumbents should not be penalised for Government's lapse to hold the examination in certain years though rules enjoining government to hold examination every year. Those who could not exhaust all permissible chances to appear in the examination, had a right to be considered for the promotion. They should have been promoted subject to their passing of the examination at the earliest opportunity under rules. It is also noted by Apex Court that making employees suffer adversely for the default or lapse on the part of the Government itself, would be unjust, unreasonable and arbitrary. There is also a mention of Operation of statutory rules cannot be restricted by issuing executive instructions - Executive instructions may supplement but cannot supplant the statutory rules - These findings however do not come to rescue of the respondents in this case. This is not actually a case where the respondents seniority had gone down on the failure of the department to hold the examination in time and the lapse was caused by Department inaction. This was a case where a department went actually went out of the way to provide extra facilities for adhoc employees with specific condition that once they clear the examination, they would be placed junior to those who have been appointed earlier and if they did not actually make the grade, they would forfeit their job. Infact, the Government has given three chances and the respondents 4 to 6 passed in the second chance respondent 7 did so only in the third and final chance. They, cannot, inspite of their inability to clear the examination in time



gain seniority over those who have been recruited regularly and confirmed on a much earlier time. With regard to examination, it is clear that the respondents had accepted the conditions actually fixed by the Government to regularise their adhoc service and therefore they cannot now turn around and say that they would accept only the portion of the instructions which is beneficial to them and not the portion which imposed stipulations, only on the fulfillment of which the benefit could flow. Respondents also do not get any benefit from the decision of the Apex Court in the case of Ram Pal Malik, which deals with the case of Class-I Officers and is not applicable in the present situation. The respondents therefore in our view could not have been given benefit of counting the seniority from the initial date of their adhoc appointment over the candidates who were regularly appointed.

11. Respondent-3's plea that somewhere else such a procedure has been done especially in his own office is no justification for such an action. More so as evidence is on record that respondent No.2 had been advising him earlier also that those who were permitted to be regularised on a later date on passing the examination cannot have the benefit of seniority, for promotion, etc. That being the case, the action of Respondent No.3 in revising the seniority list issued on 7/6/93 by another list on 14/7/93 and granting benefit to the respondents over the applicant cannot be upheld.



12. We also observe that the revisionary seniority ordered on 14/7/93 was taken by Respondent No.3 without issuing a notice to the applicants who were on correct basis seniors from their date of appointment and that too after 13 years without any notice. This action was illegal, improper and totally avoidable. We stop at that. The benefit of such an incorrect or improper order cannot accrue to the respondents in this case. The promotion given to one of the respondents on the basis of this incorrectly revised seniority also follows suit.

13. In the result, the application succeeds.

(a) The revised seniority list issued by Respondent No.3 on 14/7/93 on an incorrect basis and that too without issuing notice to the parties to be affected is quashed and the promotion ordered for the Respondent No.4 on the basis of said revised seniority is hereby set aside.

(b) The seniority list issued on 7/6/93 is restored and the respondents are directed to take action ~~to respondents are directed to take action~~ to promote those of the applicants to the next higher grade on the basis of the seniority list dated 7/6/93, subject to their suitability otherwise.

(c) These directions shall be carried out within four months from the date of this order.

14. No orders as to costs.

(GOVINDAN.S.THAMPI)
MEMBER(A)

abp.

(B.S.JAI PARMESHWAR)
MEMBER(J)

28/7/2000

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

CP No.60/2000, with MP 957/2000 in OA 1129/1994

Mumbai, this 26th day of July, 2001

Hon'ble Shri Justice Birendra Dikshit, VC(J)
Hon'ble Shri M.P. Singh, Member(A)

L.P.Raja & 8 others .. Petitioners

(By Shri B.Ranganthan, Advocate)

versus

Dr.S.Swarup
Dy.Director General
Dte. of Supplies & Disposals
5th Floor, New CGO Building
New Marine Lines, Mumbai-400020 .. Respondent

(By Shri P.M.Pradhan, Advocate)

ORDER(oral)

Justice Birendra Dikshit

This Tribunal by its order dated 28.7.2000 in OA No.802/96 quashed the promotion order of Respondent No.4 passed by Dte. General of Supplies & Disposals, New Marine Lines, Mumbai, restored the seniority list issued on 7.6.93 and directed respondents to take action to promote applicants to next higher grade on the basis of seniority list dated 7.6.93 subject to their suitability otherwise. The Tribunal also directed that its directions be carried out within four months from the date of order. An MP 957/2000 was moved on 30.10.2000 to extend the time by eight weeks for complying the order in addition to the time granted at the time of disposal of the OA. The MP was taken up on 5.2.2001 when the Division Bench observed that if it is taken that time was to be granted, even then the time already stands expired.

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Learned counsel for the applicant has now pointed out that no compliance of the order has taken place till this time.

2. Notice was issued on CP on 5.2.2001 which was ordered to be returnable in four weeks. Time was sought on CP for filing reply on 9.3.2001. Again on 23.3.2001 an MP for extension of time was moved by the respondents for filing reply to CP. The time was granted awarding adjournment cost of Rs.300. It was made clear while fixing next date that the cost should be paid before filing the reply. When the case was taken up on 9.4.2001, the order dated 23.3.2001 was not complied by that time, and respondent was then directed to appear in person at next date of hearing to explain delay in non-implementation of the order, the date fixed being 8.6.2001. On 8.6.2001 one Dr. S. Swarup (Respondent) appeared in person and admitted that there has been delay due to mistake in giving effect to the order of Tribunal as instead of year 1997 in respect of the applicants, it is to be mentioned between 1993-1995 and the necessary correction will be made within 10 days. In view of the said statement of Dr.S. Swarup, the case was adjourned to 22.6.2001. On 15.6.2001, office order No.58 of the office of respondent was passed fixing inter-se seniority of UDCs. In respect of this giving effect to the order

there was difference between the parties counsel and, therefore, the question arose whether respondents have duly complied the order dated 28.7.2000. Shri Pradhan appearing on behalf of respondent sought time to file compliance affidavit and the same was filed on 13.7.2001. On 20.7.2001, as case was being adjourned, an order was passed that respondent need not be present on the next date in case he is represented through a counsel and the case was listed for 24.7.2001. On 24.7.2001 this Tribunal ordered that Dr.S.Swarup was to be present on 26.7.2001. Dr. S. Swarup is present today. A copy of order dated 26th July, 2001 has been filed which is corrigendum to office order No.59 dated 20.7.01, the relevant part of which is as under:

"In terms of the CAT Judgement dt. 28.7.2000 and the direction given by the Hon'ble CAT on 24.7.01 the promotions issued on the dates indicated against the following officials stands cancelled and they stand reverted.


Sl.No. Name of the official Dates

- | | |
|-----------------------------|----------------------------------------------|
| 1.Smt. A.K.Khopkar, LDC | O.O. No.350 dt. 24/8/93
(w.e.f. 17.08.93) |
| 2.Smt. S.S.Salvi, LDC | O.O. No.433 dt. 01/08/95 |
| 3.Smt. Celin Fernandes, LDC | O.O. No.434 dt. 01/08/95 |
| 4.Smt. M.V.Kirtikar, LDC | O.O. No.447 dt. 01/09/95 |

This issues with the approval of DDG(S&D), Mumbai"

A. *gint*

The counsel for applicant is satisfied that order of this Tribunal has now been complied with. We have also examined this. However, it has been wrongly referred in the affidavit by Dr.S.Swarup that "the direction given by the Hon'ble CAT on 24.7.01". No such direction was given on 24.7.2001 by the Division Bench. Although the order of the Tribunal was not complied in letter and spirit earlier but as now needful has been done, we do not propose to take any action against respondent as his counsel stated that Dr.S. Swarup is sorry for the mistake that stood committed. Dr.S.Swarup came forward for that and also admitted his mistake. Under the circumstances, we discharge the notice and drop the proceedings against respondent. However, as applicant has been dragged to this court due to non-compliance of our order, we award cost of Rs.1000/- to applicant which shall be paid by the respondent to the applicant within one month. Thus, subject to payment of costs awarded as above, the CP is dismissed.


(M.P.Singh)
Member(A)

/gtv/


(Birendra Dikshit)
Vice-Chairman(J)