

FORM NO. 4

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

ORDER SHEET

Org. App/ Misc. Petn/ Cont. Petn/ Rev. Appl. R.A 4/04 (343/02)

In O.A.

Name of the Applicant(S) Smt. Sunita V Langtiach

Name of the Respondent(S) Union of India Goss

Advocate for the Applicant Mr. S. Sarma

Counsel for the Railway/ C.C.S.C. ✓

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

This Review application 25.5.2004 has been sent by the petitioner by speed post and praying for review the order dated 23.12.03 passed by this Honble Tribunal in O.A 343/02. The above order was issued by this office on 7.1.2004 and the same was received by the petitioner on 18.1.2004. The Review application which mb has been sent by the petitioner is received by this office on 11.2.2004 and it is in time.

Therefore, we may circulate the Review petition to the Honble Mr. Justice B, Panigrahi, Vice-Chairman of the Calcutta Bench for his Lordship kind perusal and further orders.

Submitted for kind approval and orders.

S.O (J)

16/4/04

It approved we may perhaps to send the Review application to the Honble Justice Mr B. Panigrahi,

Judgment delivered in open Court, kept in separate sheet. The R.A. is rejected under Rule 17 of the CAT (Procedure) Rules. No costs.

*K. P. Pal*  
Member (A)

Vice chairman for World Landships  
necessary order.

16/4/04

DR

The Review Application shall  
be sent to Hon'ble Sri Justice B.  
Panigrahi, Vice-Chairman, Calcutta  
Bench for consideration by circula-  
tion under Rule 49 (Appendix-4).

DEPUTY REGISTRAR

HON'BLE MEMBER (A)

21/4/04

26/5/04

Copy of the order  
has been sent to  
the office for filing.  
The same to the  
applicant as well  
as to the Regd No 5  
and D.C.S.C.

25 May 9/6

2

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

R.A. 4 of 2004 ( O.A. No. 343 of 2002)

Present : Hon'ble Mr. Justice B.Panigrahi, Vice-Chairman

Hon'ble Mr. K.V.Prahladan, Member (A)

SMT. SUNITA V. LANGSTIEH

VS

UNION OF INDIA & ORS

For the applicant : In person

For the respondents : Mr. A.Deb Roy, Sr. CGSC  
(Present during hearing of OA)

Disposed of by Circulation :

Date of order : 25.5.2004

O R D E R

Per Justice B.Panigrahi, VC:

This review application has been filed by the applicant of OA seeking review and recall of the order dated 23.12.2003.

2. In the OA, the applicant had prayed for refixation of her seniority as Inspector of Income-tax in the Shillong region by taking into account her past service in the same grade in Pune region and for consideration of her promotion to the post of Income-Tax Officer accordingly. The applicant was initially appointed as Inspector of Income-tax as direct recruit in Pune region and had completed necessary service for being eligible for promotion to the next higher post of Income-tax Officer. Her husband was also working in Pune region in the same department. He was subsequently transferred to Shillong region. Because of family problem, the applicant sought for transfer to Shillong where her husband had been transferred. Her prayer was allowed by the authorities on conditions that she

B

would not be entitled to claim her past service and that she would be treated as a direct recruit in the new zone and will be placed at the bottom seniority position. Accepting these conditions, the applicant accepted the transfer. Subsequently she claimed her past service for being counted for refixation of her seniority in the new zone and for consideration of her case for promotion. The respondents did not accede to this prayer and being aggrieved she filed OA 343 of 2002 claiming the aforesaid benefit.

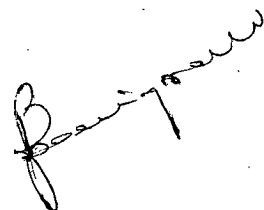
3. The Tribunal after hearing the OA on merit, disposed of the OA with a direction to the respondents to consider the case of the applicant for the purpose of her eligibility for promotion to the next higher grade of Income-tax Officer by taking into account her past service only but she will be at the bottom seniority position in the new zone. In other words, her past service will be counted only for her eligibility for next promotion and not for refixation of her seniority in the new zone as claimed.

4. The applicant now claims that the Tribunal has erred in not allowing her prayer for counting her past service for the purpose of fixation of her seniority in the new zone. In fact she has re-argued the case in support of her claim. Her contention is that the Income-tax Inspectors should be treated to be an All India cadre so that on transfer from one zone to another, the incumbent should carry his/her seniority. She relied on various decisions of the Hon'ble Apex Court. But she has not produced any new circular/decision whereby in case of posts in which zonal seniority is maintained, one is entitled to carry his/her seniority to a new zone even when transferred at his/her own request. The Tribunal in its order under review clearly noted that the applicant accepted her transfer to Shillong zone after agreeing to the conditions stipulated therein that she will not be entitled to carry her seniority and that she will be treated as a direct recruit in the new zone, and would be placed at the bottom position.

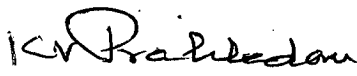
5. The scope of review is very limited. An order can be reviewed

only when there is apparent error in the face of the order or when important evidence is produced, which could not produced at the time of hearing of the case inspite of exercise of due diligence. The applicant has not produced any such evidence or pointed out any error in the face of the order. It is time and again pointed out by the Hon'ble Apex Court that a review proceeding cannot be equated with the original hearing of the case and the finality of the judgement delivered by the Court will not be reconsidered except where a glaring omission or patent mistake has crept in earlier by judicial fallibility. In the RA the applicant in fact wants re-hearing of the OA which is not permissible under the law. If the applicant is not satisfied with the order of the Tribunal, her remedy lies in filing appropriate application before appropriate higher forum. In the garb of review she cannot ask for re-hearing of the OA.

6. For the reasons stated above, we do not find any merit in this RA and therefore no useful purpose will be served in hearing the RA. Accordingly it is rejected under Rule 17 of the CAT(Procedure) Rules. No costs.

  
(B. Panigrahi)  
Vice-Chairman

I agree.

  
(K.V. Prahladan)  
MEMBER(A)

By Speed Post

b



केन्द्रीय प्रशासनिक अधिकरण  
CENTRAL ADMINISTRATIVE TRIBUNAL  
कलकाता न्यायपीठ, कलकाता  
CALCUTTA BENCH, CALCUTTA

Gram : CATRIBUNALCAL  
Phone : 2247-9061 & 2247-9071  
Fax : (033) 2247-1098

2nd M. S. O. Building,  
(11th & 12th Floors),  
C.G.O. Complex, Nizam Palace,  
234/4, A. J. C. Bose Road,  
Kolkata - 700 020

No.

CAT/CAL/JUDL/04 / 830

Dated: 17/05/2004

To,

The Deputy Registrar,  
Central Administrative Tribunal,  
Guwahati Bench,  
Rajgarh Road,  
Bhangagarh,  
Guwahati-781005

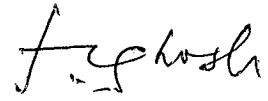
Sub : Review Application NO. 4/2004 in O.A. NO. 343/2002  
on the files of CAT, Guwahati Bench.

....


Sir,

With reference to your letter NO. CAT/GHY/63/2001/JUDL/327, dt. 22/04/2004, I am directed to send herewith the "A" Part files of above mentioned R.A. and O.A., alongwith the order duly passed in the above R.A. under Circulation Rules and signed by Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman of this Bench for placing the same before Hon'ble Sri K.V. Prahladan, Member(A) of your Bench for doing the needful at your end.

Yours faithfully,


  
(S.K. GHOSH)

DEPUTY REGISTRAR(J)

  
20.5.04

Hon'ble Member Encl : As stated above.

R.A. may be listed on 24.5.04  
pronouncement of order. for

  
21.5.04

P.S. to the Hon'ble Member (A)

**FORM No.1**

[See Rule 4(a)]

**Form of Index**

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

**11 FEB 2004**

गुवाहाटी बेंच  
Guwahati Bench

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

**Review Application**

[on OA 343 of 2002]

**2004**

Smt. Sunita V. Langstieh,  
W/o Shri. John V.D. Langstieh,  
Inspector, Office of the Chief Commissioner  
of Income Tax, Aayakar Bhavan,  
T.S.S. Road, Shillong – 793 001, Meghalaya.

..... Applicant

By Self

-Versus-

1. Union of India,  
Represented by the Secretary to the  
Government of India,  
Department of Revenue,  
Ministry of Finance,  
New Delhi.
2. The Central Board of Direct Taxes  
(CBDT), North Block, New Delhi – 110 001.
3. The Chief Commissioner of Income Tax,  
(CCIT), Aayakar Bhavan, S.V. Road, Pune – 411 001.
4. The Chief Commissioner of Income Tax,  
NER, Saikia Comercial complex,  
Sreenagar, G.S. Road, Guwahati – 781 005.
5. The Commissioner of Income Tax,  
Aayakar Bhavan, T.S.S. Road, Shillong – 793 001.

..... Respondents

By

## INDEX

Sl. No.	Brief description of proceedings/documents	Page No.	
		From	To
1.	Review Application-cum-Affidavit (Form 14)	1	20
2.	Annexures to the Review Application (in separate paper-book form)		
	(i) Copy of CAT order dated 23 <sup>rd</sup> December, 2003 in O.A. 343 of 2002	1	5
	(ii) Copy of Original Application O.A. 343 of 2002	6	23
	(iii) Copy of G.I., D.O.P.T. O.M.'s dt. 04.11.1992, 29.05.1986, 27.03.2001	24	30
	(iv) Copy of Supreme Court judgement in Radhey Shyam Singh Vs. UOI	31	36
	(v) Copy of Staff Selection Commission publication of Results of Recruitment to the Post of Inspector of Income Tax published in the Employment News, 5-11 January 2002	37	37
	(vi) Copy of Supreme Court judgement in S.T. Rooplal & Others Vs. Lt. Governor through Chief Secretary, Delhi	38	49
3.	Prayer for Withdrawal of Vakalathnama (to represent by 'Self')	1	1

### FOR USE BY THE REGISTRY

Date of Presentation/Filing: 11/2/04

Date of Receipt by Post: 11/2/04

Registration (Diary) No:

Signature  
for Registrar  
11/2/04



9

IN THE CENTRAL ADMINISTRATIVE  
TRIBUNAL  
GUWAHATI BENCH

**Petition for Withdrawal of Vakalathnama**

**Review Application**

**for Order dated 23<sup>rd</sup> December, 2003**

**in OA 343 of 2002.**

Petition is hereby prayed

before the Hon'ble Central Administrative Tribunal,

Guwahati Bench,

under Rule 68 of the CAT Rules of Practice, 1993,

that the Vakalathnama executed in OA 343 of 2002

in favor of Sri. S. Sarma (Advocate)

**be hereby Permitted to be Withdrawn**

due to Inadequate Appreciation of Facts, Issues, and Rules

and Inadequate Pleading/Representation of the Original Application.

The Review Application shall be presented by Self.

Place: Shillong

Dated: 05<sup>th</sup> February, 2004.



(Applicant)

Smt. Sunita V. Langstieh,

W/o Shri. John V.D. Langstieh,

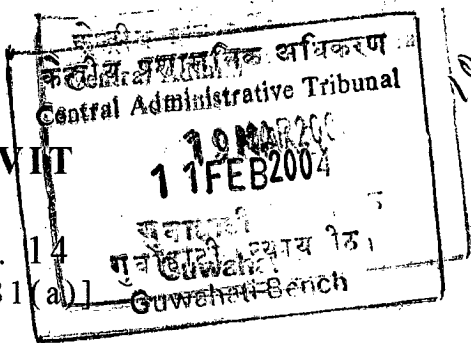
Inspector, Office of the Chief Commissioner

of Income Tax, Aayakar Bhavan,

T.S.S. Road, Shillong - 793 001, Meghalaya.

**AFFIDAVIT**

Form No. 14  
[See Rule 81(a)]



**IN THE  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

**Review Application No. 4 of 2004.**  
[on OA 343 of 2002]

Smt. Sunita V. Langstieh,  
W/o Shri. John V.D. Langstieh,  
Inspector, Office of the Chief Commissioner  
of Income Tax, Aayakar Bhavan,  
T.S.S. Road, Shillong - 793 001, Meghalaya.

..... Applicant

By Self

-Versus-

1. Union of India,  
Represented by the Secretary to the  
Government of India,  
Department of Revenue,  
Ministry of Finance,  
New Delhi.
2. The Central Board of Direct Taxes  
(CBDT), North Block, New Delhi - 110 001.
3. The Chief Commissioner of Income Tax,  
(CCIT), Aayakar Bhavan, S.V. Road, Pune - 411 001.
4. The Chief Commissioner of Income Tax,  
NER, Saikia Commercial complex,  
Sreenagar, G.S. Road, Guwahati - 781 005.
5. The Commissioner of Income Tax,  
Aayakar Bhavan, T.S.S. Road, Shillong - 793 001.

..... Respondents

Signature

## AFFIDAVIT

I, Smt. Sunita V. Langstieh, aged 35 years, wife of Shri. John V.D. Langstieh, presently employed as Inspector, in the office of the Chief Commissioner of Income Tax, Aayakar Bhavan, T.S.S. Road, Shillong -793 001, Meghalaya, do hereby swear in the name of God/solemnly affirm and state as follows:

**Para 1.** That there have been errors of facts, inference, and interpretation in the Order of the Hon'ble CAT dated 23<sup>rd</sup> December 2004, in O.A. 343 of 2002.

*{Annexure A-1}*

Thus therefore it is prayed for a Review of the order, so that the concluding line of the Hon'ble CAT's order " keeping due regard to the seniority which she gained at her previous place" is in consonance with the facts and circumstances of the case, relevant Apex Court judgements, and current modified government rules, and also so that the order of the Hon'ble CAT is implementable.

Sunita V. Langstieh

**Para 2.** On Facts, and applicable Judgements, and current modified Government of India Rules.

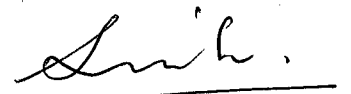
**Para 2.1** It is prayed that the Hon'ble Tribunal consider the unique Facts and circumstances of the case, and the Reliefs, as prayed for in the Original Application; as what has been discussed in the Order, and orally argued by the learned legal practitioner, is not in proper perspective and context as what has been put before in the Original Application.

{Annexure A-2}

That the Facts and circumstances of the case of the applicant are unique as brought out in the relevant Para No. 4 of the Original Application [*particularly Paras 4.5 to 4.29*]. These unique facts have direct material bearing to the Grounds of Relief for Restoration/Protection of Seniority prayed for in the relevant Paras 5 [*particularly para 5.1*] and 8 [*particularly para 8.1*] of the Original Application.

Thus that the case of the applicant was unique, and strong on the grounds of denial of natural justice and denial proper due consideration of the facts and circumstances at every stage of the transfer process.

That the case of the applicant is even further stronger on the Relief prayed for of Restoration of Seniority, as per government's current modified orders and rules themselves as is elaborated in the following sub-paras hereunder:



**Para 2.2.** That the aspect of Seniority for Promotion in central government service, is governed by orders issued by the Department of Personnel and Training.

The main starting principle is that Seniority is to be determined by the order of merit indicated at the time of initial appointment [O.M. dated 04.11.1992].

{Annexure A-3}

Then there are the categories of:

- Seniority of Direct Recruits and Promotees [O.M. dated 03.07.1986]
- Seniority of Absorbees [O.M. dated 29.05.1986, as amended vide O.M. dated 27.03.2001]
- Seniority in Special Type of Cases

{in Annexure A-3}

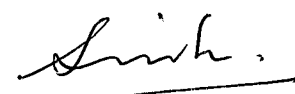
Accordingly, a case has to be determined as per the applicable category and rule.

In this case of the applicant, the relevant orders are:

- (a) The basic starting principle that Seniority is to be determined by the order of merit indicated at the time of initial appointment [O.M. dated 04.11.1992].

- (b) Then, the applicable category of Absorbees:

This is governed by O.M. dated 29.05.1986, which has subsequently been

  
4

amended vide O.M. dated 27.03.2001 [consequent to Hon'ble Supreme Court judgement in S.T. Rooplal & Others Vs. Lt. Governor through Chief Secretary, Delhi, (C.A. Nos. 5363-64 of 1997, and W.P. 191/99, and T.C. No. 56/99) which have been accepted by the Government, and the modified Government Rule thereto vide G.I., Dept. of Per. & Trg. O.M. F.No. 20011/1/2000-Estt. (D) dated 27.03.2001].

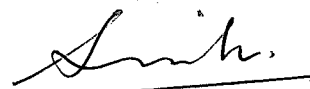
These are elaborated hereunder:

Para 2.3 On the principle that Seniority is to be determined by the order of merit indicated at the time of initial appointment.

The applicant was appointed through the Staff Selection Commission as a direct recruit Inspector of Income Tax on 27.01.1993.

That the Income Tax Department is a All India Department, being a Department of the Union Government.

That the grade of Inspector is a authority under the Income Tax Act, which is administered by the Union.



That therefore, inter-alia, amongst the facts put forth in the original application, it had also been prayed at Para 4.24 thereto, that this being so, Seniority of Inspectors is required to be on All India basis.

The Hon'ble Supreme Court in the case of Radhey Shyam Singh Vs. Union of India (C.A. 4190, 5112 of 1995, and W.P. 224, 395 of 1995) has held that the recruitments by the Staff Selection Commission have the nature and are to be on All India basis.

{Annexure A-4}

Thus therefore following this judgement, the Staff Selection Commission in its declaration of the results of recruitment to the post of Inspector of Income Tax published in the Employment News, 5-11 January 2002 have published that "the result of the examination has been processed on all-India merit basis", and have further more continued that "As per this legal advice, even in respect of examinations which had already been notified and conducted in accordance with the Zonal scheme prior to the date of pronouncement of the said judgement, merit list is required to be prepared on all-India basis.....".

{Annexure A-5}

Thus therefore, the 'region-wise' seniority for the grade of Inspectors being practiced by the Income Tax Department has no validity.

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Thus therefore these developments, in the light of the Apex Court's observation, are in consonance with the DOPT O.M. dated 04.11.1992 (*Supra*) that Seniority is to be determined by the order of merit indicated at the time of initial appointment.

**Para 2.4 On Seniority of Absorbees.**

Further also, from the angle of her Absorption in the North Eastern Region of the same Department.

The applicant was Absorbed in the North Eastern Region following the transfer of her husband (*notwithstanding the denial of natural justice, and non application of mind to the facts and circumstances of the case, at every stage of the process - paras 4.5 to 4.25 of the original application*).

The Hon'ble Supreme Court has dealt with at length, the issue of Seniority of Absorbees in the case of S.T. Rooplal & Others (*Supra*), and therefore the DOPT had issued O.M. dated 27.03.2001 (*Supra*), wherein seniority is to be fixed from the date from which he has been appointed on a regular basis to same or equivalent grade in his parent department.

Therefore, the applicant's Seniority has to be reckoned from the date of her appointment on regular basis, which is 27.01.1993.





To further clarify, if need be, on this judgement of the Hon'ble Supreme Court as also on the DOPT O.M.:

- (a) It could be argued that the case of S.T. Rooplal and the DOPT O.M. are in the context of deputation and then absorption.

Firstly, the Hon'ble Supreme Court at Para 16 of the judgement, emphasizing on its earlier decision in the case of K. Madhavan, had come to the conclusion that:

"We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. *It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred.*"

Sinh.

Secondly, if it is required that the recruitment rules should have a provision for appointment by deputation and then absorbed later, and that the recruitment rules for the post of Inspector of Income Tax do not have such a provision, then the process of absorption being followed in the Income Tax Department is invalid by itself.

(b) The issue most importantly stressed upon by the Hon'ble Supreme Court in the judgement is that of Equivalence of Post. The four deciding factors are:

- (i) The nature and duties of the post
- (ii) The responsibilities and powers exercised by the officer holding the post
- (iii) The minimum qualifications
- (iv) The salary of the post

*{copy of the judgement at Annexure A-6}*

The DOPT O.M. has also clarified upon this at Para 3 thereto.

Accordingly therefore, the deciding criteria being equivalence of posts, past service in equivalent post counts for seniority.


Snih.

**Para 2.5** Thus the straight facts of the case read with the applicable government orders itself favor the Relief prayed for in the original application of Restoration of Seniority.

Though this Para 2 should suffice enough for relief of Restoration of Seniority as prayed for by the applicant in the original application, hereunder below in subsequent Paras are given further grounds for review on other bearing facts and circumstances of the case.

**Para 3.** On unique facts, and of denial of natural justice as mentioned in the Original Application.

**Para 3.1** The case of the Applicant being Unique and which shall be recurring throughout her career, which actually can be solvable if considered in holistic view as intended by through various government incentives for opting to serve in the North-East (paras 4.24 and 5.2 of original application), policy for posting husband and wife at the same station (paras 4.20, 5.3, and 8.2 of original application), the contradiction that the Income Tax Department considers the grade of Inspector on Region basis whereas the next grade of Income Tax Officer is on All-India basis, when even the Inspector grade is an authority under the Union Income Tax Act (para 4.24 of original application) and now questionable in view of Hon'ble Supreme Court judgement in Radhey Shyam Singh case (*Supra*), absurdity that the loss of seniority inflicted is worse than

  
10

- 11 -


20

major penalty under the disciplinary rules as there is no leeway for appeal (para 4.25 of original application).

Therefore, unless otherwise decided now, the Hon'ble CAT is hereby prayed to consider the facts of the case as brought out in the Original Application, as these unique facts of the case, read with the various government policies, have direct material relevance to the grounds of relief prayed for.

**Para 3.2** That the Hon'ble CAT considers the denial of natural justice meted out, at every stage, right from seeking the transfer, process of the transfer, to refusal to forward the representation to the appropriate authority. These have been elaborated at Paras 4.5 to 4.14 of the Original Application.

**Para 3.3** Most pertinently, what had been done by the concerned authorities then was having routinely applied only the most restrictive clauses in the transfer guidelines without the applicant having copy of the instructions and thus not fully knowing; and without application of mind to the unique facts and circumstances of the applicant's case; when actually relevant clauses 2(h), and 3, could and should have been considered and applied; wherein in deserving cases, recommendation could be referred to the CBDT (Appropriate Authority) to relax the terms and conditions.

  
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If this had only just been done, it would have been quite sure that the outcome would have been in the affirmative.

This has been mentioned at Para 4.13 and 8.2 of the Original Application.

This is notwithstanding that in view of the discussion of now modified government rules at Para 2 above, the validity of the applied CBDT's instruction is questionable.

Para 4. On Reliefs as sought for in the Original Application.

Para 4.1 That the Hon'ble CAT decide upon the Reliefs as prayed for in Paras 5 and 8 of the Original Application.

Para 4.2 That the Hon'ble CAT decide upon the Reliefs as prayed for in the Original Application, and in the light of relevant bearing Court judgements, and now current modified Government policies, as elucidated at Para 2 above.

Liuh.

**Para 5. On Errors of facts, inference, and interpretation in the CAT's Order.**

Para 1: It is not that the applicant was not considered for promotion at Pune charge.

It is that because though she was fully qualified and eligible to be considered, however in view that she was very junior in the seniority list, she never could have been within the zone of consideration for promotion.

Para 2: (i) It is not that the applicant's representation for transfer was so smooth and simultaneous.

The correct facts, compelling circumstances, and the strenuous persuasion and denial of natural justice in the process, had been mentioned in Paras 4.5 to 4.14 of the Original Application.

This is the crux of the grievance giving rise to the original application.

(ii) The husband's transfer is not a one-time instance as it might appear.

It will be there throughout his career, as brought out in Para 4.4 of the original application.

Smith

Para 3: (i) It is not that the applicant accepted bottom seniority.

It was performed upon, and therefore immediately protested against with several representations to the appropriate authority, which unfortunately were never forwarded/acted upon, thereby giving rise to the original application to the CAT.

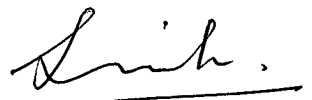
These facts have all been mentioned at Paras 4.14 to 4.19 in the original application.

(ii) It is not that meanwhile certain vacancies had arisen in the post of Income Tax Officer, and therefore the applicant made a representation for restoration of seniority.

The protest representation was made since 30.08.1999, i.e. immediately after on being performed to lose her seniority, due to the denial of natural justice. This is all elaborated in Paras 4.4 to 4.22 of the original application.

(iii) It is not that the applicant challenged the validity of the order passed on 18/21.06.2001.

Right from the time the applicant was served with the unfair order of loss of seniority, she had made her protest representation to the appropriate authority.

  
14

Several reminders were made; but there never was any forwarding of the representations, nor any response.

Due to these persistent reminders, and insistence on information as to whether the representations were ever forwarded, an intermediate official of the channel, who is in no way a authority, made the letter dt. 18/21.06.2001 refusing to forward the representations to the appropriate authority.

There is no such 'order' dt. 18/21.06.2001. It is just a refusal letter by an intermediate official, refusing to forward the representations to the appropriate authority. In fact this letter was made due to 2 years of representation having been made, but no information at all whether they were ever ever forwarded to the appropriate authority. It was upon insistence of communication in this regard that the intermediate official finally did reply that he will not be forwarding to the appropriate authority. This is gross delay, and gross denial of natural justice.

In the original application, mention was made of this letter dt. 18/21.06.2001 in Para 4.18 to show that there has been denial of justice at every stage.

The complete sequence of facts have been mentioned at Paras 4.14 to 4.19, and the

  
15



prayer at Para 5.4 and 8.3 of the original application.

Para 4: (i) It is not the prayer of the applicant that her past service be counted towards eligibility for the post of ITO.

As it is, and as already held by various earlier judgements, she is already eligible.

The reliefs prayed for are totally different.

The reliefs prayed for are regarding Restoration of Seniority, and for natural justice.

These have been listed at the appropriate Paras 5, and 8, of the original application.

(ii) It is not the prayer of the applicant that the benefits of B. Shanti Kumar case be conferred on her.

As it is her past service is counted towards eligibility.

The case was mentioned as the appropriate authority had considered this case; whereas in the case of the applicant, her representations were never forwarded at all to the appropriate authority.

Smith

- 17 -

nb

Para 6: It is not correct that the applicant was willing to forfeit all her past service towards seniority.

As mentioned in Paras 4.5 to 4.14 of the original application, it was under compelling circumstances, and not being provided with the relevant instructions, where there was actually provision for relaxation in deserving cases.

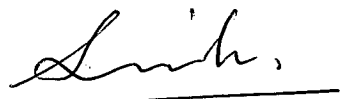
Para 7: (i) Though it is the general rule of the CBDT that upon inter-charge transfer there shall be loss of seniority, yet there are provisions in the said instruction for relaxation in deserving cases, which if acted upon, could only then be in tune with various government policies.

These have been mentioned at Paras 4.13, 4.20, 4.24 of the original application.

Had the applicant been provided with a copy of the instructions before effecting her transfer, she would have been aware, that in the circumstances of what has happened, unless she herself pointed out the existence of these provisions; these have therefore been denied.

The relief had also been prayed for at Para. 8.2 of the original application.

This is notwithstanding that in view of the discussion of now modified government rules at Para 2 above, the validity of the applied CBDT's instruction is now questionable.

  
17

(ii) The applicants case is not a simple one-time straight-forward case of inter-charge transfer, and consequential loss of Seniority, as it supposedly appears to be.

It is a case of denial of natural justice at every stage of the process, and the harm inflicted.

Her case of transfer will always be recurring in her career.

Had the relevant clauses 2(h), and 3, of CBDT's transfer guidelines been applied, her petition would have been in the affirmative.

On facts it is a unique case; and unless otherwise decided now, similar severe harm and injustice will be recurring throughout her career.

This is notwithstanding that in view of the discussion of now modified government rules at Para 2 above, the validity of the applied CBDT's instruction is now questionable.

(iii) And in the light of the Apex Court's judgements and the current modified government rules as elucidated at Para 2 above of the review application, the applicants case is very strong on facts, rules, and of course the denial of natural justice.

Smith

**Para 6. Upon Relief prayed for in the Original Application.**

Thus it is prayed that both on straight facts read with the current modified government rules, and on the facts and circumstances of denial of natural justice of opportunity:

The case of the applicant is very strong on facts, circumstances, and issues; more so in the light of government's present modified rules following the Apex Court's judgements; and in the context of various pronounced government policies; and therefore her past service in the grade of Inspector is to be counted towards Seniority, i.e., her Seniority is to be counted from her date of appointment as Inspector in the service, 27.01.1993.

The seniority as thus would have been, is accordingly thus required to be recasted.

This will then be perfectly in consonance with the concluding line of the Hon'ble CAT's order " keeping due regard to the seniority which she gained at her previous place", and will also make the order implementable.

The applicant is therefore entitled to be put within the zone of consideration for promotion to the post of ITO in the present charge, and considered in the next DPC, and as her juniors have already been promoted, it should follow that her seniority in the post of ITO is to be above her immediate junior in the recasted seniority.



Contents of all the paragraphs (Nos. 1 to 6) given above in this affidavit are within my personal knowledge.

Place: Shillong

Date: 05<sup>th</sup> February, 2004.

Sunita V. Langstieh

Signature of the Deponent.

Name in Block letters: Smt. SUNITA V. LANGSTIEH

Sworn/solemnly affirmed before me on this the 05<sup>th</sup> day of  
FEBRUARY 2004.

Signature:

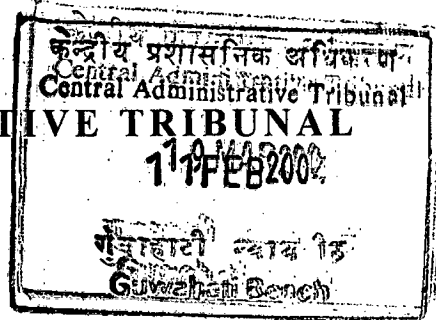
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(Name and designation of the  
Attesting Authority with Seal)



- 21 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH



Index to Annexures

Review Application

for Order dated 23<sup>rd</sup> December, 2003

in OA 343 of 2002.

Sl. No.	Brief description of documents	Page No.	
		From	To
Annexures to the Review Application			
(i)	Copy of CAT order dated 23 <sup>rd</sup> December, 2003 in O.A. 343 of 2002	1	5
(ii)	Copy of Original Application O.A. 343 of 2002	6	23
(iii)	Copy of G.I., D.O.P.T. O.M.'s dt. 04.11.1992, 29.05.1986, 27.03.2001	24	30
(iv)	Copy of Supreme Court judgement in Radhey Shyam Singh Vs. UOI	31	36
(v)	Copy of Staff Selection Commission publication of Results of Recruitment to the Post of Inspector of Income Tax published in the Employment News, 5-11 January 2002	37	37
(vi)	Copy of Supreme Court judgement in S.T. Rooplal & Others Vs. Lt. Governor through Chief Secretary, Delhi	38	49

- 22 -

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 343 of 2002.

Date of Order . This the 23rd Day of December, 2003.

The Hon'ble Mr Justice B.Panigrahi, Vice-Chairman.

The Hon'ble Mr K.V.Prahladan, Administrative Member.

Smt.Sunita V.Langstieh,  
W/o Sri John V.D.Langstieh,  
Inspector, Office of the Chief Commissioner  
of Income Tax, Aayakar Bhawan,  
T.S.S.Road, Shillong, Meghalaya.

....Applicant

By Advocate Sri S.Sarma.

- Versus -

1. Union of India,  
represented by the Secretary to the  
Government of India,  
Department of Revenue,  
Ministry of Finance,  
New Delhi.
2. The Central Board of Direct Taxes  
(CBDT), North Block, New Delhi-1.
3. The Chief Commissioner of Income Tax,  
(CCIT), Aayakar Bhawan, S.V.Road, Pune.
4. The Chief Commissioner of Income Tax,  
NER, Saikia Commercial Complex,  
Srinagar, Guwahati-5.
5. The Commissioner of Income Tax,  
Aayakar Bhawan, T.S.S.Road, Shillong,  
Meghalaya.

...Respondents.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C.

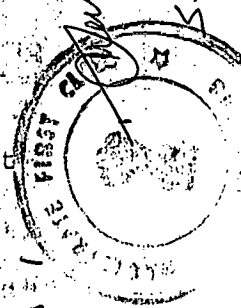
O R D E R (ORAL)

PANIGRAHI J.(V.C)

Briefly stated the facts of the present case as follows:

The applicant joined as a direct recruitee Inspector on 27.1.1993 in Income Tax Department in the office of Income Tax Officer, Investigation, Kolhapur under Chief Commissioner of Income Tax, Pune. Subsequently she cleared the departmental examination meant for the Inspector on 6.7.1996. Looking to her performance the respondents had also confirmed her in the rank of Inspector on 28.1.1995. From recruitment rules it appears that an Income Tax Inspector after completion of 3 years regular service can be eligible for being promoted to the post of Income Tax

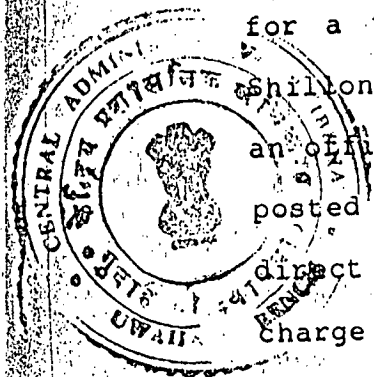
This is the document marked as Annexure No A-1 in the Affidavit of Smt. Sunita V. Langstieh. This Annexure No. A-1 is the true copy of the original document.



32 -23-  
eligible for being considered in the post of Income Tax Officer. The applicant has stated in the application that after completion of 3 years service and on passing the departmental examination she was not considered for promotion at Pune charge.

2. It appears that applicant's husband is working as a Group A Officer in the rank of Deputy Commissioner of Income Tax. He was posted in the office of the Commissioner of Income Tax, Pune in 1992. There is no dispute that the applicant's husband has all India transfer liability. He was accordingly transferred from Pune Zone to North Eastern Region, Shillong. Since the family life of the applicant might likely be affected therefore she made a representation for a transfer at the place of her husband's posting at Shillong. Her representation was accordingly considered and an office order has been passed by showing that she would be posted in Shillong charge against the vacancy meant for the direct recruit and the service rendered by her in Pune charge will not be counted towards the minimum service if any prescribed for her promotion to the higher grade. It was also indicated that the applicant shall be placed at the bottom seniority and she was denied to any transfer benefit such as advance pay, joining time as it was a transfer on her own volition.

3. She continued as an Income Tax Inspector direct recruit after accepting bottom seniority since 11.8.99. In the meanwhile certain vacancies had arisen in the post of Income Tax Officer and therefore the applicant made a representation for restoration of seniority which was not given any attention on account of inter charge transfer, the authorities were also not inclined to give any benefit to the applicant. Therefore, she challenged the validity of the order passed on 18/21.6.2001.

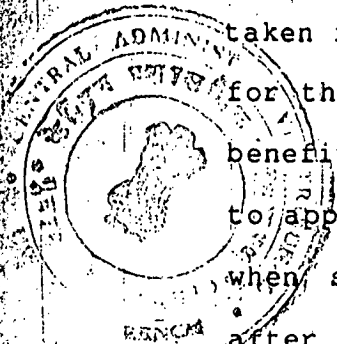





4. Mr S.Sarma, learned counsel appearing for the applicant has submitted that it is no doubt true that the applicant had submitted an appeal<sup>9</sup> for inter charge transfer which was accepted by the authorities and accordingly she was posted at Shillong charge but atleast the applicant's past service at Pune as an Inspector should not be overlooked for considering her eligibility to the post of ITO. He has also invited our attention to an order passed by the Central Board of Direct Taxes (CBDT) dated 27.12.96 in which the CBDT relaxed in case of B.Shanti Kumar pursuant to the order passed in O.A.17/96 after consulting the Department of Personnel and Training. Why the same benefit shall not be given to her.

5. While examining the aforesaid contention we noticed that the respondents have also admitted in their written statement to have given such benefit to B.Shanti Kumar after consulting the DOP&T pursuant to the order passed by the Tribunal. But the respondents had justified that it was a singular case where <sup>after</sup> relaxation of the rules they considered the eligibility criteria of B.Shanti Kumar.

6. Mr A.Deb Roy, learned Sr.C.G.S.C. for the respondents while repelling the aforesaid contention have invited our attention that in this case the applicant with her eyes wide open accepted the condition that she would be placed at the bottom seniority at that stage, the applicant did not claim any such benefit that her past service at Pune would be taken into consideration atleast to consider her eligibility for the post of Income Tax Officer. After surrendering such benefit in coming over to Shillong, she cannot be permitted to approbate and reprobate. Her case may be considered only when she completed her eligibility criteria at Shillong after having served over 3 years as Income Tax Inspector.



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7. While going through the various contentions raised at the Bar we find the CBDT have indicated in their order that in case of inter charge transfer at the request of the candidates no seniority at the old station shall be credited in the account of the officer so transferred. He/She shall have to accept the bottom seniority at the transferred place under the Zone the incumbent is working. We also found a precedent in the case of B.Shanti Kumar where the department had relaxed pursuant to the order passed in O.A.17/96 of Hyderabad Bench. While appreciating the contention of Mr Sarma, we had an occasion to go through the judgment passed by the apex Court in Union of India and others vs. C.N.Ponnappan reported in AIR 1996 SC 764. The identical question had been answered by Hon'ble Supreme Court quoted as under :



The service rendered by an employee at the place from where he was transferred on compassionate grounds is regular service. It is no different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. In our opinion, the Tribunal has rightly held that the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred."

From the rationale of the judgment, it is, therefore, made clear that the officer so transferred from one zone to the other shall get the benefit of past service only for the retiral benefit and experience for the purpose of promotion. No other benefit shall be given to the officer so transferred from one

4

zone to the other. Therefore, as per the judgment of the Supreme Court and also looking to the precedent case we direct the authorities to consider the case of the applicant for the purpose of her eligibility in the rank of Income Tax Officer by placing her at the bottom of the other eligible candidates for the aforesaid post; keeping due regard to the seniority which she gained at her previous place.

With the above observation the application is disposed of. No order as to costs.



Sd/ VICE-CHAIRMAN  
Sd/ MEMBER (A)

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*N. K. 1.04*  
Section Officer (J)  
C.A.T. GUWAHATI BRANCH  
Guwahati-781005

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THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH  
GUWAHATI

O.A. No. 343 of 2002

BETWEEN

Smt. Sunita V. Langstieh,  
W/o Sri John V.D. Langstieh, working as  
Inspector of Income Tax in the office of  
the Chief Commissioner of Income Tax,  
Aayakar Bhawan, T.B.S. Road, Shillong-  
793008, Meghalaya.

... Applicant

AND

1. The Union of India, represented by  
the Secretary to the Government of  
India, Department of Revenue, Ministry  
of Finance, New Delhi.
2. The Central Board of Direct Taxes  
(CBDT) North Block, New Delhi-1.
3. The Chief Commissioner of Income Tax  
(CCIT) Aayakar Bhawan, S.V. Road, Pune.
4. The Chief Commissioner of Income Tax,  
NER, Saikia Commercial Complex,  
Gopinagar, Gauhati-5.
5. The Commissioner of Income Tax,  
Aayakar Bhawan, T.B.S. Road, Shillong,  
Meghalaya.

... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE  
APPLICATION IS MADE.

The present application is directed against the  
action on the part of the Respondents in not  
calculating the service rendered by the Applicant in  
the cadre of Inspector of Income Tax prior to her  
transfer to NER from Pune Region.

2. JURISDICTION OF THE TRIBUNAL.

This is the document marked as Annexure No. A-2  
in the Affidavit of Smt. Sunita V. Langstieh.  
This Annexure No. A-2 is the true copy  
of the original document.

Dated 5/2/04  
S.R. Marak  
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The Applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

### 3. LIMITATION :

The Applicant further declares that the application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

### 4. FACTS OF THE CASE :

4.1 That the present Applicant joined the Income Tax Department as a direct recruit Inspector on 27.1.93 in the office of the Income Tax Officer (Investigation), Kolhapur under Chief Commissioner of Income Tax, Pune. Thereafter she cleared the Departmental Examination for Inspectors on 6.7.93. Thereafter her service as Income Tax Inspector was confirmed on 28.1.95. In the month of July 1996 she cleared the Departmental Examination for promotion to Income Tax Officer. The Recruitment Rule prevailing at that point of time for promotion to the grade of Income Tax Officer were - (1) Three years regular service in the grade of Inspector, (2) passing the departmental examination for Income Tax Officer. In spite of passing her examination as early as July 1996 itself, the authority could not effect her promotion because of the reasons best known to them.

4.2 That the Applicant is a citizen of India and as such she is entitled to all the rights and privileges as guaranteed under the Constitution of India.

4.3 That under the Income Tax Department the grade of

- 3 -

Assistant Commissioner of Income Tax and above are categorized as Group-A, Officers as Group-B, and Inspector of Income Tax together with other Ministerial cadres as Group-C. The Central Board of Direct Taxes has divided the entire country into Regions/charges. Regions are headed by Chief Commissioner of Income Tax who is also the cadre controlling authority. In a few charges, it was the Commissioner of Income Tax who was the cadre controller. This set up was prevailing up to the year 1999. In the year 2001 there has been some changes in the said official set up. In the instant case the Respondent No. 4 is the cadre controlling authority of the Applicant.

4.4 That the husband of the Applicant is a Group-A officer in the rank of Deputy Commissioner of Income Tax and since 1992 he had been posted under CCIT Pune Region. As per the transfer policy guidelines issued by CBDT, the Group-A officers are subjected to All India Transfer liability. After completion of 8 years of continuous posting in a particular region, the officer is compulsory to be transferred out from the said region, with the option of choice place of posting. After completion of tenure, one may get back his posting again in original region, but that will be subject to a total length of maximum 14 years.

A copy of said transfer policy guideline is annexed herewith as Annexure-A.

4.5 That by the year 1999, both the Applicant and her husband were posted at Nasik under CIT Nasik under the

39

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CCIT Pune Region). As the Applicant's husband's period of stay in Pune region was coming to a close, he submitted his transfer proforma wherein in column 6 of the said proforma, he furnished the particulars of his wife (Applicant). The said proforma was sent to CBDT, New Delhi through CCIT (Pune Region).

4.6 That the Under Secretary to the Government of India, Ministry of Finance, issued an order dated 24.4.99 by which the husband of the Applicant was transferred to North eastern region under CIT (NER) Shillong as cadre controlling authority (under Patna CCIT).

4.7 That as the details of the Applicant was furnished by the husband in the transfer proforma, it was assumed that her transfer would follow. However, the Applicant could come to know that a "No objection Certificate" from CIT NER (Shillong) is required. The Applicant therefore sent a letter dated 26.5.99 making a request for her accommodation under CIT (NER) and to that effect to issue such "No objection certificate".

A copy of the said letter dated 26.5.99 is annexed as Annexure-B.

4.8 That the aforementioned letter dated 26.5.99 was followed by another letter dated 2.6.99 by the Applicant reiterating the request for her absorption under Commissioner of Income Tax (CIT) NER and to that effect to issue necessary "No objection certificate". Acting on the said letter dated 2.6.99, the Assistant Commissioner of Income Tax (Head Quarter) office of the

9.



CCIT, Pune, issued a letter to the CCIT, Patna, indicating the fact that she was eligible for such transfer with a further request to intimate the possibilities if she could be accommodated.

A copy of the said letter dated 2.6.99 is annexed as Annexure-C.

4.9 That after the issuance of the aforesaid letter the applicant was under the bonafide belief that she would be given her due transfer under CIT, NER on the ground of husband and wife's same place of posting circular. On the other hand, the husband of the applicant on 14.6.99 handed over the charge of the post held by him. The applicant applied for earned leave from 30.6.99 to 11.7.99 and accompanied her husband who reported for his duties at his transferred post on 5.7.99. The applicant had taken leave and was under the legitimate expectation that during this period her case would be considered by the authorities for transfer to CIT, NER, in the light of Office Memorandum's issued by Government of India for posting of husband and wife at same station.

4.10 That after long persuasion finally on 2.8.99, the Additional Commissioner of Income Tax (Head Quarter)(Admn), Office of the CCIT, Pune, issued an order bearing No. FN/EST/038/SVL/99-2003/2068 dated 2.8.99 by which the applicant was transferred to Shillong under CIT, Shillong, with an observation that her seniority in Shillong will be reckoned from the



date she resumed duty in Shillong, below all the Inspectors including permanent and temporary. In the said order the Respondents sought for an undertaking from the Applicant regarding acceptance of conditions laid down in the said order. Under compelling circumstances, she had to give her undertaking as she already shifted from Nasik with her husband after availing leave. Since Annexure-C order did not indicate the terms she took leave and shifted from Nasik to Shillong.

A copy of the said order dated 2.8.99 is annexed as Annexure-D.

4.11 That the aforementioned order dated 2.8.99 was followed by another consequential order dated 10.8.99 by which, she was relieved from CIT, Nasik. The Commissioner of Income Tax, Shillong then issued order dated 11.8.99 by which the applicant was absorbed by CIT, NER. In the said order also the Respondents also reiterated the stand that she will not be entitled to carry her seniority and she will not be entitled to joining time, joining time pay, traveling allowance as the transfer was made at her own request. By an another order dated 11.8.99, she was given the posting as Inspector of Technical Section under CIT, NER.

Copies of the orders dated 11.8.99 are annexed as Annexure-E & F respectively.

4.12 That the Applicant states that as per the endorsement reflected in the absorption order dated 11.8.99 the Respondents have mentioned the letter dated

50

- 7 -

26.7.99 and another order issued by CIT, NER it is seen that there has been internal communications regarding issuance of "No Objection Certificate."

Copies of the aforesaid letter dated 26.7.99 and 9.7.99 are annexed herewith as Annexure-B & H respectively.

4.13 That it is pertinent to mention here that the Annexure-D order dated 2.8.99 has been issued in terms of the instruction contained in the Board's letter dated 14.3.90, wherein the criteria for transfer of non-gazetted staff from one charge to another under CBDT has been mentioned. In the instant case the Respondents have invoked the guideline contained in clause 2 (f) of the said guideline dated 14.3.90. Since it was a peculiar case, the Respondents should have invoked clause 2 (h) and 3 which deal with the facts of posting of husband and wife and the power of relaxation.

A copy of the guideline dated 14.3.90 is annexed as Annexure-I.

4.14 That the Applicant being aggrieved by the aforesaid loss of seniority and having only thereafter obtained a copy of the said instructions, preferred a detailed representation dated 30.8.99 to the Chairman CBDT as the instructions contained relaxing clauses. In her said representation, she made it known to the authority concerned that she had no occasion to go through the Annexure-I, guideline dated 14.3.90 as it was never supplied to her. It was also highlighted that

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the husband of the Applicant since holding a Group-A post will again be posted to another station after 9 years and the Applicant again will have to face the same consequences in respect of her seniority. The copy of the representation was sent to the Chairman, CBOT, through proper channel. However, the representation was never replied to by the Respondents even after repeated persuasion. It has not been known whether the representation ever reached the Board.

A copy of the said representation dated 30.8.97 is annexed as Annexure-I.

The Applicant craves leave of this Hon'ble Tribunal to treat the representation to be a part of this OA.

4.15 That the Applicant states that by about October, 2000, the CCIT, NER, Guwahati started functioning as a new cadre controller of NER in place of CIT, Shillong. The Applicant preferred another reminder/representation dated 1.11.2000 to the CCIT, NER, Guwahati to recommend her case to the Board.

A copy of the representation dated 1.11.2000 is annexed as Annexure-II.

4.16 That a tentative seniority list of Inspector, Income Tax, NER, was circulated wherein the Applicant has been shown to be junior most in the cadre. The Applicant submitted her objection letter to that effect.

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A copy of the said objection letter dated 27.11.2000 is annexed as Annexure-L.

4.17 That the Applicant submitted another reminder dated 28.12.2000 which was followed by another representation dated 12.6.2001.

4.18 That the representations although were addressed to the Chief Commissioner of Income tax, but the Additional Commissioner of Income Tax, (HQ) issued a letter dated 18/21.6.2001 which was communicated to her by a letter dated 29.6.2001, by which her representations in respect of correction of seniority have been rejected.

A copy of the order dated 29.6.2001 enclosing the order dated 18/21.6.2001 are annexed herewith as Annexure-m & M1 respectively.

4.19 That since the Respondents did not adhere to the Departmental Rule for sending the representation through proper channel, the Applicant preferred yet another representation dated 2.7.2001 directing to the Member, central Board of Director Taxes for restoration of her seniority. The aforesaid representation however was never acted upon. The Applicant submitted yet another representation dated 8.1.2002 but same also failed to evoke any positive response from the Respondents. The husband of the Applicant in January, 2002 visited the office of the CDDT and the Chairman, CDDT referred the matter to the Joint Secretary (Administration) to look into the matter. The Joint Secretary (Administration) CDDT was of the opinion that

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47.  
if the Applicant again goes back to her earlier CCIT, Pune, she may regain her seniority and consequential promotion to Income tax Officer. However, inspite of such persuasion nothing came out in positive, and hence this application.

Copies of representations dated 2.7.2001 and 8.1.2002 are annexed as Annexure-N and O respectively.

4.20 That the Applicant states that the husband of the Applicant in his transfer pro-forma indicated the fact that his wife (Applicant) also an employee of the Department and the Respondents fully knowing about the fact ought to have considered her case taking into consideration the guidelines issued by Government of India from time to time. It is pertinent to mention here that the Government of India from time to time has been issuing various guidelines in respect of posting of husband and wife in a same station and trying to follow the spirit in almost all identical cases which are not covered by the said guideline. Mention may be made of Office Memorandum dated 3.4.06 issued by Government of India in this regard. It is also pertinent to mention here that the 8th Pay Commission also has recommended the fact and the need of posting of husband and wife in a single station. The CBDT also mentions their clause in all its transfer policy instructions.

4.21 That the Applicant at the time of transfer of her

husband was under the bonafide belief that her case would be considered taking into consideration the Office Memorandum dated 3.4.86 which was been reiterated by the recommendation of 5th Central Pay Commission but the Respondents instead of considering her case in the light of Office Memorandum dated 3.4.86 took the aid of Office Memorandum 14.3.98 by which she had to loose her by which she had to loose her seniority. Even, in the said Office Memorandum dated 14.3.98 there has been a clause of posting of husband and wife in a single station as well as relaxation but those two clauses have not been taken into consideration while considering her case for absorption in NER. The husband of the Applicant is now due for promotion to the grade of Joint Commissioner, Income Tax, in the event of such promotion he may be transferred to some other region and accordingly the Applicant again will have to loose her seniority, and as such she would never be under the zone of consideration for promotion to Income Tax Officer which is a post having all India seniority.

The Applicant craves leave of this Hon'ble Tribunal to rely and refer upon the Office Memorandum dated 3.4.86 at the time of hearing of this case.

4.22 That the Applicant begs to state that at the time of consideration of her case for transfer from Pune to Bhillong, the Respondents never apprised the Applicant about her such loss of seniority and even the Office Memorandum dated 14.3.98 as well as the internal



communications dated 26.7.99 and 9.7.99 were not communicated to the Applicant. It is stated that since the Applicant was going to loose her seniority it would have been proper for the Respondents to apprise the Applicant about the fact and having not done so the Respondents have acted illegally and have violated the settled principles of "Next Below Rule".

4.23 That the Applicant states that at the time of her husband's transfer, she simply made application for her transfer to Shillong but the Respondents have failed to take into consideration the intent and purpose of such representation and invoked a wrong guideline instead of invoking the guideline meant for transfer of husband and wife in a single station. It will not be out of place to mention here that apart from these guidelines, there are various guidelines wherein emphasis has been made to retain husband and wife in a same station of which mention may be made of the Chairman, CDDT's additional guidelines dated 17.5.2001 and the guideline issued by the CDDT, dated 8.2.91.

Copies of the aforesaid guidelines are annexed herewith and marked as Annexure-P & Q.

4.24 That the Applicant begs to state that on posting in NER, the Central Government Civilian Employee used to get special incentives like weightage for promotion, tenure of posting, special mention in LRC, SDA etc. But in the instant case the Applicant has been made to loose her seniority without any valid reason. In fact taking into consideration statute by the Income Tax

Act, the duties and responsibilities of the Inspectors of Income Tax, the Respondents should have treated the cadre to be all India cadre. In fact, direct recruitment in the grade of Inspector is made from all India open competitive examination and it's promotional post i.e. Income Tax Officer is 100% promotional post and the seniority of Income Tax Officer is maintained all India basis. Even the Recruitment Rule does not disclose the fact that on being recruited as Inspector of Income tax it will be on regional basis. For all practical purpose the cadre of Inspector, Income tax bears all the requisite of being a All Indian Cadre. However, the Respondents have not yet declared the cadre to be all India basis for the reasons best known to them. Thus, appropriate direction need be issued to the Respondents to declare the cadre of Inspector, Income Tax to be a all India cadre.

4.25 That the Applicant states that the action on the part of the Respondents in down grading the seniority of the Applicant quoting irrelevant Rules without affording the Applicant the reasonable opportunity of being heard. The law is an incident of service and it cannot be treated as a measure of punishment. But in the instant case, there has been deviation and virtually the Applicant forego her seniority, lien etc. at the time of her transfer. In fact under the provisions of CCS(CCA) Rules, 1965, it is a major punishment.

4.26 That the Applicant begs to state that the



43  
guideline contained in Office Memorandum dated 14.5.90 in violative of the principles guiding the field which was circulated vide Office Memorandum dated 4.11.92 in respect of determination of seniority and thus, same is not sustainable in the eye of law and liable to be set aside and quashed.

4.27 That the Applicant begs to state that the matter relating to continuing of past service was the subject matter in OA No. 17/96 before the Central Administrative Tribunal, Hyderabad Bench and to that effect the CDDT after consultation with the matter with DOP, issued certain clarification and same was communicated vide letter dated 27.12.96.

A copy of the said communication dated 27.12.96 is annexed as Annexure-R.

4.28 That the Applicant begs to state that the issue pertaining to continuing of past service and other consequential benefits has been settled by the Apex Court in its various judgments and basing on those rulings and settled law this Hon'ble Tribunal also had occasions to deal with the similar matter granting relief to the aggrieved employees.

The Applicant craves leave of this Hon'ble Tribunal to rely and refer upon those rulings at the time of hearing of the case.

4.29 That the Applicant states that at present taking into consideration her seniority she is over due for her promotion to the Next Higher Grade for Income Tax

41- 42

Officer and in fact, even her Juniors in Pune Region have already been promoted to the said grade since January, 2002. On the other hand the Applicant cleared the requisite examination for promotion to Income Tax Officer in the year 1996, and she is a recruit of 1993 as Inspector. Even the 1993 batch of Inspector working at Shillong got their promotion to Income Tax Officer but her case has not been considered on the count of her seniority at Shillong. Had the seniority at Pune (Nasik) been counted she would have promoted to Income Tax Officer even in the years 2000 or earlier. Had she been promoted to Income Tax Officer in due time the controversy in respect of looming seniority would not have been there as the cadre of Income Tax Officer is an all Indian cadre, having all India transferability. It is therefore also the prayer of the Applicant through this application, to pray for an order directing the Respondents to consider her for promotion to the Grade of Income tax Officer, into consideration her seniority from her date of appointment.

GROUND FOR RELIEF WITH LEGAL PROVISIONS :

For that the action/inaction on the part of the Respondents in not reckoning her seniority in her new posting taking into the aid of some irrelevant reasons is not sustainable in the eye of law and to be set aside and quashed.

For that the Respondents being a model employer

ought to have taken into consideration the provisions contained in the guidelines issued by Government of India from time to time in respect of posting of husband and wife in a single station while accommodating her in NER and also the various special incentives for opting to serve in the NER. Having not done so the Respondents have acted illegally and as such appropriate direction need be issued to the Respondents, refixing her seniority taking into consideration her service under CCIT, Pune Region.

5.3 For that there having been definite guideline holding matter pertaining to posting of husband and wife, the Respondents ought to have considered her case for transfer from Nazik to Shillong under those guidelines without disturbing her seniority.

5.4 For that non-disposal of the representations filed by the Applicant addressed to the competent authority amounts to rejection and the so-called disposal order dated 18/21.6.2001 is not at all a disposal as the same was never forwarded to the competent authority.

5.5 For that down gradation in the matter of seniority is a major punishment under Rule 11 of the CCB(CCA) Rules, 1965 and the Respondents in the instant case while transferring the Applicant virtually punished her without affording any reasonable opportunity of hearing which is not sustainable in the eye of law and liable to be set aside and quashed.

5.6 For that in any view of the matter the entire action of the respondent are liable to be set aside and

quashed.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both factual as well as legal at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant declares that she has no other alternative, and efficacious remedy except by way of filing this application.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The Applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the Applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

8.1 To direct the Respondents to recast the seniority of the Applicant taking into consideration her service from the date of appointment and to promote her to the

Next High Grade i.e., Income Tax Officer, taking into consideration the revised/recasted seniority or alternatively her seniority may be retixed as per her earlier seniority in Pune Region.

8.2. To direct the Respondents being a unique case to invoke the relaxing provisions contained in 2(h) and 3 of the Office Memorandum dated 14.5.70.

8.3 To set aside and quash the order dated 18/21.6.2001 treating the same to be illegal and arbitrary.

8.3 Cost of the application.

8.4 Any other relief/reliefs to which the Applicant is entitled to.

9. INTERIM ORDER PRAYED FOR :

During the pendency of the OA, the Applicant prays for an interim order directing the Respondents to count her seniority from her date of appointment and to recast her seniority and to consider her case for promotion to the grade of Income tax Officer on the basis of recasted seniority.

10. ....

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- i) I.P.O. No. :
- ii) Date :
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

45

1

# Seniority for Promotion

I

Order effective from 4th November, 1992

[ Government of India, Department of Personnel and Training, Office Memorandum No. 20011/5/90-Estt. (D), dated the 4th November, 1992 ]

1. Seniority to be determined by the order of merit indicated at the time of initial appointment.— The seniority of Government servants is determined in accordance with the general principles of seniority contained in M.H.A., O.M. No. 9/11/55-RPS, dated the 22nd December, 1959 (See Section II). One of the basic principles enunciated in the said OM is that, seniority follows confirmation and consequently permanent officers in each grade shall rank senior to those who are officiating in that grade.

2. This principle has been coming under judicial scrutiny in a number of cases in the past; the last important judgment being the one delivered by the Supreme Court on 2-5-1990, in the case of Class II Direct Recruits Engineering Officers' Association v. State of Maharashtra. In Para. 47 (A) of the said judgment, the Supreme Court has held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

3. The general principle of seniority mentioned above has been examined in the light of the judicial pronouncement referred to above and it has been decided that seniority may be delinked from confirmation as per the directive of the Supreme Court in Para. 47 (A) of its judgment, dated 2-5-1990. Accordingly, in modification of the General Principle 3, proviso to General Principle 4 and proviso to General Principle 5 (i) contained in O.M. No. 9/11/55-RPS, dated the 22nd December, 1959 and Para. 2.3 of OM, dated the 3rd July, 1986, it has been decided that seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation.

4. These orders shall take effect from the date of issue of this Office Memorandum. Seniority already determined according to the existing principles on the date of issue of these orders will not be reopened even if in some cases seniority has already been challenged or is in dispute and it will continue to be determined on the basis of the principles already existing prior to the date of issue of these orders.

*This is the document marked as Annexure No. A-3 in the Affidavit of Smt. Sunita V. Langtich.*

*Chand*  
*(S.R. Marale)* 5/10/94

24



### Consolidated Orders on Seniority

Government of India, Department of Personnel and Training,  
Office Memorandum No. 22011/7/86-Estt. (D), dated the 3rd July, 1986

Instructions issued from time to time laying down the principles for determining seniority of persons appointed to services and posts under the Central Government have been consolidated in this Office Memorandum. The original communications consolidated here are reproduced (Items I to VII) at the end of this OM.

#### Seniority of Direct Recruits and Promotees

2.1 The relative seniority of all direct recruits is 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 selection.

2.2 Where promotions are made on the basis of selection by a DPC, the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered unfit for promotion and is superseded by a junior, such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.

[ "Provided that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior General/OBC candidate who is promoted later to the said immediate higher post/grade, the General/OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade." ]

2.3 Where persons recruited or promoted 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<sup>2</sup> would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation ].

1. Added vide G.I., Dept. of Per. & Trg., O.M. No. 20011/1/96-Estt. (D), dated the 30th January, 1997 and takes effect from 30th January, 1997.

2. Modified vide G.I., Dept. of Per. & Trg., O.M. No. 20011/5/90-Estt. (D), dated the 1st November, 1992.

2.4.1 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 quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

2.4.2 If adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees.

In other words, to the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list below the last position up to which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter in that year, while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed *en bloc* below the last promotee (or direct recruit as the case may be), in the seniority list based on the rotation of vacancies for that year. The same principle holds good for determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent year.

Illustration.— Where the Recruitment Rules provide 50% of the vacancies of a grade to be filled by promotion and the remaining 50% by direct recruitment, and assuming there are ten vacancies in the grade arising in each of the years 1986 and 1987 and that two vacancies intended for direct recruitment remain unfilled during 1986 and they could be filled during 1987, the seniority position of the promotees and direct recruits of these two years will be as under—

1986	1987
1. P1	9. P1
2. D1	10. D1
3. P2	11. P2
4. D2	12. D2
5. P3	13. P3
6. D3	14. D3
7. P4	15. P4
8. P5	16. D4
	17. P5
	18. D5
	19. D6
	20. D7



2.4.3 In order to help the appointing authorities in determining the number of vacancies to be filled during a year under each of the methods of recruitment prescribed, a Vacancy Register giving a running account of the vacancies arising and being filled from year to year may be maintained in the pro forma enclosed.

2.4.4 With a view to curbing any tendency of under-reporting/suppressing the vacancies to be notified to the concerned authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant Recruitment Rules. Excess promotees, if any, exceeding the share falling to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated only as *ad hoc* promotees.

#### 1. Seniority of Absorbees

3.1 The relative seniority of persons appointed by absorption to a Central service from the Subordinate Offices of the Central Government or other departments of the Central or a State Government shall be determined in accordance with the order of their selection for such absorption.

3.2 Where such absorbees are effected against specific quotas prescribed in the Recruitment Rules, the relative seniority of such absorbees *vis-a-vis* direct recruits or promotees shall be determined according to the rotation of vacancies which shall be based on the quotas reserved for absorption, direct recruitment and promotion respectively in the Recruitment Rules. Where the vacancies in any quota or quotas are carried forward, the principles stated in Para. 2.4.2 will apply, *mutatis mutandis* in determining *inter se* seniority of the appointees.

3.3 Where a person is appointed by absorption in accordance with the provisions in the Recruitment Rules providing for such absorption in the event of non-availability of suitable candidate by direct recruitment or promotion, such absorbee shall be grouped with direct recruits or promotees, as the case may be. He shall be ranked below all direct recruits or promotees, as the case may be, selected on the same occasion.

3.4.1 In the case of a person who is initially taken on deputation and absorbed later (i.e., where the relevant Recruitment Rules provide for "deputation/absorption"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from—

1. The terms "transfer on deputation" and "transfer" have been changed as "deputation" and "absorption" respectively, vide Para. (vi) of O.M. No. AB-14017/2/97-Estt. (RR), dated the 25th May, 1998.

49-

56

5

SENIORITY FOR PROMOTION

— the date he has been holding the post on deputation.  
(or)

— the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later.

3.4.2 The fixation of seniority of an absorbee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

3.5 In cases in which absorbees are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption.

#### Seniority in Special Types of Cases

4.1 In the case of such ex-TB or ex-Pleurisy, ex-Leprosy patients, as have been declared non-infective and medically fit for Government service, on re-employment in the same posts from which they were discharged, the actual previous service rendered by them should be counted for seniority. The seniority of such persons re-employed in other posts will be fixed in consultation with the Department of Personnel and Training.

4.2.1 An order imposing the penalty of reduction to a lower service, grade or post or to a lower time-scale should invariably specify—

- (i) the period of reduction, unless the clear intention is that the reduction should be permanent or for an indefinite period;
- (ii) whether on such re-promotion, the Government servant will regain his original seniority in the higher service, grade or post or higher time-scale which had been assigned to him prior to the imposition of the penalty.

4.2.2 In cases where the reduction is for a specified period and is not to operate to postpone future increments, the seniority of the Government servant may, unless the terms of the order of punishment, provide otherwise, be fixed in the higher service, grade or post or the higher time-scale at what it would have been but for his reduction.

4.2.3 Where the reduction is for a specified period and is to operate to postpone future increments, the seniority of the Government servant on re-promotion may, unless the terms of the order of punishment provide otherwise, be fixed by giving credit for the period of service rendered by him in the higher service, grade or post or higher time-scale.

4.3.1 The surplus employees are not entitled for benefit of the past service rendered in the previous organization for the purpose of their seniority in the new organization. Such employees are to be treated as fresh entrants in the matter of their seniority, promotions, etc.

1. Swamy's Complete Manual on Establishment and Administration  
Cat. No. S-2 — Eighth Edition

2. Swamy's Compilation on Seniority and Promotion  
Cat. No. C-44 — Eighth Edition

Seniority of persons absorbed after being on deputation

G.I., Dept. of Per. & Trg. O.M. F. No. 20011/1/2000-Estt. (D),  
dated 27-3-2001

The undersigned is directed to say that according to our O.M. No. 20020/7/80-Estt. (D), May 29, 1986 (Para. 3.4.1 in Page 568 of S-2 and Page 4 of C-44) in the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant Recruitment Rules provide for "transfer on deputation/transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

*the date he has been holding the post on deputation*

or

*the date from which he has been appointed on a regular basis to same or equivalent grade in his parent department,*

*whichever is later.*

2. The Supreme Court has in its judgment, dated December 14, 1999 in the case of *Shri S.I. Rooplal & others v. Lt.-Governor through Chief Secretary, Delhi*, [JT 1999 (9) SC 597] has held that the words *whichever is later* occurring in the Office Memorandum, dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution and, hence,

-51- 60

those words have been quashed from that Memorandum. The implications of the above ruling of the Supreme Court have been examined and it has been decided to substitute the term *whichever is later* occurring in the Office Memorandum, dated May 29, 1986 by the term *whichever is earlier*.

3. It is also clarified that for the purpose of determining the equivalent grade in the parent department mentioned in the Office Memorandum, dated May 29, 1986, the criteria contained in this Department Office Memorandum No. 14017/27/75-Estt. (D) (Pt.), dated March 7, 1984 which lays down the criteria for determining analogous posts, may be followed.

4. These instructions shall take effect from December 14, 1999 which is the date of the judgment of the Supreme Court referred to above.

5. In so far as personnel serving in Indian Audit and Accounts Departments are concerned, these instructions are issued in consultation with the Comptroller and Auditor-General of India. However, these orders (in keeping with Paragraph 4 of the Office Memorandum, dated May 29, 1986 as referred to above) will not be applicable to transfers within the Indian Audit and Accounts Department which are governed by orders issued by the C & AG from time to time.

6. The above instructions may be brought to the notice of all concerned for information, guidance and necessary action.

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Citation : 1996 SOL Case No. 326

Decision

Date : 1996-12-09

(yyyy-mm-dd)

Petitioner : Radhey Shyam Singh

Respondent : Union of India

Subject : Constitution of India, Articles 14 and 16 - Appointment - Recruitment Examination - Selection process - Recruitment to Non-Technical Class III posts in the department of Government of India and in subordinate offices - Purpose and object behind holding a recruitment examination is to select suitable and best candidates out of the lot - Such an object can only be achieved by making a common select list of successful candidates belonging to all the zones - If zone-wise selection is made, then various candidates who appeared in some of the zones and secured more marks than those who were selected from other zones would be deprived of their selection resulting in great injustice and consequent discrimination cannot be said to exist between aforesaid process of zone-wise selection and the object to be achieved i.e. the selection of the best candidates.

Citation : 1996 SOL Case No. 326

**SUPREME COURT OF INDIA**

Before :- S.C. Agrawal and Faizan Uddin, JJ.

Civil Appeal No. 4190 of 1995

WITH

Civil Appeal No. 5112 of 1995

AND

Writ Petition No. 224/1995 and 395/1995. D/d. 9.12.1996

Radhey Shyam Singh - Appellants

Versus

<http://www.supremecourtonline.com/cases/3727.html>

7/12/2003

This is the document marked as Annexure No. A-4  
in the Affidavit of Smt. Sunita V. Langatich

(S.R. Marak) 5/12/04  
31

62

55

Union of India - Respondents

For the Appellant :- Mr. P.P. Rao, Sr. Advocate and Jitendra Mohan Sharma, Advocate.

For the Respondents :- Mr. K.N. Shukla, Sr. Advocate, Mr. Shashi Kiran, Ms. Anil Katiyar Anubha Jain, Advocates.

**A. Constitution of India, Articles 14 and 16 - Appointment - Recruitment Examination - Selection process - Recruitment to Non-Technical Class III posts in the department of Government of India and in subordinate offices - Purpose and object behind holding a recruitment examination is to select suitable and best candidates out of the lot - Such an object can only be achieved by making a common select list of successful candidates belonging to all the zones - If zone-wise selection is made, then various candidates who appeared in some of the zones and secured more marks than those who were selected from other zones would be deprived of their selection resulting in great injustice and consequent discrimination cannot be said to exist between aforesaid process of zone-wise selection and the object to be achieved i.e. the selection of the best candidates. [Para 8]**

**B. Constitution of India, Articles 14 and 16 - Appointment - Selection Process - Recruitment to non-Technical Class III posts in the department of Govt of India and in subordinate offices - Process of zonewise selection on the basis of separate merit list drawn for each zone in respect of candidates who appeared at centres within same zone - Would result in the devaluation of merit at the selection examination by selecting a candidate having lesser marks over meritorious candidate who has secured more marks; consequently rule of equal chance for equal marks would be violated - Such process is violative of Articles 14 and 16 [Para 8]**

**C. Appointment - Rule of - equality of opportunity for every individual in the country is an inalienable part of our constitutional guarantee - That being so, a candidate who secures more marks than another is definitely entitled to get preference for the job as the merit list must be the best when selecting a candidate for recruitment for posts which are advertised - Constitution of India, Articles 14 and 16 [Para 8]**

Cases referred:

1. Om Prakash v. Akhilesh Kumar, 1986(1) SCR 855 : AIR 1986 SC 1043.
2. Rajendran v. State of Mad. and others, 1968(2) SCR 786.
3. Peeriakaruppan v. State of Tamil Nadu and others, 1971(2) SCR 430.
4. Nidamarti Maheshkumar v. State of Maharashtra and others, 1986(2) SCC 534.

JUDGMENT

**Faizan Uddin, J.** - This Civil Appeal has been directed against the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the Tribunal) in O.A. No. 322/1995 dismissing the appellants application at the admission

54

stage challenging the selection process of various posts in pursuance of an advertisement by the Staff Selection Commission published in Employment News of 10-16th July, 1993 and the select list prepared and published in pursuance thereto, while Civil Appeal No. 5112/1995 has been preferred by the appellants of the said appeal against the order dated 7th March, 1995 passed by the aforesaid Tribunal in O.A. No. 438/1995 dismissing the application at the admission stage challenging the said selection process and the select list as aforesaid. In the writ petitions also referred to above filed under Article 32 of the Constitution, the same selection process and select list has been challenged by the petitioners of the said writ petitions.

2. On the recommendations of the Administrative Reforms Commission the Government of India (Department of Personnel and Administrative Reforms) passed a resolution on November 4, 1975 whereby a "Subordinate Services Commission" was constituted for the purposes of recruitment to Non-Technical Class III posts in the departments of the Government of India and in the subordinate offices. In the aforesaid Government resolution, the functions of the Subordinate Services Commission constituted by the Government are stated in para 3 thereof, the relevant part of which reads as under :

"The Subordinate Services Commission will make recruitment to non- technical Class III posts in the departments of the Govt. of India and in the subordinate offices except those posts for which recruitment is made by the Railway Service Commission Staff in the offices of the Comptroller and Auditor General and the Accountants General and Industrial establishment. The Commission will among other things conduct examinations whenever required for recruitment to the posts within their purview and *for ensuring that as far as possible the actual recruitment is made on a zonal basis so as to enable candidates from different regions to be absorbed in the vacancies, arising within the respective, rgions*, the examinations would be held as far as possible on different, cantres and successful candidates posted, to the extent possible to their home states/regions." (emphasis supplied)

The said Subordinate Service, Commission (hereinafter referred to as Commission) published an advertisement on 10-16th July, 1993 in the Employment News inviting applications for the selection of candidates to the posts of (I) Preventive Offices, (II) Examiner, (III) Inspector of Central Excise, (IV) Inspector of Income-tax, (V) Assistant Enforcement Officers in the Directorate of Enforcement and (VI) Gr. II of Delhi Administration Subordinate Services. The number of vacancies, was however, not stated as the firm number of vacancies had not been determined and the reservation of SC/ST, EX/servicemen and the physically handicapped persons was to be taken into account as per position reported in each department for each category of posts.

3. According to the said advertisement, the recruitment was to be made zonewise on the basis of separate merit list drawn for each zone in respect of candidates who appeared at the centres within the same zone. The relevant portion of the said advertisement which relates to the zone-wise process of selection of candidates for the said posts as stated in paragraph No. 16 of the advertisement for ready reference is reproduced hereunder :-

"16. *Selection of candidates* - (a) After the examination, Commission will draw up a separate list in different categories of posts in respect of each of the zones mentioned in column 2 of the Table in para 13 above, in the order of merit as disclosed by the aggregate marks (written test and personality test) finally awarded to each candidate at the examination, and in that order so many candidates as are found by the Commission to be



64  
65  
qualified in the examination shall be recommended for appointment upto the number of unreserved vacancies in each of the zones separately. However, in case no vacancy is available in a particular zone that zone would be clubbed with one of the contiguous zones at the discretion of the Commission and a common order or merit list for both the zones may be prepared. Similarly, where a particular office caters to the requirements of more than one zone, candidates competing at centres located in all such zones will be eligible to be considered for appointment in that office and for this purpose, a common order of merit list for all such zones would be prepared.

(b) The candidates for Delhi Administration Grade II Subordinate Service will be selected from Delhi zones in the manner mentioned in sub-para (a) above.

4. In all there were 15 zones and the candidates were eligible to appear at any zone out of the those 15 zones. In case no vacancy was available in a particular zone then that zone was to be clubbed with one of the contiguous zones at the discretion of the Commission and a common list for both the zones in the order of merit may be prepared. It is alleged that the appellants No. 1 and 2, namely, Radhey Shyam and Dharmendra Kumar made representations to the Secretary of the Commission objecting to the process of zonewise selection on the basis of separate merit list drawn up for each zone and requested to make an All India Merit List in place of zonewise merit list because the number of vacancies was not declared but the said representations were not decided and, therefore, the appellants appeared in the written Selection test under protest. The appellants in these two appeals as well as the petitioner in the two writ petitions applied for various unreserved posts and appeared in the written examination. The appellants and the petitioners qualified in the written test, the result of which was declared on 24-30th September, 1994 as published in the Employment News and were called for the interview/personality test held in different zones in the month of October, 1994 onwards. The results of the said examination after interview and personality test were declared on January 21, 1996 but none of the appellants were declared selected in U.P. zone examinations. So was the case with the petitioners.

5. The appellants as well as the petitioners approached the Tribunal as aforesaid challenging the zonewise selection on the basis of separate merit list drawn from each zone instead of drawing up All India Merit List which according to the appellants and petitioners had resulted in the selection of persons with relatively inferior merits in violation of principles embodied in Articles 14 and 16 of the Constitution of India. The Tribunal, relying on the decision of the Court in *Om Prakash v. Akhilesh Kumar*, 1986(1) SCR 855 : AIR 1986 SC 1043 dismissed the applications at the admission stage itself by taking the view that they had already appeared in the examination as per advertisement issued by the Commission while it was open to them before taking that selection to seek judicial review and since the process of selection of 1993 was challenged after the merit list had been declared on January 21, 1995 they were estopped from challenging the selection in which they had participated and ultimately could not be impaneled in the merit list. Being aggrieved by the said order of the Tribunal, the appellants and the petitioners have approached this Court for redress.

6. Shri P.P. Rao, learned senior counsel appearing for the appellants contended that the zone-wise process of selection adopted by the Commission did not provide equal opportunity to the candidates appearing in different zones though the competitive examination was same in all the zones. He submitted that since the vacancies available in each zone were not indicated, the appellants were denied the opportunity of appearing at



- 56 -

the competitive examination from a centre of a zone where the number of the vacancies was large, there being more and better chances of selection. The appellants were thus denied the opportunity of competing with the candidates of other centres. It was submitted that the candidates appearing in a zone having large number of vacancies were declared selected though they had secured marks less than the candidates in other zones where the vacancies were less by reason of which the candidates securing even more marks than the candidates in other zones could not be selected. He, therefore, urged that the process and method of zone-wise selection of candidates adopted by the Commission was violative of Article 14 and 16 of the Constitution of India as it had resulted in selection of candidates of inferior quality in one zone while the candidates of superior merit in the other zones could not be selected. These arguments were also adopted by the learned counsel appearing in the other appeal and writ petitions. On the other hand Shri K.N. Shukla, learned senior counsel appearing for the respondents supported the process of selection and the impugned order of the Tribunal by contending that the zonewise selection was adopted in order to enable the candidates from a particular zone to be absorbed in the job in the same zone and the Commission has been recruiting the candidates to various posts on zonal basis right from 1975 and this process of selection has stood the test of time and, therefore, it could not be disturbed. He submitted that the composition of zone and scheme of holding the examination on zonal basis was given in the advertisement and the candidates were free to choose the zone from which they desired to appear in the recruitment examination and to choose the centre. It was stated that since the appellants and the petitioners had appeared in the examination, but could not be selected and as such they cannot be permitted to challenge the process of selection now.

7. We have given serious consideration to the aforementioned rival contentions and have critically perused the Government resolution dated November 4, 1975 whereby the Commission was constituted and the functions assigned to it as well as the advertisement issued for the recruitment of the candidates for the aforementioned posts. A reading of the functions assigned to the Commission, the relevant part of which is reproduced in the earlier part of this judgment will go to show that it provided that the Commission will among other things conduct examinations whenever required for recruitment to the posts within their purview and for ensuring that as far as possible the actual recruitment is made on a zonal basis so as to enable candidates from different regions to be absorbed in the vacancies arising within the respective regions. It thus provides the holding of examination as far as possible and making of actual recruitment on zonal basis. The object sought to be achieved by this process or method of selection is to enable the candidates from different regions to be absorbed in the vacancies arising within the respective regions. The question therefore that arises for consideration is whether such a selection based on zonal basis would be permissible or it would be violative of the Constitutional guarantee enshrined in Article 14 and 16 of the Constitution of India.

8. It is needless to emphasise that the purpose and object behind holding a recruitment examination is to select suitable and best candidates out of the lot and such an object can only be achieved by making a common select list of the successful candidates belonging to all the zones. On the other hand, if zone-wise selection is made then various candidates who appeared in some of the zones and secured more marks than those who are selected from other zones, would be deprived of their selection resulting in great injustice and consequent discrimination. Thus there can be said to exist no nexus between the aforesaid process of zone-wise selection and the object to be achieved, that is, the selection of the best candidates. That being so the process of selection as envisaged in paragraph 16 of the

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advertisement in question and reproduced in the earlier part of this judgment would lead to discriminatory results because adopting the said process of zone-wise selection would result in the devaluation of merit at the selection examination by selecting a candidate having lesser marks over the meritorious candidate who has secured more marks and consequently the rule of equal chance for equal marks would be violated. Such a process would not only be against the principles enunciated in Articles 14 and 16 of the Constitution, but it would also result in heart/burning and frustration amongst the young men of the country. The rule of equality of opportunity for every individual in the country is an inalienable part of our constitutional guarantee and that being so, a candidate who secures more marks than another is definitely entitled to get preference for the job as the merit must be the test when selecting a candidate for recruitment for the posts which are advertised. In the present case admittedly the process of selection as envisaged in paragraph 16 of the advertisement in question is violative of Articles 14 and 16 of the Constitution of India as it has been demonstrated from the marks list of the appellants placed before us at the Bar during the course of arguments that they had secured more marks than those secured by some of the selected candidates.

9. In the case of *Rajendran v. State of Madras and others*, 1968(2) SCR 786 this Court had struck down the districtwise distribution of seats for the medical admission as providing for unitwise allocation was held to be violative of Article 14 and 16 of the Constitution on the ground that it might result in candidates of inferior calibre being selected in one district and those of superior calibre not being selected in another district. Similarly in the case *Peeriakaruppan v. State of Tamil Nadu and others*, 1971(2) SCR 430 unitwise allocation of seats was also held to be void and was struck down as discriminatory. Again in the case of *Nidamarti Maheshkumar v. State of Maharashtra and others*, 1986(2) SCC 534 regionwise scheme adopted by the State Government was held to be void and struck down by this Court by holding that it would result in denial of equal opportunity and was thus violative of Article 14 of the Constitution. The ratio of these decisions of this Court is fully attracted to the facts of the present case in which the process of selection on the zonal basis will also result in denial of equal opportunity and would be violative of Article 14 and we hold accordingly.

10. The argument advanced by the learned counsel for the respondents that this process of zone-wise selection is in vogue since 1975 and had stood the test of time cannot be accepted for the simple reason that it was never challenged by anybody and was not subjected to judicial scrutiny at all. If on judicial scrutiny it cannot stand the test of reasonableness and constitutionality it cannot be allowed to continue and has to be struck down. But we make it clear that this judgment will have prospective application and whatever selections and appointments have so far been made in accordance with the impugned process of selection shall not be disturbed on the basis of this judgment. But in future no such selection shall be made on the zonal basis. If the Government is keen to make zone-wise selection after allocating some posts for each zone, it may make such scheme or rules or adopt such process of selection which may not clash with the provisions contained in Articles 14 and 16 of the Constitution of India having regard to the guidelines laid down by this Court from time to time in various pronouncements. In the facts and circumstances of the case, we make no order as to costs. The appeals and writ petitions are allowed as indicated above.

Appeals and writ petitions allowed.

# STAFF SELECTION COMMISSION

## RECRUITMENT TO THE POST OF INSPECTORS OF CENTRAL EXCISE, INCOME TAX ETC., 1996 (RE-EXAMINATION) - FINAL RESULT

Staff Selection Commission conducted an all-India competitive examination (Re-examination) for recruitment to the post of Inspectors of Central Excise, Income Tax, etc., on 13.6.99. The result of the written examination was declared on 3.4.2000. Personality tests of the candidates who had qualified in the written examination were held in June, 2000. Following are the lists of 108 candidates (83 in the Income-Tax (including one provisional) and 25 in Central Excise), in roll number order, recommended for appointment in different categories of posts on all-India basis subject to verification of their eligibility conditions in all respects and correctness of the information furnished by them in their applications.

While processing the final results, candidature of Ms. M. Lalitha, Roll No. 6830080 was duly considered as if she belongs to the ST category, in compliance with the Order dated 04.01.2001 of the Hon'ble Central Administrative Tribunal, Chennai Bench, in O.A. No. 578 of 2000.

The examination had originally been notified on centre-linked-zonal scheme. However, the result of the examination has been processed on all-India merit basis keeping in view the fact that the instant re-examination was held on 13.6.1999 and also the legal advice/opinion communicated by the Government of India to the Commission with regard to the implication of the judgement of the Hon'ble Supreme Court dated 9.12.96 in the case of Radhey Shyam Singh Vs Union of India (C.A. No. 4190 of 1995). As per this legal advice, even in respect of examinations which had already been notified and conducted in accordance with the Zonal scheme prior to the date of pronouncement of the said judgement, merit list is required to be prepared on all-India basis and selections and appointments will also be made on all-India basis.

The selection of candidates for appointment to different categories of posts has been made taking into consideration the number of vacancies reported to the Commission vis-a-vis merit-cum-preference of the candidates. However, nomination of candidates and appointment would depend on the actual vacancies available in the respective departments, apart from successful candidates satisfying various conditions of eligibility prescribed in the Notice of the examination.

For the candidates belonging to the reserved categories for whom certain percentage of vacancies are reserved, the category status has been indicated alongwith their Roll Numbers. It is important for such candidates to note that some of them may have been recommended for the category mentioned against their respective Roll Numbers. It is in the interest of the candidates to immediately contact the respective regional office of the Commission in all such cases where they do not belong to the category shown against their Roll Numbers.

The list of recommended candidates is purely provisional and subject to, among other things, thorough verification of their identity with reference to their photographs, signatures, hand-writings etc. on the application forms, admission certificates etc.

Result is also available on SSC Website : <http://ssc.nic.in>

LIST IN ROLL NO. ORDER, RECOMMENDED FOR APPOINTMENT IN C.E. / IT (D.A.V.)

*This is the document marked as Annexure No. A-5 in the Affidavit of Smt. Sunita V. Langstich.*



of para 2(b) of Office Memorandum dated 13th May, 1998 to give benefit to the petitioner by considering his case and giving him extension upto the age of 62 years, going by the fact that all those persons who are similarly situated as the petitioner are given the benefit of extension by general order issued in the circular letter dated 29th July, 1998. Such a solitary case as that of the petitioner who is deprived of the benefit of general order in view of peculiar circumstances could be remedied by the respondents when it was brought to their notice by taking this course of action.

19. After my aforesaid conclusion normally I would have directed the competent authority to consider the case of the petitioner for extension. However since one year and five months have already passed and the total period of benefit which the petitioner would get is only two years, it would be futile to refer the matter to the respondents for fresh consideration at this stage. Interest of justice would subserve in giving direction to the respondents to give benefit of enhanced retirement age of 62 years to the petitioner in terms of Office Memorandum dated 13th May, 1998 read with circular letter dated 29th July, 1998. Consequences of that would be that the petitioner would be treated as in service, as if he was not retired w.e.f. 31st May, 1998. Rule is therefore made absolute. This writ petition is allowed. Direction is issued to the respondents to allow the petitioner to resume duties and give him charge of the post of Lieutenant General in AFMS and allow him to work as such till 31st May, 2000 i.e. till he attains the age of 62 years. He shall also be paid salary and allowances w.e.f. 31st May, 1998.

20. The writ petition is allowed in the aforesaid terms. There shall be no order as to costs.

[66/99] *Petition allowed*


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**SUPREME COURT OF INDIA**  
 The Hon'ble Mr. Justice S.P. Bhargava  
 The Hon'ble Mr. Justice R.C. Lahoti  
 The Hon'ble Mr. Justice N. Santosh Hegde  
 S.T. Rooplal and Anr. —Appellants

versus  
 Lt. Governor through Chief Secretary, Delhi and Others —Respondents  
 Civil Appeal Nos. 5363-64 of 1997. *Decided on 14.12.1999*

(i) Precedents—Role of Court—Consistency of Interpretation—A coordinate Bench overruled decision of an earlier Bench—Held improper and observed.

**Held:** At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for

*This is the document marked as Annexure No. A-6 in the Affidavit of Smt. Sunita V. Langstich.*

*(S. R. Marathe)* 5/10/99  


consistency in interpretation of law alone can lead to public confidence in our judicial system.

(ii) **Equivalence of Posts**—Tribunal rejected benefits of past service on plea that pay scale of former and latter posts were different so were not equivalent—Held equivalence depends on various factors and not pay alone.

**Held:** These four factors are: (i) the nature and duties of a post; (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post.

(iii) **Seniority—Counting Past Service—BSF—Delhi Police—Appellants** were brought on deputation during dire need of Delhi Police—Later absorbed in Delhi Police yet benefit of past service in BSF not given for seniority—Found they were regular S.I.s in BSF, came to D.P. as S.I's, 2 posts were equivalent in duties and responsibilities—Hence directed to Court past service for seniority.

(iv) **O.M. of 29.5.86—Constitution of India, 1950—Articles 14, 16—Contradictory provision—Precedents—Supreme Court had upheld benefit of past service in BSF for seniority—In a later similar case CAT, relied upon O.M. of 29.5.86 and denied the benefit—Found the O.M. had neither been made public nor its existence was known, was never cited or used in earlier litigation, otherwise also it contained contradictory provisions and arbitrarily denied the benefit of past service by using phrase which ever is later, hence is not constitutionally valid.**

#### Cases Referred:

1. K. Madhayan and Anr. etc. v. Union of India and Others etc., 1988 (1) SCR 421.
2. Tribhuvandas Purshottamdas Thakur v. Ratilal Motilal Patel, 1968 (1) SCR 455.
3. Union of India and Anr. v. P.K. Roy and Others, 1968 (2) SCR 186.
4. Vice-Chancellor, L.N. Mithila University v. Dayanand Jha, 1986 (3) SCC 7.
5. K. Anjaiah and Others v. K. Chandraiah and Others, 1988 (3) SCC 218.

#### Advocates:

For the Appearing Parties: Mr. Mukul Rohtagi, Additional Solicitor General, Mr. P.P. Rao, Mr. S.K. Dholakia, Sr. Advocates, Mr. Mahabir Singh, Uma Datta, Mr. Tarun Sharma, Ms. Binu Tania, Mr. S.W.A. Qadri, Ms. Sushma Suri, Mr. S.N. Terdoi, Mr. Y.P. Mahajan, Mr. B.K. Prasad, Mr. D.S. Mehra, Ms. Varuna Bhandari Gugnani, Mr. Naresh Kaushik, Ms. Lalita Kaushik, Mr. Lalit Kumar Khanna, Ms. Gargi, Mr. P.N. Puri, Mr. Ranbir Yadav, Mr. Atul Kumar, Mr. Bimal Roy Jad, Mr. Mukul Gupta, Mr. T.N. Singh, Mr. Debasis Misra.

Advocates.

#### IMPORTANT POINTS

1. A coordinate Bench cannot supercede an earlier decision.
2. Precedents must be followed in the interest of consistency of interpretation.
3. Pay is not the sole criterion to judge equivalence of posts.
4. Past service in equivalent post counts for seniority.
5. Govt. should act as an impartial employer and help Court in arriving at justice rather than encouraging litigation.

## JUDGMENT.

Santosh Hegde, J.—Civil Appeal Nos. 5363-64/97 are preferred against the order dated 28.10.1994 made by the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. Nos. 1414-15/94. W.P. © No. 191/99 filed before this Court under Article 32 of the Constitution of India challenges the constitutional validity of Office Memorandum No. 20020/7/80-Estt. (D) dated 29.5.1986 issued by the Government of India. T.C. © No. 56/99 is a transfer case filed seeking transfer of W.P. © No. 4128/98 pending on the file of the High Court of Delhi which involves the same question as is involved in the civil appeals referred to above.

2. In all the above cases, the question involved is whether a Sub-Inspector who was appointed as such in the Border Security Force (for short 'the BSF') when transferred on deputation to Delhi Police in the cadre of Sub-Inspector (Executive) on being permanently absorbed in the transferred post, is entitled to count his substantive service as Sub-Inspector in the BSF for the purpose of his seniority in the Cadre of Sub-Inspector (Executive) in Delhi Police or not.

3. To appreciate the controversy involved in these cases, it is necessary to note the background of these transfers from various Police Organisations to Delhi Police. A perusal of the letter issued by the Commissioner of Police, Delhi No. 15413/Est. dated 10.9.1985 shows that in the year 1985 with a view to strengthen the existing security system in the Capital, the Delhi Police had created 12 new Police Stations in Delhi. Consequent to the same and in view of the prevailing conditions, it was felt necessary to fill up the required posts in Delhi Police within the shortest possible time so that there is an immediate impact on the law and order situation in Delhi. In the said letter, the Commissioner noted that in the normal course the recruitment at different levels and training of the recruits would take a longer time and in view of the urgent need of the hour, a decision was taken to take suitable persons on deputation in the ranks of Inspector, Sub-Inspector, Assistant Sub-Inspector, Head Constable, Constable and Drivers (Head Constable and Constable). In the said letter, a request was made to the Director General of the BSF to forward the names of suitable persons desirous of joining Delhi Police on initial deputation for a period of one year. The letter also stated that those officials taken on deputation are likely to be considered for permanent absorption after one year if they are found suitable. From the above letter it is clear that the Delhi Police were in dire need of additional hands to man the twelve newly created Police Stations in Delhi. In this background, certain Sub-Inspectors who were working in the BSF were at first sent on deputation to Delhi Police in the cadre of Sub-Inspector (Executive) and subsequently they were permanently absorbed.

4. The Delhi Police (Appointment and Recruitment) Rules, 1980 provide for the mode of recruitment in Delhi Police. Rule 5(h) of the said Rules provides that if the Commissioner is of the opinion that it is necessary or expedient in the interest of work to do so, he may make appointment(s) to all non-Gazetted categories of both Executive and Ministerial cadres of Delhi Police on *deputation basis* (emphasis supplied) by drawing suitable persons from any other State, Union Territories, Central Police Organisation or any other Force. It is not in dispute that in exercise of the said power the appellants herein and other similarly situated persons were deputed on transfer from the BSF to Delhi Police.

5. Rule 17 of the above Rules, which was incorporated on 31.3.1983, empowers the Commissioner of Police, Delhi, to sanction permanent absorption of persons sent on deputation with the consent of the deputed official in Delhi Police of upper and lower subordinate and with the concurrence of the Head of Police Force from which the said official



is deputed. It is also not in dispute that the absorption of the appellants and other similarly situated officials in Delhi Police in the cadre of Sub-Inspector (Executive) was done in exercise of the above power vested in the Commissioner under Rule 17 of the Rules.

6. In view of the fact that when the *inter se* seniority list of the Sub-Inspectors in Delhi Police was drawn, the concerned authorities did not take into consideration the service put in by the transferee officials like the appellants in their parent department, namely, the BSF, one of the aggrieved persons by name Antony Mathew filed an application before the Central Administrative Tribunal (CAT) in O.A. No. 470/91 wherein he claimed that for determination of his seniority in the Delhi Police, the date of his continuous officiation on a substantive basis as Sub-Inspector in the BSF has to be counted. A Principal Bench of the tribunal in the said application, vide its judgment dated 2.3.1993 held as follows:

"The petitioner was appointed as Sub-Inspector in Border Security Force on 21.4.1980. He was appointed as Sub-Inspector on substantive basis w.e.f. 1.10.1984. He came to be sent on deputation basis to Delhi Police on 19.11.1985. He came to be absorbed in the Delhi Police in the same grade of Sub-Inspector w.e.f. 19.6.1987. He has in due course been confirmed in that position. The petitioner's claim in this case is for determining his seniority taking into consideration the date of continuous officiation as Sub-Inspector in the Border Security Force, i.e. from 21.4.1980, on which date he was appointed as Sub-Inspector in the Border Security Force or w.e.f. 1.10.1984, the date of his substantive appointment in the Border Security Force. The respondents have decided to accord seniority to the petitioner with effect from the date of his absorption, namely 19.6.1987. The contention of the petitioner is that he is entitled to the benefit of service rendered by him with the Border Security Force for the purpose of reckoning his seniority. So far as the principle of law is concerned, the learned counsel for the petitioner relies upon the judgment of the Supreme Court in AIR 1987 SC 2291 between *K. Madhavan and Anr. v. Union of India and others*. The relevant discussion in paragraph 21 of the judgment makes it clear that full credit must be given to the petitioner for the services rendered by him on a substantive basis in the Border Security Force w.e.f. 1.10.1984. The petitioner contends that he should be given seniority taking the date of his initial appointment or in the alternative his seniority may be counted w.e.f. 1.10.1984 when he was appointed on substantive basis with the Border Security Force. The petitioner has not produced any material showing that he was appointed w.e.f. 21.4.1980 on permanent basis. In the absence of clear material, we will not be justified for taking 21.4.1980 as the correct date. There is no dispute that the petitioner was appointed as Sub-Inspector with the Border Security Force w.e.f. 1.10.1984 on a substantive basis. That is the date which should be taken into account for determining the seniority of the petitioner."

2. For the reasons stated above, this petition is allowed. The respondents are directed to accord seniority to the petitioner in the Delhi Police taking 1.10.1984 as the date of appointment as Sub-Inspector in the Border Security Force on a substantive basis. He shall be accorded all other benefits flowing from determination of such seniority. No costs.

7. It is seen from the above order of the tribunal that it relied upon a judgment of this Court in the case of *K. Madhavan & Anr. etc. v. Union of India & Ors. etc.* 1988 (1) SCR 421, which

judgment required equivalent department.

(mut. g. The Delhi after referred tribunal, original equivalent (d) posts were not seniority in the by a reasoned determining by down by this case. 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judgment required that full credit must be given to the official for substantive service in the equivalent post in the transferred department while computing his seniority in the transferred department.

The Delhi Administration which was the respondent in the said application (hereinafter referred to as 'the respondent') filed a review petition against the said judgment of the tribunal, urging new ground, inter alia, that the post of a Sub-Inspector in the BSF was not equivalent to the post of a Sub-Inspector in Delhi Police because the pay-scales of the two posts were not the same. Hence, their service in the parent department cannot be counted for seniority in the transferred post. The said review petition came to be dismissed by the tribunal by a reasoned order. It held that equal pay-scales was not the sole determinative factor while determining the equivalency of the two posts. It also reiterated its finding that the law laid down by this Court in *Madhavan's case* (supra) was applicable on all fours to the facts of the case.

9. On not being satisfied with the order of the tribunal in the review application also, the respondent filed an SLP before this Court against the original judgment and the order in review vide SLP © No. 2575-75A of 1993. In the said SLP, the respondent specifically contended that the ratio of this Court in *Madhavan's case* (supra) was not applicable to the case of *Antony Mathew*, on the ground that the post held by Antony Mathew in the BSF was not equivalent to the post of a Sub-Inspector in Delhi Police. A three-Judge Bench of this Court vide its order dated 22.4.1994 found no merit in the petition filed by the Delhi Administration and dismissed the same. It is worthwhile to note that the above-referred dismissal order of this Court shows that the respondents in the SLP were represented by a counsel and the Court passed an order after hearing the counsel. Strangely enough, the respondent which was the employer of both the originally recruited Sub-Inspectors of Delhi Police, as well as subsequently transferred and absorbed officials was still not satisfied even with this decision of the apex Court and filed a review petition against the said order of dismissal of the SLP, which review petition came to be dismissed by this Court with the following order: "Apart from the fact that the petitions are delayed by 444 days, even on merits we see no reason to entertain these petitions. Hence the Review Petitions are dismissed." Thus, the first bout of litigation which originated with regard to a simple question of counting the seniority, in the year 1991 came to an end, in February, 1996. But, so far as the respondent is concerned, it was not prepared to accept the law laid down in *Antony Mathew's case*. Though it gave the benefit of the order of the tribunal, as affirmed by this Court to Antony Mathew, it was not ready to extend the same benefit to the persons similarly situated, like the appellants herein. As stated above, the appellants were also originally appointed like Antony Mathew in the BSF as Sub-Inspectors and subsequently transferred and absorbed as such in the Delhi Police Force and, as a matter of fact, the first appellant was even senior to Antony Mathew in the cadre of Sub-Inspectors in the BSF and was also absorbed in the Delhi Police on a date anterior to that of Antony Mathew. The refusal of the Delhi Administration to give benefit of the judgment in the case of *Antony Mathew* to the appellants despite their repeated representation, and consequent denial of their seniority, compelled these appellants to file original applications being O.A. Nos. 1414/94 and 1415/94 before another Principal Bench of the C.A.T. at Delhi.

10. Surprisingly, even though the case of the applicants before the tribunal in the above-referred Original Applications from which the present civil appeals arise, was identical to the case of *Antony Mathew* both on facts and in law, the tribunal in total disregard to the rule of precedence, in spite of having noticed the earlier judgment of a Coordinate Bench of the tribunal and having noticed the fact that the review petition filed before the tribunal, SLP

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before this Court and review petition filed before this Court were dismissed, it still proceeded to consider the application independent of the law laid down in the previous case and came to an entirely contra conclusion and further held that the judgment in *Madhavan's* case had no bearing to the facts of the present case. In this process it relied on an Official Memorandum dated 29.5.1985 the existence of which was unknown to all concerned and reference to which was not made by the respondent either as a defence in the Original Application of *Anthon Mathew's* case or in review filed thereafter or before this Court in the SLP or in the review petition filed before this Court. In this second round of litigation, the tribunal came to the conclusion that the post held by the present appellants in the BSF was not an equivalent post of Sub-Inspector in Delhi Police and also in view of the language employed in O.M. dated 29.5.1986, held that the appellants herein were not entitled to count the service rendered by them prior to their absorption in Delhi Police for the purpose of their seniority in the cadre of Sub-Inspectors (Executive) in Delhi Police. It is against this order of the tribunal that the appellants have preferred SLPs. In which leave to appeal was granted by this Court.

11. Before us in these matters, Mr. P.P. Rao and Mr. S.K. Dholakia, learned senior counsel appearing for the parties contended that the latter Bench of the tribunal committed a judicial impropriety in taking a contra view from the earlier judgment without following the rule of precedent. They questioned the correctness of the finding of tribunal in the impugned judgment as to equation of the two posts of Sub-Inspector based only on an unequal pay scale. The reliance on the O.M. dated 29.5.1986 was also questioned on the ground that same was not acted upon earlier and the existence of the same was not made known to all concerned at any relevant point of time. It is to be noted that the constitutional validity of the said O.M. is also challenged before us in W.P. No. 191 of 1999. We have heard the learned Additional Solicitor General and Sri Bimal Roy Jad on behalf of the respondents.

12 & 13. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned. Deviation from the same should be only on a procedure known to law. A subordinate Court is bound by the enunciation of law made by the superior courts. A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of *Tribhuvandas Purshottamdas Thakur v. Ratilal Motilal Patel*, 1968 (1) SCR 455, while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same court observed thus :

"The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhugwati, J. in *Pinjare Karimbhai's* case and of Macleod, C.J. in *Haridas's* case did not lay down the correct law or rule of practice, it was open to him to recommend to

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the Chief Justice, that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of coordinate authority or of superior authority. Gajendragadkar, C.J., observed in *Lala Shri Bhagwan & Anr. v. Shri Ram Chand and Anr.* "It is hardly necessary to emphasis that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be re-considered; he should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench, or in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

14. We are indeed sorry to note the attitude of the tribunal in this case which, after noticing the earlier judgment of a coordinate Bench and after noticing the judgment of this Court, has still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment thereby creating a judicial uncertainty in regard to the declaration of law involved in this case. Because of this approach of the latter Bench of the tribunal in this case, lot of valuable time of the Court is wasted and the parties to this case have been put to considerable hardship.

15. In our opinion, the above error on the part of the tribunal in the normal course should have made us remand this case to the tribunal to be decided by a larger Bench of the tribunal to decide the issue involved in this case, but then taking into consideration the time already consumed by this case and cost and inconvenience already suffered by the parties concerned because of the above referred indiscretion of the tribunal we think in the interest of justice we should put to rest the controversies involved in these appeals.

16. We will now take up the question whether the appellants are entitled to count their service rendered by them as Sub-Inspector in the BSF for the purpose of their seniority after absorption as Sub-Inspector (Executive) in Delhi Police or not. We have already noticed the fact that it is pursuant to the needs of Delhi Police that these officials were deputed to Delhi Police from the BSF following the procedure laid down in Rule 5(h) of the Rules and subsequently absorbed as contemplated under the said Rules. It is also not in dispute that at some point of time in the BSF, the appellants' services were regularised in the post of Sub-Inspector and they were transferred as regularly appointed Sub-Inspectors to Delhi Police force. Therefore, on being absorbed in an equivalent cadre in the transferred post, we find no reason why these transferred officials should not be permitted to count their service in the parent department. At any rate, this question is not res integra and is squarely covered by the ratio of judgments of this Court in more than one case. Since the earlier Bench of the tribunal relied upon *Madhavan's* case to give relief to the deputationists, we will first consider the law laid down by this Court in *Madhavan's* case (supra). This Court in that case while considering similar question, came to the following conclusion:

"We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government

department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See *R.S. Mokashi & ors. v. I.M. Menon & Ors.* (1982) 1 SCC 379; *Wing Commander J. Kumar v Union of India & ors.* (1982) 3 SCR 453." (emphasis supplied)

17. Similar is the view taken by this Court in the cases of *R.S. Mokashi & Ors.* and *Wing Commander J. Kumar* (supra) which judgments have been followed by this Court in *Madhavan's* case. Hence, we do not think it is necessary for us to deal in detail as to the view taken by this Court in those judgments. Applying the principles laid down in the above referred cases, we hold the appellants are entitled to count the substantive service rendered by them in the post of Sub-Inspector in the BSF while counting their service in the post of Sub-Inspector (Executive) in Delhi Police force.

18. In law, it is necessary that if the previous service of a transferred official is to be counted for seniority in the transferred post then the two posts should be equivalent. One of the objections raised by the respondents in this case as well as in the earlier case of *Anthony Mathew* is that the post of a Sub-Inspector in the BSF is not equivalent to the post of a Sub-Inspector (Executive) in Delhi Police. This argument is solely based on the fact that the pay scales of the two posts are not equal. Though the original Bench of the tribunal rejected this argument of the respondent, which was confirmed at the stage of SLP by this Court, this argument found favour with the subsequent Bench of the same tribunal whose order is in appeal before us in these cases. Hence, we will proceed to deal with this argument now. Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than 'Pay' will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc. It is so held by this Court as far back as in the year 1968 in the case of *Union of India & Anr. v. P.K. Roy & Ors.* (1968) 2 SCR 186. In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors are: (i) the nature and duties of a post; (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criterion. If the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different, would not in any way make the post 'not equivalent'. In the instant case, it is not the case of the respondents that the first three criteria mentioned hereinabove are in any manner different between the two posts concerned. Therefore, it should be held that the view taken by the tribunal in the impugned order that the two posts of Sub-Inspector in the BSF and the Sub-Inspector (Executive) in Delhi Police are not equivalent merely on the ground that the two posts did not carry the same pay-scale, is necessarily to be rejected. We are further supported in this view of ours by another judgment

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of this Court in the case of *Vice-Chancellor, L.N. Mithila University v. Dayanand Jha* (1986 3 SCC 7) wherein at para 8 of the judgment, this Court held: "Learned council for the respondent is therefore right in contending that equivalence of the pay-scale is not the only factor in judging whether the post of Principal and that of Reader are equivalent posts. We are inclined to agree with him that the real criterion to adopt is whether they could be regarded of equal status and responsibility. The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts. x x x"

19. Therefore, in our opinion, the finding of the tribunal that the posts of Sub-Inspector in the BSF and Sub-Inspector (Executive) in Delhi Police are not equivalent, is erroneous, and the same is liable to be set aside.

20. This leaves us to consider the validity of the Office Memorandum which was relied upon by the tribunal in the impugned judgment. We have noticed earlier in the judgment that the constitutional validity of this Memorandum is independently challenged by the appellants in W.P. © No. 191/99. There is considerable force in the argument addressed on behalf of the appellants that this Memorandum had neither been made public nor the existence thereof made known to anybody concerned with the controversy in question. We have already referred to this fact. Hence, we do not want to repeat the same in detail. On facts, we are of the opinion that the respondents ought not to have been permitted to rely upon this document because there is no material whatsoever produced by the respondents to show that this Memorandum which was issued by the Government of India was either *ipso facto* applicable to the Delhi Police force or the same was adopted and applied by the Delhi Police force. It is to be noted that the law in regard to the right of a deputationist to count his service for the purpose of seniority in the transferred Department was settled as far back as in the year 1982 in itself in the cases of *R.S. Mokashi & ors.* and *Wing Commander J. Kumar* (supra) (if not earlier). Therefore, it is reasonable to expect that a deputationist when his service is sought to be absorbed in the transferred department would certainly have expected that his seniority in the parent department would be counted. In such a situation, it was really the duty of the respondents, if at all the conditions stipulated in the impugned Memorandum were applicable to such person, to have made the conditions in the Memorandum known to the deputationist before absorbing his services, in all fairness, so that such a deputationist would have had the option of accepting the permanent absorption in Delhi Police or not. The very fact that such steps were not taken, shows that this Memorandum was, in fact, never acted upon. Apart from the above question of equity, the appellants have challenged the constitutional validity of the above Memorandum on the ground that the same violates Articles 14 and 16 of the Constitution. One of the grounds raised is that their vested right of counting the seniority in the deputed Department, after absorption in an equivalent post, is arbitrarily taken away, if the Memorandum in question is applicable to them. Therefore, they had prayed for a declaration that the Memorandum be declared as *ultra vires* to the extent it offends their fundamental right.

21. The relevant part of the Memorandum impugned in the writ petition referred to above, reads thus:

"Even in the type of cases mentioned above, that is, where an officer initially comes on deputation and is subsequently absorbed, the normal principles that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same or equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in

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the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not effect any regular promotions made prior to the date of absorption. Accordingly it has been decided to add the following sub-paragraph (iv) to para 7 of general principles communicated vide O.M. dated 22nd December, 1959.

- “(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for “Transfer on deputation/Transfer”), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has so ever, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from
- the date he has been holding the post on deputation, or
  - the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, *whichever is later.*”

(emphasis supplied)

22. A perusal of clause (iv) of the Memorandum shows that the author of this Memorandum has taken inconsistent views in regard to the right of a deputationist to count his seniority in the parent department. While in the beginning part of Clause (iv) in clear terms he says that if a deputationist holds an equivalent grade on regular basis in the parent department, such regular service in the grade shall also be taken into account in fixing the seniority. In the latter part the author proceeds to say—“subject to the condition that he will be given seniority from the date he has been holding the post or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later.” The use of the words “whichever is later” negatives the right which was otherwise sought to be conferred under the previous paragraph of Clause (iv) of the Memorandum. We are unable to see the logic behind this. The use of the words “whichever is later” being unreasonable, it offends Article 14 of the Constitution. It is also argued on behalf of the appellants that this memorandum is further violative of Article 14 and 16 of the Constitution inasmuch as it arbitrarily takes away the service rendered by the deputationist when he is absorbed in Delhi Police, which right of a civil servant cannot be taken away without authority of law. We have noticed earlier that the petitioners who are the appellants in the civil appeals, were regularly appointed as Sub-Inspectors in the BSF on the date of their deputation. We have also accepted the fact that the post of Sub-Inspector held by them in the BSF is equivalent to the post of Sub-Inspector (Executive) in the Delhi Police to which they stood deputed. That being the case, in view of the judgment in the cases of *R.S. Mokashi, Wing Commander J. Kumar and Madhavan* (supra), it is clear that they are entitled to count the service rendered by them in the post of Sub-Inspector in the BSF for the purpose of seniority in the cadre of Sub-Inspector (Executive) in Delhi Police. Therefore, such a right of the petitioners/appellants could not have been taken away in the garb of an Office Memorandum which is impugned in the above writ petition. This view of ours finds support from a judgment of this Court in the case of *K. Anjaiah & Ors. v. K. Chandraiah & Ors.* (1988 3 SCC 218). In that case this Court was considering a statutory regulation which in almost similar terms



used in the Office Memorandum with which we are concerned, deprived the civil servants of their past service in the parent department. The Regulation involved in the said case reads:

- "9. (1) The persons drawn from other departments will carry on their service and they will be treated as on other duty for a tenure period to be specified by the Commission or until they are permanently absorbed in the Commission whichever is earlier.
- (2) The services of those staff members working in the Commission on deputation basis and who opted for their absorption in the Commission, shall be appointed regularly as the staff in the Commission, in the cadre to which they belong, as per the orders of Government approving their appointments batch by batch and to determine the seniority accordingly. For this purpose the Commission may review the promotions already affected."

23. The validity of the said Regulation was challenged and the same was struck down by the Administrative Tribunal in that case and when the matter was brought up in appeal before this Court, the argument of the aggrieved persons that the offending regulation did not violate Articles 14 and 16 was repelled by this Court and it upheld the argument of the deputationist which was as follows:

"x x x that when persons from different sources are drafted to serve in a new service, their pre-existing length of service in the parent department should be respected and preserved by taking the same into account in determining their ranking in the new service cadre and this has been done under Regulation 9(1) that benefit cannot be taken away for determination of the *inter se* seniority as per Regulation 9(2) and, therefore, the Tribunal was justified in striking down Regulation 9(2). x x x"

24. However, in that case this Court instead of striking down the said regulation, upholding the contention that a deputationist is entitled to count his seniority when absorbed in the deputed post, observed thus:

"x x x When the Commission finally takes a decision to permanently absorb these deputationist after obtaining their option the question of their *inter se* seniority in the Commission crops up and Regulation 9(2) deals with the said situation. In the case of *R.S. Meekashi v. I.M. Menon* this Court had indicated that it is a just and wholesome principle commonly applied to persons coming from different sources and drafted to serve a new service to count their pre-existing length of service for determining their ranking in the new service cadre. The said principle was reiterated by this Court in *K. Madhavan* case. A three-Judge Bench judgment of this Court in the case of Wing Commander J. Kumar also reiterated the aforesaid well-known principle in the service jurisprudence, x x x"

25. It is clear from the ratio laid down in the above case that any Rule, Regulation or Executive Instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned Memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the Memorandum, as has been prayed in the writ petition, the rights of the appellants could be preserved, we agree with the prayer of the petitioners/appellants and the offending words in the

Memorandum "whichever is later" are held to be violative of Articles 14 and 16 of the Constitution, hence, those words are quashed from the text to the impugned Memorandum. Consequently, the right of the petitioners/appellants to count their service from the date of their regular appointment in the post of Sub-Inspector in DSF, while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police, is restored.

26. Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State should only play the role of an impartial employer in the *inter-se* dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly. Still if the matter is dragged to a judicial forum, the State should confine its role to that of an *amicus curiae* by assisting the judicial forum to arrive at a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The matter thereafter should be left to the parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgment, files review petition, appeal etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, we feel the respondent has taken more than necessary interest which is uncalled for. This act of the State has only resulted in waste of time and money of all concerned.

27. In the light of the view taken by us, the civil appeals and W.P. © No. 191/99 are allowed to the extent mentioned above. W.P. © No. 4128/98 pending on the file of Delhi High Court which has been registered here as TC © No. 56/99 is withdrawn to the file of this Court and the same is dismissed. The respondent (Delhi Administration) shall pay costs in all the above matters.

[114/99]

Appeal dismissed

### DELHI HIGH COURT

The Hon'ble Mr. Justice N.G. Nandhi

Ex. Sep. Jagbir Singh

—Petitioner

versus

Union of India & Others

—Respondents

Civil Writ Petition No. 5361 of 1997

Decided on 28.1.2000

Army Pension Regulations—Regulation 173—Medical Board—Disability Pension—Petitioner was recruited after due medical examination—After seven years, was found medically unfit and 40% disability pension for 2 years was recommended—Final Medical Board was not set up—Decided to not to give pension as disease was not attributable to duties—Relying on *Mohinder Singh* case held the recommendation has to be honoured—Application allowed.

Case Referred:

1. Deepak Kumar Singh v. Union of India & Others, 68 (1997) DLT 788; All Advocates:

For the Petitioner : Mr. S.M. Hooda, Advocate.

For the Respondents : Ms. Jyoti Singh, Advocate.

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