

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

28.02.2013

OA No. 68/2013

Mr. Ravi Chirania, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.
Mr. V.D. Sharma, Counsel for respondent no. 3.

On the request of the learned counsel for the applicant,
list it on 04.03.2013.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S.Rathore)
Member (J)

ahq

04/03/2013

O.A. NO. 68/2013

Mr. Ravi Chirania, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents nos. 1 & 2.
Mr. V. D. Sharma, Counsel for respondent No. 3.

Heard.

O. A. is disposed of by a
Separate order on the separate-sheets
for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member(A)

K. S. Rathore
[Justice K. S. Rathore]
Member (J)

Reply not filed
R-1 & 2
V2

Reply not filed
R-2

Reply filed
R-2
V2

Rejoinder not
filed
CB

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Monday, this the 4th day of March, 2013

ORIGINAL APPLICATION No.68/2013

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Hanumant Singh Bhati, IAS,
s/o Shri Narain Singh Bhati,
aged 55 years,
r/o A-28, Ugam Path,
Bani Park, Jaipur,
at present posted as
Project Coordinator,
Woman Empowerment,
Govt. of Rajasthan,
Jaipur

.. Applicant

(By Advocate : Shri Ravi Chirania)

Versus

1. Union of India
through its Secretary,
Department of Personnel and Training,
Government of India
North Block,
New Delhi.
2. Union Public Service Commission,
New Delhi,
Through its Secretary

3. Principal Secretary to Government,
Department of Personnel,
Government of Rajasthan,
Secretariat, Jaipur

.....Respondents

(By Advocate : Shri Mukesh Agarwal for resp. No. 1&2 and Shri V.D.Sharma for resp. No.3)

ORDER (ORAL)

The controversy involved in this OA is regarding not appointing the applicant to the IAS against the correct year of selection scale i.e. 1991-92. The applicant claims his correct year of selection scale as 1991-92 whereas the respondent State has changed his year of selection scale from 1991-92 to 1993-94.

2. The learned counsel appearing for the applicant submits that action of the respondent State has been assailed by the applicant before the Rajasthan Civil Services Appellate Tribunal (RCSAT), Rajasthan, Jaipur by way of filing Appeal No.2022/1998 and the same was allowed vide order dated 11.3.1999 and seniority of the applicant which was in existence as on 22.4.1995 was maintained, till the review DPC takes place. The learned counsel further submits that in the Review DPC held on 22.5.1999 it was decided by the State that in compliance of the order



passed by the RCSAT, the applicant was treated as selected against the vacancies of the year 1991-92.

3. It is not disputed by the respondents that against the order passed by the RCSAT dated 11.3.1999, no writ, whatsoever, has been filed by the respondents, meaning thereby the order passed by the RCSAT attained finality. Bare perusal of order dated 11.3.1999, it reveals that the applicant is appointee in the R.A.S. by direct recruitment against the quota of 1980 and was promoted in the Senior Scale of R.A.S. on 21.4.1988 and subsequently promoted in the Selection Scale of R.A.S. on 20th August, 1993. On 23.2.1996, a review DPC took place and according to the applicant, his seniority against the merit quota was pushed down. His juniors were assigned the quota of 1991-92 while he was assigned the merit quota of 1993-94. In the seniority list in Senior Scale of three officers, name of the applicant find place at Sl. No.280, name of Shri K.K.Singhal at Sl.No.281 and Shri O.P.Harsh at Sl.No.289. Applicant and Shri O.P.Harsh were given year of allotment as 1993-94 in the Review DPC held on 23.2.1996.

4. The grievance of the applicant is that there was no justification to push down his name in the seniority list of Selection



Scale of R.A.S. which was granted to the applicant on 20.8.1993 whereas Shri K.K.Singhal and Shri O.P.Harsh were granted the Selection Scale of R.A.S. in the year 1994 and admittedly, these persons were junior to him, both in the Senior Scale and Selection Scale of R.A.S.

5. The respondents raised preliminary objections before the RCSAT submitting that the Tribunal has no jurisdiction as it is a matter of promotion/selection in I.A.S. cadre/preparation of eligibility list for I.A.S. The respondents also challenged that the appellant failed to challenge the promotion order dated 23.2.1996 and now in the garb of challenging the provisional seniority list of Selection Scale of R.A.S. issued on 15.5.1998, the applicant is trying to re-open the issue of 1996. It is further contended that the order dated 15.5.1998 has been challenged after expiry of the limitation period of 60 days. It is further contended that the Review DPC was held in pursuance of the order passed by the Hon'ble Supreme Court in SLP No.10670/93 dated 19.4.93.

6. The RCSAT have heard the rival submissions of the respective parties and also carefully perused the judgment rendered by the Hon'ble Supreme Court in the case of Collector,



Land Acquisition, Anantnag and another vs. Mst. Katiji and others reported in AIR 1987 SC 1353 wherein the Hon'ble Supreme Court observed that 'it must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds, but because it is capable of removing injustice and is expected to do so' and in view of the submissions made and having meticulously gone through the ACRs of the applicant and have considered the fact that applicant being administrative officer and has been awarded merit certificate by the State Government on 15th August, 1998 which is a rare honour and only those officers having consistently outstanding record are considered for such public honour at the level of the Governor/Chief Minister and that the then Chief Secretary also commended the excellent work in connection with the tracing out and seizure of arms, ammunition and explosives, he was allowed three advanced increments in recognition of work, which again is a rare honour. Further the applicant's 7 out of 7 ACRs are 'Outstanding'/'Very Good' for the concerned period of 7 years. The Tribunal considered each and every aspect and in operative portion observed as under:-

"11. Before parting with this case, we would like to advise the State Govt. not to take piecemeal decisions in such matters- it is this tendency which has triggered so much of avoidable litigation. If so many officers of the top State service has to knock the portal of the courts, it is not a happy augery. Some thing is seriously wrong some where. It



is high time the State Govt. takes an integrated view of the entire issue instead of reacting in a mechanical way in each individual case. The State Govt. would be exposing itself to the charge of favouratism and discrimination if it selectively implements some of our decisions while stoutly contenting other cases of identical nature. It was mentioned before us that in pursuance of this Tribunal's order in the case of Shri O.P. Harsh, the year of allotment was revised from 1993-94 to 1991-92 while in other cases of similar nature, cases are being contested in the Hon'ble Supreme Court and Hon'ble High Court. This embarrassing position can be avoided if a common view is taken on some of the hotly contested issues and uniform treatment is allowed to all the concerned officers, irrespective of the fact whether they have approached the courts or not."

7. It is also not out of place to mention here that the Tribunal not only given direction to revise year of seniority of the applicant from 1993-94 to 1991-92, but also considered ACRs of the applicant which are undoubtedly in meritorious category and it was observed that it is true that the Reporting Officer has given 'Good' but the Reviewing Officer has given 'Outstanding'. It is settled proposition of law and the settled practice of DOP that the grading of the officers is done on the basis of last authority and if the Reviewing Authority has given 'Outstanding' it has to be given its due weightage. It is further observed that while perusing the ACRs of the concerned 7 years, the DPC should have noticed that the appellant had consistently meritorious record and the remarks of the Reporting Officer in the year 1984-85 were rather incongruous-not blending with the general pattern of meritorious record and giving undue



importance to the remarks of the Reporting Officer ignoring the 'Outstanding' remarks of the Review Officer cannot be appreciated. The DPC should not act as a mere tabulating body but it should take a holistic view of the entire record and according to the Tribunal, there was not a shred of doubt that the record of the applicant was consistently meritorious and respondents were directed in the following terms:-

"12. Since the Respondent-State has raised doubts specifically about the grading of the ACRs for the year 1984-85, we declare it to be "outstanding". Review DPC should take place accordingly within 3 months. Annexure-12, so far it relates to the Appellant is quashed. His seniority should continue to be treated on the basis of seniority list dated 22.4.95 (Annexure-12), till the review DPC takes place, as directed by us."

8. As stated hereinabove, it is not disputed by the respondents that the order passed by the RCSAT dated 11.3.1999 has not been challenged by the respondents and the same attained finality. It is also not disputed that the objections against the seniority list dated 1.11.2012 issued for the Super Time Scale and Selection Scale of R.A.S. has been filed by the applicant on 7.11.2012 (Ann.A/7) taking factual as well as legal grounds on the basis of the judgment of the RCSAT and also the grounds which are taken here in this OA and during pendency of the representation with the respondents, the applicant was



promoted and appointed to the I.A.S. vide notification dated 31.12.2012.

9. The main grievance of the applicant is that the State Government totally ignored the order passed by the RCSAT which has attained finality and arbitrarily not corrected the seniority list assigning the year of allotment as 1991-92 in the Selection Scale. Further, the State Government deliberately not placed the correct material before the Union Public Service Commission (UPSC) and Department of Personnel and Training (DOPT), Government of India. This has resulted the UPSC only considered the incorrect seniority list prepared for promotion to the IAS cadre, just to deprive the right of consideration for promotion w.e.f. 1991-92 as directed by the RCSAT.

10. The respondent No.3 in reply has stated that the applicant has concealed the material and important factual aspect while filing the present OA. The correct position is that one Smt. Prabha Tak, member of the RAS filed Writ Petition No. S.B. Civil Writ Petition No.5392/2003 before the Hon'ble High Court, Jodhpur Bench wherein she has impleaded the applicant and seven other officers of RAS challenging the wrongful determination of vacancies. The Hon'ble High Court vide order dated 4.7.2007



has allowed the Writ Petition and in compliance of the order, the DPC reviewed the recommendation in supersession of previous order made by the previous DPC's to the selection scale of RAS against the vacancies of the year 1986-87, 1996-97 and issued order dated 12.5.2008 whereby name of the applicant was shown at Sl.No. 19 against the vacancies of the year 1993-94 in place of 1991-92 and name of Shri O.P. Harsh was shown at S.No.26.

11. Further submits that Shri O.P. Harsh challenged the aforesaid order before the Hon'ble High Court in D.B. Civil Writ Petition No. 7774/2009 and the Hon'ble High Court vide order dated 5.2.2010 has allowed the writ petition and impugned orders were quashed qua the petitioner and direction has been given to treat the petitioner as promotee in Selection Scale of RAS against the vacancies of the year 1991-92.

12. It is not disputed that the State of Rajasthan preferred SLP before the Hon'ble Supreme Court which was dismissed vide order dated 7.12.2010 and in compliance of Hon'ble High Court order Shri O.P.Harsh was treated as promotee in Selection Scale of RAS against the vacancies of the year 1991-92 vide order dated 1.11.2012. After referring the judgment rendered by the



Hon'ble Single Bench of the High Court and the judgment rendered by the Division Bench of the Hon'ble High Court in the Writ Petition filed by Shri O.P. Harsh, it is stated that the applicant's case was not considered against the vacancies of the year 1991-92 and referred para 34 of the judgment rendered by the Division Bench, which is reproduced as under:-

"34. Consequently, the writ petition is allowed, the notification dated 28.12.2002 (Ex.16) and 25.04.2008 (An.17) are hereby struck down. The impugned orders dated 12.5.2008 (Ex.18), 12.05.2008 (Ex.19), 24.06.2008 (Ex.23) and 15.06.2009 (Ex.25A), qua the petitioner, are quashed and set aside. The respondent State is directed to prepare the seniority list of selection scale and supertime scale after treating the petitioner as promote in selection scale of R.A.S. against the vacancies of the year 1991-92."

The above order of the Division Bench has been complied with by the respondent State and order dated 1.11.2012 has been passed to assign correct seniority of the year 1991-92 to Shri O.P.Harsh.

13. The applicant has filed rejoinder to the reply and with regard to concealment of material fact, it is stated that against the judgment passed by the Hon'ble High Court in the case of Smt. Prabha Tak in S.B.Civil Writ Petition No.3592/2003 in which she has impleaded applicant as one of the respondent, he did not preferred Writ petition in the High Court as the judgment of



the Single Bench is not against the applicant. The case of the applicant is based on Selection Scale against the vacancies of the year 1991-92 on merit basis and since ineligible persons were promoted against merit quota which action was not appreciated by the Hon'ble High Court, therefore, the promotion in Selection Scales against the vacancies of 1991-92 on merit basis was declared to be illegal. The applicant is already having judgment in his favour passed by the RSCAT whereby the State of Rajasthan was directed to promote the applicant against the vacancies of the year 1991-92 against the merit quota as the applicant was having outstanding service record. Therefore, the question of filing writ petition does not arise and the learned counsel Mr. Chirania has referred the judgment rendered by the RSCAT. Further, even in view of the judgment rendered by the Hon'ble High Court in the case of Smt. Prabha Tak, the respondent State conducted the review DPC and issued order dated 12.5.2008 in which they placed the applicant at Sl.No.19 as promotee against the vacancies of the year 1993-94. In this very order Shri Kamlesh Kumar Singhal is placed at Sl.No.20 just below the applicant and Shri O.P.Harsh is placed much below the applicant at Sl.No.26. This shows that even by the order dated 12.5.2008 the respondent treated and placed Shri O.P.Harsh below the applicant.



14. The learned counsel appearing for the applicant in support of his submissions placed reliance on the judgment of the Hon'ble Supreme Court in the case Shambhu Singh Meena and Ors. vs. State of Rajasthan and Ors., reported in 1995 Supp (2) SCC 431 and more particularly referred para 7 and 8, which thus reads:-

"7. The learned counsel for the contesting respondents drew our attention to the copies of the judgment of the Tribunal and the Rajasthan High Court annexed with their affidavits. In the judgment delivered by the Tribunal on 11.11.1983 it has been observed: "We have been consistently holding that the ACRs/APARs of the officers pertaining to 7 (seven years) including the year of selection should either be "Very Good" or "Outstanding" if they have to be selected on the basis of merit as per the notification dated 11.4.1979. After the passing of the said order the DPC again met and did not select those who did not possess the "Outstanding" or "Very Good" record for a period of 7 years. This selection was again challenged before the Rajasthan High Court by Mahesh Prasad Mathur and Suresh Chander Tayal but the High Court dismissed the petitions while holding the view taken by the Tribunal was correct. The judgment delivered by a Division Bench of the Rajasthan High Court in Civil Writ Petition No.4202 of 1990 also indicates that in the year 1984 the DPC has selected only those officers whose confidential reports were outstanding or consistently "Very Good" for all the 7 years. In view of this material on record it is not correct to say that the DPCs had always understood the rule as contended by the learned counsel for the petitioners.

8. The Rules requires that the record of the officer should be outstanding or consistently very good and that would



imply that it should be so for the entire period under consideration."

15. After referring the judgment, it is submitted by the learned counsel appearing for the applicant that the applicant was promoted in Selection Scale on the basis of his 7 out of 7 'Outstanding' ACRs and no other officer was having such ACRs. The Hon'ble Apex Court in the case of Shambhu Singh Meena (supra) also held that the officers with "Outstanding' ACRs must be promoted first.

16. The learned counsel appearing for the applicant also referred to regulation 5(4) and 5(5) of I.A.S. (Appointment by Promotion) Regulations, 1955, which are reproduced below:-

"5. Presumption of a list of suitable Officers.- (1).....

(2)

(3)

(4) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as the case may be, on an overall relative assessment of their service record.

(5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order



of names inter-se within each category shall be in the order of their seniority in the State Civil Services:

Provided that the name of any officer so included in the list, shall be treated as provisional if the State Government withholds the integrity certificate in respect of such officer or any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government."

17. After referring regulation 5(4) and 5(5) of I.A.S. (Appointment by Promotion) Regulations, it is contended by the learned counsel appearing for the applicant that the Selection Committee so constituted should have classified the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of service record and as per service record of the applicant, he is having 'Outstanding' ACRs for consecutive 7 years. Thus as per regulation 5(5) which provides that list shall be prepared by including required number of names, first from the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Civil Service.



18. The case of the applicant is that select list on the basis of which promotions were made and notified vide notification dated 31.12.2012 was not prepared as per regulation 5(4) and 5(5) and therefore, aggrieved by notification dated 31.12.2012 whereby the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India promoted and appointed the applicant to I.A.S. against the select list of the year 2008 ignoring the mandate given by the RSCAT vide order dated 11.3.1999 in Appeal No. 2022/1998 and not revised the year of allotment from 1993-94 to 1991-92 as has been done in the case of Shri O.P.Harsh. The RCSAT has specifically directed that applicant's seniority should continue to be treated on the basis of seniority list dated 22.4.1995 till the review DPC takes place. Not only this, pursuant to the direction of the RCSAT, the State Government held review DPC in the case of the applicant and granted him Selection Scale against the vacancies of the year 1991-92 and admittedly, his name was placed over and above Shri O.P.Harsh.

19. Shri Mukesh Agarwal, learned counsel appearing for the Union of India adopted the submissions made on behalf of the State of Rajasthan.



20. We have heard the rival submissions of the respective parties and also gone through the material available on record as well as the relevant rules and the judgments referred and relied by the respective parties. The main grievance of the applicant is that the Union of India as well as the State of Rajasthan not only ignored the order passed by the Rajasthan Civil Services Appellate Tribunal but also the objections/representation filed by the applicant against the seniority list dated 1.11.2012 whereby in pursuance to the direction issued by the Division Bench of the Hon'ble High Court in Writ Petition filed by Shri O.P.Harsh, it was directed to assign correct year of allotment to Shri O.P.Harsh as 1991-92. According to the applicant, similar selection needs to be made in the case of the applicant who has outstanding service record and senior to Shri O.P.Harsh.

21. We have give thoughtful consideration to the order passed by the RCSAT and the judgment passed by the Single Bench of the Hon'ble High Court in the case of Smt. Prabha Tak dated 4th July, 2007 as well as the judgment passed by the Division Bench of the Hon'ble High Court in the Writ Petition filed by Shri O.P.Harsh. To resolve this controversy, first we would like to refer the order rendered by the RCSAT. The Tribunal vide its order



dated 11.3.1999 taken note of the fact that pursuant to the Tribunal's order in the case of Shri O.P.Harsh, year of allotment was revised from 1993-94 to 1991-92 while in other cases of similar nature, cases are being contested in the Hon'ble Supreme Court and Hon'ble High Court and the Tribunal observed that this embarrassing position can be avoided if a common view is taken on some of the hotly contested issues and uniform treatment is allowed to all the concerned officer, irrespective of the fact whether they have approached the courts or not.

22. As per the settled proposition of law similarly situated persons should be treated alike whereas in the instant case, the applicant is not only senior than Shri O.P.Harsh but also have 7 out of 7 ACRs as 'Outstanding' and as per IAS (Appointment by Promotion) Regulations, the applicant's case should have been classified accordingly.

23. Further, we are not convinced with the preliminary objections raised by the respondents that the applicant is guilty of suppressing the material fact from this Tribunal as he has not referred the case of Smt. Prabha Tak. We have also carefully gone through the judgment passed by the Single Bench of the Hon'ble High Court in SB Civil Writ Petition No.5392/2003. The said



petition was filed by Smt. Prabha Tak being member of R.A.S. claiming to be considered for promotion to the Selection Grade of R.A.S. against the vacancies relating to the year 1991-92 by redetermination of the number of vacant posts. No doubt, the writ petition filed by Smt. Prabha Tak was allowed and it was directed that the review DPC to reconsider candidature of the eligible persons for promotion to RAS selection grade against the vacancies of the year 1991-92 shall be convened by the State Government within a period of three months.

24. It is submitted by the respondents that the applicant was one of the party in the writ petition and he has not challenged the order passed by the Single Bench in the case of Smt. Prabha Tak. We are fully satisfied with the submissions made on behalf of the applicant in the rejoinder that this order was not against the interest of the applicant as the review DPC held on 22.5.1999 considered the applicant for further promotion against the vacancies of the year 1991-92. The direction given by the Single Bench of the Hon'ble High Court in the case of Smt. Prabha Tak was in positive nature that the review DPC shall reconsider candidature of all eligible persons for promotion to Selection Grade of R.A.S. against the vacancies of the year 1991-92. Since the applicant was eligible and rightly assigned the year against



the vacancies of the year 1991-92 pursuant to the order passed by the RCSAT, thus, the applicant rightly not challenged the order.

25. The controversy arose when Shri O.P.Harsh preferred D.B.Civil Writ Petition 7774/2009 and the State also preferred D.B. Civil Special Appeal No.612/2009. Both the Writ Petition and Civil Special Appeal were heard and decided by the Hon'ble Division Bench vide order dated 5.2.2010. The Division Bench allowed the writ petition and struck down the notification dated 28.12.2002, and 25.4.2008 and orders dated 12.5.2008, 12.5.2008, 24.6.2008 and 15.6.2009 qua the petitioner were also quashed and set aside. The respondent State was directed to prepare the seniority list of Selection Grade and Super Time Scale after treating the petitioner as promotee in selection scale of R.A.S. against the vacancies of the year 1991-92. The aforesaid judgment has been complied with by the respondent State and so far as Shri O.P.Harsh is concerned, vide order dated 1.12.2012 he has been assigned seniority of the year 1991-92. The cause of action was made available to the applicant only on 1.11.2012 when his junior Shri O.P.Harsh was assigned the year 1991-92 and seniority of the applicant was pushed down to the year 1993-94 and immediately after six days, the applicant redressed his



grievance by way of filing objections/representation dated 7.11.2012 (Ann.A/7). As discussed hereinabove, objections against assigning year 1991-92 to Shri O.P.Harsh were filed by the applicant and till date the same are pending consideration. Subsequently, further cause of action was made available to the applicant when notification dated 31.12.2012 was issued by the respondents promoting and appointing the applicant to the cadre of I.A.S. and immediately thereafter the applicant has filed this OA on 24th January, 2013.

26. The respondents earlier also at the time of filing appeal before the RCSAT by the applicant, raised preliminary objection regarding maintainability of the appeal in their reply stating therein that the Tribunal has no jurisdiction as it is matter of promotion/selection in I.A.S. cadre/preparation of eligibility list for I.A.S. cadre. The Tribunal dealt with this issue thoroughly and having considered the preliminary objections raised by the respondents was of the view that the Tribunal has jurisdiction so far as service matters pertaining to R.A.S. officers are concerned and the issue of their seniority very much falls within the jurisdiction and the matter was heard. Now, the respondents in reply to the present OA have taken a somersault and submitted that this matter pertains to the seniority list which requires to be



drawn by the Rajasthan State and this is not a subject matter of this Tribunal. We are not convinced with the submissions made on behalf of the respondents, as the applicant is presently member of the IAS and rightly challenged the seniority list, against which he has approached and filed objection/representation, but the same is not decided by the respondents and is still pending consideration. Further, the list for assigning the year of allotment to the applicant as 1993-94 has been prepared for the purpose of promotion/appointment to the IAS and the respondents have not only failed to comply with orders of the RCSAT but also acted in contravention to the provisions of regulation 5(4) and 5(5) of the IAS (Appointment by Promotion) Regulations.

27. Much emphasis has been given by the learned counsel appearing for the respondents to the judgment rendered by the Single Bench of the Hon'ble High Court in the case of Smt. Prabha Tak and the judgment rendered by the Division Bench of the Hon'ble High Court in the case of O.P. Harsh. As already discussed above, the judgment rendered in the case of Smt. Prabha Tak is not against the interest of the applicant, but on the contrary, direction were issued to the respondents to reconsider all eligible persons for promotion to RAS Selection Grade against



vacancies of the year 1991-92. This direction is also applicable to the case of the applicant. So we are fully satisfied with the submissions made by the learned counsel appearing on behalf of the applicant that the order of the Hon'ble High Court in the case of Smt. Prabha Tak, is not against the interest of the applicant and thus, the question challenging the same does not arise. With regard to the judgment rendered by the Division Bench of the Hon'ble High Court in the case of O.P. Harsh, the respondents submits that this judgment is in persona and not in rem as the directions issued by the Division Bench were related to the petitioner and notifications quashed and set aside qua the petitioner and thus, the judgment is in persona and not in rem.

28. In such matter, in our view, common and uniform treatment should have been given to all similarly situated persons irrespective of the fact whether they have approached the court or not. The applicant is admittedly senior and not junior to Shri O.P.Harsh and there should be no occasion for the respondents to push down the applicant from the year 1991-92 to the year 1993-94. Even otherwise, the ratio decided by the Hon'ble Division Bench in the case of Shri O.P.Harsh is also applicable to the case of the applicant and in view of this



judgment, the applicant deserves to be given the same treatment as has been given to Shri O.P.Harsh and the applicant should have been assigned the seniority in the Selection Scale of R.A.S. against the vacancies of the year 1991-92.

29. The controversy in hand is not res-integra and the Hon'ble Supreme Court in the case of State of Karnataka and another vs. C.Lalitha reported in 2006 SCC (L&S) 447 in para 29 and 32 observed as under:-

"29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well settled that the question of seniority should be governed by the rules. It may be true that this Court took notice of the subsequent events, namely that in the meantime she had also been promoted as Assistant Commission which was a Category I post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to.

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31.....

32. Justice demands that a person should not be allowed to derive any undue advantage over other employees. The concept of justice cannot be stretched so as to cause heart-burning to more meritorious candidates. Moreover, at the end of the day, the respondent has got what could be given to her in law. As of now, she had



already been enjoying a higher scale of pay than what she would have got if she was to join the post of Assistant Controller (sic). We, therefore, are of the opinion that interest of justice would be subserved if she is allowed to continue in her post and direct the appellant to consider her seniority, in the administrative service in terms of the order of this court dated 15.3.1994 that she would be the last in the seniority list of the appointees in the post of category I Assistant Commission (Karnataka Administrative Service)."

30. Further, the Apex Court in the case of Gajraj Singh vs. State of U.P. reported in (2001) 5 SCC 762 held that:-

"A doubt arising from reading a judgment of the Court can be resolved by assuming that the judgment was delivered consistently with the provisions of law and therefore, a course or procedure in departure from or not in conformity with statutory provisions cannot said to have been intended or laid down by the Court unless it has been so stated specifically."

31. Thus, in view of the ratio decided by the Hon'ble Supreme Court in the case of State of Karnataka vs. C.Lalitha and in the case of Gajraj Singh vs. State of U.P. (supra), the applicant is entitled to get the relief as has been claimed, even though, he has not filed any Writ/Appeal against the judgment rendered by the Single Bench of the Hon'ble High Court and the ratio decided in the aforesaid cases squarely covers the present controversy.



32. In view of above discussions, we are of the view that the OA deserves to be allowed and the same is allowed. The respondents are directed to hold review DPC and revise the seniority list after treating the applicant as promotee in the Selection Scale of R.A.S. against the vacancies of the year 1991-92 in view of the regulation 5(4) and 5(5) of the IAS (Appointment by Promotion) Regulations and the order passed by the Rajasthan Civil Services Appellate Tribunal, which attained finality so far as the applicant is concerned. The Union of India and the State Government are directed to undertake the exercise in the terms indicated above expeditiously but in any case not later than a period of 15 days from the date of receipt of a copy of this order and assign the correct year 91-92 to the applicant in the Selection Scale. No costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member

K.S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/