

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1101 OF 1994.

Date of Decision : ^{18th} December , 1998.

Gurcharan Singh, Petitioner.

Shri D. V. Gangal, Advocate for the
Petitioner.

VERSUS

Union Of India & 3 Others, Respondents.

Shri R. K. Shetty, Advocate for Respondent
Nos. 1 & 2.
Respondent No. 3 in Person.
Respondent No. 4
unrepresented.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.
Hon'ble Shri D. S. Baweja, Member (A).

- (i) To be referred to the Reporter or not ? ~~~~~
(ii) Whether it needs to be circulated to other ~~~~~
Benches of the Tribunal ?


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1101/94.

Dated the 18th day of December, 1998.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

Gurcharan Singh,
Sr. Data Entry Operator,
Ordnance Factory,
Bhusaval - 425 203.

Residing at -

Quarter No. T/63/2,
Clerical Line,
Ordnance Factory,
Bhusaval - 425 203.

... Applicant

(By Advocate Shri D. V. Gangal)

VERSUS

1. Union Of India through
The General Manager,
Ordnance Factory,
Bhusaval - 425 203.

2. The Director General,
Ordnance Factory Board,
10-A, Auckland Road,
Culcutta - 700 001.

... Respondents.

3. Shri S. M. Dhulekar,
Sr. Data Entry Operator,
Ordnance Factory,
Bhusaval - 425 203.

4. Shri K. P. Varkey,
Sr. D.E.O.,
Ordnance Factory,
Bhusaval.

(By Advocate Shri R. K. Shetty
for Respondent Nos. 1 & 2.

Respondent No. 3 in person.

Respondent No. 4 unrepresented).

O R D E R

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

This is an application filed under Section 19 of the Administrative Tribunals Act. The official respondents have filed reply. Respondent No. 4 has sent his reply by post. No reply is filed by Respondent No. 3. However, respondent no. 3 has appeared in person at the time of argument and addressed us. We have heard the Learned Counsels for the applicant, Respondent Nos. 1 & 2 and also Respondent No. 3 in person.

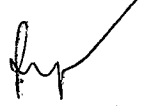
2. The applicant's case in brief is as follows :

The applicant is working under the Ordnance Factory at Bhusaval, which he joined as a Lower Division Clerk in 1966, became P.V. Operator in 1970, promoted as U.D.C. in 1977, re-designated as Sr. P.V. Operator in 1987 and promoted as Sr. D.E.O. in 1989. On the other hand, the Respondent No. 3 became L.D.C. in 1974, P.V. Operator in 1977, Sr. P.V. Operator in 1981 and Sr. D.E.O. in 1989. After amending the O.A., the Respondent No. 4 has been added as a party-respondent and it is stated that Respondent No. 4 became L.D.C. in 1972, U.D.C. in 1982, Sr. P.V. Operator in 1987 and Sr. D.E.O. in 1989. The applicant pleads that he is the senior-most as between himself and Respondent Nos. 3 & 4. He is getting more pay than Respondent Nos. 3 & 4. It is stated that after the establishment of E.D.P. Section, where more Data Entry Operators were required, some existing L.D.Cs. and U.D.Cs. were deployed for carrying out the additional work, being re-designated as Punch and Verifier Operators with



special pay. Subsequently, the existing Punch & Verifier Operators were re-designated in 1992 as Data Entry Operators and Sr. P.V. Operators as Sr. Data Entry Operators. That the applicant is the senior-most in the cadre of L.D.C., senior-most in the cadre of U.D.C. and senior-most in the cadre of Sr. Data Entry Operator as between himself and Respondent Nos. 3 & 4. The applicant has now completed more than three years as Sr. Data Entry Operator and, therefore, entitled to be considered for promotion to the post of Chargeman Grade-II (Technical). Now the official respondents are intending to treat Respondent No. 3 as senior to the applicant. Therefore, the applicant has approached this Tribunal praying for a direction to the respondents to consider the case of the applicant for promotion to the post of Chargeman Grade-II and for a further declaration that he is to be declared as senior to Respondent Nos. 3 & 4 and for consequential reliefs.

3. Respondent Nos. 1 and 2 have filed a written statement opposing the application. The service particulars, as given by the applicant, concerning himself and Respondent Nos. 3 & 4, are not disputed. It is stated that the date of promotion as Sr. P.V. Operator (since re-designated as Sr. Data Entry Operator) should be the date of fixing seniority in that cadre. The applicant was appointed as Sr. P.V. Operator on 04.05.1987 and therefore, his seniority in that cadre is reckoned only from 04.05.1987. But the crucial date for considering promotion was

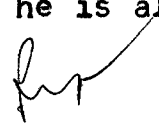


31.12.1985 and on that date the applicant did not have eligibility criteria for promotion to the post of Chargeman Grade-II. The applicant is working in the E.D.P. Section only from 21.04.1987, whereas Respondent No. 3 is working since 06.03.1978 and, therefore, in the cadre of P.V. Operator, he should be held as senior to applicant. It is, therefore, stated that applicant cannot claim any seniority over Respondent No. 3.

After amendment of the O.A., Respondent Nos. 1 & 2 have filed additional reply denying the allegations that he is senior to the newly added respondent, namely - Respondent No. 4.

4. Respondent No. 4 has sent his reply by post stating that though originally he was junior to the applicant, at the time he and the applicant were selected to the new cadre, he was given seniority on the basis of merit list by the Screening Committee. Therefore, the applicant cannot claim seniority over Respondent No. 4.

5. Mr. D. V. Gangal, the Learned Counsel for the applicant, contended that admittedly, the applicant entered into Government service long prior to Respondent Nos. 3 & 4 as L.D.C. and, therefore, he should be declared as senior to them. Even otherwise, it was argued, Respondent No. 3 cannot get seniority since it was a case of re-designating the post and therefore, the applicant being senior to Respondent No. 3 prior to re-designation, is entitled to be held as senior to Respondent No. 3. As far as Respondent No. 4 is concerned, it was stated that admittedly, he is always



junior to the applicant even in the re-designated post but he is kept above the applicant on the basis of getting more marks in the screening test and it was argued that since it is a non-selection post, the question of giving seniority on the basis of marks does not arise, and therefore, the applicant should be held senior to Respondent No. 4 also. On the other hand, the Learned Counsel for the official respondents submitted that though the applicant was formerly senior to Respondent Nos. 3 & 4, he cannot now claim seniority over Respondent No. 3 in view of respondent no. 3 becoming senior to the applicant in the cadre of Sr. Data Entry Operator. As far as Respondent No. 4 is concerned, it was submitted that though he was junior to the applicant, but in view of the merit position in the screening test, he has been rightly placed above the applicant in the cadre of Sr. D.E.O. Respondent No. 3, who appeared in person, also contended that he is senior to the applicant in the cadre of Sr. D.E.O. and, therefore, the applicant cannot be placed above him.

6. The short point for consideration in the light of the arguments addressed before us is, whether the applicant has made out a case that he should be placed senior in the post of Sr. D.E.O. and entitled to claim for promotion to the post of Chargeman Grade-II (Technical)?

7. As already seen, admittedly and undisputedly, the applicant entered Government service as L.D.C. in 1966, whereas Respondent No. 3 entered service as L.D.C. in 1974 and Respondent No. 4 joined service as L.D.C. in 1972. Therefore, the applicant is far senior to

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Respondent No. 3 and 4 in the cadre of L.D.C.

Then we find that applicant was promoted as U.D.C. in 1977, Respondent No. 3 never came to the cadre of U.D.C. but atleast got the position of Senior P.VO having the same pay ~~scale~~ as U.D.C. only in 1981 and as far as Respondent No. 4 is concerned, he became U.D.C. in 1982. Therefore, here also we find that either in the U.D.C. cadre or equivalent cadre, having same pay scale, the applicant is far senior to Respondent Nos. 3 and 4. So far there is no dispute between parties.

The applicant became Sr. P.V.O. on 04.05.1987 whereas Respondent No. 3 became Sr. P.V.O. on 15.05.1981. The question is, whether getting the grade of Sr. P.V.O. will determine the seniority of the applicant and Respondent No. 3, S. M. Dhulekar. The Learned Counsel for the official respondents and even the Respondent No. 3 who argued in person, contended that since Respondent No. 3 became Sr. P.V.O. in 1981 whereas the applicant got that post in 1987, he cannot be senior to Respondent No. 3. The argument is no doubt attractive but cannot be accepted in the facts and circumstances of the case.

If it is a case of Sr. P.V.O. being of a different and independent cadre, then nodoubt the seniority will count from the date the official gets that cadre. But from the records we find that there was no such independent and distinct grade of Sr. P.V.Os. but it is just a case of U.D.C. being re-designated as Sr. P.V.O. for the purpose of taking work in the E.D.P. Section by giving some special pay.




8. At page 15 of the Paper Book we have a circular from the Director General of the Ordnance Board dated 04.03.1987 where it is clearly mentioned that where more D.E. Operators are required in the interest of work, then existing L.D.Cs./U.D.Cs. be re-deployed to do that work by re-designating them as P.V.O., which ofcourse, has been subsequently redesignated as D.E.O. Therefore, it was a mere case of re-designation and not a case of promotion from L.D.C./U.D.C. to P.V.O. or D.E.O. nor it is a case of ~~creation~~ of a new cadre either P.V.O. or D.E.O. It is a simple case of re-designation by giving some special pay.

This is further clear from the 1981 circular which is at page 20 of the Paper Book. The circular is dated 18.04.1991 issued by the Ordnance Board. They ^{have} ~~may~~ ^{made} have a distinction between the units where computer facilities exists and Units where computers are not yet installed. So far as Bhusaval factory is concerned, admittedly, in 1981, Computers had not been installed. Therefore, that portion of the circular which applies to places where computers are not provided, applies to this case. It is clearly mentioned in the circular dated 18.04.1991 that in the Units where computers had not been installed, "a separate cadre for data process^{ing} staff will not be provided." Then the question is, how those posts should be filled up ? It is mentioned therein that the post can be filled up as mentioned in Section-II. In Section-II it is stated that the post should be filled up as mentioned in Annexure-II. Anyhow, the ¹⁹⁸¹ 1984 circular clearly mentions

that in non-computer factory, there is no separate cadre of Data Processing Staff.

9. Then we can make useful reference to a letter dated 08.07.1987 under which the applicant and Respondent No. 4, K. P. Varkey, were taken as Sr. Punch Verifiers. It is clearly mentioned in this letter that both, the applicant and Respondent no. 4, who are now U.D.Cs. are 're-designated' as Sr. Punch Verifiers. Therefore, it is a case of not/^{an}appointment, nor/^apromotion to the post of Sr. Punch Verifiers but it is a case of U.D.C. being re-designated as such. The argument of the official respondents and Respondent No. 3 is that, Respondent No. 3 was already holding that post from 1981 and, therefore, he should get seniority over applicant and Respondent No. 4, who came to that section in 1987. We have already seen that coming to the Section in 1987 was not by way of a fresh recruitment, fresh promotion or a fresh appointment but it was a simple case of re-designation. The question is, how should the seniority between the existing staff and the re-designated staff should be decided. That question itself is posed in that letter dated 08.07.1987 seeking clarification from the Ordnance Board as to how the seniority should be decided. Though it is a letter of 1987 and we are now in 1998, the official respondents have not placed on record any decision taken by the Ordnance Board regarding the question of seniority as between the existing officials in the E.D.P. Section and re-designated officials.



Again, we have a letter dated 15.04.1991, which is produced by the official respondents themselves, where again the local officer has written to the Ordnance Board to intimate as to how the seniority should be determined between the existing Sr. P.V.Os. and re-designated P.V.Os. As already stated, no reply is given by the Ordnance Board and no decision is taken by the Ordnance Board on this point or at any rate, no such document regarding decision is produced before us.

10. The Learned Counsel for the applicant also placed strong reliance on an unreported judgement of the Madras Bench of this Tribunal dated 17.10.1996 in O.A. No. 229 of 1994 \parallel I.P. Swamy V/s. Union Of India & Others \parallel where an identical question arose for consideration. The Division Bench of the Madras Bench went into the question in detail and referred to the 1981 circular and other documents and came to the conclusion that posts in the Data Operating Section are ex-cadre post, and no decision is taken regarding inter se seniority among the officials working in those posts and, therefore, the officials' seniority should be decided on the basis of their seniority prior to entering the ex-cadre post. It has been clearly ruled in that case that P.V.Os. and Sr. P.V.Os. do not belong to a separate cadre but they are only posts manned by deployment of L.D.Cs. and U.D.Cs. by re-designating the post. That judgement completely supports the case of the applicant. Though Mr. R. K. Shetty, the Learned Counsel for the official respondents submitted that the judgement requires reconsideration and it has

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not considered all relevant documents, he did not point out as to on what point or as to how the said judgement requires re-consideration. A mere bald or a vague assertion that the decision is not applicable or that the decision ^{requires reconsideration} ~~is not~~ considerate, is of no use unless the argument is advanced with reference to a particular document or a particular fact. We find that the Madras Bench has taken into consideration all the relevant documents and facts and has reached the conclusion that there is no separate cadre of P.V.Os. and Sr. P.V.Os. (re-designated as D.E.O. or Sr. D.E.O.) and, therefore, the seniority will have to be governed on the basis of original seniority in the parent department. We do not find any apparent mistake or error in the judgement of the Madras Bench of the Tribunal. In our view, no case is made out for taking a different view. We are in respectful argument with the view taken by the Madras Bench of the Tribunal. In view of the above discussion and following the judgement of the Madras Bench of the Tribunal, we hold that Respondent No. 3 cannot claim seniority over the applicant only on the ground that he joined the E.D.P. Section ^{earlier,} since it is not a separate cadre and no rules are laid down regarding seniority. The applicant being senior to Respondent No. 3, both in the cadre of L.D.C. and U.D.C. and he came into E.D.P. Section by mere re-designation, he must be held to be senior to Respondent No. 3 at all times, including in the present post of Sr. D.E.O.

11. We are now told that Respondent No. 3, S. M. Dhulekar, has already been promoted as



Chargeman Grade-II. In view of our findings that the applicant is senior to Respondent No. 3, normally the applicant should be considered for promotion and if he is promoted, he must be promoted in the place of Respondent No. 3. But in the facts and circumstances of the case, we do not want to disturb the promotion already given to Respondent No. 3, S. M. Dhulekar, as Chargeman Grade-II (Technical). It is also not disputed that the post of Chargeman Grade-II is a selection grade. Therefore, the administration will have to consider the case of the applicant, Gurcharan Singh, and find out whether he is suitable for promotion to Chargeman Grade-II. If he is found suitable for promotion, then he must be promoted if there is any existing vacancy of Chargeman Grade-II or if there is no existing vacancy, then he should be promoted as and when a future vacancy arises. On such promotion, either in existing vacancy or future vacancy, the applicant should be placed above Respondent No. 3, S. M. Dhulekar, in the cadre of Chargeman Grade-II (Technical).

12. We are also not impressed by the argument of the Learned Counsel for the official Respondents that seniority should not be disturbed after a lapse of time by placing reliance on one or two authorities. Here, the seniority is not at all determined inspite of the local office making reference to the Ordnance Board on two occasions. When the seniority position itself is not determined by the Ordnance Board, the question of upsetting seniority does not arise at all. Hence, it is not necessary to refer to the decision cited by the Learned Counsel for the respondents.

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12. As far as the seniority of him between the applicant and Respondent No. 4, Mr. K. P. Varkey is concerned, there cannot be much dispute at all. Admittedly and undisputedly, the applicant has always been senior to Mr. Varkey both in the I.O.C. cadre, and U.O.C. cadre but re-designated alongwith Mr. Varkey on the same day in the re-designated post of Sr. P.V.C. (which is subsequently charged as Sr. D.C.). As already stated, it is not a case of a fresh appointment or a promotion to the case of Sr. P.V.C. or Sr. D.C. The order itself shows (vide page 145 of the paper book) though the following transfers of re-designation are sanctioned w.e.f. 04.05.1987, it is a case of mere deputation or transfer to the re-designated post. But however, in the order, Respondent No. 4, Mr. K. P. Varkey, is placed at Sl. No. 1 and applicant, Gurcharan Singh, is placed at Sl. No. 2. The reason for this placement is, because Respondent No. 4 got more marks than the applicant in the Screening Test. At page 144 of the paper book, the respondents have produced the D.P.C. proceedings which shows the marks given to fifteen candidates who were screened for the purpose of re-designation and deputation as Sr. P.V.Cs. Since Mr. K. P. Varkey, got 34 marks and applicant, Gurcharan Singh, in the transfer order are selected and because of the marks, Mr. Varkey is placed above Gurcharan Singh in the transfer order at page 145. For one thing, it is not a promotion, for another, it is a non-selection method. In the case of non-selection method, there is no question of comparative merit. It is only in selection method the comparative

13. As far as the seniority claim between the applicant and Respondent No. 4, Mr. K.P. Varkey is concerned, there cannot be much dispute at all. Admittedly and undisputedly, the applicant has always been senior to Mr. Warkey both in the L.D.C. cadre and U.D.C. cadre but re-designated alongwith Mr. Varkey on the same day in the re-designated post of Sr. P.V.O. (which is subsequently changed as Sr. D.E.O). As already stated, it is not a case of a fresh appointment or a promotion to the post of Sr. P.V.O. or Sr. D.E.O. The order itself shows (vide page 145 of the paper book) ^{that} though the following transfers of re-designation are sanctioned w.e.f. 04.05.1987, it is a case of mere deputation or transfer to the re-designated post. But however, in the order, Respondent No. 4, K. P. Varkey, is placed at Sl. No. 1 and applicant, Gurcharan Singh, is placed at Sl. No. 2. The reason for this placement is, because Respondent No. 4 got more marks than the applicant in the Screening Test. At page 144 of the paper book, the respondents have produced the D.P.C. proceedings which shows the marks given to ten candidates who were screened for the purpose of re-designation and deputation as Sr. P.V.Os. Since Mr. K. P. Varkey got 34 marks and applicant, Gurcharan Singh, got 31 marks, they were selected and because of the marks, Mr. Varkey is placed above Gurcharan Singh in the transfer order at page 145. For one thing, it is not a promotion, for another, it is a non-selection method. In the case of non-selection method, there is no question of comparative merit. It is only in selection method the comparative

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merit plays an important role and persons who get a better grading or better marks will be ranked senior to a person with a lesser grading or lesser marks. In a non-selection process, if ^{once} ~~one~~ selection is made, than seniority must be on the basis of the feeder cadre or the original cadre. There is no dispute that in the original cadre of U.D.C. the applicant was senior to Respondent No. 4. Even in the re-designated post, notwithstanding the marks, the applicant should be kept as senior to Respondent No. 4. Therefore, we hold that applicant should be kept as Senior to Respondent No. 4 also.

14. In the result, the application is allowed as follows :-

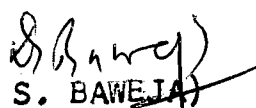
- (i) It is hereby declared that in the post of Sr. Data Entry Operator, Ordnance Factory, Bhusaval, the applicant is held to be senior and should be kept above Respondent No. 3, Mr. S. M. Dhulekar and Respondent No. 4, K. P. Varkey.
- (ii) Since the applicant's junior, Mr. S. M. Dhulekar, Respondent No. 3, has already been promoted as Chargeman Grade-II (Technical), the applicant, Gurcharan Singh, is entitled to be considered for promotion to the said post, in any existing vacancy or whenever the next vacancy arises. The respondents are directed to consider the case of the applicant, Gurcharan Singh, for promotion

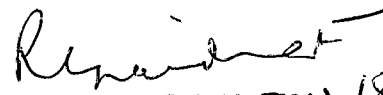
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either in the existing vacancy or in future vacancy and if he is found suitable, he should be promoted as Chargeman Grade-II (Technical) and in that grade he should be placed above Respondent No. 3, Mr. S. M. Dhulekar.

(iii) It is made clear that as a result of the seniority position declared by us, Respondent No. 3 should not be reverted but as and when the applicant gets promotion to Chargeman Grade-II (Technical), he should get seniority from the date Respondent No. 3, Mr. Dhulekar was promoted and he should be placed above him in that cadre but the applicant will not be entitled to any monetary benefits as a result of getting retrospective seniority but he is entitled to notional benefit of fixation of pay from the date his immediate junior, Mr. S. M. Dhulekar, got promotion and entitled to only actual monetary benefits from the date he is promoted.

(iv) In the circumstances of the case, there will be no order as to costs.


(D. S. BAWEJA)
MEMBER(A).


(R. G. VAIDYANATHA) 18/12/98
VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

M.P. No.713/99 &
C.P. No.10/99 in
Original Application No.1101/94

Dated this Monday the 17th Day of January, 2000.

Coram : Hon'ble Shri B.N. Bahadur, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Shri Gurcharan Singh
(By Advocate Shri D.V. Gangal)

.. Petitioner

Vs.

1. Shri M.L. Gupta,
The General Manager,
or his Successor in Office,
Ordnance Factory,
Bhusawal - 425 203.

2. Shri D. Rajgopal,
The Director General,
or his Successor in Office,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta - 700 001.

.. Respondents
(Contemners).

(By Advocate Shri R.K. Shetty)

Tribunal's Order:

We have before us Contempt Petition No.10/99, filed by Shri Gurcharan Singh (Petitioner) who was the applicant in O.A. No.1101/94. The applicant prays that it be declared that Respondents have committed contempt of Court in not implementing the orders dated 18.12.1998 made by this Tribunal in OA 1101/94. The petitioner also prays that it be declared, that the applicant should be promoted in the existing vacancy as explained in the petition. The Respondents have filed a reply in the case. We have also observed that a rejoinder has been filed, as also a sur-rejoinder.

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2. Also before us for consideration is M.P.No.713/99 filed by the Petitioner.

3. We have heard Learned Counsel on both sides in detail and have perused the records in the case as also in the M.P. We would like to recapitulate the order in OA 1101/94 which is reproduced below:-

"14(ii) Since the applicant's junior, Mr.S.M. Dhulekar, Respondent No.3, has already been promoted as Chargeman Grade II (Technical), the applicant, Gurcharan Singh, is entitled to be considered for promotion to the said post, in any existing vacancy or whenever the next vacancy arises. The respondents are directed to consider the case of the applicant, Gurcharan Singh, for promotion either in the existing vacancy or in future vacancy and if he is found suitable, he should be promoted as Chargeman Grade II (Technical) and in that grade he should be placed above Respondent No.3, Mr.S.M.Dhulekar.

(iii) It is made clear that as a result of the seniority position declared by us, Respondent No.3 should not be reverted but as and when the applicant gets promotion to Chargeman Grade II

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(Technical), he should get seniority from the date Respondent No.3, Mr.Dhulekar was promoted and he should be placed above him in that cadre but the applicant will not be entitled to any monetary benefits as a result of getting retrospective seniority but he is entitled to notional benefit of fixation of pay from the date his immediate junior, Mr.S.M. Dhulekar, got promotion and entitled to only actual monetary benefits from the date he is entitled".

(Since it is admitted that orders contained at Para 14 (1) have already been implemented, we have not reproduced it).

4. Learned Counsel for the Petitioner, Shri Gangal assisted us in some detail and argued that the main point on the basis of which he is come up alleging contempt is that orders were made inter alia, for entitlement of Petitioner for promotion in any existing vacancy, and that the clear implication of this was that arrears of pay etc. should also be paid from the date from which notional promotion has been granted. He argued that once a decision is taken to promote the Petitioner in existing vacancy from a certain date, it must follow that arrears should be paid from the same date. (The Respondents have admittedly issued orders promoting the Petitioner from 9.9.1994).

5. Submission by Shri Gangal further was that if such

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implementation was not made then the orders in the DA will remain unimplemented. He stressed the implication of the point regarding phrase "existing vacancy" more than one.

6. Similarly, Shri Gangal cited the case of 1991 ATC SC 259 in support of his contentions, and took us through the relevant portions.

7. Shri Gangal further argued the prayer made in the MP in some detail stated that the production of documents sought was necessary to appreciate a point regarding existing vacancy.

8. Arguing the case on behalf of the Respondents, Learned Counsel Shri R.K. Shetty categorically stated that no contempt has occurred, and that the orders of the Tribunal have been faithfully, correctly and fully implemented. He took us over the orders made on 5.6.1999 (E.R-5) and stated that through this order the seniority of Shri Gurcharan Singh has been refixed, as described therein. He has been provided seniority as Chargeman Gr.II with effect from 9.9.1994 i.e. the date from which Shri Dhulekar was promoted to this post. Further, through this orders Shri Gurcharan Singh is ordered to be entitled to actual monetary benefits from the date of actual promotion i.e. 4.6.1999.

9. Shri Shetty contended that the words used in the order to the effect that entitlement for promotion would be "in a existing

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vacancy or whenever the next vacancy arises", are important. Similarly, he asserted that in Para 14(iii), it is clearly ordered that applicant will not be entitled to any monetary benefits. He cited the case of 1997(1)AISLJ 236 in support of his contentions.

10. At the outset, it is clear that in a Contempt Petition we have to examine whether there is any wilful disobedience of orders or otherwise. No doubt one has to go into some details to see if the orders have been implemented ⁱⁿ letter and spirit, but there can be nothing like reassessment of facts.

11. It is important to note that the entitlement for consideration for promotion has been ordered in any existing vacancy or whenever the next vacancy occurs. It is clear, therefore, that the Tribunal had no intention of ordering an assesement of the date of vacancy as per junior or on any other consideration with retrospective effect. The alternative of "or whenever next vacancy arises" clearly supports this view.

12. It is observed that it is clearly stated, not once but twice, in Para 14(iii) that the applicant will not be entitled to any monetary benefit, which will be payable only from the date on which the applicant promoted.

13. We have gone through the judgemnt cited by Learned

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Counsel for the Petitioner and found that ~~its~~ ^{the} Bub therein was taken on the facts of the circumstances of the case. Importantly, in that case it was stated that there was no specific direction regarding payment of arrears one way or the other and hence, the judgment was made on the facts and circumstances of the case by Hon'ble Apex Court. As stated, in the Tribunal's Order before us a categorical order exists to the effect that no arrears will be payable. Hence the judgment cited is not applicable to the present case before us.

14. In regard to the MP ^{Bub} ^{before us (MP no 713/99)} it is seen that the Petitioner have asked for production of documents in order to appreciate the point regarding existing vacancy of Chargeman Gr.II on 9.9.1994 which thereafter. Since the matter cannot be reappreciated, there would no relevance in allowing this MP, which is hereby rejected.

15. We have thus carefully assessed as to whether there has been any wilful disobedience of the order in OA 1101/94 and find that there is no such wilful disobedience. In view of this, the CP No.10/99 is hereby dismissed and notices are discharged.

S.L. Jain
(S.L. Jain)
Member (J)

B.N. Bahadur
(B.N. Bahadur)
Member (A).

H.