

NOTES OF THE REGISTRY

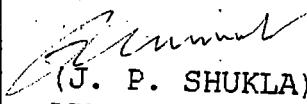
ORDERS OF THE TRIBUNAL
(40)

OA No. 113/2002.

24.10.2007.

Mr. V. D. Sharma proxy counsel for
Mr. Ashok Gaur counsel for the applicant.
Mr. Gaurav Jain counsel for the official
respondents.
None is present for other respondents.

Learned Proxy counsel for the applicant
prays for further adjournment with an
understanding that the matter will be argued
on the next date of hearing. It is a 2002
matter. Let the case be listed for hearing on
14.11.2007 on which date no further adjournment
will be granted.


(J. P. SHUKLA)
ADMINISTRATIVE MEMBER

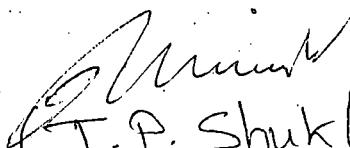

(M. L. CHAUHAN)
JUDICIAL MEMBER

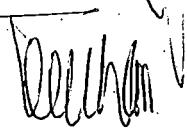
P.C./

14-11-2007
Mr. Ashok Gaur, Counsel for applicant
Mr. Gaurav Jain, Counsel for respondent No. 1
None present for other respondents

Heard learned Counsel for the
parties

Judgement Reserved.


(J. P. Shukla)
M(A)


(M. L. Chauhan)
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 19th day of November, 2007

ORIGINAL APPLICATION NO. 113/2002

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. J.P. SHUKLA, ADMINISTRATIVE MEMBER

1. Pradeep Sharma son of Shri Gopi Ram Sharma, aged 41 years, resident of 119, IT Colony, Jyoti Nagar, Jaipur.
2. Jagdish Prasad Saini son of Shri Gangal Ram Saini, aged 41 years, resident of 100-B, Panchwati, Scheme No. 7, Alwar.
3. Yogesh Sharma son of Lt. Shri Brij Lal Sharma aged 45 years, resident of Brivila, 201, Raghu Marg, Bhagat Singh Circle, Alwar.

By Advocate: Mr. Ashok Gaur

.....Applicant

Versus

- 1.A. Union of India though Secretary, Revenue Department, Secretariat, New Delhi.
1. Chief Commissioner of Income Tax, Jaipur, Central Revenue Building, Bhagwan Das Road, Jaipur.
2. Sunil Verma son of Shri Dula Ram Kumawat, aged 41 years, resident of Quarter No. 67, Income Tax Colony, Jyoti Nagar, Jaipur.
3. Pramod Goyal son of Sh. Shri Chand Goyal, aged 41 years, resident of 434, Adarsh Block, Mahaveer Nagar, Tonk Road, Jaipur.
4. Bhagirath Lal Gupta, aged 44 years, Inspector Income Tax, Office of CIT, Kota.

By Advocate: Mr. Gaurav Jain (official respondents)
None present for respondent nos. 2 to 4.

.....Respondents

ORDER**PER HON'BLE MR. M.L. CHAUHAN**

Applicants three in numbers have filed this Original Application against the order dated 22.01.2002 (Annexure A/1) whereby their seniority viz-a-viz private respondent nos. 2 to 4 has been revised. In the prayer clause, the applicants have prayed for quashing the impugned order dated 22.01.2002 (Annexure A/1) along with provisional seniority list dated 26.11.2001 (Annexure A/2) for UDCs. The applicants have also prayed that they may be placed senior to the private respondents as per the seniority order dated 01.09.1994 (Annexure A/7) and the seniority of the applicants may be kept the same which continued from 1986 to 1995. The applicants have further prayed that the respondents may be restrained from conducting the review DPC for the post of Income Tax Inspector on which the applicants already stand promoted.

2. Briefly stated, facts of the case are that the applicants were initially appointed as UDCs against Sports quota in 1983. It may be stated that during the pendency of this OA, the respondents had conducted a review DPC thereby promoting certain candidates on the post of Income Tax Inspector based

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on the revised seniority. The said action of the respondents was challenged by applicant no. 3 by filing MA No. 112/2002 and this Tribunal vide order dated 28.03.2002 directed the respondents not to give effect to their order dated 20.03.2002 (Annexure A/13). Accordingly, all the applicants were working as Inspector. Now few facts may be noticed. As already stated above, that the applicants were recruited as UDC/against the Sports quota in 1983. They were appointed in response to the advertisement published at National Level, for recruitment of UDCs who have brilliant/meritorious sports record against the substantive permanent vacant posts. Consequently they joined the post of UDC on 18.05.1983 so far as applicant no. 1 is concerned, on 20.05.1983 so far as applicant no. 2 is concerned and on 02.09.1983 so far as applicant no. 3 is concerned. The private respondent nos. 2 & 4 joined the post of UDC in the year 1986 and respondent no. 3 in the year 1988 respectively as per details given in Para No. 4.1 of the OA. Their names was sponsored by the Service Selection Committee vide letter dated 26.09.1984 (Annexure A/10) in response to requisition sent by the respondents to the SSC vide letter dated 18.04.1984. This fact is borne out from the letter dated 26.09.1984 which is placed on record as Annexure A/10.

It is further stated that the private respondents have not born in service when the applicants had already joined the service. The private respondents 2 & 4 had joined the department almost three and a half years later to the applicants and respondent No. 3 had joined five years after the applicants joined the department. The seniority list was published in the year 1986 whereby the names of the applicants was shown at sl. Nos. 196, 198 and 207 respectively. The names of the private respondents does not find mention in the said seniority list. Thereafter another seniority list was published in the year 1989 vide order dated 27.03.1989 whereby the names of the applicants was shown at sl. No. 156, 158 and 164 respectively while the name of the private respondents is shown at sl. No. 222, 246 and 218. The applicants have placed on record the seniority list at Annexure A/3. The respondents have published another seniority list in the year 1991 vide order dated 26.09.1991 (Annexure A/4). In the said seniority list, the private respondents were shown junior to the applicants. Yet another seniority list was published in the year 1993 vide order dated 16.04.1993 (Annexure A/5) followed by another seniority list issued in the year 1994 vide letter dated 01.09.1994 (Annexure A/6) and the seniority list issued in the year 1999

vide letter dated 14.03.1999 whereby applicants were shown senior to the private respondent nos. 2 to 4.

3. From the material placed on record, it appears that private respondents nos. 2 to 4 have filed OA before this Tribunal which was disposed of vide order dated 30.07.2001 whereby direction was given to the respondents to decide the issue of seniority in accordance with rules/ norms in force at the relevant time. Pursuant to the said order passed by this Tribunal, respondents vide letter dated 26/27.11.2001 (Annexure A/2) issued show cause notice to the applicants to file objections within seven days as to why four persons including respondent nos. 2 to 4 should not be placed senior to them having been appointed against the slot for appointment as UDC as a result of competitive examination held in 1982. Against the show cause notice, applicants filed the objections. However vide impugned order dated 22.01.2002, representations of the applicants were rejected and private respondent nos. 2 to 4 were shown senior to the applicants vide seniority list dated 26/27.11.2001 showing their position as on 01.09.1998 by treating them having been appointed against the slot of 1982. The grievance of the applicants is that

such course was not permissible to the respondents. According to the learned counsel for the applicant, the applicants were shown senior to the private respondents since 1986 to 1999 and the said seniority lists were never challenged by the private respondents and their representation at belated stage could not have been considered in contravention of rules governing the seniority. Learned counsel for the applicant further argued that seniority does not depend on the occurrence of the vacancy. Normally seniority has to be determined from the date of joining unless there are statutory rules to the contrary, which is not the case here. Learned counsel for the applicant has also drawn our attention to the instructions issued by the Government of India No. 14015/1/76-Estt.(D) dated 04.08.1980 and argued that as per these instructions, sportsman quota recruited in the Department should be placed en block junior to those who have already been recommended by the Service Selection Commission. Since in 1983, no recommendation was issued by the Service Selection Commission and the case of the private respondents were recommended vide letter dated 26.09.1984 (Annexure A/10). Even on the basis of these instructions,

private respondents are not entitled to seniority from retrospective date.

4. Respondents have filed reply. In the reply, the stand taken by the respondents is that vacancy of direct recruitment quota was reported to the SSC in the year 1982 against the unfilled vacancies of 1981 for sponsoring the names of those who had cleared the competitive examination. The competitive examination was held in the year 1982. Since some of the posts were not filled as per the recommendation made by the SSC, a further requisition was sent to the SSC by the department in 1984 about the available vacancies at that time also, which included the unfilled vacancies of 1981 reported in 1982 and accordingly, the names of four candidates including the private respondents nos. 2 to 4 were recommended against the vacancies of 1981. It is further stated that the seniority of the applicants viz-a-viz private respondents were determined on the basis of the decision of the Hon'ble CAT in OA No. 248/2001 decided on 30.07.2001 whereby respondents were directed to dispose of the representation filed by Shri Unil Verma and Shri Pramod Goyal, private respondents in this OA. Accordingly, the representations of these private respondents

were considered in the light of the OM dated 22.12.1959 and since private respondents were selected by the SSC on the basis of the competitive examination held in 1982, they have rightly been placed above the applicants recruited under sports quota in 1983. The respondents have also placed reliance on the decision of the Apex Court in the case of reported in **AIR 1984 SC 1291** and **AIR 1985 SC 781** to contend that if there is quota rule to implement, the question of length of service becomes irrelevant. Further respondents in Para No. 4.13 have categorically stated :-

“.....the factual position is that out of 32 candidates sponsored by the SSC on the basis of the result of the competitive examination held in the year 1982, only 17 joined the department and therefore the remaining 15 vacancies under direct recruitment quota were carried forward till 15 candidates including private respondents no. 2 and 4 were made available by the SCC on the basis of the result of the competitive examination held in the year 1982. Another candidate namely private respondent no. 3 was sponsored later so as to fill up all the 33 vacancies reported to the SSC vide requisition dated 12.7.1982.”

Further in the said para, the respondents have categorically stated that vide letter dated 26.09.1984 (Annexure A/10), remaining 15 candidates including private respondents were sponsored by the SCC and thus according to the respondents, private respondents were appointed against the vacancies of direct quota of 1982.

5. We have heard the learned counsel for the parties and have gone though the material placed on record.

6. The learned counsel for the applicant has raised three contentions in support of the issue involved in this case. First contention raised by the learned counsel for the applicants was that the private respondents had never made any grievance/ challenged to the various seniority lists issued by the respondents since 1986 till 1999 whereby private respondents were shown junior to the applicant. Thus according to the learned counsel for the applicants, it was not open for the respondents to rack up this issue after more than 16 years by passing the impugned order dated 22.01.2002 (Annexure A/1).

7. We have given due consideration to the submission made by the learned counsel for the applicant. We entirely agree with the contention so raised by the learned counsel for the applicant. From the material placed on record and even from the impugned order (Annexure A/1), it is clear that applicants have never objected to their seniority list. Even respondent No. 1 in Para No. 6 of the impugned order has specifically stated that objections regarding seniority list were invited from the

affected persons and one Shri Sunil Verma has objected to the seniority list vide his representation dated 22.12.1989 and no action has been taken on the said representation. No representation whatsoever was filed by the respondents against the seniority lists in the year 1991, 1993, 1994 and 1999. It is further clear from this Para that one Shri Sunil Verma (Respondent No. 2) and Pramod Goyal (Respondent No. 3) had filed OA before this Tribunal, which was disposed of vide order dated 30.07.2001 thereby directing the respondents to decide the representation of the applicants. According to us, it was not permissible for the respondents to entertain such a belated claim of the private respondents in view of the law laid down by the Apex Court whereby it has been held that seniority dispute raised after more than a decade after joining the service should not be re-opened and the matter has to be dismissed on that ground alone without going into the merit of the case. This is what the Apex Court has held in the case of **B.S. Bajwa & Another vs. State of Punjab & Others,** 1998 SCC (L&S) 611. At this stage it will be useful to quote Para No. 7 of the judgment, which thus reads as under:-

“7. Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the Single Judge and, therefore, the judgements of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone

sufficient to dismiss the writ petition on the ground of laches because the grievance was made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this period of more than a decade they were all along treated as junior to the other aforesaid persons and the right inter se had crystallized which ought not to have been reopened after the lapse of such a long period. At every stage others were promoted before B.S. Bajwa and B.D. Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

The law laid down by the Apex Court is squarely applicable to the facts of this case. In this case, private respondents entered the Department in the year 1986-1988.

The respondents have issued as many as six seniority lists from 1986 onwards and objections were also invited. The private respondents were shown junior to the applicants in all the seniority lists, which was circulated in the years 1989, 1991, 1993, 1994 and 1999. Even for argument sake, it is to be admitted that one Shri Sunil Verma had objected to the seniority list as early as on 22.12.1989, it was not open for him to file OA in this Tribunal after a lapse of more than 11 years in 2001. In fact, this Tribunal should not have entertained that OA in view of the law laid down by the Apex Court in the case of

State of Orissa vs. Chandra Shekhar Mishra, 2003 SCC

(L&S) 878 whereby it has been stated that even direction to

decide the representation where the case is hopelessly time barred should not have been given by the Tribunal. Be that as may be, since the Tribunal had given direction to decide the representation in accordance with law and the ~~applicant~~ ^{private respondents} has not racked up the issue of the subsequent seniority lists issued from time to time, we are of the view that the action of the respondents to re-open the entire issue at this belated stage is against the law laid down by the Apex Court in the case of B.S. Bajwa (supra). Further the Apex Court in the case Bimlesh Tanwar vs. State of Haryana & Others SLJ 2003 (2) 220, in para No. 46 has held as under:-

“46. Furthermore, it is now well settled that a settled position should not be unsettled. The respondents had already been posted to the post of Additional District Judge. As would appear from the report of the Sub-Committee that the seniority list was published in the year 1992. Representations were, however, made only in the year 1997 which was rejected by the High Court on 22nd August, 1997. The Writ petition was filed in March 1998 which was dismissed by reason of the impugned judgment dated 18.08.1999.

8. Thus in view of the law laid down by the Apex Court, we are of the view that the applicants are entitled to the relief on this score alone namely that it was not proper for respondent No. 1 to reopen the matter again after a lapse of 16 years, which will amount to unsettled the settled position and also that as many as 5 to 6 seniority lists were circulated and

objections were invited against these seniority lists but private respondents choose not to object the matter and simply filing of the OA at belated stage after a lapse of 11 years will not entitled the private respondents to reopen the entire issue again, more particularly in view of the law laid down by the Apex Court in the case of **State of Orissa vs. Chandra Shekhar Mishra**, 2003 SCC (L&S) 878, where the Apex Court has deprecated the action of the Tribunal to entertain the belated OA thereby giving direction to decide representation of the applicant, once the representation was rejected by the department thereafter entertaining another OA and granting relief to the applicant, by holding that such course was not permissible and ~~state~~ claim ought not to have been entertained.

9. Even on merit, the applicant has made out a case for our interference. In order to give relief to the private respondents, respondent No. 1 has relied upon the instructions, issued by the Ministry of Home Affairs dated 22.12.1959, and has also relied upon certain judgements of the Apex Court, which have been referred to in the earlier part of the judgement. We are of the firm view that respondent No. 1 has not consider the

matter in the right perspective and has misread the circular issued by the Government of India, Ministry of Home Affairs as well as judgements rendered by the Apex Court, which was in different context. As already stated above, the judgement of the Apex Court was rendered in the context where the dispute of relative seniority between direct recruits and promotees was involved. The seniority has to be determined between direct recruits and promotees based on the quota of vacancies reserved for direct recruitment and promotion respectively. The issue involved in this case relates to the direct recruits as the applicant as well as the respondents were recruited to the post through a selection made by SSC or otherwise. Thus the stand taken by the respondents that the question of length of service is irrelevant where quota is involved is wholly without any basis. At this stage, it will be useful to quote Para No. 4 of the instructions of OM dated 22.12.1959, which thus reads as follows:-

“4. Direct Recruits.

Notwithstanding the provisions of para 3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent action.

Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of

merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit."

10. From bare perusal of the aforesaid provisions, it is clear that the relevant seniority of direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendation of the UPSC or other selecting authority. Admittedly, the applicants were selected in the year 1983 as direct recruits and they joined the department in 1983. Further, it is also clear that requisition was sent to the SSC by the Department in the year 1982 for the 33 vacancies and the SSC sponsored the names of 32 candidates on the basis of the result of the competitive examination held in 1982. Against the 32 candidates sponsored by the SSC, only 17 candidates joined the department. Further the stand taken in the reply by the respondents, it is evident that subsequently another requisition was sent in the year 1984 and the remaining 15 candidates including the private respondents were sponsored by the SSC on 26.09.1984 (Annexure A/10). Thus in view of the stand taken by the respondents in their reply, it is not understood how the private respondents can be treated as appointee of the year 1982? when they have not joined the department: despite the

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recommendation made by the Selection committee, only 17 persons joined the department pursuant to such recommendation. The fact remains that another requisition was sent in the year 1984 and it is pursuant to such requisition, name of the 15 candidates were recommended by the SSC and subsequently the private respondents were appointed and joined the department in the year 1986 and 1988. Thus in view of the provisions contained in Para No. 4 of the instructions dated 22.12.1959, the respondents could not have allotted the seniority from the retrospective date when they were not born in the cadre at the relevant time. As already stated above, it appears that respondent No. 1 has relied on Para 6 of the aforesaid memo, which was not applicable in the instant case, which relate to the seniority of direct recruits and the promotees, which thus reads as under:-

“6. Relative seniority of Direct Recruits and of Promotees-

The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.”

11. Thus from perusal of Para 6 of O.M. dated 22.12.1959, it is clear that relative seniority between direct recruits and

promotees shall be determined according to the rotation of vacancies between them whereas existence of vacancies is irrelevant where only one source of recruitment is involved as in the instant case. It was the Para No. 4, which should have been made applicable in the case of applicants and private respondents being direct recruits read with para 4 of Government of India, Department of Personnel & Training, OM No. 14015/1/76-Estt.(D) dated 04.08.1980, which will clinch the issue of seniority between sportsman (applicants) recruited by way of direct advertisement and the private respondents which were appointed through selection made by the SSC. Para 4 of OM dated 04.08.1980 is in the following terms which thus reads as under:-

"Seniority of meritorious sportsmen appointed in relaxation of Recruitment Rules - Where sportsmen are recruited through the Employment Exchange or by direct advertisement and are considered along with other general category candidates, they may be assigned seniority in the order in which they are placed in the panel for selection.

Whether recruitment to a post is through a selection made by the Staff Selection Commission, whether by a competitive examination or otherwise, the sportsmen recruited in the departments themselves be placed en block junior to those who have already been recommended by the Service Selection Commission. The inter se seniority of sportsmen will in the order of selection.

12. Thus from the Para No. 4 of O.M. dated 22.12.1959 read with Para 4 of OM dated 04.08.1980, as reproduced above, it is

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quite clear that the relevant seniority of the applicants and the private respondents has to be determined from the date they are appointed pursuant to the recommendation made by the Selection Committee and in case, in particular ~~where~~ ⁱⁿ the selection is made both by the SSC and the Department regarding Sport quota, in that eventuality, the sportsman recruited in the department should be placed en block junior to those who have already been recruited by the Service Selection Commission. In the instant case, no persons were recruited by the SSC in the year 1983 when the applicants were selected and appointed. As already stated above, the private respondent nos. 2 to 4 were recommended by the SSC vide their letter dated 26.09.1984 (Annexure A/10) and consequently, these persons were appointed in the year 1986 and 1988. Thus they cannot be assigned seniority w.e.f. 1982 from the date when the vacancy had occurred. Further the issue - whether the year of appointment governs the seniority or this may be from the date when the vacancy arose and against which recruitment is made is relevant for the purpose of determination of seniority is no longer res-integra. The Apex Court in the case of Jagdish Ch. Patnaik vs. State of Orissa, AIR 1998 SC 1926 in Para No.14 has held as under:-

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"14. The next question for consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited? Mr. Banerjee's contention on this score is that since the appellant was recruited to the cadre of Assistant Engineer in respect of the vacancies that arose in the 1978 though in fact the letter of appointment was issued only in March, 1980, he should be treated to be a recruit of the year 1978 and as such would be senior to the promotees of the year 1979 and 1980 and would be junior to the promotees of the year 1978. According to the learned counsel since the process of recruitment takes a fairly long period as the Public Service Commission invites application, interviews and finally select them whereupon the Government takes the final decision, it would be illogical to ignore the year in which the vacancy arose and against which the recruitment has been made. There is no dispute that there will be some time lag between this year when the vacancy accrues and the year when the final recruitment is made for complying with the procedure prescribed but that would not give a handle to the court to include something which is not there in the Rules of Seniority under Rule 26. Under Rule 26 the year in which vacancy arose and against which vacancy the recruitment has been made is not at all to be looked into for determination of the inter se seniority between direct recruits and the promotees. It merely states that during the calendar year direct recruits to the cadre of Assistant Engineer would be junior to the promotee recruits to the said cadre. It is not possible for the Court to import something which is not there in Rule 26 and thereby legislative a new Rule of Seniority. We are, therefore, not in a position to agree with the submission of Mr. Banerjee, the learned senior counsel appearing for the appellants on this score."

13. The law as laid down by the Apex Court is fully applicable in the facts & circumstances of this case. There is no rule/instructions which prescribed that seniority shall be determined from the year when vacancy arose and against which recruitment is made. The instruction on the point suggests that it is the date of appointment which is relevant for the determination of seniority of direct recruits which have

been recommended by the UPSC or other selecting authority. Further instructions dated 04.08.1980 merely state that during the calendar year where the selection is made through SSC, the persons appointed against the sportsmen quota could be junior to direct recruited/selected through SSC. Thus it is not possible to prescribe a new rule of seniority on the basis of the year in which vacancy has arisen, as was done in the instant case.

14. Thus viewing the matter from all angles, we find force in the OA and the same is accordingly allowed. The impugned order dated 22.01.2002 (Annexure A/1) along with provisional seniority list 26.11.2001 for UDCs (Annexure A/2) is hereby quashed and set aside. The respondents are directed to restore the original seniority of the applicants as per the seniority list dated 01.09.1994 (Annexure A/7) and seniority list dated 14.03.1999 (Annexure A/8). Further any follow up action taken pursuant to the revised seniority list dated 22.11.2000 (Annexure A/2) is hereby declared invalid.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ