30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES,1990)

**INDEX**

O.A/T.A No. 182/96

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet.....OA.....Pg...1.....to...2.....
2. Judgment/Order dtd 21/11/96.....Pg...1.....to...W.S. Separate order not received
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....182/96.....Pg...1.....to...18.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
7. W.S.....Pg.....to.....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendement Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

30/1/18

CENTRAL [redacted] TRATIVE TRIBUNAL
TI BENCH
....

OA No. 1821/96

Sri Hiralya Saikia Applicant(s)

Union of India & Ors. Respondent(s)

Mr. R.P. Sarma, P.V. Srinivasan, R.K. Goradhan Advocates for the applicant(s)

Mr. A.K. Chaudhury, ACGSC Advocates for the Respondent(s)

| Office Notes | Date | Courts' Orders |
|---|---|---|
| This application is in form and within time C. F. of Rs. 50/- deposited vide IPO/~~BD~~ No 346673 Dated 9.8.96 | 24.9.96 | Mr S.Ali, Sr.C.G.S.C for the respondents. None for the applicant However, Mr B.Chakraborty prays on behalf of Mr R.P.Sarma to list this case on 8.10.96.<br>List on 8.10.96 for considera tion of admission..<br>Member |
| ~~Dy. Registrar.~~ No index-sheet is provided in the application. The applicant himself attached all the annexures. However, may be placed before the Hon'ble Court. Submitted for orders. 27/8/96 | pg 25/9 | |
| | 8.10.96 | Mr. R.P.Sarma for the applicant.<br>Mr. S.Ali, Sr. C.G.S.C. for the respondents.<br>Mr. Sarma seeks short adjournment. Allowed.<br>List for consideration of admission on 14.10.1996.<br>Member |
| | trd 9/10 | |

14-10-96 Learned counsel Mr.R.P.Sharma the applicant. Mr.S.Ali, Sr.C.G.S.C. for the respondents. Mr.R.P.Sharma a seeks adjournment for admission. All

List for consideration of Admi on 11-11-96.

Member

lm

14/10

11-11-96 None for the applicant. Sr.C.G. Mr.S.Ali for the respondents.

List for consideration of Admi on 21-11-96.

Member

lm

12/11

21.11.96 Learned counsel Mr. R.P.Sharma for t applicant.

Mr. S.Ali, learned Sr. C.G.S.C. for the respondents.

Mr. Sharma submits that the applicant may be allowed to withdraw the application with liberty to file fresh application. Prayer allowed. Application is disposed of on withdrwal. The applicant is at liberty to file fresh application and may raise all the contentions that have been raised in this application.

Copy of the order be supplied on both the counsel of the parties.

Member

Copy of order on 21.11.96

21/11

trd

21/11

Wide memo No. 3986

No. 3987 dtd. 5-12-96.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GAUHATI BENCH:

CASE NO. O.A. 182 OF 1996

Shri Himalaya Sarmah .... .. Petitioner

- Versus -

Union of India & ors .... .. Respondents

Matter : Bench:

I N D E X



Dated : 27.8.96 Filed by :

R. K. Pradhan

(Advocate)

Form No;2
(See Rule 11(b)I

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....

Presented By

Diary No. 518

Applicant(s) Mr. R.K. Pradhan

Date of representation:

Respondent(s) Mr. A.K. Chaudhury, ACSC - 27.8.96

Nature of grievance Seniority

No.of Respdts. 2 (Two)

No.of applicants One

CLASSIFICATION

Deptt.

1. Is the application in the proper form : Yes
2. Whether name,description and address of all the parties been furnished in the cause title ? : Yes
3. (a) Has the application been duly signed and verified ? : Yes
   (b) Have the copies been duly signed ? : Yes
   (c) Have sufficient number of copies of the application been filed ? : 2 Copies
4. Whether all the necessary Parties are impleaded : Yes
5. Whether English translation of documents in a language other than English or hindi been filed? : No
6. Is the application in time ? : Yes
7. Has the Vakalathnama/Memo of appearance/authorisation been filed ? : Yes
8. Is the application maintainadle ? : Yes
9. Is the application accompanied by IPO/DD for Rs.50/- ? : IPO No. 346673 Dt. 9.8.96 for Rs. 50/-
10. Has the impugned orders original/ duly attested been filed ? : Yes
11. Have legible Copies of the annexures duly attested been filed ? : Annexures are attested by the applicant himself.
12. Has the index of documents been filed and Pagination done Properly ? : Index not filed
13. Has the applicant exhausted all available remedies ? : Yes
14. Has th e declaration as required dy item 7 of Form I been made ? : Yes
15. Have required number of enveloped bearing full address of the respdts ? been filed ? : No
16. (a) Whether the relief Sought for arise out of single cause of action : Yes
    (b)Whether any interim relief is Prayed for ? : No
17. In case an M.A.for condonation of delay is filed,is it Suported by an affidavit of the applicant ? : NA
18. Whether this case can be heard by Single Bench : No, O/B
19. Any other Point : X
20. Result of the Scrutiny With initial of the Scrutiny cleark : 27/8

SECTION OFFICER(J)
23/9/96

DEPUTY REGISTRAR

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

.....

ORIGINAL APPLICATION NO. : 182/96

Sri Himalaya Saikia -APPLICANT(S)

VS

Union of India & Ors -RESPONDENT(S)

| S.No. | Description of Documants | Page No. |
|---|---|---|
| 1. | Application | 1 — 58 |
| 2. | Annexures | 59 — 183. |

2/8

Filed by the petitioner through R.K. Pradhan Advocate 23.8.96



DISTRICT : KAMRUP

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :
GUWAHATI BENCH

CASE NO. OA 182 OF 1996

Details of Application :

1. Particulars of the applicants :

| | |
|---|---|
| (i) Name of the Applicant | : Himalaya Sarma |
| (ii) Name of Father | : Benudhar Sarma |
| (iii) Designation and Office to which employed | : Geologist (Junior) Geological Survey of India, Gauhati - 21. |
| (iv) Office Address | : Geological Survey of India 5th North Bye Lane 200 Narangi Road, Gauhati - 21. |
| (v) Address for service of all notices. | : As above. |

2. Particulars of the Respondents:

| | |
|---|---|
| (i) Name and/or Designation of the Respondent. | :(i) Union of India, through the Secretary, Department of Mines, New Delhi. |

contd...2.

(ii) The Director General, Geological Survey of India, 27, Jawaharlal Nehru Road, Calcutta - 16.

(ii) Office Address of the Respondents. : As above.

(iii) Address for Service of Notices. : As above.

3. Particulars of the order against which the application is made

(i) Order No. 609/5/CAT/HS/90 dated 8.5.1995 communicated by the Senior Administrative Officer, Geological Survey of India, N.E Region, Shillong 3 (And received by the applicant on 15.5.1995) by which the seniority of the applicant has been wrongly fixed purportedly on the basis of the so-called gradation list which is alleged to have been approved on 1.10.1992 without circulating the same and passed by the Deputy Director General, Geological Survey of India, Shillong.

contd ....3.

(ii) Order No. 2344 B/34/62/93/19 A Pkaa dated 29.8.95 passed by Administrating Officer for DY. Director General (P). Geological Survey of India. and Communicated by the Senior Adm nistrative Officer, Geological Survey of India. North Eastern Region, Shillong under Order No. 4325/5/ CAT/HS/90.

(iii) Gradation List of Geologists (junior) as on 1.10.92 forwarded to the applicant vide No. 326/2/ 34/62/93/19 A dated 28.3.96.

4. Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

5. Limitation :

The applicant further declares that the application is with the limitation prescribed in Section 21 of the Administrative Act. 1985.

contd...4.

6. Facts of the case :

1. That the applicant is invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 (here - in after referred to as the Act, 1985) for the enforcement of the fundamental right as well as legal rights which have been violated by the arbitrary saction of the Respondents. The applicant who has served the Respondents for a considerable length of time has ultimately found that he has not been given his due seniority which he is entitled to under the law and the relevant statutory rules.

2. That the applicant is holder of Master Degree in Geology from the University of Gauhati in the year 1973. Persuant to an U.P.S.C. advertisement in 1994 the applicant applied for the post of Assistant Geologist (Class- II) and after the facing the written test he was selected on merit for appointment to the post . Then the applicant was appointed to the post vide appointment order F.I / 6(14)/A/74 EIX dt. 17.3.1975 and joined his post on 5.7.1976.

contd...5

After the appointment was issued on 17.3.1995 the applicant had to undergo the verification by Police and also had to face medical Board before joining his post. The process of police verification and Medical Board report took about 1 year 4 months.

It is pertinent to state here that M.Sc., in Geology is prescribed q-ualification for the post of Assistant Geologist and above.

3. That after appointment and joining of the applicant to the post for the first time a gradation list of Asstt. Geologist was brought out by the Respondent No. 2 in 1.2.1981. In the said gradation list of Asstt. Geologist of 1981 the applicant stood at Serial No. 209.

The applicant craves leave of this Tribunal to produce the said list as and when necessary.

4. That the qualifying period for promotion from the post of Asstt. Teologist to the post of Geologist (Jr.) as per Geological Survey of India Class-I & II Recruitment Rules, 1967 as amended in 1969 and published in Gazettee of India 20.6.1969, is three years service in the grade rendered after appointment thereto on regular basis.

contd..p.6

The applicant seeks your Lordship's indulgence to produce the said amended Rule of 1967 in respect of period of qualification for promotion to Geologist (Jr.) in respect of B quota for respective modes of appointment.

5. That in the said Rules of 1967 in the Schedule percentage of Quota for the Direct Recruitment and the promotion to the post of Geologist (jr.) has been fixed at 50 : 50, that is to say 50% of the promotional posts would be filled up by promotion and the rest 50% through competitive Examination to be conducted by the U.P.S.C. failing which by ad-hoc selection by open advertisement through the Commission. The Geological Survey of India, Class-I & II posts Recruitment Rules 1967 was recruited as Geological survey of India ( Group A and Group B posts) Recruitment Rules, 1967 only. ~~The provision~~ in short Recruitment Rules 1967 only. The provision inrespect of method of recruitment to the post of Geologist (Jr.) as existed in 1967 stood as follows :-

50% by promotion and 50% through competitive examination to be conducted by the Union Public Service Commission, failing which by ad-hoc Selection by open advertisement through the Commission. "

contd...7.

The applicant stated that the 1967 recruitment Rules as amended in 1967 is applicable in his case for the reason that his claim for seniority and promotion to the post are relates to the period in 1978-1979, or in other orders to the period prior to the amendment of the Rules in 1980.

6. That the said Recruitment Rules of 1967 was again amended by the authority in 1980, where the method of recruitment in respect of filling of the respective quota was laid as follows :-

"50% by promotion, failing which by direct recruitment through competitive examination to be conducted by the UPSC failing by ad-hoc selection by open advertisement through UPSC and 50% through competitive examination to be conducted by the UPSC, failing which ad-hoc selection by open advertisement through Commission".

The applicant will produce the amended Rules of 1980, as and when required.

It is stated here that 1980 amendment is no applicable in case of the applicant as his claim for seniority and promotion preceeds the 1980 amendment.

contd...8.

7. That Department of Personnel and Administrative Reforms, Govt. of India issued an Office Memorandum with Number 9.11.55/RPS dt. 22.12.1959 laying down the principles in fixing a relative seniority of Direct Recruit and Promotees. The para 6 of the said D.P.A.R. Circular, which is quoted below, prescribed the principles to be followed in fixing the seniority between the Direct recruits and promotees.

"6. Relative seniority of Direct Recruits and Promottees - The relative seniority of Direct Recruits and of promottees shall be determined according to the rotation of vacancies between Direct Recruits and promotees which shall be based on the quotas of vacancies reserved for direct Recruitment and Promotion respectively in the Recruitment Rules."

A copy of the said D.P.A.R. Circular dated 22.12.1959 is annexed herewith as Annexure - A.

8. That the Department of Personnel and Administrative Reforms, Govt. of India on 15.9.1984 impressed upon all the Department under the Govt. of India, the need to enforce the 1969 D.P.A.R. Circular.

contd...9.

9. That in terms of the statutory Rules of 1967, the applicant became eligible for promotion to the post of Geologist (Jr.) on 5.7.1979 as he had joined the regular service on 5.7.1975 after selection on merit by the UPSC in 1975.

It is important to mention here that alongwith the applicant there were about 50 other similarly situated persons, who became qualified on completion of 3 years service for promotion to the post of Geologist (Jr.) in 1978-79.

A List of the eligibe persons qualified to be promoted in 1978 and 1979 annexed herewith as Annexure-B.

10. That the Direct Recruits numbering more than 300 (three hundred) who were appointed in 1978,79,80,81 to the post of Geologist (Jr.) were illegally shown senior to the applicant and other similar situated persons, by allowing the Direct Recruits to eat away the quota of vacancies reserved for the promotees, under the statutory Recruitment Rules of 1967. This position should be clear from the Gradation List of 1989, which terms part of OA.4/90. The applicant craves leave to produce the same as and when required.

Admittedly, there was no DPC in 1979

contd...10.

1980, 1981 and 1982. The applicant, going strictly by the statutory rules became eligible for promotion on 5.7.1979 and as such his case for promotion ought to have considered as in 1979 by the Respondents and since admittedly there were vacancise for promotees in 1979, the vacancies could not be allowed to be eaten away by direct Recruits.

11. That in 1983 respondent No. 2 published and Circulated a provisional gradation List of Geologist (Jr.) as on 1.2.1982 where by the seniority of the applicant and the other similarly situated persons of promotee stream were not shown. However, as about 130 vacant positions were shown purportedly for the promotee group of officers from serial No. 1248 on wards, although the position of the applicant and his batch would be far above the vacant slots shown in the said gradation list going by the applicability of 3 years qualifying service under the statutory Rules.

The applicant and other similarly situtated promotee batch ought to have been placed between Serial No. 990 and Serial No.1085 of the said gradation List of 1982 (in short 1982 list). So far the applicant is concerned his position would be at 1028 of 1982 list. But that was not done by the Respondents.

contd...11.

12. That in February 1983, just before the 1982 provisional gradation list was published, the applicant and its batch were promoted to the post of Geologist (Jr. ), as reflected in the list annexed in the Annexure - 'B'.

13. That after the circulation of 1982 provisional gradation list some of the promotee officers beingaggrieved with the said list file a writ petition at Nagpur Bench of the Bombay High Court being writ petition No. 2714 of 1983.

14. That after the notices on the writ petition were served on the Respondents, the Director General Geological Survery of India, Respondent No. 2 filed an affidavit before the Nagpur Bench of Bombay High Court stating that the Gradation list of 1982 was provisional one, that large number of representations from the Officers were received wherein the seniority of the Geologist (Jr.) adopting the quota system 1.1. was not followed, the said provisional list was yet to be made final that in view of the complaints received from the various Geologist (Jr. ) Class-I the respondent No. 2 - Director General appointed a committee to go into the details of the gradation list as on 1.2.1982 and advised the respondent

contd....p.12.

No. 2 to advise the best cause of action to be followed, that the Committee has submitted the report and same was under consideration of the Director General øfor approval, and that the gradation list would then be revised and sent to the Ministry for approval after seeking approval from the President of India and same then would finally be published.

A copy ofthe said affidavit filed by the Respondent No. 2 before the Nagpur Bench of Bombay High Court is annexed herewith as Annexure - 'C'.

15. That in view of the statement made by the Respondent No. 2 g before the Bombay High Court, the writ petitioners there in withdraw the petition with a liberty to challange the final seniority list.

A copy of the said order dated 6.8.1984 of the Bombay High Court is annexed herewith as Annexure '-D'.

16. That as submitted by the Respondent No. 2 in Bombay High Court that an expert Committee consisting of 3 members headed by Deputy Director General as Chairman, Submitted his report to the Director

contd...p.13

General Respondent No. 2. The said expert Committee reports gave its findings and recommendation which is quited below :-

"Gradation list was prepared and maintained by the Department as per the terms of the recruitment rules providing 50% posts for the direct recruits in the grade of Geologist (Jr.) upto 1979 (Upto Serial No. 933 of the 1982 Seniority list).

During 1978, 1979, 1980, 1981 and 1982 there were regular in taken through direct recruitment in the grade of Geologist (Jr.) but no D.P.C. meetings were held for promotion to the posts of Geologist (Jr.) through there were eligible candidates in feeder post as per number shown in the parenthesis during 1978 (24), 1979 (47), 1981(16) and 1982 (14). Besides 206 vacancies meant for the Departmental candidates were surrendered for the direct recruits quota during 1977 and 1978 inspite of having certain eligible candidates as shown above. In the process 316 candidates (Sl.No.984 in 1248) in the year 1982 Gradation List) were directly

contd...p.14

from 1977 to 1982 in the grade of Geologists (Jr.) and they were put enblock in the 1982 seniority list without keeping the alternate vacancies for Departmental candidates as against the provision laid down in the existing recruitment rules.

At last when the Departmental promotion took place in 1983 promoting 101 candidates from the grade of Asstt. Geologist to the Grade of Geologist (Jr.) they were proposed to be placed below these 316 direct recruits with the alternate vacancies of later direct recruits. As a result Departmental candidates who were eligible for promotion in 1978, 1979, 1981 and 1982 became junior to the even 1982 direct recruits effecting very adversely their seniority position and their future prospect of promotion.

As there is only 216 posts of Asstt. Geologist (feeder post) against 1166 of Geologist (Jr.) (Promotion posts) in GSI when the basis of 50% DPC and 50% direct recruits for filling up of the posts of Geologist (Jr.) there may always be dearth of DPC candidates to match the DR candidates for certain percent devetailing.

contd...15

Considering the facts mentioned above the committee recommends that the present 1982 gradation List be revised from Sl.No.934 from whefe no vacancies were left for the DPC candidates and as number of representations have been received from the DPC candidates promoted in 1983 onward, asigning the inter se seniority of the DPC candidates with those of D.R. candidates (1:1) for a particular year (yearwise) in which the DPC candidates were eligible for promotion irrespective of the year when they have been actually promoted as per the existing recruitment rules. But the inter-se-seniority of the candidates as recommended by the DPC should be maintained in the process. In doing so relative position of each group should be kept unaltered and if the D.R. or the DPC quota candidates are found to be ~~the DPC~~ more than the other than after devetailing on 1:1 ratio for that particular years the balance may be put enblock at the end for that particular year.".

On receipt of the Expert Committee report which pinpointed the anommalies, the Director (Administration) submitted the expert committee

contd...p.16

report of the Ministry on 9.4.1984. In the said letter the Director (Administration) Geological Survey of India put his own recommendation based on the Report of the expert Committee, where in peragraph 6 of his letter, he mentions that "on the basis of the decision the gradation list which was circulated has been revised and the candidates who ~~k~~ became eligible for promotion by virtue of completion of 3 years of service in the grade~~t~~ during 1977, 1978, 1979 have been devetailed against matching D.R. candidates of 1977, 1978, 1979 respectively and the balance D.R. candidates of the respective years have been assigned enblock seniority due to non availability of D.P.C. quota candidates ".

A copy ofthe said expert Committee report which was submitted by the Director(Administration) through his letter dated 9.4.1984 to the Ministry of Steel & Mines is annexed herewith as Annexure - 'E'.

17. That based on the expart Committee report which was finally accepted by authorities as evident

contd...p.17

from the contents above, the respondents No. 2 published and circulated a provisional gradation list as on 1.3.1983 in 1984.

The list so prepared after revision following the terms of recommendation of the expert committee, as promised by the respondent before the Bombay High Court was prepares trictly interms of the existing statuory Rules of 1967 and D.P.A.R. Circular of the 1959, assigning the correct placement to the promotee batch of officers.

The applicant craves to produce the extract of the list published in 1984 of the grade as on 1.3.1983 (in short 1983 list).

18. That it is necessary to state here that the gradation list of 1983 was revised and published on the basis of the expert Committee recommendation which was promised before the Bombay High Court by the respondent No. 2. In other words the said gradation list of 1983 was based on the commitment before the Bombay High Court. And consequently it can said that the list was prepared under the judicial order of the competent Court.

contd... 18

As stated earlier the writ petitioners a group of promotee officers based on the assurance and commitment of the respondent No. 2 before the Bombay High Court to revise and prepare the gradation list of 1982 (which was in challange in that writ petition) on the basis of the expert committee recommendation, withdraw the writ petition with liberty to file a fresh petition in case the petitioners are required to challange the final seniority list.

As the Group of promotee officers were satisfied with the revised list of 1983 and since their grievances in the regard to their seniority were met, they did not require to file a fresh petition against the revised the gradation list of 1983 as published in 1984.

19. That 25 (twenty five) Direct recruit officers, 23 of whom are junior to the applicant and his batch, filed a writ petition challanging the revised gradation list of 1983 in the Calcutta High Court in February 1985. In the said writ petition being Civil Order No. 1220 (W)/85 none of the promotee batch officer were made party Respondent before the Calcutta High Court. The Twenty five Direct Recruits who filed the writ petition at Calcutta High Court with their date of appointment and their date of joining in the post of is shown below :-

contd...19

| Sl.No. | Name | Year of Selection | Date of Appointment | Date of Joining |
|---|---|---|---|---|
| 1. | S.P.Venkatadashu | 1976 | 27.10.1977 | 6.12.1977 |
| 2. | Sama Ullah Hashim | 1976 | 27.10.1977 | 8.12.77 |
| 3. | A. Chatterjee | 1977 | 27.3.1978 | 28.6.78 |
| 4. | S. Sanyal | 1977 | 18.10.78 | 17.3.79 |
| 5. | T.Gopal Reddy | 1977 | 18.10.78 | 17.2.79 |
| 6. | R.K.Srivastava | 1977 | 18.10.78 | 6.2.79 |
| 7. | P.K.Das | 1977 | 18.10.78 | 15.10.79 |
| 8. | Ruby Das-gupta | 1977 | 18.10.78 | 15.10.79 |
| 9. | B.K.Bhichanta | 1977 | 18.10.78 | 19.2.79 |
| 10. | K.Nagaraja Rao | 1977 | 18.10.78 | 13.1.79 |
| 11. | S.Chakraborty | 1977 | 18.10.78 | 25.5.79 |
| 12. | Deepak Bellur | 1978 | 8.5.79 | 27.12.79 |
| 13. | Anita Roy | 1978 | 8.5.79 | 17.12.79 |
| 14. | B.B.Das | 1978 | 8.5.79 | 18.2.80 |
| 15. | Shafiquar Ahmed | 1978 | 8.5.79 | 27.12.79 |
| 16. | T.R.Anantha Raman | 1978 | 8.5.79 | 6.12.79 |
| 17. | A.K.Samaddar | 1978 | 8.5.79 | 28.12.79 |
| 18. | Dr.A.P.Mahalar-mathan | 1978 | 8.5.78 | 18.2.80 |
| 19. | Amitava Bandhopadhya | 1978 | 8.5.78 | 18.2.80 |
| 20. | V. Sundaram | 1979 | 8.5.79 | |

contd...20

| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|
| 21. | Tridip Laskar | 1979 | 7.4.80 | 23.10.81 |
| 22. | Monika Sanyal | 1978 | 7.4.80 | 8.9.81 |
| 23. | Keshy John | 1980 | 8.5.81 | 4.11.81 |
| 24. | A.K.Bhattacharjee | 1980 | 8.5.81 | 8.3.82 |
| 25. | B.K.Bhardan | 1980 | 8.5.81 | - |

The above table would show the seniority/ juniority of these 25 direct recruit vis-a-vis the applicant and his batch as shown in the list of Annexure - 'B' above.

20. That after service of the notice of the writ petition on the respondents in the calcutta High Court the respondents Nos. 1 to 5 in the writ petition viz. (i) The Union of India, Ministry of Mines, (ii) The Director General Geological Survey of India, (iii) The Senior Deputy Director General (Personnel), GSI, (IV) The Deputy Director General (Operation), GSI, and (v) the Director (Personnel), GSI filed and affidavit-in-Opposition to the writ petition of the aforesaid twenty five Director Recruits fully supporting the case of promotee Group of officers, which included the

contd...p.21.

applicant. The said respondents 1 to 5 in the said writ petition justified the revision and preparation of gradation list of 1983 of the Cadre of Geologist (Jr.) strictly following the DPAR circular 1959 and statutory Rules of 1967 and adhering to the quota rota system of 1 : 1.

A copy of the said affidavit with annexure there to in opposition filed by the respondent in Calcutta High Court on 28.5.1985 is annexed herewith as Annexure-'P'.

21. That immediately after the filling of writ petition at Calcutta High Court and during its pendency the Administrative Tribunal Act 1985 was enacted by the Parliament on 27.2.1985, under Article 323 A of the Constitution of India to provide for the adjudication or trial of disputes and complaints with respect to Recruitment and conditions of service by Administrative Tribunals.

22. That in subsection (3) of Section 1 of the Administrative Tribunal Act of 1985 (1985 Act in Short)

contd...22

provided for date of comming into force of the Act as the Central Government may be notification appoint. Under the provision of said sub-section (3) of Section 1, the Central Government by notification No. G.S.R. 527 (E) dt. 1.7.1985 appointed the 1st day of July 1985 as the date on which the provisions of the 1985 Act in so far as they relate to Central Administrative Tribunal, would come into force. Thereafter all Courts, except Supreme Court, ~~xxx~~ ceased to have jurisdiction in matter relating service conditions of Central Govt. employees.

23. That as will be evident from the judgment of the Calcutta High Court dated 5.9.1985, the writ petitioners in that case solely relied on the failing which *Clause of Rule 10 of the Recruitment Rules of 1967 amended in 1980 to the effect that there been no eligible officers from the promotee Group to be recruited to the post of Geologist (Jr.) in 1976, 1977, 78, 79, 80 and 1981, and the quota for the promotees were thereby surrenders to the direct recruits and once the quota is surrenders and the appointment made there to the same could not be revoked. The further

contd...23

submission of the writ petitioners before the Calcutta High Court was that these promotee officers for whom seniority was given in the gradation list of 1983 following the quota - Rota rules were infact promoted effectively only in 1983 and as such they could not be equated with the direct recruits of 1976, 77, 78, 79, 80, 81 batch, for reason that the said promotee officers were not in the cadre in 1976, 77, 78, 79, 80, 81 .

The Official respondents ( No. promotee officers were made parties to the writ petition ) in their counter affidavit stated that there were number of elibible candidates for promotee group for promotion during the year 1977, 78, and 1979 at 24 : 24 and 47 respectively. The respondents further sta ed that the gradation list of Geologist (Jr.) as on 1.3.1983 was prepared following the quota rota rules and the D.P.A.R. Circular of 1959 and 1984.

From the statements made by the official respondents at Calcutta High Court, it is clear that there were candidates avaiolable for promotion from the promotee group in the years 1977 (22) 1978 (24) and 1979 (47), as such there was no

contd...24.

question of surrendering the promotee quota to the direct recruits, nor there is any question of applicability of "failing which" clause when there were admittedly eligible candidates for promotion. Further, the 1980 amendment of 1967 rules was not applicable so far as the promotee Group of officers and the applicant who became eligible for promotion in their quota in 1978-79 were concerned.

23. That the Calcutta High Court in its judgment dated 5.9.1985 quashed the 1983 gradation list mainly on one point, that is since the promotee Group of officers who were shown senior to the said 25 direct recruits - writ petitioner, were affectually promoted in 1983 long after the 25 said writ petitioners came into cadre, the promotee group of officers as such could not be equated or made senior to said 25 direct recruits - writ petitioners.

A copy of the said judgment of Calcutta High Court on 5.9.85 is annexed herewith as Annexure - 'G'.

24. That the respondents having accepted and

contd...p.25.

admitted that there were eligible candidates in 1978 (24), 1979 (47), that the said quota for promotees were not surrendered to direct recruits and the failing which clause was not applicable and infact was not applied, that for some reason D.P.C. did not sit in 1979 - 80, 81 and 82 to consider the promotion of the eligible candidates with their respective year of eligibility and that the expert committee also recommended the promotion and consequent fixation of seniority of the promotee Group of officers with their respective years of eligibility strictly adherence to the statutory rules of 1967 and D.P.A.R. Circular 1959, did nothing nor took any steps to perform their statutory duty of considering the promotion to the applicant and other eligible promotees with retrospective effect as in 1978-79.

26. That the applicant, for that matter any of the promotee group of officers, was not made party respondent to the writ petition filed in the Calcutta High Court. The writ petition was filed in February 1985 and it was finally heard and judgement delivered on 5.9.1985. In effect the judgment of Calcutta High Court went exparte so far as the promotee group of officers were

contd...p.26.

concerned. Although the Calcutta High Court Judgment may not be relevant to the case of the applicant for the simple reason that the Calcutta High Court Primarily based its findings and conclusions on fact of prmotion of the applicant and similarly situated person in promotee group of officers in 1983. If 1983 is accepted the date of effective promotion, although the applicants case is otherwise, the Calcutta High Court Judgment, may be justified to some extent, notwithstanding the fact of lack of jurisdication of Calcutta High Court on the point of coming into force of the Administrative Tribunal Act, 1985, and for not hearing the promotee Group of officers by which judgment they were directly affected.

27. That against the single bench judgment of the Calcutta High Court the Union of India filed an appeal before the Division Bench, some of the promotee Group of officers who came to know about the Single Bench judgment and also other filing of the appeal by Union of India, filed cross objection in the writ appeal before the Calcutta High Court, which however, was rejected by

....28.

the appellate Bench of Calcutta High Court on the ground "they did not file any affidavit in the writ petition and accordingly at this stage they can not be allowed to rely on such affidavit filed before the appeal Court". The Division Bench also laid strees on "failing which" clause of Rule 10 of 1967 R. Rules which was amended in 1980. The 1980 amendment was not applicable in case of the applicant or any officer of 1978-79 batch. The Division Bench also accepted the judgment of the single Bench which based on the motion that there were no eligible candidates in 1978, 79 and 1981 and the entire quota for the promotee group surrendered to the direct recruits by applying "failing which" clause of 1980 amendment but factually the case was otherwise.

The Division Bench however, held that since the writ petitioners in Calcutta High Court did not challenged the 1982 graduation list and the future list that would be prepared on the basis of said 1982 list and these appointed on ad-hoc basis by virtue of Departmental Committeess letter dt. 17.1.1985 was not be disturbed, so far as these person whose names appeared in

contd...28.

the 1982 list and further promotion to the post of Geologist (Sr.) on the basis of the gradation list to be prepared persuant to the order of the Trial judge as modified by the Appellate Court. The Calcutta High Court further gave liberty to the authority to give, in the mean while ad-hoc or officiating promotion till the finalisation of the gradation list, but same would proceed on the basis of 1982 gradation list subject to such modification the Trial Court judgment was upheld by the appellat Court.

A copy of the said judgment of the appellat Court is annexed herewith as Annexure - H.

28. That against the judgment of the Calcutta High Court S.K. Dhatia filed a writ petition on Artible 32 of the Constitution in the Hon'ble Supreme Court being writ petition (Civil) No.880 of 1987 and one Mr. R.C. Sinha, both promotee officers filed a special leave petition against the judgment of the Calcutta High Court. The pertinent point, among other, was lack of jurisdiction of Calcutta High Court on the date on which

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it passed the judgment in view of the section 29 of the Administrative Tribunal Act of 1985.

The Hon'ble Supreme Court took up both the petition together and passed a common order on 30.7.1987 recording the primary points of the petitioner therein. The Hon'ble Supreme Court in view of the submission made regarding jurisdiction of the Calcutta High Court, and the fact of making the said petitioners parties to the Calcutta High Court decision of the Single Bench permitted the said S.K. Bhatia and R.G. Sinh, both petitioners in the Supreme Court of file a review application and the Calcutta High Court in the event of filing of such review application within 30 days would dispose of on merits. The Supreme Court also did not express any opinion on the legally or otherwise of the petitioners. The writ petition however, was allowed to withdrawn in view of the order passed, allowing the petitioners to file a review application without expressing any opinion on merit.

A copy of the said order dated 30.7.1987 is annexed herewith as Annexure-I.

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29. That on the other hand the 25 writ petitioners in Calcutta High Court who also felt aggrieved with the judgment and order of the Appellat Bench of Calcutta High Court dated 19.3.1987 with modification of Single Bench judgement filed on Civil Appeal No.1822 of 1989 before the Hon'ble Supreme Court. The Hon'ble Supreme Court on 7.3.1989 disposed of the said Civil Appeal with following direction -

> "Special leave granted -
> Heard learned Counsel for the parties. The direction given by the learned single Judge which has been affirmed in appeal by the Division Bench with certain modification has been subjected to appeal before this Court. The Division Bench has indicated in its order dated 19.3.1987 that the list of 1982 shall be treated as the basis and while drawing up the fresh list no change except, of course any commission which is to be made from that list on account of death, transfer, retirement, resignation shall be permitted.

...31.

We have heard learned Counsel and would like to add that while drawing up the fresh seniority list the Government shall not be precluded from taking into account mistakes which it consider are relevant and appropriate to be considered. Whatever have been said by us shall not effect the pending Review petition in the High Court.

The appeal accordingly disposed of no costs."

A copy of the said order dated 7.3.1989 annexed herewith as Annexure -J.

30. That the order of the Hon'ble Supreme Court dated 7.3.1989 went beyond what had been said by the Division Bench of the Calcutta High Court in its modified judgment to follow the 1982 gradation list in prepearing the list future without change except on account of death, transfer, retirement and resignation. The Supreme Court's observation, quoted below has sufficiently

contd...32.

amplified the authority of the Government to take into account all mistakes which its considers are relevant and appropriate to be considered.

> "We have heared learned Counsel and would like to add that while drawing up the fresh seniority list, Government shall not be precluded from taking into account mistakes which it considers are relevant and appropriate to be concidered."

This above quoted order of the Supreme Court allowed the Government to correct all mistakes beyond what have been specified by the Division Bench of the Calcutta High Court, that are (i) death, (ii) transfer (iii) retirement and (iv) resignation.

So that the Government was always at liberty to rectify the mistake intentionally or otherwise, if had been committing in regard to consideration of promotion of the applicant and such other like persons by convening a D.P.C. as in

....33.

1978-79 taking said years to be eligibility years and in furtherence of obligation of the duty cast on the Government by operation of statutory Rules of appointment/promotion by quota rota system and the IPAR Circular 1959 which continues to be inforce. This was the primary mistake on the part of the Government which it specifically admitted in its affidavit before the Nagpur Bench of Bombay High Court and in its counter affidavit before the Single Bench of the Calcutta High Court and further in it appeal before the Division Bench of Calcutta High Court.

In other words the Government did not bothered least to comply on the order of Supreme Court to rectify the genuine mistakes which Government admitted in all forms and the mistakes which the Government bound to rectify by viture of the statutory Rules and relevant Government instructions. The respondents have in the present case also failed to take note of the clear order of the Supreme Court and rather they went on misinterpreting and misleading the Hon'ble Supreme Court.

....34.

Before the Hon'ble Tribunal in OA 4/90 the Government admitted in its affidavit that there were mistakes in not following the quota rota in 1978-79 and to gradation list as on 1.3.1983 was a pointer to such mistakes in not following the statutory Rules in maintaining the ratio of 1:1 Although Asstt. Geologist in competion of three years would be eligible for promotion to the post of Geologists (Jr.) The respondent also did not dispute the fact in their written statement that there were eligible candidates available for promotion during the period from 1978 to 1982.

It is suprising that the Government should be obvious of such a petent statutory mistakes have been clearly admitted in all forums.

31. That before adverting to the facts that led to present applicant to filing of OA 4/1990, the applicant states that in prusuant of the order of the Supreme Court a review petition was filed in the Calcutta High Court which was disposed of on 16.3.1990 rejecting the petition for review since the learned advocate for the review petitioners made no submission on the review petition.

...35.

A copy of the said order annexed herewith as Annexure-K.

The review petitioners in the Calcutta High Court made another applicantion for recalling the order dated 16.3.1990 and for rehearing the matter on merit as the order dated 16.3.1990 was an exparte order as the lawyer for the review petition failed to make any submission.

However, it is stated here that present applicant was no way associated with any proceeding of the Calcutta High Court and he was not party to these procedings.

32. That the Calcutta High Court after hearing the parties on the prayer for recalling the order dated 16.3.1990 passed an order or 29.6.1990 the operative portion of which is quoted below :-

"In our opinion, this objection raised by Mr. Bose, learned Counsel is to be sustained since the order dated 16.3.1990 has not been passed exparte but on merits disposing of the said review petition.

contd...36.

The order has also been signed immediately after the case was passed. Moreover, this application is not made either order 9 Rule 13 of the Civil procedure code or the principles analogous thereto. In any event the said provisions are not attracted in the facts and circumstances of the precent case. Other remidies may be open to the applicant but not for recalling the order as sought to be done in this application."

A copy of the said order dated 29.6.1990 of the Calcutta High Court annexed as Annexure - L.

33. That even the Calcutta High Court Division Bench ultimately left other remedies open to the review petitioners which meant that the grievances which were agitated by some of the promotee officers before the Calcutta High Court could still be agitated inspite of the judgment of the said court. In other words the judgment of the Calcutta High Court would not operate as a bar for any body to agitate the issue at appropriate

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competent forum. Because the Calcutta High Court could not rule out the question of lack of jurisdiction and the illegality of not making the promotee officers party in the decision of the Single Bench, although the Calcutta High Court should have delt with these two substantial law of merits as directed by the Hon'ble Supreme Court in the order dated 30.7.1987. Thus the optrepeated plea of the Respondents that Calcutta High Court's judgment would operate as a resjudicate or a bar for any other competent forum to try the dispute, is totally unfounded and far stretched.

34. That the applicant thereafter approached this Hon'ble Court by way of original Application being OA.4/90 challalging interalia the provisional Gradation list published on 6.12.89 which further published the applicant further down in the list thereby affecting him adversly. However the above original Application was withdrawn by the applicant and vide order dt. 30.1.95 this Hon'ble Tribunal directed the Respondent-authorities to decide the representations preferred by the applicant. The Hon'ble Tribunal while allowing the O.A. to be withdrawn and did not touch upon or express any opinion on the merits of the application.

Attested
27/3/96

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35. That the representation as filed by the applicant was purportedly decided by the Respondent - authorities on 8.5.95, wherein the applicant and other groups of promotee Officers were given enbleck seniority in the 1989 gradation List as on 31.8.89, starting from ~~M~~ sl.No. 778 to 862. By the said order the applicant appears to have been placed at Sl. No. 798, although no specific position has been referred to nor a copy of verified Gradation List published.

In the 1989, Gradation list as published on 6.12.89 the position of the Applicant was at Sl. No. 814.

In the said order the Respondent - authorities mis-read and mis-interpreted the Judgement of the Calcutta High Court and the order passed by the Apex Court. further more it clearly appears that the Respondent - authorities appears to be thoroughly confused regarding the greivance of the Applicant. The said order was passed mechanically, casually and without due application of mind.

In para 6, Item (b) of the said order dt. 8.5.95, about 61 persons who were never before the High Court or any other fora and who joined against the 1981 Geologist Examinations were placed at Sl. No. 717 to 777 purportedly on the ground

contd...p.39

that they were included as a part of 1982 seniority basis . In the 1982 seniority list though vacant slots was kept for direct recruits, the appointees joined their service in 1983 after they were appointed by order No. A/12025/6/80/M.2 dt. 25.6.82 , which fact will be clear from the 1989 Gradation List. Thus the persons placed at Sl. No. 717 - 777 were given enblock seniority taking them to be of 1981 U.P.S.C. batch although they were borne in the cadre after they joined in 1983 This however was grossly illegal. This position may be compared with the 1982 Gradation list were vacant slots were kept on 1 : 1 quota basis for promotee group of officers from Sl.No. 1248 onwards which is equivalent to 646 in the 1989 List.

A copies of the said order dated 30.1.95 and 8.5.95 are annexed hereto and marked as Annexure - 'M' and M-1 respectively

Attested
Alam
23/8/96

36. That there after the applicant was constrained to approach this Hon'ble Tribunal by way of an application which was registered as O.A No. 253/95.

That this Hon'ble Tribunal vide order dated 28.11.95 observed that the promotion of the applicant as claimed in the said O.A. could not be

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decided unless the position of the Applicant in the Gradation List dated. 1.10.92, which was stated to be approved by the Govt. was ascertained/ determined. The Respondent - authorities during the pendency of the said O.A. had in the meantime, intimated the position of the Applicant in the list dt. 1.10.92.

This being so this Hon'ble Tribunal vide order dt. 28.11.95, was pleased to allow the applicant to withdraw this application with liberty to file a fresh application challenging the seniority list dt. 1.10.92, if the Applicant was aggrieved. Liberty was also granted to the applicant to rely on the contention urged in the said application as well as in the earlier application (O.A. 4/90) in the fresh subsequent application.

A copy of the order dt. 28.11.95, passed by this Hon'ble Tribunal in O.A. No. 253/95, is annexed hereto and marked as Annexure - 'N'.

37. That the Applicant states that the Respondent - authorities namely the Senior Administrative Officer, GIS, Shillong, vide letter No. 4325/5/CAT/HS/90 dt. 6.11.95 enclosed a Xerox copy of letter No. 2344 B/34/62/93/19 A dt. 29.8.95 issued by the Deputy Director General(P), wherein

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the seniority position of the Applicant was taken to be placed at Sl. No. 273 in the seniority List of 1992.

By the same letter it was purportedly stated that the said list was prepared on the basis of the recast/modified Gradation list of 31.8.89, which was allegedly approved by the Govt upto Sl.No. 777. The promotee batch Geoligest (FR) of 1983 batch starting from S.K. Bhatia and ending with Deepak Kr. Bose corresponding to Sl.No. 778 to 862 of the List of 1989 were assigned seniority from Sl. No. 254 to 336 enblock after the names of retired officers, officers who had resigned or promoted to the post of Geoligist Senior before 1.10.92 had been defected. Based thereon the Applicant was placed at Sl. No. 273 in the impugned Gradation List of 1992. It may be added here that this letter was issued just before the order dt. 28.11.95, was passed by this Hon'ble Tribunal. Subsequently a copy of the impugned Gradation list of Geoligist (JR) as on 1.10.92 was forwarded by the Deputy Director General (P) Geological Survey of India vide letter No. 326 R/34/62/93/19A dt. 28.3.96 and circulated vide letter dt. 8.4.96.

An extract copy of the impugned gradation list as on 1.10.92 is annexed hereto and marked as Annexure - 'O'

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The applicant further prays that this Hon'ble Tribunal may direct the Respondent - authorities to produce the entire gradation list if so required.

38. That in the said impugned Gradation List the position of the Applicant as Stated earlier has been placed at Sl. No. 273 which fixation is not only arbitrary but betrays a gross disregard for the statutory Rules of 1966 and the D.P.A. R circular of 1959.

39. That a perusal of the impugned Gradation List published as on 1.10.92 clearly goes to show that the Respondent - authorities failed to take into account mistakes that had crept in and which in so far as its relates to the Applicant and other similarly situated officers are relevant and warrants consideration to correctly reflect the actual position of the applicant .

The Respondent - authorities vide its order 8.5.95 admittedly gave the benefit of the Gradation List of 1982 to persons appearing at Sl. No. 1 to 777 while the Applicant and such other officers though given vacant slots in the 1982 Gradation List at Sl. No. 1248 (646 of 1989) of 1982 List were totally deprived the benefit of

contd..43

of 1982 list inspite of the fact that the 1982 List was never challanged by the direct recruits individually or collectively in any judicial fora any time any where and which is also a finding of the Division Bench of the Calcutta High Court. Even if the position as shown in the 1982 List is given to the Applicant his name will appear at the top of the List.

A statement showing the position of the applicant in the various gradation List and the position that he ought to be are given for the perusal of this Hon'ble Tribunal and marked hereto as Annexure - 'P'

40. That the impugned orders however do not reflect the connected grievance of the connected applicant relating to the continuous denial of promotion as on 1979 which issue has been agitated time and again by the applicant and has a direct bearing on the issue herein.

(7) 11. Relief/Reliefs sought :

In view of the facts stated above the applicant prays for the following Relief/Reliefs :

(1) To quash and set aside the impugned order dated 8.5.95.

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(2) To quash letter No.2344 B/34/62/93/19A dt. 29.8.95 communicated vide letter No.4325/5/CAT/HS/90 dt. 6.11.95 (Annexure ... ) to direct the Respondents to promote the Applicant to the post of Geologist (Jr.) retrospectively as in 1979 i.e. on completion of 3 yrs of service as Assistant Geologist as per statutory Rules and D.P.A.R. Circular 1959, in the quota reserved for promotees, if necessary by convening a D.P. for the year 1979 and or declared the applicant deemed to have been promoted with effect from 1979, with all consequential benefits, if necessary by decalring the 1983 D.P.C. to be of 1979 in so far as the Applicant is concerned.

(3) To direct the Respondents to prepare/revised the Gradation List of Geologist (JR) afresh after the case of the Applicant for promotion as in 1979, has been considered

(4) To direct the Respondents to consider the Applicant for promotion to the post of Geologist (SR) in terms of the statutory Rules, after taking into account the service of the Applicant in the cadre of Geologist (JR) w.e.f. July 1979.

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(5) Any other Relief/Reliefs as this Hon'ble Court may deem fit and proper to grant.

(6) Costs :

The Applicant challanges the impugned order dated 8.5.95 and order dated 29.8.95 as well as the impugned Gradation List prepared as on 1.10.92 in so far as it rebets to the Applicant and other similarly situated officers on the following amongst other :

GROUNDS

I) For that the respondents acted illegally in passing the impugned order without referring to the statutory rules and the D.P.A.R. Circular, in regard to, maintenance of quota of 1:1 for the promotee and the direct recruits.

II) For that the respondents in their impugned order delt with the case in contradiction to their continuous stand right from the time of the filing of the writ petition in the Bombay High Court, Nagpur

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Bench to the adjudication of the writ petition and writ appeal by the Calcutta High Court. As such the respondents in taking contradictory stand in their order are guilty of blowing hot and cold in the same breath.

III) For that the respondents as per their statement before the Bombay High Court constituted a 6 member expert committee to go into the anomalies, which has recommended and was accepted, that the gradation list of 1982 was not prepared by following statutory Recruitment Rules. This was also the stand consistently taken by the respondents before the Calcutta High Court. Therefore the impugned order now passed new contra to the stands taken by the respondents the recommendation of ~~xxxxx~~ the expert committee and the provisions statutory of rules and Govt. instructions.

IV) For that the respondents inspite of their commitment to set interms of the statutory rules, and their admission of lapses in not timely convening the D.P.C. for

consideration of promotion of promotee officers for the years 1979, 80, 81 and 82 have not taking steps to convene the D.P.C. for these years even subsequently and till date. Failure of the part of the Respondents to convene the yearly D.P.C. cannot prejudice the promotee officers, who were eligible in the year in which the D.P.C. ought to have been convened.

VI) For that the impugned orders passed by the respondents sufferes from non application of mind and serious confusion and contradiction in as much as while they seem to be dealing with the question of seniority are totally oblivious or rather confused to the basic facts and law that unless prmotee officers were given their promotion in respective years of thir eligibility by convening D.P.C. for the year 1979, 80, 81 and 82 the question of consideration are aplacement in seniority list, or for that matter the preperation of seniority list is totally injustified and illegal.

VI) For that it is a basic question of law and fact that the promotee officers ought to have been fitted in their quota

according to their year of eligibility and then prepare gradation list, which would not ~~xxxxx~~ only made the requirement of law but also would be flaw less.

VII) for that the respondents having admitted in their counter affidavit in Calcutta High Court that there were eligible candidates from the promotee officers for the year 1978 (24), 1979 (47) 1981 (16) and 1982 (14), they could not have allowed the said promotee quota to be eaten away by the Direct Recruits. In this view of the matter all action of the respondents are illegal and void.

VIII) for that the stand contrary to the facts of the case that there been no sufficient number of candidates eligible from promotee group in 1978, 1979, 1981 and 1982 the "Failing which" clause of 1967 rules with its amendment in 1980 ~~xxxxx~~ is totally untenable and illegal, in as much as, there were eligible candidates for aforesaid years and as such "failing which" clause was not apprication.

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IX) for that the applicant was eligible for promotion within his available quota of vacancies at least in the year 1979, taking full three years continuous service in the cadre of Assistant Geologist. This aspect of case was totally lost sight of by the respondents while passing the impugned order.

X) for that the respondents are bound by the principle of promissory estoppel in not fulfilling their commitment as per statutory rules given before the Bombay and the Calcutta High Courts.

XI) for that the action of the respondents in giving seniority to the direct recruits from the date of their initial appointment and not from the date of joining without being borne in the cadre, is illegal in as much as, an employee who might be serving in some other deptt. or corporation through selected and appointment in a particular date may also be borne in the cadre, and in the gradation list where he has been serving before joing the post in

the Geological Survey of India. It is therefore pertinent to decide whether an employee in service same other department or in State Govt. or Corporation can be taken to be borne in the cadre from the date of appointment on which date he/she might not have been resigned from the service where he/she was serving on the date of appointment of GSI. In such a case two gradation list are bound to be there for particular serving employee, one in his own department where he has been serving on the date of appointment and in the other in the Geological Survey of India.

XII) for that the impugned order and all action of the respondents are arbitrarily illegal, discreminatory, and in violation of provision of Articles 14 and 16 of the Constitution of India for the simple reason that the impugned order is total violation of statutory Rules and the D.P.A.R. Circulars and other instructions.

XIII) for that the impugned order as well as denial of promotion to the applicant as

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in 1979 from the promotee quota is in violation of the provision of recruitment rules and the law the settled down by the Hon'ble Supreme Court and as such the impugned order is liable to quash with a direction to the respondents to promote the applicant in 1979 and then proceed to prepare the gradation list of the Geologist (jr.).

XIV) for that the denial of promotion for failure on the part of the respondents to convene the D.P.C. inspite of the instructions issued by the Department of personnel and Administrative Reforms vide their Office Memorandum No.22012/2/79-Estt. (D) dt. 19.9.79 and such other instructions issued from time to time, is violative of the provisions of such instructions and as such list by Articles 14 and 16 of the Constitution of India.

XV) for that the action of the respondents in denying the promotion to the applicant with effect from 1979 in the cadre of Geologist (Jr.) and thereafter to the Cadre of Gelogist (Sr.) without following the procedure established by law is hit by the Articles 21 and 23 of the Constitution of India.

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XVI) For that arbitrarily and unjustified denial promotion an eligible candidate while making his juniors appointed in 1982 senior over him, is not only humiliating and prejudical but also amounts to demotion to the lower post use is his juniors, thereby attrecting the provisions of Article 311(2) of the Constitution of India.

XVII) The respondents acted arbritarily and malafide in allowing the promotee quota to be encroached and eaten away by the direct recruits in violation of the rules, the admitted position of fact and eans and the law settled down by the Hon'ble Supreme Court.

XVIII) For that the respondents can not proceed with the promotion to the post of Geologist (Sr.) until and unless the applicant is given retrospective promotion as in 1979, within his quota and then prepare a gradation list of the Cadre of Geologist (Jr.) and the gradation list so prepared

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proceed to process the cases for promotion to the post of Geologist (Sr.). In such Factual and legal situation any promotion made to the post of Geologist (Sr.) is legally is not sustainable and factually in correct, and such promotion made or likely to be made should be subject to the decision of this Hon'ble Tribunal in this application.

XIV) for that the preperation and approval of the alleged gradation list of 1992 will not have any legal relevance in the present application in as much as the said gradation list also, as stated by the respondent in the impugned order, bases its reasoning on the fact of promotion of the prometee officers including the applicant in 1983. That the case of the applicant is that his promotion first be given as in 1979 within his quota and then prepared the gradation list and preceed with process of promotion to the higher Cadre.

XX) for that the Respondents while going ahead with the finalisation of the impugned Gradation List of 1992, failed to meet the provisions of law and publish

contd..p.54.

correct Gradation List by taking into account the mistakes which the Respondent were given liberty ~~to~~ by the Hon'ble Supreme Court in its order dt. 7.3.199. It is humbly submitted the word 'mistake' includes the mistakes of law and fact. The liberty of correcting 'mistakes' was given by the Hon'ble Supreme Court in addition to the conditions, namely, (a) death (b) transfer (c) retirement and (d) resignation as set out by the Calcutta High Court, Division Bench. So the humble submission of the applicant it is abundently clear that the Hon'ble Supreme Court allowed to correct the 'Mistakes' beyond the four conditions set out by the Calcutta High Court. The Respondent however, did not correct the exfacie legal mistakes.

(XXI) For that the Respondents while passing the impugned orders in question as well as the impugned Gradation List of 1992, lost sight of the Judgement and order passed by the Central Administrative Tribunal, ~~Bhangagar~~ Banglore Bench in an exactly similar case, though of the 1986 Batch where all aspects of Rules

contd .... 55

and decisions of the Calcutta High Court as well as the Hon'ble Supreme Court were considered and the rights of the promotee officers were vindicated. The case in reference is Application No. 289/90 ( Shri N.L.Gorah and others -Vs- The Union of India) which was decided on 29.7.99 by the Hon'ble Central Administrative Tribunal, Banglore Bench.

(XXII) For that for reason of the facts and the position in law stated above, the applicant is deemed to be promoted with effect from 1979 and this Hon'ble Tribunal may declare so far the ends of justice. And once the applicant is deemed to have been promoted in 1979 all consequential benefits admissible to the applicant may be granted. For the ends of justice and for enforcement of constitutional and statutory provisions this Hon'ble Tribunal may also declare the 1983 D.P.C. to be of 1979 so far as the applicant is concerned

(XXIII) For that at any rate and under any consideration the impugned order as well as the actions of the respondents are bad in

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law and infact and as such are liable to be quashed with a direction to promote the applicant with effect from 1979, prepared the gradation list thereafter proceed ahead with further promotion.

It is further submitted that findings of facts with impugned order are incorrect, confusing and misleading, and the interpratation of the judgments of the Calcutta High Court and the Supreme Court is equally incorrect.

The order sufferes from non application of mind on the legal and factual aspects involved in the case.

8. Interim order, if prayed for :

Pending final decision in the application the applicant prays for the following interim reliefs.

(1) To stay further promotion to the post of Geologist (Jr.) until the applicants case as in 1979 is concerned and fresh gradation list is published.

And/or

In case of consideration for promotion to the post of Geologist (Sr.) the

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case of the applicant should also be considered deeming him to have been promoted to the post of Geologist (Jr.) in 1979.

(2) In other order or orders as this Hon'ble Tribunal may deem fit and proper to grant for the protection of the rights of the applicant during the pendency of the application.

9. Details of the remedies exhausted :-

The applicant declares that the he has availed of all the remedies available to him under relevant service rules etc.

10. Matters Not pending with any other Court etc. :-

The applicant further declared that the matter rearding which this applicant has been made is not pending before any court of law or any other authority or any other bench of Tribunal.

Attested 22/5/96

11. Particulars of Bank Draft/Postal orders in respect of application fee :

(a) Name of the Bank of which drawn :

(b) Demand Draft No. :

Or

No. of Indian Postal order/orders. : 346673

contd..p.58

(i) Name of the Issuing P.O.: GPO, SH.

(ii) Date of Issue of P.O/ P.Oc. 9-8-96

(iii) P.O. at which payable: G PO, SH.

12. Details of Index :

An index in duplicate containing details of the documents to be relied upon its enclosed :

13. List of Enclusers :-

## V E R I F I C A T I O N

I, Shri Himalay Sarma, son of Shri Benudhar Sarma, aged 46 years working as Geologist (Junior) resident of Gauhati, do hereby verify that the contents from 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Himalaya Sarma

Signature of the Applicant

Date : 23-8-96

Place : Guwahati

ANNEXURE - A

No.9/11/55-RPS
Government of India
Ministry of Home Affairs.

New Delhi - II, the 22nd December, 1959
1st Pusa, 1891.

OFFICE MEMORANDUM

Subject : General Principles for determining seniority of various categories of persons employed in Central Services.

As the Ministries of the Government are aware instructions have been issued for time to time regarding the principles to be observed in and the method of determining seniority vide office Memorandum citled below :-

i) Office Memorandum No.30/42/48 - Apptts. dated 22nd June, 1949 ;

ii) Office Memorandum No.65/28/49-DGS(Apptts.) dated the 3rd February, 1950 and other subsequent office Memorandum regarding fixation of seniority of ex-employees of the Govt. of Burma :

...60.

Ann. A

INSTRUCTION FOR THE INITAIL CONSTITUTION OF THE ASSISTANTS GRADE OF THE GENTRAL SECRETARIATE SERVICE

2. Seniority of Assistants in Grade IV as newly constituted. The names of all existing permanent Assistants who are included in the permanent statement of the service and who were confirmed in their posts prior to the 22nd October, 1943, will be arranged in the first instance Ministry wise in accordance with the rules in force at present. Such permanent Assistants will be considered senior to all others confirmed in pursuance of these instructions in vacancies arising up to the 22nd October, 1950. The order of seniority of the later group of Assistants, namely, those confirmed after the 22nd October, 1943, which will be arranged in a single list for all Ministries, will be determined inter se on the basis of their length of continuous service, temporary or permanent in the grade of Assistant or in an equivelent grade, provided that any period of service during which the pay actually drawn exceeds Rs. 160 per month should be deemed to be service in a grade equivalent to that of an Assistant.

.....61.

ANNEXURE - II

NO.9/11/55-RPS
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

New Delhi-IL the 22nd December, 1959
1st Pus. 1891.

OFFICE MEMORANDUM

Subject : General principles for determining seniority of various categories of persons employed in Central Services.

As the Ministries of the Government are aware instructions have been issued from time to time regarding the principles to be observed in and the method of determining seniority vide office Memorandum cited below :-

i) Office Memorandum No.30/42/48-Apptts. dated 22nd June, 1949 ;

ii) Office Memorandum No.65/28/49-DGS(Apptts.) dated the 3rd February, 1950 and other subsequent office Memorandum regarding fixation of seniority of ex-employees of the Govt. of Burma ;

(iii) Office Memorandum No.31/223/50-DGS, dated the 27th April, 1951 and other subsequent office Memoranda regarding fixation of seniority of displaced Government servants ;

(iv) Office Memorandum No.9/59/56-APS dt. 4th August, 1956.

The instructions contained in this Ministry's office Memorandum No.30/44/48 - Apptts ; dated the 22nd June, 1949, were issued in order to safeguard the interests of displaced Government servants appointed to the Central Services after partition.

contd...62

As it was not possible to regulate the seniority of only displaced Government servants by giving them credit for previous service, the instructions were made applicable to all categories of persons appointed to Central Services. The principles contaiued in the 22nd June, 1949 orders were extended to :-

(i) Ex-Government servants of Burma appointed to Central services ; and

(ii) The employees of former Part 'B' States taken over to the Central as a result of Feberal Financial Integration.

The instructions contained in this Ministry's Office Memorandum No.32/10/49-CS dated the 31 st March, 1950 and No. 32/49-CS(C) dated the 20th September, 1952 similarly regulate the seniority of candidates with the war service appointed to the Central Service.

2. The question has been raised whether it is necessary to continue to apply the instructions contained in the Office Memoranda cited above. Displaced Govt. servants have by and large been absorbed in the various Central Services and their seniority has been fixed with reference to the previous service rendered by them. Similarly, the seniority of ex-employees of the Govt. of Burma and of Part 'B' Statesas well as of candidates with war service has already been determined in accordance with the instructions

...63

cited above. Asthe specific objects underlying the instructions cited above have been achieved, their is no longer any reasons to apply these instructions in preperence to the normal principles for determination of seniority. It has therefore, been decided in consultation will the U.P.S.C. that hk here after the seniority of all persons appointed to the various Central Services after the date of those instructions should be determined in accordance with the General Principles annexed hereto.

3. The instructions contained in the vadous Office Memoranda cited in para I above are hereby cancelled, except in regard to determination of seniority of persons appointed to the various Central services prior to the date of this Office Memorandum. The revised General Principles embodied in the Annexure will not apply with retrospective effect but will come into force with effect from the date of issue of these orders, unless a different dat in respect of any particular service/grade from which these revised seniority are to be adopted for purposes of determining seniority has already been or is hereafter a agreed by this Ministry.

Sd/- V. Biswanathan,
Special Secretary to the Govt. of India.

Annexure - A

GENERAL PRINCIPLES FOR DETERMINATION OF SENIORITY IN THE GENERAL SERVICES.

1. (i) These principles shall apply to determination of seniority in Central Civil Services and Civil posts except such services and post for which separate principles have already been issued or may be issued hereafter by Government. Ministries or Departments which have made separate rules or issued instructions on the basis of instructions contained in the Ministry of Home Affairs O.M.NO.30/44/48-Apptts. dated the 22nd June, 1949, are requested to consider modification of these rules or instructions on the basis of these general principles. However, whenever, it is considered necessary to follow principles different from these laid down in this Memorandum, a specific reference should be made to the Ministry of Home Affairs will consult the U.P.S.C. As regards individual cases, the Ministry of Home Affairs will decide the case of which the advice of the Commission should be obtained.

(ii) Not with standing anything contained in these General principles, the seniority of persons belonging to the following categories will,

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on their appointment to a Central Civil service, or a Civil posts, continue to be determined by the instructions noted against each such category :-

| | |
|---|---|
| (a) Ex-Government servants penalised for their patriotic activities | H.H.A.O.M.NO. 6/4/52 S&NG dated 29.5.57. |
| (b) Central Government employees discharged on account of affiliation with T.B. Pleurisy or Leprosy. | O.M.NO.37/1/52-DGS. dated 10.7.54(subsequently extended to ex-pleurisy/Teprosy Patients vide O.M.NO 13/4/56 -RPS dated 29.9.56 and 15/4/57-RPS dated 14.7.1958. |
| (c) Permanent displaced Government servants nominated by the Transfer Bureau to purely temporary organistaions, who consequents on their retrenchment, were absored in other officers. | O.M.NO.30/44/48 - Appts. dated 22.6.49 |

2. Subject to the provision of para 3 above, persons appointed in a substantive or officiating capacity to a grade prior to the issue of these ~~gene~~ general principles shall retain the relative seniority already assigned to them or such seniority as may hereafter be assigned to them under the existing orders applicable to their cases and shall enb ------ senior to all other that grade.

Explanation : For the purpose of these principles (a) person who are confirmed retrospectively with effect from a date earlier than the issue of these general principles ; and (b) persosn appointed

...66

on probation to a permanent post substantivley vacant in a grade prior to the issue of these general principles, shall be considered to be permanent officers of the grade.

3. Subject to the provisions of para 4 below, permanent officer of each grage shall be ranked senior to persons who are officiating in that grade.

4. Direct Recruits :

Not withstanding the provisions of para 3 above, the relative seniority of all direct recruits shall be determined by the order of merit to which they are selected for such appointment on the recommendations in the U.P.S.C. or ther selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection ; Provided that where persons recruited initially on "temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit .

5. Promotees :

(i) The relative seniority of persons promoted to the various grades shall be determined in

....67

the order of their selection for such promotion :

Provided that where persons promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their promotions seniority shall follow the order of confirmation and on the original order of merit.

(ii) Where promotions to a grade are made from more than one grade, the eligible persons shall be arranged in a separate lists in the order of their relative seniority in their respective grades. Thereafter, the Departmental Promotion Committee shall select persons for promotion from each list upto the proscribed quota and arrange all the candidates selected from differant lists in a consolidated order of merit which will determine the seniority of the persosn on promotion to the higher grade.

Note: If separate quota for promotion have not already been prescribed in the relevant recruitment rules, the Ministeres/Departments may do so now, in conclusition with the Commission whereever necessary.

Relative seniority of Direct recruitments and Promotees:

The relative seniority of direct recruits and of promotees shall be determined according to the pro rotation of vacancies between direct recruits

contd...68

and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

7. Transferees :

i) The relative seniority of persons appointed by transfer to a Central Services from the Subordinate Officers of the Central Government or other Departments of the Central or State Government shall be determined in accordance with the order of their selection for such thansfer.

ii) Where such transfers are effected against specific quotas prescribed in the recruitment rules therefore, the relative seniority of such transferres vis-a-vis direct recruits and promotees shall be detemmined according to the rotation of vacancies which shall be based on the quota reserved for transfer, direct recruitment and promotion respectively in the recruitment rules.

iii) Where a person is appointed by transfer in accordance with a provision in the recruitment rules providing for such transfer in the event of non-availability of a suitable candidate by direct recruitment or promotion, such transferees shall be grouped with direct recruits or promotees, as the case may be, for the purpose of para 6 above. He shall be ranked below all direct recruits or promotees, as the case may, selected on the same occasion.

8. Persons appointed on adhoc basis to a grade without consultation with the U.P.S.C. under Regulation 4 of the U.P.S.C.(Exemption from consultation) Regulations, 1958, are to be replaced by persons approved for regular appointment

.....69

by direct recruitment, promotion or transfer, as the case may. Until they are replaced, such persons will be shown in the order of their ad-hoc appointment regularly appointed to the grade.

EXPLANATORY MEMORANDUM

General Principle 4: The Union public service Commission invariably indicate the order of preference at the timeof selection and it will not, therefore, be difficult to determine the relative seniority of persons recruited though the Commission. In order to obviate difficulties in determining the relative seniority of direct recruitmxx recuited otherwise than though the U.P.S.C. the selecting authority should indicate the order of merit at the time of selection.

Coneral Principle 5(i): Where promotions are made on the basis of selection by a D.P.C., 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 as unfit for promotion and is superseded by a junior, such person shall not if he is subsequently found suitable and promotees take seniority in the higher grade over the junior persons who had superseded him.

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General Principles 5(ii) : Illustrations : Where 75% of the vacancies in the grade of head Clerk are reserved for promotion from the grade of Upper Division Clerk and 25% from the group of Store Keeper the eligible Upper Division Clerk and Store Keeper shall be arranged in se separate lists with reference to their relative seniority in those grade. The D.P.C. and 1 from the list of Store-keepers. Thereafter the selected persons from each list shall be arranged in a single list in a consolidated order of merit assessed by the D.P.C. which will deter-mine the seniority of the persons on promotion to the higher grade.

General Principle (6): A roster should be maintained based on the reservation for direct recruitment and promotion in the recruitment Rules. Where the reservation for each method is 50% the roster will run as follows :-

(1) Promotion, (2) Direct recruitment (3) Promotion, (4) Direct recruitment and so on. Appointment should be made in accordance with this roster and seniority determined accordingly.

Illustration : Where 75% of the vacancies are reserved for promotion and 25% for direct recruitment, each direct recruit shall be ranked in seniority below 3 promotees. Where the quotas are 50% each, every direct recruit shll be ranked below a promotee. It for any reasons a direct recruit or a promotee cases to hold the appointment in the grade, the seniority list shall not be re-appointment merely for the purpose of ensuring the proportion referred to above.

....71.

General Principle 7(i) : The Principle laid down in para 7(i) will not present any difficulty where recruitment by transfer is made singly and at intervals but it will be found wanting in cases where two or more persons are selected from different sources on the same occasion and the selection is spreed over a number of day. It will, therefore, be necessary for the authorities responsible for approving appointment by transfer to indicate the inter se order or merit of the selected persons in such cases.

General Principle (8) : While the seniority of persons appointed on an ad hoc basis will be determined as indicated in para (8) of the Annexure, the seniority list should clearly show that such persons are not eligible for promotion or confirmation .

....

Annexure - A

Department of Personnel & A.R. Dy. No. 2837/84-Estt(C).
Estt.(D) Section.

Reference F.R. attached.

2. According to the principles relating to the determination of seniority contained in M.H.A.O.M.No.9/11/55-RPS dated 22.12.59 the relative seniority of direct recruits and of promotees is to be determined according to the roster of vacancies for direct recruitment and promotion respectively in the recruitment rules.

3. However, in the instant case, since a failing which clause has been provided in the Rules in area of non-abailability of persons for promotion, the direct recruits appointed in such an eventualy will be treated as promotees for the purpose of rotation of vacancies between DH and promotion. it may be added here that the failing which cause in such case can be operated only when the normal channel of filling up of vacancies from the source from which they are required to be filled fails.

4. As regards the quiry raised by the Deptt.of Mines in paint B. of their O.M placed below, it may be clarified that in view of the promotion indicated para 2 above, the case in which there is no failing which clause in the recruitment rules, the vacancies had to be filled with reference to the relavent quota and their interpolting the DRs and promotees accordingly. The date of appointment is not relevant for the purpose of such interpulation and the quota eystem is required to be observed scrupulously.

Sd/-
G.I. Sharma
Desk Officer,
15the September, 1984.

Director (E)
Department of Mines.

Attested
Himalaya Sarma
20.8.96.

ANNEXURE - B.

1867 Rules

Asstt. Geo - Date of appointment as as criterion for seniority

JG - do -

Rules - 3 yrs service on regular basis as A.G. for promotion to JG.

Annexure - 10 (page 79)
1964 Letter - Quota reserved.

Our position should be (LL) (MM) or (NN)

Our position in serial should be 362 onwards 17 1:1 is followed

17. 3rd yrs. continuous service there Sk. 413 onwards

O A. 4/90

Himalay Sarma ... Appellant

- Vs -

Union of India ... Respondent

Dates of appointment of different years as shown sum belically in 1989 Gradation list of Geologist (Jr)

Direct Recruits (LL) - 27.3.78 (JG), (MM) 10.10.78 (NN) 3.5.1979 (OO) 7.4.1980, (PP) 8.5.81, (QQ) 25.6.82, RR (SS) 3.6.83

In the Grade Asstt. Geologist on 17.3.75 and

In the Grade Geologist (Jr.) (RR) 15.1.1985.

| Name with Sl.No. | Initial appointment | Nest Post | Date/with UPSC yrs. | Nest Promotion | Due for promotion | Actually promoted as J.G. |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 1. Himalaya Sarma | Asstt. Geologist | - | 17.3.1975/ 1976 (DJ 5.7.76 | | 17.3.78 | 25.2.83 (RR) |

Attested
Himalaya Sarma
20.8.96

contd..

Ann.- B.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| *2. S.K. Bhatta (998) | Sr. Technicah Asstt. (S.T.A) 6.5.71 | Asstt. Geologist. | 16.5.1975 (DJ) | " | 16.5.78 | 10.2.83 (RR) |
| 3. Ramchandra (780) | -do- 6.5.71 | " | 19.5.1975 | " | 19.5.78 | 18.2.83 (RR) |
| 4. V.S.Murthy (781) | -do- 7.5.71 | " | 16.5.1975 | " | 16.5.78 | 11.2.83 (RR) |
| 5. D.K.Mukhapadhyay (783) | Asstt. Geologist | " | 17.3.1975/ 1974(DJ Oct.75) | " | 17.3.1978 | 11.2.83 (RR) |
| 6. S.Majumdar (785) | S.T.A. 15.5.71 | Asstt. Geologist. | 2.6.1975 | " | 2.6.1978 | 2.2.83 (RR) |
| 7. K. Prabhakar(787) | Asstt. Geologist | " | 17.3.75/74 | " | 17.3.1978 | 18.2.83 (RR) |
| 8. D.L. Basu (789) | S.T.A. 1.5.71 | Asstt. Geologgist | 13.5.75 | " | 13.5.1978 | 18.2.83 (RR) |
| 9. J.Bose (791) | Asstt. Geologist. | " | 17.3.75/74 | " | 17.3.78 | 3.2.83 (RR) |

Attested
Hindoja Farms
Secretary

contd...

Ann.- B.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| 10. S.B. Nayar (793) | -do- | " | 17.3.75/74 | " | 17.3.78 | 17.2.83 (RR) |
| 11. S.K. Jadia (795) | -do- | " | 17.3.78 | " | 17.3.78 | 11.2.83 (RR) |
| 12. Shibanada Sengpta (797) | S.T.A. 4.5.71 | Asstt. Geologist | 1.12.75 | " | 1.12.78 | 22.2.83 (RR) |
| 13. S. Shashrabuddha (799) | Asstt. Geologist. | " | 17.3.75/74 | " | 17.3.78 | 17.2.83(RR) |
| 14. Mukul Bisher (801) | S.T.A. | Asstt. Geologist. | 17.3.75/74 | " | 17.3.78 | 18.2.83 (RR) |
| 15. S.N. Vangakar (803) | S.T.A. 7.4.75 | -do- | 16.10.75 | " | 16.10.78 | 19.2.83 (RR) |
| 16. Pashanta Kr. Roy (804) | Asstt. Geologist. | -do- | 17.3.75/74 | " | 17.3.78 | 9.2.83 (RR) |
| 17. S.N. Opadhaya (806) | " | - | 17.3.75/74 | " | 17.3.78 | 14.2.83 (RR) |

Attested
Himalaya Sarma
Nepal

contd...

Ann. B.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| 18. K. Radhakrishanan (808) | Asstt. Geologist. | - | 17.3.75/74 | " | 17.3.78 | 24.2.83 (RR) |
| 19. J. S. Rawat (810) | " | -- | 17.3.75/74 | " | 17.3.78 | 9.2.83 (RR) |
| 20. P. S. Chakraborty(812) | " | - | 17.3.75/74 | Geologist (Jr.) | 17.3.78 | 14.2.83 (RR) |
| 21. Shyamla Kr. Sengupta (816) | -do- | - | 17.3.75 | " | 17.3.78 | 14.2.83 (RR) |
| 22. B. K. Srastave (818) | S. T. A 7.12.72 | Asstt. Geologist. | 10.3.76 | " | 10.3.79 | 5.2.83 (RR) |
| 23. S. Anatharanman (820) | Asstt. Geologist | - | 17.3.75 | " | 17.3.78 | 10.2.83 (RR) |
| 24. K. K. Rastoge (822) | " | - | 17.3.75 | " | 17.3.78 | 10.2.83 (RR) |
| 25. Miss S. Dasgupta (824) | S. T. A 23.2.71. | Asstt. Geologist. | 18.3.76 | " | 18.3.79 | 2.2.83 (RR) |
| 26. R. K. Singha (826) | Asstt. Geologist 1 | - | 17.3.75/74 | " | 17.3.78 | 16.2.83 (RR) |

contd...

Attested
Himalaya Salms
20-8-96.

Ann.-B.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| 27. A.K. Dasgupta (828) | S.T.A. 9.7.75 | Asstt. Geologist | 21.6.76/74 | " | 21.6.79 | 11.2.83 (RR) |
| 28. S.S. Gupta (330) | S.T.A 7.12.70 | " | 25.3.76 | " | 25.3.79 | 2.2.83 (RR) |
| 29. R.S. Sukla (832) | S.T.A. 15.5.71 | " | 17.5.76 | " | 17.5.79 | 10.2.83 (RR) |
| 30. Tapash Kr. Pyne (834) | Asstt. Geologist | - | 17.3.75 | " | 17.3.78 | 9.2.83 (RR) |
| 31. Subir Dutta (836) | S.T.A. 5.5.71 | Asstt. Geologist | 9.1.76 | " | 9.1.79 | 2.2.83 (RR) |
| 32. C.V. Kondana (838) | 12.5.79 | " | 26.5.76 | " | 26.5.79 | 2.2.83 (RR) |
| 33. B.C. Sinha (840) | Asstt. Geologist | - | 17.3.75/74 | " | 17.3.78 | 2.4.83 (RR) |
| 34. P. Chakraborty (842) | S.T.A. 26.4.71 | Asstt. Geologist. | 2.4.76 | " | 2.4.79 | 2.2.83 (RR) |

Attested
Himalaya Saran
20-8-96.

contd...

Ann.- B.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| 35. V. Kolhapuri (844) | Asstt. Geologist | - | 17.3.75/74 | " | 17.3.78 | 3.2.83 (RR) |
| 36. S.K.Ghodke (846) | S.T.A. 28.4.71 | N/G | 2.4.76 | " | 2.4.79 | 7.2.83 (RR) |
| 37. Smti S. Chakraborty (848) | Asstt. Geologist | - | 17.3.75 | " | 17.3.78 | 10.2.83 (RR) |
| 38. C. Wangdus (850) | S.T.A. 18.4.71 | N/G | 2.4.76 | " | 2.4.79 | 2.4.83 (RR) |
| 39. D. Roy (852) | Asstt. Geologist | - | 17.3.75/74 | " | 17.3.78 | 10.2.83 (RR) |
| 40. A.C. Banarjee (854) | S.T.A. 27.4.71 | N/G | 2.4.76 | " | 2.4.79 | 25.2.83 (RR) |
| 41. K.C. Jain (856) | Asstt. Geologist | - | 17.3.75/74 | " | 17.3.78 | 9.2.83 (RR) |
| 42. J.M. Pradas (860) | S.T.A. 6.5.71 | N/G | 11.5.76 | " | 11.5.79 | 17.2.83 (RR) |

Attested
Hinduja Sarma
20.8.84

contd...

Ann.- B.

| £ 1 | 2 | 3 | 4 | 5 | 6 | 8 |
|---|---|---|---|---|---|---|
| 43. S.N. Singh (862) | S.T.A. 31.7.71. | A/G | 29.3.76 | " | 29.3.79 | 8.2.83 (RR) |
| 44. S. Basu Roy (864) | Asstt. Geologist | - | 17.3.75/74 | " | 17.3.78 | 10.283 (RR) |
| 45. A.S. Khan (866) | Asstt. Geologist | - | 17.3.75/74 | " | 17.3.78 | 18.2.83 (RR) |
| 46. C.R. Saha (868) | S.T.A. 3.1.73 | A/G | 7.7.76 | " | 7.7.79 | 11.2.83 (RR) |
| 47. D.K. Roy (870) | S.T.A. 20.10.71 | A/G | 18.3.76 | " | 18.3.79 | 2.2.83 (RR) |
| 48. A. Sensarma (872) | S.T.A. 22.9.71 | A/G | 1.4.76 | Geologist (Jr.) | 1.4.79 | 3.2.83 (RR) |
| 49. S.N. Saxena (874) | S.T.A. 15.11.71 | A/G | 7.5.76 | " | 2.5.79 | 10.2.83 (RR) |
| 50. Sajal Kr. Chuthury (876) | S.T.A. 8.10.71 | A/G | 5.5.76 | " | 5.5.79 | 4.2.83 (RR) |

contd....

Attested
Himadya Sarma
20-8-96.

Ann.- B.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| 51. K.N. Dey (878) | S.T.A. 6.12.71 | N/G | 5.5.76 | " | 5.5.79 | 2.2.83 (RR) |
| 52. A.K. Raina (880) | S.T.A. 6.12.71 | N/G | 31.3.76 | " | 31.3.79 | 2.2.83 (RR) |

Among Promotees Total - 52

1) Direct Recruits through U.P.S.C. 1974 Exam. = 24 Nos

2) Promotee from S.T.A. = 28 Nos.

52 Nos

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Attested.
Himalaya Sarma
20.8.96.

| | |
|---|---|
| 1) Direct Recruits examined | = 54 Nos. |
| U.P.S.C. Test & Exam. | |
| 2) Promotee Exam S.J.A. | = 38 Nos. |
| | 92 Nos. |

ANNEXURE - C

C.A.No. 2830/U/87
For Private Use.

Certified copy of Reply dt. 3.7.84 in writ petition No. 2714 of 83 (decided on 6.8.84)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ petition No. 2714 of 1983

D. K.Mukhopadhyay and others .... Petitioners.

- Versus -

Union of India and others .... Respondents

REPLY TO THE RESPONDENT TO THE NOTICE BEFORE ADMISSION ISSUED BY THES COURABLE COURT.

The respondent No. 2 most humbly begs to state as under :-

1. The petitioners above named have filed the presented petition for quashing of the seniority list at Annexure 3 with the petition. The said seniority list which is under challenge in the petition contains the seniority of the Junior Geologist (Jr. Class - I) as on February, 82. The respondent submits that the list is provisionally prepared list.

2. The respondent submits that his provisional gradation list of Geologist (Jr. Class-I) as on 1.2.82 was circulated amongst the officers and after circulation of the same, large number of the representations from

contd..

Attested
Hinaloya Sarma
27-8-96.

the officers working under the respondent were received, wherein it was stated that the seniority of the Geologists (Junior Class I) is to be fixed adopting 1 to 1 ratio that is placing one D.P.C. candidate followed by one Union Public Service Commission candidate. It is submitted that the aforesaid list is provisional one and not an approved Gradation List of the grade of Geologists (Junion Class-I). The respondent submit that the gradation list so prepared will have to be sent to the Government of India for approval to be final one and the president of India WILL have to finalise the aforesaid provisional list, he being the appointing authority of the petitioners.

2. On receipt of the representations received from the various Geologists (Junior Class-I) the same were submitted for consideration to the Director General The Respondent No. 2 as appointed committee to go into the details of the Gradation List of Geologists (Junior Class I) as on 1.2.83 and advice the respondent No. 2 as to which will be the best course of action that can be followed. The committee has submitted the report and the same is under submission to the Director General Geological Survey of India, for approval. The

Attested.
Advocate
20-8-96.

....83

Gradation List will then be revised and sent to the Ministry for approval and after seeking final approval of the president of India, the same will be published.

3. The respondent submits that at present the petitioner can not make out any gmievance against the respondent for the reasons that the list under challenge in the present petition is a provisional seniority list and not the final seniority list for the aforesaid reasons and hence the respondent submits that the petition is premature and the same is liable to be dismissed on this count alone.

As to prayer clause :- The respondent submits that the petition may be dismissed as the same is premature.

Sd/- Ramesh Darda.
Counsel for Respondents.

Nagpur.

Dt. / 7/1984

Attested
Himalaya Saraf
20-8-96.

## AFFIRMATION

I, Mukund Laxman Deshpanda, Director G.S.I. Nagpur aged about 52 Resident of Nagpur take on oath and state on solemn affirmation that the reply to the notice before admission in the writ petition filed by the petitioners challenging the legality of the provisional seniority list on 1.2.83; is prepared by the additional Standing Counsel to Union of India as per instructi ns given to him which are received by me from the official records and believed to be true by me.

Hence verified and signed at Nagpur on 3rd day of July, 1984.

Sd/- M.L.Deshpande,
Deponent

I know the deponent
Sd/- Ramesh Darda,
(Advocate)

Solemnly affi rmed before me by Mukund S/o Laxman Deshpande who is identified before me by R. Darda whom I personally know this 3rd day of July 1984.

Sd/- B.C.Deo,
Sr. Superintendent,
High Court, Nagpur Bench, Nagpur,
3.7.84

filed to day
Sd/- E.C.Deo
Sr. Superintendent,
3.7.84

Attested -
Himalaya Sarma
20.8.96.

ANNEXURE - 'D'.

C.A. No.2830/U/87
For Private use.

Certified copy of order dated 6.8.84 in Writ petition No. 2714 of 83 (decided on 6.8.84)

IN THE HIGH COURT OF JUDICATION AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ petition No. 2714 of 83

1. D.K. Mukhopadhyay, aged 32 years
2. Shymal Sengupta, Abed 31 years
3. T.B.Mahapatra, aged 31 years
4. J.M. Prasad, aged 40 years
5. M.V.Venkatraman, aged ~~48~~ 28 years
6. S.N.Upadhyay, aged 35 years.
7. Rajesh Kumar aged 23 years

All petitioners working as
Geologists (Junior) Class- I
Geological Survey of India,
New Secretariat Building, Nagpur..... Petitioners.

- Versus -

1. Union of India,
Ministry of Steel & Mines,
Department of Mines,
New Delhi.

Attested.
Himalaya Sarma
20-8-86.

contd...46

contd ... 'D'

2. Geological Survey of India.
27, Jawaharlal Nehru Marg.
Calcutta-16.
Through the Director General ..... Respondents.

Petition under article 226 of the Constitution of India prayed that this Hon'ble Court may please :

(i) By a writ of mandamus or any other appropriate writ, order or direction, quash the seniority list at annexure-III and further direct the respondents to refix the seniority according to the ratio of 1:1 rotationally fixing the seniority of prometees and appointees as placed in the annexure-V to this petition.

ii) further direct the respondents to refix the seniority of the petitioners as claimed in annexure-V to this petition. (iii) by an ad-interim order, direct the respondent No. 2 not act upon the impugned seniority list at annexure-III for the purposes of promotion to the higher posts during the pendency of the petition

(iv) grant any other relief which is expendient in the circumstances of the case. (v) saddle the costs on the respondents.

Attested
Himalaya Sarma
25-8-86.

S/Shri R.R. Pillai, B.K.Rao & D.M. Kakani, Advs. for the petitioners.

Shri Darda for Respondents.

contd...

P R E S E N T

"THE HON'BLE SHRI JUSTICE GINWALA

AND

THE HON'BLE SHRI JUSTICE PATEL

the 6TH DAY OF AUGUST 1984

: O R D E R :

Read Mr. Pillai for petitionerand Mr. Darda for Respondents.

Mr. Pillai seeks permission to withdraw the petition with liberty to file fresh petition in case the petitioners are required to challenge final seniority list.

Permitted to withdraw with liberty as prayed.

Type by : Mr. Jangda.
Comp. with Mirs. Dechkar.

Attested
Hindoria Sharma
Adv. 8.96.

ANNEXURE - E.

Dated 9.4.1984

TO:

The Secretary to the
Government of India,
Ministry of Steel and Mines,
Department of Mines, New Delhi.

Sub: Gradation List of Officers for the Grade of Geologist (Jr) GSI as on 1.2.1982.

Sir,

I am to state that the Rectt. Rules for the post of Geologist (Jr) provide 50% to the filled up by DR and 50% by DPC failing which by D.R. The Gradation list in the grade of Geologist (Jr) as on 1.2.1976 was prepared on the above basis in terms of Ministry of Home Affairs O M Dated 22.12.1959 and the Ministry in their letter No. A-23024/6/78-M2 dated 24.6.1978 approved the Gradation List of the Grade of Geologist (Jr) upto Shri H.J. Maharaja Singh (Sl. No. 743)

2. While preparing the seniority list as on 1.2.1982 the inter se-seniority as approved by the Ministry upto Shri H.J.Maharaja Singh has been retired. Therefore, the Ministry recommended promotion of candidates to the grade of Geologists (Jr) in 1978. The seniority of the officers recommended for promotion through DPC has been assigned according to rotation of vacancies i.e. one DPC followed by one DR candidate, in terms of

Attested
Hiralal Jaiswal
20-6-96

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of the Ministry of Home affairs OM dated 22.12.1959, inter Seniority list as on 1.2.1982 after Shri H.S.Maharaja Singh (Sr. No.743) putting them from Sr.No.744 (Md Iqbal) to Sr. No. 933 (V S Shrivastava).

3. Thereafter no DPC candidates have been recommended till January 1982. Therefore, the balance DR candidates have be en assigned seniority enblock. This draft gradation list as on 1.2.1982 was circulated amongst the officers concerned. Representation from a number of officer were received raising objection relating to their seniority position, mainly from the prometees who have been recommended for promotion in January, 1983.

4. It may be stated that as against 1166 sanctioned post of Geologist (Jr) them are only 216 post of Asstt. Geologist and therefore the rectt. Rules of 50% DPC and 50% DR cannot be followed as candidates under DPC quota are not always available to match DR quota candidates. It may be mentioned that 73 vacancies under DPC quota available during 1976 were thrown for DR in the year 1977 Similarly, 133 DPC quota vacancies out of 193 available in 1977 were also thrown for DR in the year 1978. So incase the seniority is drawn up in tems of the R R i.e. one DP Candidate followed by one $D^R$ Candidate, the DPC candidates will always have better position than the DR candidates. In fact, we receipt recommendation of 101 DPC candidates in January 1981 who became iligible for promotion

Attested
Arindam Sarma
29-8-84

for ....

by virtue of 3 years service in the grade of Asstt. Geologist in the year 1978, 1979, 1981 and 1982. In case these candidates who have been recommended new for promotion through DPC in 1983 are devetailed against 1978 and 1979 DR DR candidates they will be having seniority above the DR candidates and may be above. DR candidates who joined earlier than they became eligible for promotions Gellegist(Jr)

5. This matter was considered by the DG. GSI and it has been decided that the DPC quota candidates who have been recommended in 1983 January for promotion to grade, may be assigned seniority vis-a-vis DR quota candidates of the year in which they became eligible for promotion to the grade by virtue of completion of 3 years service in the grade. The list of such candidates who became eligible for promotion by virtue of completion of 3 years services in the grade in 77, 78, 79, 81 and 82 is enclosed. There was no candidates eligible for promotion in 1980.

6. On the basis of this decision, Gradation List which was circulated has been revised and the candidates who became eligible for promotion by virtue of completion of 3 years service in the Grade during 77, 78, 79 have been devetniled against matching DR candidates of 77, 78, 79, respectively and the balance DR candidates of the

Attested
Himalaya Sarin
20.8.96.

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respective years have been assigned enblock seniority due to non-availability of matching DPC quota candidates.

7. As indicated above, there was no eligible candidates under promotion quota during 1980, so while drawing the revised seniority in this Grade the recommended candidates of Geologists' Examination, 1980 have been assigned enblock seniority. The DPC recommended candidate eligible for promotion in the year 1981 and 1982 will be devetailed against the haching DR candidates of 1981 and 1982 Geologists' Examination at the time of drawing of seniority list next.

The seniority list so drawn up is forwarded herewith for perusal and consideration by the Ministry. In case it is considered that the list has been drawn up properly and meets with the approval of the Ministry it will be finalised accordingly on hearing from the Ministry.

An early decision may kindly be communicated for further action that this end.

yours faithfully.

Sd/- R.N. Singhal
Director(Administration)

Attested
Himalaya Sarma
Ad. 8-96

Annexure - E.

Minutes of the meeting of the Committee for going into the details of drawing up of the Gradation List of the Geologist (Jr) and to make their recommendation:

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In pursuance of the letter No. 2938/34/52/19 A dated 10.1.1984 from Director(P), GSI, Conveying the decision of the Director General, GSI, the Committee consisting of S/Shri G.M. Benarjee, DY. Director General (Chairman) A. Kuabari, Director (P) Member and D.R. Mandy, Geologist (sr) Member met on 2.2.1984. The Committee was assigned with the talk of "Examining the gradation list for the grade of Geologist (Jr) and to guiding the details of the drawing up of the Gradation List and advise the Department as to the best course of action that can be followed". Accordingly the committee examined the various records on the relevant matter.

Gradation List was prepared and maintained by the Department as per the terms of the recruitment rules providing 50% posts for the direct recruits in the grade of Geologist(Jr) upto 1978 (upto S No. 933 of the 982 seniority List).

Attested
Himadya Sarma
25-8-96

During 1978, 1979, 1980, 1981 and 1982 there were regular in-takes through direct recruitment in the grade of Geologist (Jr) But no D.P.C. meeting were held for promotion to the posts of Geologist (Jr) though there were eligible candidates in the feeder post as per

per ...

number shown into pparenthesis during 1978 (24). 1979(47). 1981(16) and 1982(14). Besides 106 vacancies meant for the Departmental candidates were surrendered for the direct recurits quota during 1977 and 1978 inspite of having certain eligible candidates as shown above. In the preeess 316 candidates (Sl. No. 934 to 1248) in the year 1982 Gradation list) were recruited directly from 1977 to 1982 in the grade of Geologist (Jr) and they were put enableck in the 1982 seniority list without keeping the alternate vacancies for Departmental candidates as agsinst the provision laid down in the existing recruitment rules.

At last when the Department promotion took place in 1983 promoting 101 candidates from the Grade of Asstt. Geologist to the Grade of Geologist(Jr) they were proposed to be placed below those 316 direct recruits with the alternative vacancies of later direct recruits. As a result Departmental candidates who were eligible ffor promotion in 1978, 1979, 1981 and 1982 became junior to the even 1982 direct recruits enacting very adversly their seniority position and their future prospect of promotion .

Attested.
Himalaya Saraw
20.8.96.

As there is only 216 posts of Assistant Geologist (feeder posts) against 1966 posts of Geologist (Jr) (promotion post) in GSI when the gradation roster is mainted on retaion on the basis of 50% DPC and 50% direct recruits for filling up of the posts of Geologist (Jr) there may always be dearth of DPC candidates to metoh the DR candidates for certain percent devetaling.

Considering the acts mentioned above the commetter recommends that the present 1982 Gradation List be revised from Sl. No. 934 from where no vacancies were left for the DPC candidates and as member of representations have been received from the DPC candidates and as number of representations have been received from the DPC candidates promoted in 1983 onward. Assigning the inter se seniority of the DPC conditates with those of the D.R. candidates ( 1 : 1 ) for a particular year(year wise) in which the DPC candidates were eligible for promotion irrespeictive of the year when they have been actually promoted as per the existing recruitment rules. But the inter-se-seniority of the candidates as recommended by the D.P.C. should be maintained in the process. In doing so relative position of each group should be kept unaltered and if the D.R. or the D.P.C quota candidates are found to be more than the other than after devetailing on 1:1 rate for that perticular year the balance may be put enblock at the end for that particular year.

Sd/- DR Nandy
Geologist(Sr)
Member

Sd/- K.Kushari
Director(Personal)
Member

Sd/- G.M.Banerjee
DY.Director,
General (Geal)
Chairman

Attested
Hindorya Sarma
20.8.96

ANNEXURE - F

| & + | | | | |
|---|---|---|---|---|
| 21.12.89 | 19.2.90 | 24.2.90 | 16.5.90 | 17.5.90 |

C.O. 1220 (W) 85

District : Calcutta

In the High Court of Calcutta

Constitutional Writ Jurisdiction

Appellate Side

C.O. 1220(WO/85

In the matter of :

Shri Tridip Laskar & (24) others.

.... Petitioners

- Versus -

The Union of India & (6) Others

..... Respondents

Adfidavit in opposition on behalf of Respondents No. (1) to (5) :-

I, Balaram Saha aged 56 years, son of Late K.K. Saha residing at 47, Abhoy Vidya Lankar Road, Behala Calcutta - 60, by Caste Hindu by occupation service do here solemnly affirm and say as follows :

contd....

Ann. F.

1. That I am the Senior Administrative Officer Geological Survey of India. I have acquainted myself with thefacts of the case by perusal of relevant records and I am competent to swear this affidavit.

2. That I have perused a copy of the writ petition sworn by petitioner No. 2 Shri Biswabandhu Das. on 1.2.85 on which the instant role was issued. In have understood the purport and contents of the said writ petition. I have also read the Supplementary affidavit on behalf of the writ petitioners. I have understood the purport and contents of the said supplimentary affidavit as well. Such of the statements of the writ petition and of the supplementary affidavit which have not been admitted by me herein below specifically and such of the statements of the writ petition and supplementary affidavit which are not supported by records of the case shall be deemed to have been denied by me.

3. With reference to statement made in para (2) of the writ petition I deny that the writ petitioners were initially appointed through Geologists' Examination in 1978 - 79 as mentioned therein. I say that Shri S.P.Venka Basu (Petitioner No. 11) and Sonaullah Hashimi (Petitioner No. 13) were appointed

Attested
Himalaya Sharma
20.8.96

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as Geologist(Jr) through Geologists, Examination in 1956. Shri A. Chatterjee (Petitioner No. 24), S.Sanyal (Petitioner No. 18) , T. Gopal Raddy (Petitioner No. 6) Prabir Kumar Das (Petitioner No. 5), Ruby Das Gupta (Petiti-Petitioner No. 3), B.K.Siddhanta (Petitioner No. 4) K.N.Nagaraja Rao, (Petitioner No. 12), Sambhu Chakraborty (Petitioner No. 20 and Rituraj K. Shrivastava (Petitioner No. 19) was appointed as Geologist (Jr), through Geologists' Examination in 1977.

Again Shri Biswabandhu Das (Petitione No.2), Deepak Bellur (petitioner No.9), Anita Roy (Petitioner No.25) Amitava Bandyopadhyay (petitioner No.16), Shafeeq Ahmed (Petitioner No.8), T.R. Anantharamum (Petitioner No.10), Amal Kumar Samaddar (Petitioner No.17), Dr. A.P.Mahalakshmamma (petitioner No.7) and V. Sudaram (Petitioner No.15) were appointed as Geologist (Jr.) through Geologists' Examination held 1978.

Shri Tridib Laskar (Petitioner No.1) and Smt. Kanika Sanyal (Petitioner No.22) were appointed as Geologist (Jr.) through Geologists' Examination held in 1979..

Attested
Himadya Sarma
20.8.96

....98.

Ann.-F.

Shri Ashok Kumar Bhattacharya (petitioner No.23) M.Kshy John ( etitioner No.14) and Bhaskar Krishna Bhandari (Petitioner No.21) were appointed as Geologist (Jr.) through Geologists' Examination Held in 1980.

All the said writ petitioners mentioned above, successfully completed their period of probation except petitioners Smt. Kanika Sanyal, Ashok Kumar Bhatacharyay and Bhaskar Krishan Bhandari. I deny that completion of the perief of pro-bation necessarity leads to their confirmation in the post of Geologist (Jr.) Their confirmation in the grade depends, as per departmental rules, on the availability of permanent vacancies in the grade. I deny further that more drawal of increment by them did mean their confirmation.

4. With reference to statements made in para (3) , I say that the same is a matter of records.

5. With reference to statements made in para (4) I say that all of the petitioners have completed the period of probation satisfactorily except petitioners Bhaskar Krishna Bhandar, Kanika Sanyal and Ashok Kumar Bhattacharyay (Petitioner No.21 to 23 ).

Attested
Himadri Sarma
23.8.86

contd...

Ann.-F.

6. With reference to statements made in para (5) I deny that the Gradation/Seniority List of Geologist (Jr.) has reached finality. I state furthe r that a provisional Gradation List of Geologist (Jr.), was prepared as on 1.2.82. The said Provisional Gradation List was neither published nor the same was sent to the Government of India for Its approval. In this connection I state that after circulation of the Gradation List of Geologist (Jr.) as on 1.2.82, a large number of representations were received mostly from the promotees regarding their inter-se-seniority. This matter was considered by the Director-General, Geological Survey of India and particularly in view of the representations from the Geologists (Jr.) which were causing serious concern amongst the incumbents involving their future career prospect, a Committee was appointed by the Director General, Geological Survey of India, to go into the details of the criteria of drawing up of the seniority List. Later on, the provisional gradation list of Geologists (Jr.) as on 1.2.82 as prepared according to the directive of the said committee and the same was forwarded to the Ministry concerned on 9.4.84 along with recommendations of the Committee.

Attested
Singhal
Advocate
20.8.90

7. With reference to statements made in para (6) I say that the same are matters of record.

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Ann.-F.

8. With reference to statements made in para (7) I state that the gradation list of the Geologist (Jr.) as on 1.2.82 was entirely a provisional one and was not approved by the Government of India. Further, it may be mentioned here that due non-availability of sufficent number of candiates eligible for promotion, 73 out of 146 vacancies under DPC quota available during 1976 were thrown for direct recruitment in the year 1977. Similarly, 133 DPC quota vacancies out of 193 available in 1977 were also thrown for direct recruitment in the year 1978. The contention made in the writ petition in para (7) is therefore not correct. Number of candidates in the garde of Assistant Geologist eligible for promotion during the year 1977, 1978 and 1979 were 24, 24 and 47 respectively.

9. With reference to statements made in para (8) of the writ petition I say that Recruitment Rules quoted therein are substantially correct.

For the appraisal of this Hon'ble Court I state that the provisional gradation list of Geologist (Jr.) as on 1.2.82 was subsequently changed and a revised provisional list as on 1.3.83 was drawn up according to the directives of the Ministry concerned.

Attested
Himalaya Sabha
20.8.96

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Ann.-F.

10. With reference to the statements made in para (9) of the writ-petition I state that seniority of the writ petitioners night have been changed to the extent as in the provisional Gradation List of Geologist (Jr.) as on 1.3.83. This provisional Gradation List of Geologist (Jr.) as on 1.3.83 was prepared according to clarifications given by the Department of Personnel & Admn. Reforms as communicated by the Ministry under their Letter No. A-23024/4/82-M2 dated 22.9.1984.

A copy of the said letter is annexed hereto and is marked with the letter 'X'.

11. With reference to statements made in para (10) Issue say that recommendation of the Ministry for promotion to the post of Geologist (Jr.) was received by this office in January, 1983. The seniority postition has been revised following the clarifications of the Director of Personnel and Admn. Refroms and as forward by the Ministry.

12. With reference to statements made in apra (11) of the writ petition I say that inasmuch as the Gradation list of Geologist (Jr.) as on 1.3.83 was prepared according to Ministry of Home Affairs D.M.

Attested
Hinduja Sarma
2-8-86.

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Annx-F.

No.9/11/55-RPG dated 22.12.59, no action can be intiated from this end. I deny other allegations in para (11) of the writ petition.

13. With reference to statements made in para (12) of the Writ petition I say that the incumbents in Sl.Nos. 1058, 1060, 1062, 1064, 1066, 1072, 1074, 1076 and 1080 were appointed as Asstt. Geologist through the Geologists' appointed as Asstt. Geologist through the Geologists' Examination in 1977 by they have rendered more than three years of service in the grade of Asstt. Geologist and have been recommended for promotion to the post of Geologist (Jr.) under DPC queta. The above mentioned Sl. Nos. in the Gradation List have been assigned seniority as pe r rotation of vacancies between Direct recruits and promotees according to the Recruitment Rules of the post of Geologists (Jr.).

14. With reference to statements made in para(13) of the writ petition I state that the Sl. No.1019 and 1035 were appointed as Assistant Geologist throughh the Geologists' Examination and latter on they were appointed as Geologist (Jr.) through Geologists' Examination but they had rendered more than three years' service in the grade of Asstt. Geologist before joining the post of Geologist (jr.) as direct recruit and accordingly they were recommended for promotion to the post of geologist

Attested
Himadri Sarma
28.8.26.

contd..

(Jr.) under DPC quota. The have been assigned seniority as favourable to them i.e. DPC quota which is in order in accordance with rules.

15. With reference to statements made in para (14) I deny that encroachment has been made that Respondents upon the supposed Civil rights of the Writ petitioners. The department concerned as also the Ministry have not exercised their discretion injudiciously in the matter of fixation of seniority. I deny that the Respondents acted arbitrarily or capriciously or in an unprincipled manner in the matter of filling promotional quota. I add further that petitioners have assigned seniority under direct recruitment quota as per provisions of the Recruitment Rules. The allegations in para (14) running contrary to what I have stated here and denied.

16. With reference to statements made in para (15) I say that the same are substantially correct.

17. With reference to statements made in para (16) I state that objections might have been taken by the petitioners as to the provisional list as on 1.3.83 (Pu lished on 17.11.84), the fact remains that the provisional seniority list of Geologist(Jr) as on 1.2.1982 was modified according to the clarifications given by the IPAR as communicated by the Ministry and a revised provisional gradation list of Geologist (Jr) as on 1.3.1983 was drawn up accordingly.

Attested
Sinha
23.4.92

contd...

18. With reference to statements made in para (17) of the writ petition I state that for the appraisal of the Hon'ble Court that the seniority of the officers appearing upto Sl. No. 732 at page 81 of the provisional Gradation List of Geologist(Jr) drawn as on 1.3.1983 was already approved by the Government on the basis of the gradation list drawn earlier in the same grade as on 1.2.76. Accordingly a part D.P.C. proposal contain in the names of officers upto 732 was sent to the Ministry for holding DPC Meeting for selection of the officers to the post of Geologists (Sr.)

Thereafter a further DPC promosal containing the names of officers in the grade of Geologist (Jr), below the approved Gradation list was ent to Ministry for consideration of promotion to the post of Geologist(Sr) The officers in the Grade of Geologist (Jr) whose name appears in the above provisional Gradation List between Sl.No. 733 and 923 were considered by the DPC held on 17th and 19th January, 1985 for promotion to the grade of Gelogist (Sr.) it may be mentioned that none of the officers in the grade of Geologist(Jr) between Sl. No 733 and 923 submitted any representation in relation to the fixation of inter-se-seniority in the grade of Geologist (Jr.) As such , the DPC considered the promotion of these officers from Sl. No. 733 to 923 on temporary provisional basis. None of the name of these petitioners appear under Sl. No. from 733 to 923.

Attested
Shivdeep Sarma
20.8.96

contd..

Ann. F.

19. With reference to statements made in para (16) I say that the name of promotee officers in grade of Geologist(Jr.) appearing between Sk.No. 733 and 923 in the provisional gradation list of Geologist (Jr.) drawn as on 1.3.1983. Joined the post before 31.1.80 These promotees along with direct recruits appearing in between 733 and 923 were considered by the DPC held on 17th and 18th January 1985 for promotion on temporary provisional basis to the grade of Geologist (Sr.). It may be mentioned that names of none of the Officers who were recommended for promotion in the grade of Geologist (Jr.) after 31.1.1990 appears in the minutes of DPC received from Government of India for promotion in the grade of Geologist (Sr.).

20. With reference to statements made in para (19) of the writ petition I deny that any arbitrary change in the seniority position of the petitioners has at all been made.

21. With reference to statements made in para (20) I say that the petitioners have no prima-facie case and there is no conceivable reason for them to be aggrieved and come to a Court law.

Attested
Himalaya Sarma
20-5-96

The grounds taken under para (20) of the writ-

contd...

petition are not factually correct; not such grounds are based on sound reasoning. In fact, there being no case of supersession of the petitioners it is denied that Respondents acted without jurisdiction or in excess of jurisdiction or that they abused their jurisdiction.

22. With reference to statements made in para (21) I state that withdrawal of the Gradation List/Seniority List as on 1.3.83 (Published on 17.11.84) is an unreasonable claim. The said Gradation/seniority List was prepared under instructions from the Government of India after taking into consideration relevant Recruitment Rules as also on consideration that no injustice was done to incumbents keeping the quota system in view.

23. With reference to statements made in para (22) I deny that the instant application was made bonafide.

24. Coming to the statements made in the supplementary Affidavit I say that with reference to statements made in para (2) of the Supplementary Affidavit, thet the provisional gradation list of Geologist (Jr.) as on 1.3.1983 were sent to all the Dy. Director General

Attested
Shivdeya Saini
20.8.96.

contd....

Directors of the Circle Officer of the Geological Survey of India on 16.11.84 and 17.11.84 wherein we had asked the comments of the concerned officers working under the regarding the corrections of the entiries and the interse position within 30 days from the date of issue of the letter. The heads of the Regional/circle officer of the Geological Survey of India were to circulate the gradation list though the concerned officers working under their control. Till date we have not received any such request from the Head of the Division/Circle Offices from contending the date for receiving the representations from the Geologist (Jr) . It may be stated here that on receipt of a request from the Scientific Officers Association, Geological Survey of India, Nagpur for extending the date of representations, this Department took a lenient view and the period for receiving the representation against the provisional gradation list was extended upto 31.2.84. The representations which were received upto 31.12.84 had been sent to the Government along with the provisional Gradation list of Geologist (Jr.) and comments of the

Attested
Shimlaja Sarma
20.8.96.

contd.....

Department on 14.1.1985

25. With reference to statement made in para (3) of the Supplementary Affidavit I state that provisional gradation list of Geologist (jr.) as on 1.2.1982 was not sent to the Government of India for approval. Hence the question of publishing the gradation list of Geologist (Jr.) as on 1.2. 82 does not arise. The provisional gradation list of Geologist (Jr.) as on 1.3.1983 was prepared according to rules.

26. With reference to statements made in para (4) of the supplementary affidavit I state that the gradation list of Geologist (Jr.) as on 1.3.83 had been prepared according to the clarifications given by the DP & AR and communicated by the Ministry under their letter No. 23024/ 4/82-M 2 dated 22.9.84 . Hence the boseration of petitioners that Gradation list of Geologist (Jr.) has been drawn up without following any principles is wrng

27. With reference to statements made in para (5) I state for the appriaal of the Hon'ble Court that in 1975 there was no Geologist's Examination and the devetailing has been made as per provisions of the Recruitment Rules of the post of Geologist (jr.)

Attested
Himalaya Seva
20.5.96.

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28. With reference to statements made in para (5) of the supplementary affidavit I say that incumbents mentioned in Sl. Nos 926, 930,942,950,956,972 ,992 998.1017. 1019, 1035 and 1040 had been appointed as Geologist (Jr.) both under U.S.S.C. quota and as well as were recommended for promotion under DPC quota. They had been assigned seniority as favourable to them and hence to discrimination has been made in case of petitioners.

29. With reference to statements made in para (7) of the Supplementary Affidavit I say that Smt Raby Das Gupta (Petitioner No. 3 ) did not have any lien to the lower post of Asstt. Geologist which she vacated on her appointment against a direct recruitment quota in the grade of Geologist (Jr.) prior to completion of 3 years service in that grade. she was not considered for promotion to the grade of Geologist (Jr.) in the Geological survey of India along with others as she did not complete three years service in the grade of Assistant Geologist which is the minimum requirement for promotion from the grade of Assistant Geologist to the post of Geologist (Jr.) She was appointed as Geologist

Attested
Shimla
20-8-96.

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Ann.-F.

(Jr.) in the G.S.I. through Geologists' Examination 1977 (Special ) and accordingly her seniority had been assigned in the direct recruitment quota. The name appeared in the writ petiton at para-7 is arbitrary. She is not Jayashree Dutta but her name is Jayanti Dutta. She had been assigned seniority under D.P.C. quota. Shri Somnath Chatterjee was appointed as Geoligist (Jr.) both under D.P.S. quota. He had been assigned seniority which was more favourable to him under Rules.

30. With reference to statements made in para (3) of the Supplementary affidavit I state that this is a matter of records.

31. With reference to statements made in Para (9) and (10) of the Suppliementary affidavit I deny that there was arbitrary change in the Seniority List. I add that the previsional gradation list of Geologist (Jr.) as on 1.2.82 was modified according to the clarification given by the DP & AR as communicated by the Ministry.

Attested Shimla 20-5-96.

32. With reference to statements made in para (11) I say that the modifications of the Gradation List of the Geologist (Jr.) as on 1.2.82 had been made according to

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Ann.- F.

to the clarfications given by the D.P. & A.R. as communicate by the Ministry. The representation dated 29.8.84 referred to para (11) of the Supplementary affidavit was duly considered by the Director General, G.S.I., found nothing wrong in the matter of modification of the Gradation list in terms of the clarifications by the D.P. & A.R. as mentioned above.

33. With reference to statements made in para (12) I say that the provisonal Gradation List of Geologist (Jr.) as on 1.3.83 was not published but circulated on 17.11.84 inviting comments of the concerned officers for onward transmission to the Ministery for obtaining the the approval of Government of India. I deny that unmerited benefits were conferred to some of to a group of employees.

34. With reference to statements made in Para (13) and (14) of the Supplementary affidavit I submit that the Hon'ble Appellate Court has been pleased to settle the issues mentioned in these two paragraphs. I crave leave to refer to the order passed by the Hon'ble Division Bench on 28.2.85 in FMAT No.507 of 1985.

Attested
Himalaya Seva
20.6.96

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Ann.- F.

35. With reference to statement made in para (15) of the supplementary affidavit I say that the provisional Gradation list of Geologist (Jr.) as on 1.3.83 has not been published on 17.11.84 I deny that the same was prepares in a most prefunctory manner or that the same was prepared malafide and with ulterior motive to give unentitled benefits of to class of employees. The case of Smt. Sibani Das Gupta has not been correctly represented in para (15) of the supplementary affidavit.

36. That the Respondents, in the matter of promotion have been strictly following the provisional list as on 1.3.83 prepared under direction from the DP & AR., as communicated by the Ministry concerned and since none of the writ petitioners was really superseded they have not cause of action for the instant petition.

37. That statements made in paragraphs 1, 2, 4, 6, 8, 9, 10, 12, 14, 16, 18, 22, 24, 25, to 27, 30, 31, 33 and 36 are true to my knowledge, statements made in paragraphs 3.5.13, 19, 28, 29, 28, 29, and 32 are based on service records of the writ petitioners and concerned employees which I verily believe to be true and the rest of the statements are my submissions before this Hon'ble Court.

Attested
Hirday Sarkar
20-8-90

contd....

Ann. - F

Prepared in my office
Ajit B. Majumdar
Advocate

Balaram Saha
The deponent is known to me
Tin Kari Benerjee
clerk to Mr. Ajit B. Majumdar,
Advocate

Solemnly affirm in my presence this the 25th day of May, 1985,

A. B. Basu
Commissioner of Affidavits,
High Court, Appellate Side
Calcutta

Attested
Himalaya Sarma
25-5-85

Cont. Annexure- F.

Annexure 'X' as referred to in paragraph of the foregoing petition solemnly affirmed on 28.5.1985.

A.R.Basu
Commissioner, of Affirmative,
High court, Appellate Side,
Calcutta

Government of India
Ministry of Steel & Mines
Department of Mines.

No. A-23024/4/82-M-2 New Delhi, the 22nd Sept, 1982

TO:
The Director General ,
Geological Survey of India,
Calcutta.

(By name to Shri P. Rohmingthanga, Sr. Dry Director Genera (P)

Sub: Seniority Principle to be followed in the Grade of Geologist (Junior) in Geological Survey of India

Sir,

I am directed to refer to your letter No.9998/T34/62/19 A date 9.4.84, in the subject mentioned above, and to say that the matter relating to seniority principles to be followed while fixing the seniority in the grade of Geologist (Junior) has since been examined in consultation with the Department of Personnel & A.R. A copy of this Ministry's G.M. of even number, dated 28.7.84 and a copy of IP & AR advice dated 21.8.84 are forwarded herewith for necessary action at your end. The seniority of Geolgists (Jr.) may now be fixed accordingly.

Yours faithfully,
Sd/- H.L.Attri,

Encls: As above. Under Secretary to the Govt of India.

Attested
Himalaya Sarma
21-8-96

ANNEXURE - F.

GOVERNMENT OF INDIA
MINISTRY OF STEEL & MINES
DEPARTMENT OF MINES

No. A-23024/4/B2-M2. New Delhi, the 28th July, 1984

Office Memorandum

Sub: Seniority principle to be adopted when posts meant for promotion quota are diverted to direct recruitment (in view of non-availability of persons for promotion).

The undersigned is directed to say that in the cadre of Geologist (Jr.) in the Geologist Survey of India 50% posts are filled by direct recruitment through a competition Examination and 50% promotion failing which by direct recruitment. According to seniority principles laid down in MHA O.M. dated 22.12.59, the seniority in the above cadre is to be fixed by devetailing of one vacancy each for direct recruit and promotee. During past several years office for promotion were not available for consideration of promotion; as such vacancies available for promotion were diverted for direct recruitment and large number of direct recruits were recruited on bloc. Now the following questions have arisen :

A. Though the candidates recruited as directm recruits by diversion of vacancies from promotion quota to direct recruitment are basically direct recruits whether such candidates can be assigned seniority as to be assigned to promotees/or whether they can be assigned en-bloc

Attested
Hiralal Sarkar
2.8.96

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seniority without dove-tailing of vacancies between direct recruits and promotees.

B) Whether irrespective of fact that direct recruitments of promotees are not available for some time-seniority is to be fixed by dove-tailing of vacancies in the rate of 1) between DR and promotee (50% DR 50%) not withstanding how old the solts vacant for $D^R$ or promotees. as the case may be in the seniority list are i.e. vacant also to will not lapse. seniority in G.S.I. is regulated under HMA D.O.No.9/11/55 RPS. dated 22.12.59.

DP & AR (Estt.D) is requested to give their early advice in the matter .

Sd/-
D.K.Gautam
Section Officer.

TO:

Deptt. of Personnel & A.R.
New Delhi.

Attested
Srivastava Sahu
20-5-96.

Ann.- F.

DY. No. 2837/84-Esstt(D).

Department of Personnel & A.R.
Estt.(D) Section.

Reference F.R. attached.

2. According to the principles relating to determination of seniority contained in MH.A.D.M. No.9/11/55-RPS dated 22.12.1959, the relative seniority of direct recruit and of promotees is to be determined according to the rotation of vacancies between DRs and promotees on the basis of quotes of vacancies for direct recruitment and promotion respectively in the Recruitment Rules.

3. However, in the instant case, since a failing which clause has been provided in the Ryles in the case of non-availability of persons for promotion, the direct recruits appointed in such an aventuality will be treated as promotees for the purpose of rotation of vacancies between DRs and Promotees. It may be added here that the failing which clause in such case can be operated only when the normal channel of filing up vacancies from the source from which they are required to be filed, fails.

Attested
Shivdeep Sarma
20.8.96

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Ann. - F

4. As regard the query raised by the Department of Mines in point (B) of their O.M. placed below, it may be k clarified that in view of the position indicated in para - 2 above, the case in which there is no failing which clause in the Recruitment Rules, the vacancies have to be filled with reference to the relevant quota and then interpolating the DRs and promotees accordingly. The date of appointment is not relevant for the purpose of such interpolation and the quota system is required to observe scrupulously.

Sd/-

C. D. Sharma
DESK OFFICER

15th September, 1984

Director (B)

Department of Mines.

Sd/-

illegible
21.9.84

Type by: Narayan

Examined by:

Read by:

Attested
Shinde for Sawa
20.8.96

ANNEXURE - 'G'

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

The 5th September, 1985

P R E S E N T

THE HON'BLE BHAGABATI PROSAD BANERJEE

One of the judges of this Court Civil Order No. 1220(W)/85 issued by this Court, in the matter of : An Application under Article 226 of the Constitution of India.

And in the matter of : A writ in the nature Mandamus and/or Certirari and/or any other order or orders and/or direction.

And in the matter of : Recruitment rules for the post of Geologist (Junior) in the Geological Survey of India.

And in the Matter of : Illegal Change in the gradation list and/or seniority list.

And in the matter of: Provisional Gradation list of Officers in the grade of Geologist (Junior) in the Geological survey of India as on 1.3.1983 circulated vide memo No. 780 IB/34/6219 A dated 17.11.84

And in the matter of : Promotion on the post of Geologist (Junior) on the basis of the provisional gradation List without considering the objections filed by the officers concerned.

And in the matter of : Illegal holding of Departmental promotion committee for promotion to the post

contd..

Attested
Himalaya Sarma
20-8-96

of Geologist (Senior) on the 17th and 18th of January 1985 on the basis of the provisional gradation list which has not reached its fainlity

And in the matter : Illegal change in the seniority position of directly appointed Geologist (Junior) without giving any reasonable opportunity of hearing.

And in the matter of :-

1. Shri Tridip Laskar, West Bengal Circle, Calcutta
2. Shri Diswabandhu Das, West Bengal Circle, Calcutta
3. Ruby Dasgupta, M.C.P.I. Division, E.R.Calcutta
4. B.K. Bddharia Publication Division, CHQ, Calcutta
5. Prabir Kumar Das, All are working as Geologist (Junior) Geological Survey of India, Coal Division, Calcutta.
6. T.Gopal Reddy, 7 Dr. A.P. Mahalakshmanma,
8. Shafeq Ahmed, 9. Deepak Ballur, 10. T.R.Anantharamu
11. S.P.Venkata Dasu, 12. K.N.Nagaraja Rao,
13. Sanaullah Hashimi, 14, Keshy John M 15. V.Sundaram

All are Geologist (Jr)

Geological Survey of India, Karnataka Circule, Bangalore.

16. Amitava Bandopadhyaya Gujrat Circle, Ahmedbad.
17. Amal Kr. Samaddar,
18. Shri S. Sanyal.
19. R.K. Shrivastava,
20. Kanika Sanyal,
21. Bhaskar Krishna Bhandar,
22. Kanika Sanyal
23. Ashok Kumar Bhattacharyya.

All of M.P. Circle, Jabbalpur Geologist (JR) under the Geological Survey of India

Attested
Himalaya Sarma
20.8.9 C.

24. A. Chatterjee, Coal Division, Calcutta

25. Anita Roy (Nee Dhar) W.B. Circule, Calcutta

All are directly appointed Geologist (Jr.) working under the Geological Survey of India

.... PETITIONERS

- Vs -

1. The Union of India thr ugh the Secretary Ministry of Steel and Mines (Department of Mines ) shastry Bhaban, New Delhi.

2. The Director General Geological Survey of India, 27 Jawaharlal Nehru Road, Calcutta

3. Senior Deputy Director General (Personnel) Geological Survey of India, Ratnakar Buildings, 4, Chowrangi Lane Calcutta - 16

4. The Deputy Director General (Operation 27, Jawaharlal Nehru Road, Calcutta - 16

5. Director, (Personnel), 4, Chowrangi land, Cal. 16

6. Union Public Service Commission, having its office at Dholpur House, New Delhi

7. Chairman, Unior Public Service Commission, Dholpur House, New Delhi.

.... .. Respondent No. 1 to 5

Attested
Srimoyee Sarkar
20.8.96.

Mr. S.Pal,
Mr. Samir Ghosh- For the Added Respondents.

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In the writ petition, the petitioners prayed for a writ in the nature of Mandamus commanding the respondents to forthwith act in accordance with law and prepare the gradation list and/or seniority list of the Geologist (Junior) from the date of Initial appointment and/or or from the datee of initial officiation and/or from the date induction in the cadre of Geologist (Juneor ) in the Geological Survey of India and for cancellation and withdrawal of the gradation list which was prepared and published on 17.11.84 giving retrospective seniority of the prometee Geologist (Jr.) before their induction in the cadre of Geologist (junior) and/or before their officiation to the post of Geoletist (Junior). The petitioners further prayed for a writ in the nature of Mandamus commanding the Respondents to recommend the name of the Geologist (Jr.) for the promotion to the post of Geologist (Senior ) on the basis of seniority fixed from the date of initial appointment and/or initial officiation.

The petitioners were all initially appointed as Geologist (Jr) as per recruitment rules for the post of Geologist (Junior) in the Geological Survey of India on the basis of the merit and on the basis of the results of the competative examination conducted by the Union Public Service Commi-

Attested
Himadri Sarkar
25-8-96

contd.

commission during the year 1976 to 1981. The petitioners state that the nest avenue for promotion for the post of Geologist (Junior ) is Geologist (Senior) and in order to be eligible for appointment to the said post of Geologist (Senior), 5 years continuous service in the post of Geologist (Jr) was mandatorily required and that all the petitioners had duly completed and were going to complete 5 years continous service in the post of Geologist (Junoér ). According to the petitioners, all the petitioners who had completed 5 years service in the post of Geologist (Junior), who will b e eligible and entitled to be promoted to the post of Geologist (Senior). The petitioners case was that the petitioners seniority have been determined in accordance with the recruitment rules and the respondents prepared a gradation list and/or seniority list fixing the seniority of the petitioners in accordance with law. It was further stated that such gradation list and/or seniority list fixing the seniority of the petitioners in accordance with law. It was further stated that such gradation list and/or seniority list was published and circulated by the Respondents in the year 1982 which according to the petitioners was prepared strictly in accordance with law. It was fu ther stated that in the said seniority list which was published and circulated in the year 1982, the seniority position of the petitioners were between serial Nos. 968 and 1436. It was alleged by the petitioners that after publication of the said seniority list in the year 1982 , some of the prospective promotee

Geologgist (Junior) moved a writ applicationbefore the Nagpur Bench of the Bombay High Court, alleging that the said gradation list was not prepared in accordance with law, but as the Ministry of Steel and Mined, Department of Mines directed the respondents to prepare a gradation list on the basis of the recruitment rules, it was alleged that the prospective prometee Geologist (Junior) did not proceed with the said writ application filed in the Nagpur Bench of the Bombay High Court, Thereafter, the petitioners made enquiries and on enquiry the petitioners came to know that the Ministry of Steel and Mines, Deptt. of Mines issued direction to prepare gradation list at the ratio of 1:1 on the purported plea that the quota rule was not maindined in the year 1976, 1977, 1978 and 1979 and in order to accommodate the prometee Geologist (Jr.) in the gradation/seniority list on the basis of recruitment rules, the seniority with retrospective effect to the prometee Geologists were issued. In other wards, the case of the petitioners was that the Respondents proceeded to revise the seniority list on the ceeting that the quota of the prometees for appointment in the post of Geologist (Junior) in the year 1976, 1977, 1978, and 1979 were not fully filled up by the prometees, but the quota earmarked for the promettees were encroached by the direct recruitees in contravention of the recruitment rules. As such, the alleged reserved vacancies allegedly earmarked for the prometees should be shown to have been filled up by the prometees age are recruit at a much later date and in some case several years after the direct recruitees were appointed in the said posts.

Attested
Hiwase Sevak
20.8.96.

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Ann.-G.

The petitioners' contention is that the promotee Geologists (Junior) cannot have any seniority from an artificial or imaginary date. Their seniority has to be fixed from the date their promotion to the post and that they should not be given seniority with retrospective namely, from a date on which they had not been promoted and from a date on which they had not been promoted and from a date on which they were not eligible to be promoted at all. According to the petitioners, the questionof keeping the quota fixed for the promotees could not be kept vacant in view of the recruitment rules and furtner the appointment of the petitioners in the respectivel years were made on direct recruitment basis in accordance with the recruitment rules and that it was no longer open to the respondents to re-open the issue and to take away the seniority which was fixed in respect of the direct recruitee in the post of Geologist (Junior) which was fixed with effect from their date of appointment. The relevant provision namely Rule 10 of the Recruitment Rules for the post of Geologist (Jr.) is set out below :

"50% by promotion failing which by direct recruitment through competitive examination to be conducted by the Union Public Service Commission failing which by ad-hoc selection by open advertisement through U.P.S.C. and 50% through competitive examination to be conducted by a selection failing which ad-hoc selettion by open advertisement threygh the Commission". It be mentioned that the said recruitment rules was framed under Article 309 of the Constitution of India.

Attested
Himalaya Seva
20-8-96.

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Relying upon the provision of Rule 10 of the said Recruitment Rules, it was contended by the petitioners that in the year 1976, 1977 1978 and 1979 as there was no aligible persons for promotion to the post of Geologist (Junior), the posts were filled up was validly done in view of the use of the word 'ralling which' in the recruitment Rule. Under the provision of the Recruitcruitment Rules, 50% quota is to filled up by promotion under the rules, in that event, the same is required to be filled up by direct recruitment. There is no provision and/or any scope for carry forward of the vacancies for the promotees and as there were no eligible promotees for promotion in the said post, the petitioners were appointed in the sid post according to the recruitment rules. The promotees who are claiming seniority over the petitions who were promoted several years after the petitions are applinted in the posts. It was further stated that on or about 17.11.84 a provisional gradation list was published and/or circulated by the Respondents as on 1.3.83 and from the said gradation list it revealed that the seniority of the directly appointed Geologist ( Junior including the petitioners have been arbiupted changed and the promotee Geologists(Junior) who have been promoted during the month of Feb. and My, 1983 have been assigned seniority over the petitioners and others directly recruited Geologists (Jr) who were admittedly appointed several years before the promotees who were promoted in post of Geologist(Jr.)

Attested
Shivaraja Sarma
20.8.96.

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Ann. G.

In the writ petition, the petitioners disclosed the particular of the seniority position of the directly recruited and promotee officers and that it is not necessary to set out these particulars details for the purpose of his case to point out that persons who have been promoted on officiation basis on or after 31 January 1983, were given seniority with retrospective effect from 1976 over the direct recruited officers. The draft seniority list was produced before the court at the time of the hearing where in it appears that there are some blank serial Nos. In the seniority list which was kept vacant with the remark that the same had to be filled up subsequently by the promotee officers. From 1983 seniority list, it appears that serial Nos. 1200, 1203. 1207, 1209, 1210 have been kept vacant with the remark to be filled up later on promotees". From the said seniority of Md. Iqbal who was promoted in the post on 6.10.78 under Serial No. 733 was shown senior to Shri Amitava Roy (Serial No. 734) who was appointed directly on 12.8.74. Similarly, there are innumerable instance in the seniority list where the promotees who were promoted after the persons who were appointed directly, have been shown to be seniors. The Respondents

Advocate
Shimla-2
12-8-96

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No.1 to 5 filed affidavit-in-opposition. In the said affidavit-in-opposition the reasons for revising the seniority list and asking the direct recruitees who are recruited several years before the promotees as junior was that as large numbers of representation were received from promotees regarding their inter seniority the matter was considered by the Director General, Geological Survey of India and it was alleged that in view of the representation from the promotee Geologists (Junoor) which were causing a serious concern among the incumbents involving their future career prospective, a committee was appointed by the Director General, Geological Survey of India to go into the atleast of the criteria of drawing up of the seniority list and that he prepared according to the directive of the said committee and the same was forward to the Ministry concern on 9.4.84. It was further stated in that due to non availability of sufficient number on candidates eligible for promotion, 373 out of 146 vacancies under D.P.C. Quota available during

Attested
Himalaya Law
2.8.96

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1976 were thrown direct recruitment in the year 1977. Similarly, 133 D.P.C. quota vacancies out of 193 available in 1977 were also thrown for direct recruitment in the year 1978 ..... number of candidates in the grade of Assistant Geologist eligible for promotion during the year 1977, 1978 and 1979 were 24 and 24 and 47 respectively. It was further stated that the provisional gradation list of Geologist (Junior) as on 1.3.83 was prepared according to clarification given by the Department of Personnel and Admn. Reforms, is communicated by the Ministry under letter No. A- 230/4/82 M2 dated 22.9.1984. From the said letter it appears that the copy of the letter of the Ministry of Steel and Mines, Department of Mines dated 28the Junly, 1984 is annexure - 'X' to the petition. The said memo dated 28th July 1984 was issued on the question of seniority principles to be adopted when posts meant for promotion quota are advertised to direct recruitment in view of non-availability of persons for promotion. In the said memo it was stated that during past several years, officers for promotions were not available for consideration for promotion were diverted recruitment and large number of direct recruits were recruited in block and that under such situation, the following questions sought to have arise

Advocate
Himalaya Sarma
20-8-96

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Ann.- G.

"A for the candidates recruited as direct recruits by diversion of vacancies from promotion quota to direct recruitment as basically direct recruits whether such candidates can be assigned seniority as to be assigned to promotees/or whether they can be assigned in block seniority Deve-Tailing of vacancies between direct recruits and promotees.

B. Whether irrespective of facts that direct recruitments or promotees are not available for some time seniority is to be fixed developing of vacancies in the rate of 1 : I D.R. and processes (50% D.R. : 50% P.) notwithstanding how while the slots vacant for D.R. or promotees as the case may be in the seniority list are i.e. vacant slots will not lapse". It appears that on the basis of this said memo Shri G.L. Sharma, Desk Officer, Department of personnel and A.R., Estt.(D) Section issued direction on the questions referred to whereby it was stated that in the normal case, the relative seniority of direct recruits and/or promotees are to be determined according to the rotation of vacancies between D.R.s and promotees on the basis ~~of~~ of quota of vacancies for direct recruitment and promotion respectively in Recruitment Rules. The said memo also provided that "However, in the instant case, since

Attested
Sinha
20.8.96

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Ann.- G.

The failing which clause has been provided in the Rules in the case of non-availability of persons for promotion, the direct recruits appointed in sucheventuality will be trated as promotees for the purpose of rotation of vacancies between D.R.s and promotees. It may be stated here that the 'failing which' clause in such case can be operated on when the normal channel of 'failing which' vacancies from the source from which they are required to be filled, fails". It was alleged that the actions of the respondent No. 1 to 5 were contrary to the decisions given or clarifications made on the questions referred to in this behalf. It was the case of the respondents Nos. 1 to 5 that the promotee Geologists (Junior) were given the higher seniority position as the same were favourable to them on the basis of the principle of quota earmarked for the promotees should have been filled up by the promotees should have been filled up by the promotees and that same could not have been filled up by the direct recruits and that on the basis of the quota, the promotees who were promoted in late years were assigned seniority in earlier years on the basis of 50%; 50%i.e. 50% direct recruits and 50% promotees.

Attested
Shimla
10-8-96

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It was also contended that it was a clear case where the seniority of the promotee officers/ were assigned in violation of the relevant Recruitment Rules, inasmuch under the Recruitment Rules in any particular years the 50% quota earmarked for thepromotees could not have been filled up because of the non availability of the promotee officer, in that even, the same should be filled up by directly recruited officers and under Recruitment Rules, there was not provision for carry forward of the vacancies earmarked for the promotees and in the instant case, admittedly during the relevant years due to non avaailability of promotee officers, a large number of posts which were availble for the promotees, were filled up by direct recruitment because of non availability of promotee officers and a fear a lapses of several years, the representation made by the promotee officers assigned seniority to the promotee officers in these years when there were no eligible and/or available promotee officers. This was not permissible under the Recruitment rules framed under Article 309. It as also alleged that it is firmly established principle that rules framed under Article 309 of the Constitution of India could not be superseded by administrative orders of instructions. In this case.

Advocate
Shri B.P. Sahu
20-5-96

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though the respondent No. 1 to 5 relied on such instructions. In support of their contention that seniority of the direct recruited officers were distrubed and taken away by giving retrospective seniority to the promotee officers as there was no scope of diversion of the posts earmarked for the promotees for direct recruitment. This principle which was followed by the respondent Nos. 1 to 5 in the matter, is on the face of it illegal and arbitrary and/or contrary to the clarification made by the Desk Officer of the Department of personnel and A.R. dated 15th September, 1985.

Mr. Partha Sarathi Sengupta, learned advocate appearing on behalf of the petitioners, contended in the first place that the seniority already assigned to the direct recruits in the facts and circumstances of the case could not be distrurbed in the manner which is contrary to the Statutory Rules as the posts were filled up directly in accordance with the provision of the Recruitment Rules and secondly there is no scope for keeping the posts available for promotee officers vacant because of non-availability of promotee officers because of the expression of the work 'failing which' clause in the Recruitment Rules, when the Recruitment Rules specifically provided that in any particular year.

Attested
Himadri Sarma
20-8-91

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the 50% quota available for promotee officers could not be filled up because of non-availability of eligible officers for promotion, the same should be filled up by direct recruitment and in the instant case, it was admitted by the respondents that in these relevant the promotee officers that in these relevant years the promotee officers were not available and as such large number of posts had to be filled up by direct recruits. Mr. Sengupta further contended that is also firmly established principle that when recruitments have been made for metting the exigency of service even by relaxing the rules including the quota rules, the same could not be held to be invalid and the seniority in respect for persons who are appointed, should be connected from date of their appointments. Of course in the instant case there was no question of relaxation of the relevant Recruitment Rules and in the instant case the appointments were made strictly on the basis of the Recruitment Rules. Mr. Sengupta in support of this contention relied on the decision of the Supreme Court of India in A. Janardhan - V - Union of India report in A. I. R. 1983 S.C. 769 wherein it was held that when recruitment is from the independent source subject to prescribed quota, but the power is conferred on the Government to make recruitment in relaxation of the rules, any recruitment made contrary to quota rules would not be invalid unless it is shown that

Attested
Advocate
10-8-96

contd..

power of relaxation was exercised malafide. In the said case the Supreme Court considered the provisions of the Military Engineering Service. Class I (Recruitment, Promotion and Seniority) Rules, 1951. In the case of the appellant. A. Janardhan joined the service as Supervisor in the year 1953 in Military Engineering Service. He came to be promoted as Assistant Executive Engineer in the year 1962. In the seniority list drawn up in 1963, the appellant was shown at serial No. 357. In the revised seniority list, dated June , 1994, the appellant did not find a place because consistent with the quota rules on the basis of which the revised seniority list of 1994 was appeared, the appellant was found surplus and could not find his barth in the seniority list. In that context, the Supreme Court held that "when recruitment is from two independent sources, subject to prescribed quota, but the power is conferred on the Government to make recruitment in relaxation of the rules, any recruitment made contrary to powta rule would not be invalid unless it is whown that the power of relaxation was exercise malafide and that the appellant and these similarly situated were recruited by promotion as provided in R. 3(ii) and recruitment by promotion during these years, was in exercise of the quota as provided in Rule 4. But the recruitments

Attested
Advocate
20.8.96

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having been done for meeting the exigencies of service by relaxing the rules including the quota rules, the promotion in exercess of quota would be valid. Keeping in view the exignencies of service and the requirements of the State, temporary post would be a temporary addition to the strength of the cadre, when there was no provision in the rule that the temporary posts were for a certain duration or the appointments to temporary posts were of the ad hoc nature till such time as recruitment according to the rules was made. If recruitment was made from either of the sources and was otheewise legal and valid, persons recruited to temporary posts would none the-less be members of the service. In the case the Supreme Court also observed that " A direct recruit who comes into service reservation of promotion is not shown to be invalid or illegal according to relevant statutory or non-statutory rules should not be permitted by any principle of seniority to scope a march over a promotee because that itself being arbitrary, would be violative of Article 14 and 15 of the Constitution of India". In the said case the Supreme Court considered the right of seniority of the promotees who were promoted earlier in the quota reserved of direct recruitment and that direct recruits who are directly recruited in much

Attested
Himalaya Jain
20-8-96

contd...

later years, were assigned seniority on the basis of their available quota in the relevant years. In that connection, the Supreme Court observed that "In the case in hand, the appellant a promotee of Sept. 27, 1962 is put below K.N. Prinza who appeared at a competative examination in April, 1967 i.e. one who came years after the appellant and does not require in intelligent exercise to reach a conclusion that 14 years prior to 1976 Mr. Prinza was is shown to be born on July 20, 1950 much be aged about 12 years and must have been studying in a primary school. Shown of all service jurisprudence Jargon let us bluntly notice the situation that a primary school student the promotee was amember of the service, harged in and claimed and got seniority over the promotee. If this has not a demeralising effect on service we fail to see what other inequitous approach would be more damaging . It is, therefore, time to clearly initiate a proposition that a direct recruit who comes into service after the promotee was promoted and whose promotion is not shown to be invalid and/or illegal, Accordingly relevant statutory or non-statutory rules should not be permitted by any principle of seniority to score a march over a promotee because that itself being arbitrary, would be violative of

Attested
Himalaya Sarma
20-8-96

contd...

Article 14 and 16. Relying on the above observation of the Supreme Court, Mr. Sengupta contended that in the instant case, the ratio of the judgment is fully applicable in the instant case and relying on the said principle, the promotee who was promoted in later years, could not be allowed to score a march over the direct recruits who were appointed in earlier years and that too strictly on the basis of statutory rules. Mr Sengupta also relied upon a decision of the Supreme Court in India in the case of S.B. Pattabhardhana -V State of Maharashtra reported in A.I.R. 1977 S. C. 2051 and Balweshwar Das and others. V. State of Uttar Pradesh reported in A.I.R. 1980 S.C. 41 for the proposition that the seniority should be counted from the date of commencement of the service officiating or otherwise in a particular cadre and that nobody can claim seniority from a date on whch he was not appointed or promoted. All these cases of the Supreme Court were considered in the latest decision of the Supreme Court in the case of G.S. Lamba and others Vs. Union of India and others reported in A.I.R. 1985 S.C. 1019 In that case, it was held by the Supreme Court that "where recruitment to a service or a cadre is for more than one source, the controlling authority can prescribed quota for each source. It is equally correct that where the quota is prescribed, a rule of seniority by . . . . . .

Attested
Hiralal
20-8-96.

contd...

rotaing the vacancies can be a valid rule of seniority. If the rule of seniority is inextricably inter-twined with the quota rules and there is enormous deviation from the quotas, it would be unjust, inequitous and unfair to give effect to the rata Rules. In giving effect to the Rota Rule after noticing the enormous departure from the quota rule would be violative of Article 14 and 16. In that case, the petitioners were selected by the Union Public Service Commi ssion recording to merits obtained at the examination conducted for the purpose in 1955 or appointment to the post of Assistants and were allotted to the Ministry of External A affairs. After the intial constitution of the service in 1956, the petitioner were offered an option whether they would jon I.F.S. 'B' in Grade IV at the time of initial constitution. The memorandum Constituting service provided that future maintenance of the service would be governed by the rules to be promulgated for the purpose by the Central Government. The petitioners came to be promoted between 1976-79 from Grade In to intregated Grade II and III of the join Cadre of I.F.S.'B' as on June 25, 1979. The violative of the constitution guaranteed equality and particularly in the matter of public service.

Attested
Hinadeep Sarma
Adv. 8.96

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in as much as the direct recruits who came into service long after the department promotees were regularly promoted to the aforementioned grade, have been assigned seniority over the earlier promoted departmental promotees. In that connection, the supreme Court observed that even though there was violation of rota Rules, the seniority could not be distrubed in respect of the persons promoted earlier and the direct recruits who are appointed in much later years, would not be allowed to score a march over the promotees who were promoted in earlier years. In that case, the supreme Court also observed that the inquiry, if it can be so called may be demonstrably pointed out at this stage with reference to seniority list of 1979, placements in this list of Serial Nos. 294, 300, 305 ..... 480 and 496 have been kept open or vacant and are to be filed in at a later date by assigning seniority to direct recruits who would be recruited to which seniority list was drawn up. These later recruits at some unknown future date would score a march by nearly hundred steps over one at No. 486 already in service by regular promotion". In this case also as stated herein before several placements in the seniority list have been kept vacant which were to be lilled in at a later date by assigning seniority to the

Attested
Hiwadge/Jamo
20-5-96

contd...

promotees. The Supreme Court in that case cancelled the seniority list even though appointment was made in violation of statutory quota rules for recruitment. But in the instant case , there was no question of appointment in violation of the statutory rules and that the revised seniority list in which the seniority of the direct recruits who are made juniors to the promotees in the later years cannot be sustained on the basis of the principles laid down by the above Supreme Court decision.

Considering the rival contentions of the parties and the cases laws cited in this behalf, it is crystal clear that the promotees in question have been assigned seniority with retrospective effect whidh is on the face of it illegal inasmuch as the date on which the incumbent concerned was promoted and/or appointed and that the date from which the seniority had been counted he was not at all eligible for being considered for such promotion. In order to be promoted in the post of Geologists (Junior) the promotees officers in the post below must have to his credit three years service. If a promotee who could notbe considered for promotion in the post of Geologist (Junior) as he was not eligible for promotion, he could not be given promotion with effect from a date when he was not at all

Attested
Hiralal Sarma
20.8.96.

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eligible for promotion and that such assignment of seniority is in direct violation of the provision of the Recruitment Rules. In view of the above decisions of the Supreme Court referred to above the seniority has to be counted from the ate of the appointment and/or promotion whether temporarily and/or officiating basis, in the instant case it is not disputed that the appointment of the direct recruitees in the quota available for the promotees have been given strictly on the basis of the recruitment Rules and that it is also not disputed that there is no provision for carry-forward of the posts and as such the posts of Geologists (Junior) which were filled up at the relevant years, were perfectly legal and valid and the directly recruited Geologists (Junior) whose seniority was assigned with effect from their date of appointment, could not be affected or disturbed by assigning seniority to Geologists (Junior) who was promoted several years after the appointment of direct recruitments in the post of Geologist(Junior) had been made. This is not only arbitrary and mala fides, but contrary to the Recruitment Rules.

Turning to the impugned seniority list which for all practical purpose supersedes the earlier seniority list placement at several serial numbers have been kept vacant and those place would be filled by the promotee officers who may be promoted.

Attested
Hiralal Sarma
20-8-90

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at some future date for specified. This disturbing feature in this case in that when promotion will be given at a subsequent future date after the date of the seniority list, the vacancies would be assigned to the promotee officers even though they would enter into the cadre for the first time after the seniority list was published, would be senior to the directly recruited officers holding substantive post at the serial number just below the serial numbers kept vacant. This is on the face of it is illegal and arbitrary. The case of the Supreme Court in A. Anrdhana V. Union of India reported in A.I.R. 1983 S.C. 769 G.S. Lamba V. Union of India reported in A.I.R. 1985 S.C. 1019 relates to the assignment of seniority of direct recruits over the promotees, but this case is an opposite case in which for the first time it is notice that the promotees who are promoted several years after the officers who were appointed on direct recruitment basis, have been assigned seniority with retrospective effect and over the officers appointed on the basis of direct recruitment several years before the promotees officers were promoted on the basis of the recruitment rules. The ratio of the above decisions of the supremen Court is full applicable in the facts and circumstances of the case and the case of the writ petitioners is fully covered by the principles laid

Attested
Hiralal Jain
20-8-96

contd...

down in the above two decisions of the Supreme Court. It is no necessary to give reasons in details to hold that the impugned seniority list by which the promotees have been assigned seniority in the year 1976, 1977, 1978 and 1979 was wholly arbitrary, illegal and is liable to be struck down particularly in view of the fact that it is an admitted position that in the year 1976, 1977, 1979 the posts of Geologists(Junior) were filled up by the direct recruitee officers in the quota fixed for the promotee officers in view of the Recruitment rules that the 50% quota reserved for the promotee officers should be filled up and in case the promotee officers were not available and it is an admitted position that and the promotee officers were not available for filling up those vacancies, the balance quota reserved for projotee officers was filled up by the direct recruitment. There was no infirmity in this appointments and there could not be any question of cary forward of the posts in the subsequent years under the rules and the respondent Nos. 1 to 5 had acted in the matter illegally and in a most perfunctory manner in assigning seniority to promotee officers who are promoted on officiation basis on or after 31st march, 1977 with retrospective affect from 1976 onwards. The is not permissible and this clearly violates the provision of Article 14 and 16 of

Attested
Hindoga Sen
20-8-96

the ....

Constitution of India. The seniority already assigned to the directly recruited officers could not be taken away by the respondents merely on the basis of some instructions issued in its administrative capacity contrary to the statutory rules for recruitment. The impugned seniority list is accordingly quashed. In the instant case, because of revision of the seniority list in an unlawful and arbitrary manner, the seniority of the directly recruited officers have been seriously affected and their right to get promotion to the posts of Geologists (Senior) have also been seriously affected in view of the fact that the post of Geologist (Senior) is a non-selection post, which means seniority is given solely on the basis of seniority and not on the basis of merit. So the promotion to the post of Geologist (Senior) is given directly on the basis of seniority and if the seniority position in the cadre of Geologist (Junoor) is affected or distrubed, in that even their right to get promotion to the higher post are also equally affected. The seniority list in this case is for all practical purpose is the list of Geologists (Junior) for promotion to the post of Geologists (Senior) directly on the basis of the serial numbers in the seniority list. As it is held that the impugned seniority list has been prepared illegally, arbitrarily and was prepared in violation of the provisions of Article 14 and 16 of the Constution of India and therefore the same are also queshed. The promotions already given if any, to the promotee officers on the

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Annexure - G. Contd.

basis of the assignment of retrospective seniority in the impugned seniority list are also quashed and set aside and the respondents are directed to draw up a fresh seniority list on the basis of the date of appointment and/or promotion to the post of Geologists (Junior) in the light of the observations made above within three months from today in accordance with law and to fill up the post of Geologist (Senior) immediately. This will not however affect the seniority of the direct recruit Geologist(Junior) recruited through the public service commission). Accordingly, the writ petition succeeds and the respondents are directed to cancel and withdraw the gradation list which was published in 17.11.1984 fixing retrospective seniority of the promotee Geologist (Junior). ~~The writ~~ before their induction in that cadre of Geologists(Junior. The Writ application succeeds. The Respondents shall pay costs of this application assessed at 10 G.M.S.

Attested
Himalayagram
20.8.96

The 5th September, 1985 B. K. BANERAJEE

ANNEXURE - 'H'

IN THE HIGH COURT OF CALCUTTA
CIVIL APPELLATE JURISDICTION

The 19th March, 1987

Present:

The Hon'ble Mimal Chandra Basak

and

The Hon'ble Satyabrata Mitra

Two of the Judges of this Court.

Appeal from Original Order(Tender) No. 3487 of 1985

Appeal against the order of the Hon'ble

Mr. Justice Bhagabati Prasad Benerjee in

C.O. No. 1220(w)/85 dated the 5th September, 1985

1. The Union of India and anr. ..... Appellant

- Versus -

2. Shri Tridib Laskar and ors ..... .. Respondents.

Mr. S.C. Bose,

Mr. A. Vhose .... .... for the appellants.

Mr. Malay Kr. Basu,

Mr. Tapan Sarkar,

Mr. Bikash Ranjan Heogi ..... For the Respondents

Mr. Arunava Ghosh ..... For added respondent No. 1

Mr Neguive Akan .. ..... For some of the added respondents.

Attested
Hindoghelan
20-5-87

B.C. Basak, J:

This appeal is directed against a judgment and order passed by the learned trial judge in an application under Article 226 of the Constitution of India wherein the writ petitioners prayed for a writ in the nature of Mandamus commanding the respondents to prepare the Gradation List and/or seniority list

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of the Geologist (Junior) for the promotion to the post of Geologist (Senior) on the basis of the seniority fixed from the date of initial appointment and/or date of initial officiation and/or for their initial induction in the cadre of Geologist (Junior) : a writ in the nature of Mandamus commanding the respondents to forthwith cancel and/or withdraw the gradation list which wasprepared and published on 17th November, 1984 fixed retrospective seniority of the prometee Geologist (Junior) and there prayers. The facts of this case, so far as it is necessary for the purpose of disposal of the appeal, are as follows :-

The petitioners are working as Geologist. They were selected on the basis of the result of the Competative examination conducted by the Union public service Commission in 1978-79. They were confirmed in the said posts. The relevant Rules are as follows :-

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| "10 Mathod of rectt. whether by direct rectt or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various method | 50% by promotion failing which by direct recruit ment through competitive examination to be conducted by the UPSC failing by adhoc selection by open advertise- ment through the Commission". |

Attested
Hirdaya Sena
20-8-96

From time to time appointments were being made what happened is that for period 1976 to 1979, appointment were not made by way of promotion but following the

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"failing which" clause, such appointments were made by direct recruitment. There was a gradation list in 1982. The petitioners do not challenge the said 1982 gradation list but they are challenging the 1984 list. By the said impugned 1984 gradation list several promotees subsequent to 1979 were given seniority with retrospective effect as if they were appointed in the year 1976-79. In this manner in respect of various promotees the position is that they are getting seniority on the basis of back year whereas they are in fact appointed subsequently. The persons who have been promoted on officiation basis on or after 31st January 1983 were given seniority with retrospective effect from 1976. The learned Judge after hearing the parties allowed the application and made the Rule absolute. By his order the learned Judge directed as follows :-

"The seniority list in this case is far all practical purpose is the list of Geologist (Junior) for promotion to the post of Geologist (Senior) directly on the basis of the serial numbers in the seniority list. As it is held that the impugned seniority list as been prepared illegally, arbitrarily and was ordered in violation of the promvision of Article 14 of and 16 of the Constitution of India and therefore the

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same are also quashed. The promotion already given if any, to the promotee officers on the basis of the assignment of retrospective seniority in the impugned seniority list are also quashed and set aside and the respondents are directed to draw up a fresh seniority list on the basis of the date of appointment and/or promotions to the post of Geologist (Junior) in the list of the observations made above within three months from today in accordance with law and to fill up the post of Geologist(Junior) immediately. This will not however affect the seniority of the direct recruit Geologist (Senior) recruited through the public Sercice Commission. Accordingly, the Writ petition succeeds and the respondents are directed to cancel and withdraw the gradation list which was published on 17.11.1984 fixing retrospective seniority of the promotee Geologists (Junior) before their industries in that cadre of Geologist (Junior). The writ application succeeds. The Respondents shall pay costs of this application assessed at 10 Gms.

Adopted
Ambekar Law
20-8-86

The learned Judge referred to the Ministry of Steel and Mines Department's letter dated 28th July, 1984 issued on the question of seniority principles to be adopted. Raliance was also placed in A. Janardhana V. Union of India, A.I.R., 1983 S.C. 769, S.B. Pattabhardhana V. State of Maharashtra, A.I.R. 1977 S.C. 2051 and Balwashar Das and other

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versus state of Uttar Pradesh A.I.R. 1980 S.C. 41 Upon consideration of the contention raised on behalf of the respective parties the learned Judge held that it was crystal clear that the promotees in question have been assigned seniority with retrospective effect which is on the face of it illegal inasmuch as the date of from which the seniority is counted was not the date on which the incumbent concerned was promoted and/or appointed and that the date from which the seniority has been counted they were not at all eligible for being considered for such promotion. In order to be promoted in the post of Geologist (Junior) the promotee officers in the post below must have to his credit three years service. If a promotee who could not be considered for promotion in the post of Geologist (Junior) as he was not eligible for promotion , he could not be given promotion with effect from a date when he was not at all eligible for promotion and that such assignment of seniority is in direct violation of the provision of the Recruitment Rules. It was held that the seniority has to be counted from the date of the appointment and/or promotion whether temporarily and/or officiating basis. In the instant case it was not disputed that the appointment of the direct recruits in the quota available for the promotees have been given strictly on the basis of the Recruitment Rules and that it was also not disputed that there is

Attested
Shivdayal Saini
20-5-26

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no provision for carry-forward of the posts and as such the posts of Geologist (Junior) which were filled up at the relevant years, were perfectly legal and valid and the directly recruited Geologist ( Junior) whose seniority was assigned with effect from their date of appointment could not be affected or disturbed by assigning seniority to Geologist (Junior) was promoted several years after the appointment of recruitee in the post of Geologist (Junior ) had been made. This was not only arbitrary and malafide but contrary to the Recruitment Rules.

In this context the learned Judge also pointed out that truning to the impugned seniority list which for all practical purpose supersedes the earlier seniority list, placement at several serial numbers have been kept vacant and it was admitted that these places would be filled up by promotee officers who may be promoted at some future date. The learned Judge observed that the disturbing feature of the case was that when promotion will be given at a subsequent future date after the date of the seniority list, the vacancies would be assigned to the promotee officers even though they would enter into the cadre for the first time after the seniority list was published. The y would be senior to the directly recruited officers holding subsestantive post at the serial number just below the serial kept vacant.

Attested
Hirdesh Sain
20-8-96.

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Ann.- H.

Being aggrieved by the same the Union of India has preferred this appeal. We must point out that Mr. Bose appearing in support of the appeal very farely admitted before us that the Government has acted in the manner impugned in this proceedings seolely on the basis that there is a "carry forward" Rule prevailing in respect of these posts. He has submitted that the principles referred to in the Ministry's letter dated 22nd September. 1984 on the bais of which the gradation list has been prepared, practically lays down carry forward rule bgt which is not provided in the statutory Rule. He has admitted that if this carry forward Rule had no application, then the impugned Gradation List cannot be supported. He did not strongly oppose quashing of the impugned 1984 gradation, list bgt he submitted that opportunity should be given to the Gove rnment to consider the question of promotion of the prometees who are eligible for appointment in these four uears for their appointment to the post of Geologist (Junior), to bring to an end of all the litigations between the parties. Some of the respondents who filed cross-objection sought to raise some contention of the basis of some averments made in the affidavit-in-opposition affirmed in opposition to an application of Union of India made in this appeal. However, they did not file any affidavit in the writ petition. Accordingly at this stage they cannot be allowed to rely on such affidavit filed before the appeal Court.

Attested
Advocate
10-5-86

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Ann.-H.

In our opinion, the learned Judge was right in quashing the impugned 1984 seniority list. For the years 1976-77, 1977-78 and 1978-79 no appointment was made by way of promotion but in such case direct appointment were made. This was done on the basis of "failing which" clause Rule 10. Such action amounts to the Government proceeding on the basis that no eligible candidate could be found for appointment by was of promotion to such posts. It is not now open to the Government not only to say that such appointments should have been made by way of promotion but also to contend that subsequent appointees by way of promotion would get seniority as if they were recruited in those years wherein in respect of that years the "failing which" clause was applied and direct appointments were made failing recruitment by promotion. In this particular case the Petitioners have been appointed by way of direct recruitment on the basis of "failing which" clause and accordingly they were given seniority as would be reflected by 1982 gradation list. Now it is not open for the Government to proceed on the basis that they were eligible candidates by way of promotion in respect of these years. It is no longer open to them to do so. It is no longer open to them to affect the seniority of the persons recruited directly in respect of these years and change their position as shown in

Attested
Hmadeyfarm
20.8.96

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in the gradation list of 1982. Further admittedly there was no carry forward Rule. On the contray there was "failing which" clause. The action of the Government amounts to maing the gradation list nugatory. Accordingly the learned Judge was right in quashing the gradation list published on 17th November 1984. Which in impugned in the proceedings.

Th. next question is what further directions are to be given because a gradation list has to be published in accordance with the principles laid down by the learned Judge as affirmed by this Court. The petitioners have not challenged the 1982 gradation list. Accordingly we direct the respondents to draw up a fresh seniority list on the basis of the date of initial appointment to the post of Geologist (Junior) either by was of promotion or directly. In the light of the obsefations made by the learned Judge as affirmed by us within a period of three months from today in accordance with lay. The post of Geologist (Senior) is to be filled up in accordance with the same. For the preparation of the list, the 1982 list is to be treated to be the basis. No change is to be madd in respect of the seniority position shown in the 1982 list subject of course to any commission which is to be made from that list on account of death, transfer, retirement, resignation or of any other change of similar nature but strictly limited to the same. So far as the seniority of the persons promoted after 1982 list, the

Attested
Hinadayalsen
20-8-96

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Ann.-H.

same shall be strictly on the basis of the date of continuous appointment. If any promotion has been given, whether before or after the issue of Rule Nisi, on the basis of the retrospective seniority then that is also quashed and set aside, subject to this, however, that if they could be otherwise fit in except on such basis, then they will be so it in. The appointments made on adhoc basis by virtue of departmental Committee's letter dated 17th January 1985 is not to be disturbed so far as those persons whose names appear in the 1982 List. Promotion to the post of Geologist (Senior) would be made on the basis of the gradation list to be prepared pursuant to the order of the learned Traial Judge as modified by this Court. However, this will not prevent the authority concerned in the meanwhile to give adhoc or officiating promotion till the finalisation of the gradation list pursuant to our direction but the same shall preceed on the basis of 1982 gradation list and of continuous service thereafter subject to the modification specified in this order, the judgement and order of the learned Trial Judge is affirmed and the appeal is disposed of accordingly. There will be no order as to costs.

All interim Orders are vacated.

Let a plain copy of the operative pretion of this order countersigned by the Assistant Registrar (Court) be given to the learned Advocate for the parties.

Attested
Advocate/Secy
20-8-96

B.C.Basak

S.MITRA J. IAGREE

The 19th March, 1987 Satyabrata Kitra.

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ANNEXURE - I

SUPREME COURT OF INDIA

Records of Proceedings

WRIT PETITION (CIVIL/CRL.) NO.880 of 1987 (For Prel. Hearing)
WITH CMP.NO. 16693/87 (In SLP.No. /87)(For leave to file SLI

S. K. Bhatia & Another

R. G. Sinha .....Petitioners

- Versus -

Union of India & Ors. .....Respondents.

(with Appelans. for ex parts stay & CMP. No. 16577/87)

Date 30.7.87 : This petition was called on for hearing today.

Corm : Hon'ble the Chief Justice
Hon'ble Mr. Justice E. S. Venkataramiah.
Hon'ble Mr. Justice, K.N. Singh.

For the petitioners : Mr. K.K. Benguopal, Sr. Adv. Mr. C. S. Vaidaynathan, Mr. Pradbit Choudhury, Advs.

For the Petr.
in CMP. 16683/87

For the Respondets :.

UPON hearing counsel the Court made the following

O R D E R

It is submitted that the petitioners in the above special leave petition were not parties to the decision of the Calcutta High Court in Original Order (Tender)- 3487 of 1985 and that the order passed therein prejudicially affects them. It is also submitted that the High Court of Calcutta had no jurisdiction to the date on which it passed the

Attested
Advocate
20-8-96

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Ann.-II

the order in view of Section 29 of the Adminstrative Tribunal 1985. In these circumstances we fell that it ~~its~~ is just and proper that we must permit the petitioners to file a Review Petition before the High Court of Call-catta and we do so. If such an application is filed within 30 days from today the High Courtshall dispose it of an merits with these observations that special leave petition is disposed of without expressing any opinion in the merits of the cintentions.

Writ petition No.880 of 1987 is permitted to be withdrawn in view of our order passed in special leave petition filed by Shri R.C. Sinha against the order of the Calcutta High Court in Original Order (Tender) 3487 of 1985 without expressing any opinion on the merits.

Sd/-
C.Jha.
Court Master.

Attested.
Hiralaya Sarma
20.8.96.

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Annexure - J

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1822 of 1989

Tridib Likar & Ors. ..... Appellants.

- Versus -

Union of India & Ors. ..... Respondents.

O R D E R

Special leave granted.

Heard learned counsel for the parties. The direction given by the learned single which has been affirmed in appeal by the Division Bench. with certain modification has been subjected to appeal before this Court. The Division Bench has indicated in its order dated 19.3.1987 that the list of 1982 shall be treated as the basis and while drawing up the fresh list no change except, of course, any any omission which is to be made from that list on account of death, transfer, retirment and resignation shall be permitted.

We have heard learned counsel and would like to add that while drawing up the fresh seniority list, Government shall not be precluded from taking into account mistakes which it considers are relevant and appropriate to be considered.

Whatever has been said by us shallnot affect the pending review petition in the High Court.

The appeal is accordingly disposed of. No Costs.

Sd/- Ranganath Misra.
Sd/- M.M.Venkatachaliah.

New Delhi.
March 7, 1989.

ANNEXURE K

| 2.6.90 | 12.6.90 | 12.6.90 | 13.6.90 |
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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

The 16th March 1990.

P R E S E N T

The Hon'ble Bimal Chandra Basak,

- And -

The Hon'ble Satyabrata Mitra.

Two of the Judges of this Court.

Appeal from Original Order Rev. Tender No.2704 of 1987, F.M.A. No.843 of 1987, (F.M.A.T.No. 3487 of 1985.

Issued by this court.

In the matter of an application for Revies made pursuant to the Order dtd. 30th July 1987, passed by the Hon'ble Supreme Court of India in Special Leave Petition C.P. No.16693 of 1987.

And in the matter of an application for Review of the Judgement and order dated 19th March 1987, passed by the Hon'ble Mr. Justice Bimal Chandra Basak and the Hon'ble Mr. Justice Mr. Satyabrata Mitra in F.M.A. No.843 of 1987 (F.M.A.T. No. 3487 of 1985).

Attested
Hiralal Jose
20-8-96

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Ann.- K.

And in the matter of :-

1. The Union of India, through the Secretary, Ministry of Steel and Mines (Department of Mines), Shastri Bhawan, New-Delhi.

2. The Director General, Geological Survey of India, 27, Jawaharlal Nehru Road, Calcutta.

..... Respondents/Appellants.

- Versus-

1. Shri Tribib Laskar, West Bengal Circle, Calcutta.
2. Biswabandhu Das, West Bengal Circle, Calcutta.
3. Ruby Dasgupta, M.C.P.I. Division E.T. Calcutta.
4. B.K. Sidhanta, Publication Division, C.H.Q., Calcutta.
5. Prabir Kumar Das, all working as Geologist (Junior), Geological Survey of India, Coal Division, Calcutta.
6. T. Gopal Reddy.
7. Dr. A.P.Mahalkahmenda.
8. Shefeq Ahmed.
9. Deepak Halder.
10. T.H. Anantharam.
11. S.P. Venkata Dasu.
12. K.N.Nagahaja Rao.
13. Sahsuliam Sashihi.
14. Keshy John
15. V. Sundaram, all No.5 to 15 are Geologists (Junior) under the Geological Survey of India. Karnataka Circle, Bangalore.

Attested
Shivadeo Rao
24-8-90

contd...

Ann.- K.

16. Amitaba Bandopadhyay, Gujrat Circle, Ahmedabad.
17. Amal Kumar Samaddar, 18. S. Sanyal. 19. S.K. Shrivastava,
20. Sambhu Chakraberty, 21. Bhaskar Krishna Bhandari,
22. Kanika Sanyal, 23. Ashok Kumar Bhattacharyaya All Nos.16 to 23 of M.P. Circle, Jabbalpur, all are Geologists (Junior) under the Geological Survey of India, 24. A. Chatterjee, Coal Division, Calcutta. 25. Anita Roy (nee Dhar), W.B. Circle, Calcutta. Nos. 24 and 25 are directly appointed Geologists (Junior working under the Geological Survey of India. ....Writ Petitioners/Respondents.

26. Alike Sen 27. P.N. Verma, 28. P. Bandopadhyay,
29. Kallol Guha, all Nos. 26 to 29 working for gain at Geologist (Senior) in the Geological Survey of India, 4, Chowringhee Lane, Calcutta-16 ..... Cross Objection/Respondes.

30. N.K. Sen, 31. B.N. Saha, 32. R. Sen Gupta, 33. J.K. Ghose, 34. P.C. Goswami, 35. B. Debnath, 36. D.K.Mullick, 37. S.K. Barua, 38. D.N. Bandopadhyaya, 39. Dr. P.C. Basu, 40. B.K.Hore, All numbers 30 to 40 working for gain as Geologist (Senior) in the Geological Survey of India, 4, Chowringhee Lane, Calcutta-16. 41. S.K. Vohra,
42. B.R. Biswas, 43. A. Roy, Nos 41 to 43 working for gain as Geologist (senior in the Geological Survey of India 29. Jawharlal Nehru Road, Calcutta-16.

Affixed
Himalaya Seva
20-8-96.

contd...

Ann.- K.

44. J.K. Bose, 45. M.K. Sen. 46. Mrs. K.Roy Choudhury , 47. K.Anwasommi, 48. Mrs. Kalpana Sengupta, 49. Mrs. Nalpana Sengupta, 50. S. Sarkar, 51. Kumar B.Bardhan, 52. Kumari Laxmi Ghose, all numbers 44 to 52 working for gain as Geologists (Senior) in the Geological Survey of India 27, Jawharlal Nehru Road, Calcutta-16. 53. T.K. Sen, 54. A.K. Das, 55. S. Chakraborty, 56. A. Roy, 57. Madan Sharma, all numbers 53 to 57 working for gain as Geologist (Senior) in the Geological Survey of India, 12 A.& B Russel Street, Calcutta-71. 58.M.N. Ramchandra Rao working for gain as Geologist (Senior) in the Geological Survery of India, A.M.S.E. Bangalore Karnataka, 59. Amitava Sen Sharma, 60. Kashi Nath Dey, 61. Sibaji Basu Roy, 62. Shibani Chakraborty. 63. Partha Chakraborty, 64. Shibani Das Gupta, 65. Shibananda Sengupta, 66. Dipak Kumar Mukhopadhyay 67. Sajal Manti Chowdhury, 68. Bijoy Kolapur, all Geologists in the services of Geological Survey of India, 69. Prakash Chnadra Ghose, working for gain as Geologist (Senior) in the Geological Servey of India, 29, Jawherlal Nehru Road, Calcutta-16. 70. A. Nandy. 71. Sudhansu Biswas, 72. D.P. Das, all numbers 70 to 72 working for gain as Geologists (Senior) in the Geological Survey of India, 27 Jawaharlal Nehry Road, Calcutta-16. 73. P.N. Choudhury, 74. Goutam Mukharjee, 75. J.Roy, Choudhury, Nos. 73 to 75 working for gain as Geologist (Senior) in Geological Survey of India, 4 Chowringhee Lane, Calcutta-16.

Attested
Himalaya Seva
10-8-96

Ann.-K.

105. S.V. Sathanarayana, 106. A. Syamala Rao, All Nos. 104 to 106 working for gain as Geologist (Senior) in Geological Survery of India, Operation Andhara Pradesh, Hyderabad. 107. S. Narashima, 108 N.J. Maharaja Singh, Nos. 107 & 108 working for gain as Geologist (Senior) in Geological Survey of India, P.G.R.S. Hyderabad. 109. N. Ranendra, Working for gain as Geologist (Senior) in Geological Survey of India, P.G.R.S. Shillong-3. 110. K.Shivaji, 111. K.J. Sharma, Nos. 110 & 111 working for gain as Geologist (Senior) in Economic Geologist Dept. Hyderabad 112. Dinkar Srivestrv. 113. M. Mhaesh Babu, Nos. 112 & 113 working for gain as Geologist (Senior) in the E.G. Division, Souther Region, Hyderabad. 114. U.B.V. Krishna Rao, 115. K.Parth Sarathi, 116. Dr. B. Satha Narayana, Nos. 114 to 116 working for gain as Geologist (Senior) in Publication Division, Hyderabad. 117. T. Rameshar Rao, working for gain as Geologist (Senior) in planning & Co-ordination, Hyderabad. 118. G.V. Nadndy Keshab Rao, working for gain as Geologist. (Senior) in Regional Division, Hyderabad. 119. S.T.Sambandan, 120. N. Sethu Radman, Nos. 119 & 120 working for gain as Geologist (Senior) in Environmental Geological Division, Hyderabad. 121. T. Ajit Reddy, working for gain as Geologist (Senior) in Pettrology Division, Hyderabad. 122. Biman Debnath working for gain as Geologist (Senior) in E.T. Division, Geological Survey, Calcutta.

Attested
Advocate
20/8/2

contd....

76. Pradip Dey, 77. B.K.Ghosh, 78. Anjan Kumar Basu, 79. Dipankar Sen, 80. Buddhadeb Chowdhury, Nos. 76 to 80 working for gains Geologists (Senior) in Geological Survey of India, 12 A & B2 B, Russel Street, Calcutta - 71 81. Bhanumati Ramkrishna. 82. V. Murli Dharan, 83. A.V. Krishna Rao, 84. R. Sundaram, 85. P. Suthaanadan, 86. P. Shamighan, All Nos. 81 to 86 working for gain as Geologists (Senior) in Geological Survey of India, Tamil Nadu Circle, Inner Ring Road, Madras. 87. K.S. Rao, 88. J. Srinibasan, 89. L. Guru Siddappa, 90. M.V. Rama Murti, 91 M.N.Ram Chandra Rao, 92. N.S.Venkatesl, All Nos. 87 to 92 working for gain as Geologist (Senion) in the Geological Survey of India, AMSE wing, Bandalore. 93. G.A. M. Rao, 94. K. Narasingha Rao, 95. Dr. P. Yadagiri, All. Nos. 93 to 95 working for gain as Geologist (Senior) in the Geological Survey of India, Training Institute, Hyderabad. 96. M.P. Muralidhiren, working for gain as Geologist (Senior) in the Geological Survey of India, Kerala Circle, Trivandram. 97. R.K. Rajdan, 98. M.K. Wanchoo, 99. P.L. Raina, All Nos. 97 to 99 working for gain as Geologist (Senior) in the Geological Survey of India Kashmir and Laddak Circle, Raj Bagh, Sree Nagar, 100 B.K. Gupta, 101. Surendra Singh, 102 Raj Pal Singh, 103. Jagindra Sitahi, All Nos. 100 to 103 working for gain as Geologist (Senior) in the Geological Survey of India Nammu Circle, Gandhi Nagar, Jammu. 104. C. Rama Mohana.

Attested
Himalaya Seva
20.8.96

contd...

Ann. K.

123. Amitava Sen, working for gain as Geologist (Senior) in M.C.P.I. Division, Geological Survey of India, Shillong. ..... Added . Respondents

for the Appellant: Mr. K.K. Beral.

for the ~~Appellant~~ Union of India : Mr. Soma Bose.
Mr. Asim K. Ghosh.

for the writ petitioners: Mr. Bikash Ranjan Neogy

This is an application for review. Learned Advocate appearing for the application is not in a position to place before us the relevant law for review of the grounds for such review for which this application has been made. No. review can be made as a matter of course.

As we are not satisfied that any ground has been made for review of our judgment and order, we dismiss this application. All interim orders are vacated.

Prayer for stay of pp operation is refused ince no submission has been made by the learned Advocate for the petitioner is supoort of this application for review no such prayer can be acceeded to and the same is rejected .

March 16, 1990 B.C. Basak,
Typed by: AB Satyabrata Mitra.
Examined by:
Read by: H.Pahari
13.6.90

ANNEXURE - L

| 20.8.90 | 24.8 | 25/8 | 31.8/90 |
|---|---|---|---|

In the High Court of Calcutta,

Appellate Civil Jurisdiction

The 28th June, 1090

Present :

The Hon'ble Bimal Chandra Basak,

And

The Hon'ble Satyabrata Mitra.

Two of the Judges of this Court.

R E V T/N o. 2704/87 with F.M. A. No.843 of 1987.

In the matter of an application for recalling of the order dated 16th March, 1990, passed by the Hon'ble Mr. Justice B.C. Basak and Hon'ble Mr. Justice B.B. Mitra.

And in the matter of : an application for review made pursuant to the order dated 30th July, 1987, passed by the Hon'ble Supreme Court of India in special leave petition CMP No. 16693 of 1987.

Advocate's Signature 20-8-90.

contd...

Ann.- L

And in the matter of : an application for review of the judgment and order dated 19th March, 1987, passed by the Hon'ble Mr. Justice Bimal Chandra Basak and the Hon'ble Mr. Justice Satyabrate Mitra in F.M.A. No.843 of 1987 of M.A.T. No.3487) of 1985.

An in the matter of :

1.

2. The Union of India through the Secretary Ministry of Steel and Mines, Department of Mines, Shestry Bhawan New Delhi and others.

....Appellants.

- Versus -

Shri Tridib Laskar West Bengal Circle, Calcutta and other.

.....Respondents.

Ref : Application for recalling the order filed in Court on 16.4.90.

Mr. Bikash Bhattacharyya,
Mr. K.K. Boral, for the applicant.
Mr. S.C. Bose,
Mr. Bikash Neogy, for the Opposite Party.

This is an application for recalling our order dated 16th March, 1990 passed in the above appeal and for rehearing the matter.

The facts of the case are as hereunder :

A writ petition was filed wherein order was passed on 5th September, 1985 and the appeal preferred against

contd....

the said order as disposed of by our judgment and order dated 19th March 1987. By the said order dated 19th March, 1987 we affirmed the order of the trail Court subject to some modification specified in the said order disposing of the appeal. The applicants before us not parties to the proceedings. It is stated the learned Advocate that the applicants are aggrieved by the said orders. It is further stated that on or about 13th July. 1987 the applicantion for leave to file a special leave petition before the Hon'ble Supreme Court againstthe said judgment and order dated 19th March, 1987 and another application under Art. 32 of the Constitution were filed by R.G. Sinha the writ petition being No. 880 of 1987. It is stated that the said application for leave to file special leave petition and the said writ petition were heard by the Supreme Court and the same were disposed of on 30th July, 1987 by the following order :-

"It is submitted that the petitioners in the above special leave petition were not apprties to the decision of the Calcutta High Court in original order (Tender No. 3487 of 1985 and that the order passed therein prejudicially affect them. It is also submitted that the High Court of Calcutta had no jurisdiction on the date

Attested
Sinha/Sen
20-8-16

contd..

date on which it passed the order in view of section 29 of the Administrative Tribunal Act, 1985. In these circumstances we feel that it is just and proper that we must permit the petitioners to file a review petition before the High Court of Calcutta and we do so. If such an application is filed within 30 days from today the High Court shall dispose it of no merits. With these observations this special leave petition is disposed of without expressing any opinion on the merits of the contentions.

Writ petition No. 880 of 1987 permitted to be withdrawn in view of our order passed in the special leave petition filed by Shri R.G. Sinha against the order of the Calcutta High Court in Original order (tender) No. 3487 of 1985 without expressing any opinion on the merits.

Perusuant to above a review application was moved before this court and ultimately by an order dated 16th March, 1990 we disposed of the said review petition by passing the following order :

"This is an application for review. Learned Advocate appearing for the applicant is not in a position to place before us the relevant law for review of the grounds for such review for which this application has been made. No. review can be made as a matter of course.

As we are not satisfied that any ground has been made for review of our judgment and order we dismiss this application.

Attested
Shivdas Sen
20-8-96

contd....

All interim orders are vacated.

Prayer for stay of operation is refused since no submission has been made by the learned Advocate for the petitioner in support of this application for review. No such prayer can be acceeded to and the same is rejected.

Now this application has been made for recalling the above order dated 16th March, 1990.

Mr. Bose, learned Advocate appearing on behalf of the Union of India has submitted that the order passed on 16th March, 1990 has been signed. Further the said order was passed upon hearing the parties. Accordingly, the question of recalling the order for does not arise. Some other remedy may be open to the applicants as they may be advised.

In our opinion, this objection raised by Mr. Bose, learned counsel is to be sustained since the order dated 16th March, 1990 has not been passed exparte but on merits disposing of the said review petition. The order has also been signed immediately after the same was passed. Moreover, this application is not made either under order 9 Rule 13 of the Civil procedure code or the principles analogous thereto.

In any event the said previsions are not attracted in the facts and circumstances of the present case. Other remedies may be open to the applicant but not for recalling the order as sought to be done in this application.

Accordingly, we uphold the objections raised by Mr. Bose, learned counsel appearing on behalf of the Union of India and dismiss this application.

There will however, be no order as to costs.

29th June, 1990.

B. C. Basak,

Satyabrata Mitra.

Typed by: Sankar Examined by:

Rady by: 30.8.90

Attested
Sinha
30-8-90

ANNEXURE - 'M'

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH:

Original Application No. 4 of 1990

Date of Order : This the 30th day of January, 1995

The Hon'ble Justice Shri M.C.Chaudhuri, Vice Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative)

Shri Himalaya Sarma ... Applicant

- Versus -

Union of India and others ... Respondents.

Shri R.P. Sarma for the applicants

Shri S. Ali, Sr. C.G.S.C. for the respondents

Shri B.K. Sharma for the interveners.

O R D E R

CHAUDHARI. J.V.C

The applicant does not state that it is filed in a representative capacity. By order in M.P.No. 2/90 leave was granted to prosecute the application in representative capacity on behalf of 52 other officers mentioned in the annexure to the application. However, these person being interested persons have neither been served personally not by public advertisement. For that reason we proceed with the application as relating to the applicant alone in his individual capacity.

Attested
Himalaya Sarma
20-5-95

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2. The grievance of the applicant can not be said to be justified or unjustified unless the matter is examined on merits. The position has not remained simple by reason the Supreme Court on this subject. From the written statement of the Government of India it appears that in view of the vexed nature of the problem the 1989 gradation list purported to be impugned in the present application has not been yet approved by the Government of India. That was the position stated in the written statement which was filed on 14.6.1990. Mr. S.Ali learned Sr. C.G. S.C., states that he has no instructions that the list has been approved so far. The applicant also believes that it has not so far been approved. In paragraph 19 of the written statement of the respondents it is stated that the gradation list of 31.8.1989 is a pxx provisional one and is subject to examination and approval by the Government. Same statement is repeated in paragraph 20 of the written statement. That shown that the Government of India are not oblivious to the difficulties and problems as may arise in that connection. Eventually, therefore, it is the Government of India who have to take the final decision as regards that list.

Attested
Advocate
20-8-96

contd...

3. Coupled with the above circumstances there is statement made in the application in paragraph 27 that the applicant had filed a representation against the 1989 seniority list to the respondents on 2.1.1990, but he has not stated that has been decided by the Government. In the written statement of the Government of India it is stated in paragraph 25 that the aforesaid representation of the applicant dated 2.1.1990 is under examination alongwith representations receive from other officers in this connection. Although that was a statement made on 14.6.1990 it is neither claimed by the respondents nor the applicant nor the interveners that the said representation has been disposed of. It is, therefore, presumed to be pending. The interveners has also stated in paragraphs 3(b) of their written statement that th said representation is pending disposal before the authorities.

4. Considering the above position we are of the view that it will be more appropriate to leave the matter to be considered by the Government of India. After we asked the learned counsel for the applicant whether the applicant would desire to await the decision on the representation or press for an order on merits in this application, the learned counsel states that the applicant would prefer

contd...

to await the result of the representation. We think that in the circumstances as are revealed from the application and the written statement of the respondents and the interveners the applicant is well advised to await the decision on the representation.

5. In the result we direct the respondents to examine and decide the representation of the applicant dated 2.1.1990 on merits in the light of the grievances made by the applicant in his representation as expeditiously as possible and to convey the decision to the applicant after it is taken.

6. Subject to the aforesaid direction the applicant is allowed to withdraw the instant application. It is made clear that we have not touched the merits of the case nor any contention raised by the respondents and the interveners in their written statements.

7. The application stands withdrawn and disposed of. The interim direction stands vacated. No order as to costs.

Copy of the order be supplied to the counsel for the parties.

Sd/- Vice Chairman,

Sd/- Member (Admn).

Memo No. 612 Dated 3.2.95.

Copy for information & necessary action.

1. Mr. R.P. Sarma, Advocate, Gauhati High Court, Gauhati
2. Mr. S. Ali, Sr. C.G.S.C., C.A.T., Gauhati Bench, Gauhati
3. Mr. B.K. Sharma, Advocate, Gauhati High Court, Gauhati.

Sd/-
Section Officer (J)

ANNEXURE - 'M-21'

GOVERNMENT OF INDIA

No. 609/5/CAT/HS/90 Dated 8th May, 1995

From:
The Dy. Director General
Geological Survey of India
North Eastern Region,
Shillong - 793003

To
Shri Himalaya Sarma
Geologist (Jr)
RCD Opn (Assam),
Geological Survey of India
Guwahati

Sub: Determination of Seniority in Geologist (Jr.) with particular reference to the order dated 30.1.95 in O.A.4/90 filed by Shri Himalaya Sarma, Geologist (Jr.) in the CAT, Gauhati.

Sir,

I am directed to inform you that your representation dated 2.1.90 has been examined by the Competent authority, as per order dated 30.1.95 of the Hon'ble CAT, Gauhati in the above mentioned O.A. and the findings are as follows.

In the representation you have raised the following main objections

(i) The Gradation list prepared as on 1.3.83 assigning his position therein is in order and challenged the Gradation list as on 31.8.89.

(ii) the reversion of his seniority in 1989 list is in violation of the order of the Nagpur High Court and also violation of the Government Policy by the Department as well as by the Calcutta High Court.

Attested
Himalaya Sarma
20.8.96

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Ann. -M-1'

(iii) the Supreme Court did not uphold the order of the Calcutta High Court in its order dated 7.3.89, but directed the Calcutta High Court to expedite the Review petition filed by some promotee Geologists and

(iv) ~~xxxxxxxx~~ circulation of 1989 Gradation List, pending disposal of the Refiew petition before the Calcutta High Court. The petition is clarified as follows :-

1. The Gradation list of Geologist(Jr.) as on 1.3.83 was drawn according to the directives of the DPAR and the same was circulated to all concerned. A few direct recruitees filed Writ petition in the Calcutta High Court challenging the validity of the list of 1.3.83 with a prayer to quash the impugned list and also not to give effect to the promotion to the post of Geologist (Sr.). The writ petition was disposed of by the Learned judge on 5.9.85 quashing the impugned list of 1.3.83 assigning retrospective seniority to the promotee Geologist (Jr.) batch of 1983. An appeal was preferred before the Division Bench, Calcutta Hi h Court by the Government Director General, G.S.I. and some promotee Geologist (Jr.) which was decided on 19.3.87. The Division Bench, Calcutta High Court, in ~~its~~ order and judgement dated 19.3.87 has ordered that while preparing the fresh Gradation list as on 1.2.82 should be taken as the basis and shall not be distrubed in as much as the Gradation list has not been challenged and no change except any ommission on account of death, transfer, retirement and

Attested
Advocate Bar
20-8-90

resignation shall be permitted.

2. The writ petition filed by some promotees as referred by Shri Sarma in the Bombay High Court (Nagpur Bench) it was disposed of by the Bombay High Court (Nagpur Bench) by an order dated 6.8.1984 being withdrawn. In other words, no order was passed on this writ petition on merit.

3. Shri Tilib Laskar and others filed SLP in the Supreme Court against the Judgement dated 19.3.87 of the Division Bench, Calcutta High Court alleging that the judgement of the Division Bench was arbitrary in as much as, it has accepted the judgement of learned single judge which has been given on the basis of the Supreme Court's judgement, but has arbitrarily decided not to disturb the Gradation list as on 1.2.82 and ordered that the principle laid down by the Hon'ble Trial Judge should be followed after 1982 gradation list.

4. The Supreme Court by an order dated 7.3.89 has disposed of the SLP and uphel the judgment of Division Bench, Calcutta High Court's order dated 19.3.87 and stated that "We have heard learned counsel and would like to add that while drawing up the fresh seniority list, Government shall not be precluded from taking into account

Attested
Advocate
20.8.90

contd..

Ann.-M-1

mistakes which it consider are relevant and appropritate to be considered. Whatever has been said by us shall not effece the pending review petition in the High Court".

Although the Supreme Court has observed that its order dated 7.3.89 shall not affect the pending review petitón in the Calcutta High Court, it is very clear that the Hon'be Supreme Court has accepted the judgement and order passed by the Division Bench, Calcutta High Courts' order dated 19.3.87.

5. Hence in pursuance of the judgement of the Division Bench of the Calcutta High Court and as accepted the Hon'ble Supreme Court, the gradation list of Geologist (Jr.) as on 31.8.89 was prepared and circulated.

6. As per advice given by BOPT and Dept. of Legal Affairs, the Gradation list as on 31.8.89 has been modified as under :

(a) Sl. No.1 to 716 - The same as the old seniority list of 1982

(b) Sl. No.717 to 777 - Direct recruits who joined against 1981 Geologists' exam. hence included as part of the 1982 seniority list

Attested
Advocate
11-8-96

contd..

Ann.-WA -I

(c) Sl.No.778 to 862 - The promotee batch of 1983 starting from Shri S.K. Bhatia to Shri Dipak Kr. Bose assigned enblock seniority.

(d) Sl.No.863 to 1025 - Direct recruits who joined against Geologists' Examination 1982, 1983, 1984, 1985, 1986 and 1987 have been assigned enblock seniority as there was no promotion during the above years.

(e) Sl.No.1026 to 1055 - Promotee batch of 1988 has been given enblock seniority in terms of DOPT, OM No.35014/2/80 - Estt.(D), dated 7.2.86.

The above modified gradation list has not been circulated. The Government has approved the modified list up to Sl.No.777.

7. Thereafter another gradation list of Geologist (Jr.) was as on 1.10.92/prepared as per direction of the Ministry

contd....

Ann.-W-1

deleting the name of officers retired, resigned or promoted to the post of Geologist (Sr.) before that date. The said list of 1.10.92 has not also been circulated as the provisional gradation list of 1989 was sub-judice before the CAT, Gauhati Bench. The Government has also approved the list of 1.10.92 in full.

Shri Himalaya Sarma, Geologist (Jr.) may be informed suitably from your end.

Yours faithfully,

Sd/-

D. T. Syiemieh,
Sr. Administrative Officer,
for Dy. Director General (G).

No. /CAT/HS/90 dated May , 1995.

Copy to the Director General, Geological Survey of India, 12, J.L. Nehru Road, Calcutta-16. This has reference to your office letter No. 1097/34/62/89/19 A dated 17.4.95.

Sd/- D. T. Syiemieh.

Sr. Administrative Office ,
for Dy. Director General (G).

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Annexure- "N"

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH : GUWAHATI

ORIGINAL APPLN. NO. 253 OF 1995

HIMALAYA SARMAH ... Applicant(s)

- Versus -

UNION OF INDIA ... Respondent(s)

For the applicant(s) .... R.P. Sarmah

R.K. Pradhan

For the Respondent(s) .... S. Ali, Sr. C.G.S.C.

| Office Note | Date | O r d e r |
|---|---|---|
| | 28.11.95 | Mr. R.P. Sarma for the applicant. Mr. S.Ali, Sr.C.G.S.C. for the respondents. By our previous order dated 30.1.95 in O.A.4/90 we had allowed the O.A. to be withdrawn without expressing any opinion on the merits pending the consideration of the representation of the applicant and directed the respondents to decide the said representation.The representation has been decided on 8.5.95. That goes to ~~show~~ that in the light of a decision of the Division Bench of the Calcutta High Court a gradation list as on 31.8.89 was prepared and circulated. Mr. Sarma stated that the applicants fall within Sl.No.778 to 862 batch shown in that list.The order of the respondents aforesaid shows |

Contd.....

Contd . Annexure- ' '

that the Government of India had approved the modified list only upto Sl.No.777 and thereafter another gradation list as on 1.10.92 was prepared as per the direction of the Ministry but the said list was not circulated as the provional gradation list of 1989 was subjudice before this Tribunal. It is already stated that the list of 1.10.92 has been approved by the Government fully. Unless therefore the position of the applicant in the list dated 1.10.92 is decide the question of his promotion claimed in the O.A. We would have considered directing the respondents to circulate the list dated 1.10.92 but Mr. Sarma now states that subsequent to the filling of the O.A. the applicant has been intimated his position in the said list. It is therefore essential that if the applicant feels aggrieved by that position .He has to challenge the same and the instant application will have to be regarded as premature in the absence of such challenge having been made in this O.A. Having regard to the above position Mr. Sarma now seeks to withdraw this application with liberty to file a fresh application to challenge the seniority list dated 1.10.92 if the applicant still feels aggrieved by the same and also with liberty to rely on the contentions urged in the instant application as well as earlier application in support of the fresh application. We think that in the circumstance that is the appropriate couse to be adopted. The O.A. is accordingly allowed to be withdrawn as premature with liberty to the applicant to file afresh O.A. for challenging the gradation list dated 1.10.92 if he is aggrieved with the same. All the contentions urged by him in the instant application are left open to be relied upon in the fresh petition.

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Contd. Annexure-

O.A. 253/95

28.11.95

We make it clear that since the earlier O.A. has already been disposed of there is no bar in the way of the respondents to circulate the gradation list of 1.10.92.

Sd/-Vice Chairman

Sd/- Member(Admn)

(Seal)

Certified to be true copy

Sd/-
Illegible,
1.12.95

(SEAL)

ANNEXURE A 0

Date 23.6.95.

From : Himalaya Sarma,
Geologist (Jr.)
Geological Survey of India
Zoo.Narangi Road, 5th Byclane(N)
Gauhati-21.

TO,

The Deputy Director General,
Geological Survey of India
27, J.L. Nehru Road.
Calcutta-16.

(Through Proper channel)

Sub : Approved gradation list as on 1.10.92.

Ref : Your letter No.609/5/CAT/HS/90 dt. 8.5.95.

Sir,

Please refer to your above mentioned letter. From the reply of my representation dt.2.1.90, I have come to know that one more gradation list of geologist (Jr.) as on 1.10.92 has been approved in ~~khak kkkk~~ fual. I do not know my exact seniority position in that list. I am aggrieved by the seniority position shown to my promotee group (from Sl.No.778 onwards) in the modified list of Geologist (Jr.) as on 31.8.89.

If this is my seniority position in the approv modified list Geologist(Jr.) I may have to proceed for legal admice. You are requested to kindly give me the exact seniority position of mine in the 1992 gradation list and obliged.

Yours faithfully,

Sd/- Himalaya Sarma,
Geologist(Jr.)

Attested
Himalaya Sarma
20-6-96

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ANNEXURE - 'p'

## RELATIVE SENIORITY POSITION OF SHRI HIMALAYA SARMA, GEOLOGIST (JR.)

| Name and Designation | Year of Gradation List | Sl. No.(seniority) in gradation list | WHAT SHOULD HAVE THE POSITION | | | Loss in position |
|---|---|---|---|---|---|---|
| | | | Three years criteria from appointment order | Three years criteria of residency period from the date of joining | As per vacant slap kept for promotion | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| HIMALAYA SARMA, GEOLOGIST(Jr.) | 1982 | was not promoted to Geologist (Jr) (name not figured in the list ) | 1078 | 1023 | 1286 | Not known |
| | 1983 (published in 1984) List Quashed | 874 | Rightly placed | Rightly placed | Rightly placed | Nil |
| | 1989 | 814 | - | 437 | 656 | As per 3 years Criteria(5), 377 |
| | 1992 | 273 | - | (-) 47 | 156 | With reference to 1982 List 117 |

Attested
Himalaya Sarma
w.r.a.b.