

**Central Administrative Tribunal
Principal Bench**

OA No.229/2012

Order Reserved on: 06.11.2017

Pronounced on:13.12.2017.

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

Sh. Tarsem Lal Sharma,
Aged 63 years,
S/o Late Shri Dheru Ram
R/o Flat No. 220, 2nd Floor
Metro View Apartments, MIG Flats,
Phase-II, Pocket-B, Sector 13,
Dwarka, New Delhi-110078

-Applicant

(By Advocate: Ms. Harvinder Oberoi with Mr. Harpreet Singh)

Versus

1. Union of India
Through Secretary,
Ministry of Science & Technology
Department of Science & Technology,
Technology Bhawan, Institutional Area,
New Mehrauli Road,
NEW DELHI-110 016
2. The Surveyor General of India,
O/o The Surveyor General of India,
Survey of India,
Harthibarkala Estate,
Dehradun-248 001
UTTARAKHAND
3. Dr. Mahesh Chandra Tiwari
HEAD (BOUNDARY CELL), jnb 3065
Ministry of External Affairs, New Delhi
Intercom: 3065, Phone: 49015235 (O)
4. Shri O.P. Tripathi

Director, East Uttar Pradesh Geo-spatial Data Centre,
Survey of India, Manchitra Bhawan,
5-Vibhuti Khand,
Gomti Nagar,
LUCKNOW-226 010

5. Shri U.N. Gurjar
Director,
Survey of India,
Phule Nagar, Alandi Road,
PUNE-411006, MAHARASHTRA
6. Shri Chandra Pal
Director, Survey (Air) & Delhi Geo-spatial Data Centre,
Survey of India, West Block No.4,
R.K. Puram, NEW DELHI-110 066
7. Shri R.K. Nim
Director (Retd.)
Western Printing Group,
Survey of India,
Near Railway Crossing,
Palam,
DELHI CANTT-110 010

-Respondents

(By Advocate: Shri Rajinder Nischal)

ORDER

Mr. K.N. Shrivastava, Member (A):

This Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:

- “(i) Quash and set aside the impugned order dated 22.9.2011 whereby the representation of the applicant has been rejected;
- (ii) Quash and set aside the impugned seniority list circulated vide SG’s letter No. E1-1068/701 (Coll.69) dated 21.4.2016 (Source : Official website of Survey of India), wherein name of the Applicant appears at Sl 78, shown to have been promoted on

1.10.1995 and consequent to which the name of the Applicant does not appear in the seniority lists as on 1.1.1991 onwards till the list as on 1.1.1995.

- (iii) Direct Respondent No. 2 to correct the seniority of the applicant by placing him above Mahesh Chandra Tiwari in the seniority lists 1.1.1991 onwards.
- (iv) Consequently, the respondents may be directed to extend the benefit of Non-Functional Up-gradation (Grade Pay Rs.10,000/-) w.e.f. 26.10.2006, as has been extended to the 1984 batch of 'direct recruit' officers in terms of the relevant DoP&T OMs dated 24.4.2009 and 25.9.2009 and all other benefits which have been extended to the juniors of the applicant".

2. The brief facts of this case, as noticed from the records, are as under:

2.1 The applicant joined as an Officer Surveyor (OS) – a Group 'B' post on 09.02.1981 under respondent no.2. The then Recruitment Rules (RRs) also provided for recruitment of class-I officers directly through the UPSC to the post of Deputy Superintending Surveyor (DSS) in the junior time scale. The next promotional post both for OS and DSS was that of Superintending Surveyor (STS). The seniority positions in the Surveyor cadres were to be filled up from two distinct streams, namely defence stream (Core of Engineers of MES officers) and civilian stream (OS/DSS). As per the RRs then prevailing, 50% of the STS posts were to be filled up from eligible offices from Corps of Engineers officers and the remaining from the civilian cadre, i.e., OS/DSS. Out of this 50% of the posts of STS to be filled up by promoting civilian officers, half of it, i.e., 25% was to

be filled up by promoting officers from the OS cadre and the remaining 25% by promoting officers from the DSS cadre.

2.2 Strangely, in the RRs, residency period of five years was prescribed for promoting officers from DSS cadre to the posts of STS but there was no such prescription of residency period for promoting officers from OS cadre to the STS posts. This is evident from Annexure A-10 letter dated 11.08.1982 of the Department of Science & Technology, Ministry of Science & Technology – respondent no.1, addressed to Secretary, UPSC. The relevant portion of this letter is extracted below:

“Further, it may be stated that the Recruitment Rules do not lay-down any minimum service for promotion from the grade of Officer Surveyors to Superintending Surveyors. The suggestion that an officer should not be considered eligible for promotion as Superintending Surveyor before putting in at least 5 years service as Officer Surveyor was made keeping in view the requirement of 5 years service prescribed for promotion of Deputy Superintending Surveyors in the rules. The Department however does not insist for prescribing any service condition in the absence of any provision to that effect in the Recruitment Rules”.

2.3 The respondent no.1 is the nodal Ministry for Survey of India, i.e., respondent no.2.

2.4 The Ministry of Science & Technology, vide Annexure A-16 notification dated 17.06.1989 notified new RRs for various cadres of Survey of India, titled as Survey of India (Group A Service) Rules, 1989 (in short, the 1989 Rules). In accordance with the 1989

Rules, the seniority of defence and civilian stream officers were bifurcated and separate posts at various levels were also identified for both the streams. In the civil stream, Group 'A' service is to be regulated by Rule-9 of these Rules. This rule is reproduced below:

“9. Seniority – (A) Civilian Stream:

- (i) Direct Recruitment : The relative seniority of all direct recruits shall be determined by the order of merit in which they are selection for such appointment on the recommendations of the Commission; persons appointed as in result of an earlier selection being senior to those appointed as a result of a subsequent selection.

Provided that where persons 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 optional order of merit.

- (ii) Promotees: The relative seniority of persons promoted to the various grades shall be determined in the order of their selection for such promotion:-

- (iii) Inter-se-seniority: Relative seniority in the grade of Superintending Surveyor.

- (iv) Relative Seniority of Deputy Superintending Surveyor and Officer Surveyor shall be determined according to the roster of vacancies. The first vacancy will go to the Deputy Superintending Surveyor and next vacancy to the promote officer from the grade of Officer Surveyor and so on”.

2.5 A proposal was submitted by respondent no.2 to respondent no.1 vide letter dated 28.09.1987 enclosing therewith a list of eligible officers of OS cadre for considering them for promotion to the post of STS. The applicant's name figured at serial no.2 of the list (pages 89-90). Pertinent to note that no DPC was held for promoting OS cadre officers to the post of STS from 1982 to 1990

but DPCs were held for promoting DSS officers to the post of STS in the years 1985, 1988 and 1989.

2.6 A DPC meeting was held on 13th, 14th & 15th February, 1990 for promoting 24 OS officers (Group B) to the post of STS. The applicant was not promoted because his overall grading based on his ACRs upto 1987 was adjudged as 'Good' whereas the benchmark for promotion was 'Very Good'. The applicant was promoted to the post of STS later against a vacancy for the year 1995 as is evident from the seniority list published on 05.04.2016 (page 45-46). The applicant subsequently secured promotion to the post of Deputy Director on 26.12.2003 and thereafter to the post of Director on 26.02.2011 and finally retired from the said post on 30.09.2011 on attaining the age of superannuation. The applicant claims that he was promoted to the post of STS in the year 1991 against a vacancy of the year 1990 which is corroborated by Annexure A-14 letter dated 04.06.2010 of Survey of India whereas Respondent No.3 Dr. Mahesh Chand Tiwari who joined as DSS (Junior Time Scale), as a direct recruit, in the year 1985, was promoted as STS w.e.f. 22.08.1991, his notional date of promotion being 19.02.1990.

2.7 His grievance is that despite having secured promotion to the post of STS prior to Respondent No.3, in the provisional seniority list as on 01.01.1990, Respondent No.2 has been placed at Sl.

No.43 whereas he has been downgraded to Sl. No.73. This has led to denial of Non-Functional Selection Grade (NFSG) in the grade pay of Rs.10000/- to him whereas Respondent No.3 has been given NFSG w.e.f. 26.10.2006. Applicant has submitted a comprehensive representation dated 09.06.2011 to respondent No.1, which has been turned down by the respondents vide impugned Annexure A-1 order dated 22.09.2011. The relevant portion of the order is extracted below:-

“9. As per DoP&T's OM No. AB.14017/16/2010.Estt (RR) dated 10.06.2010 vide clarification No.2, the term 'Batch' for direct recruit officers in the induction grade shall be year following the year in which the competitive exam was held. In subsequent grade the 'Batch' would be the same provided the officer is not superseded due to any reason. In case, an officer is superseded the officer would be considered alongwith the 'Batch' with which his seniority is fixed. According to DoP&T's OM No. AB.14017/16/2010.Estt(RR) dated 25.09.2009, in point No.2 regarding Group 'B' officers inducted into Organized Group 'A' service, it has been clarified that "Officers inducted into Group 'A' Organized service will also be eligible for the benefit of non-functional upgradation. They shall be assigned the benefit of 'Batch' corresponding to the 'Batch' of direct recruit officers with whom their seniority is clubbed.

As the seniority awarded to Shri T.L. Sharma in the said circulated seniority list issued vide SG's letter No. E1-23665/701 dated 24-9-2010 is in order and the officer has been placed at the correct place, the claim of Shri T L Sharma for grant him NFSG to Grade pay of Rs. 10,000 (correct nomenclature is Non-Functional Upgradation) from the date from which Dr. M.C. Tiwari has been granted is not tenable. However, the case for grant of non-functional upgradation from the date of direct recruit officer below Shri T L Sharma with whom his seniority has been clubbed is being processed”.

2.8 Aggrieved by the Annexure A-1 order dated 22.09.2011, the applicant has filed the instant OA praying for the reliefs as indicated in Para-1 (supra).

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply in which, giving the chronological background of the case, they have averred as under:

3.1 The STS is a Group 'A' service post in Survey of India to be filled by officers from defence and civil streams. The service conditions of STS are governed by the 1989 rules. The feeder cadres for STS from the civil stream are: DSS (Group A – Junior Time scale) and Officer-Surveyor (Group B). The applicant was initially recruited as Officer Surveyor and was promoted to the post of Deputy Director on 07.06.2002 and thereafter was promoted to the post of Director on 26.02.2011 and finally retired from service on 30.09.2011.

3.2 Provisional year-wise seniority lists of STS from 1.1.1990 to 1.1.2006 were issued on 21.07.2006. Representations were received from both the feeder cadres of civil streams, i.e., OS and DSS. One Shri Sandeep Srivastava from DSS cadre filed OA No.05/2009 before the Jabalpur Bench of the Tribunal against the provisional seniority lists which was disposed of vide order dated 06.11.2009 with the following direction:

“.....we dispose of present OA with direction to the respondent No.2 to decide said representation within a period of three months from the date of receipt of copy of this order by passing detailed, reasoned and speaking order....”

3.3 In compliance of the *ibid* order of the Jabalpur Bench and taking note of the fact that the provisional seniority lists indeed needed some amendments/corrections in view of the rule position, besides passing Annexure R-1 speaking order in the representation dated 06.05.2008 of Shri Sandeep Srivastava, year-wise seniority lists were revised from 1.1.1990 to 1.1.2010 in accordance with the 1989 Rules vide letter dated 24.09.2010. Aggrieved with the same, the applicant filed OA No.2129/2011 before this Bench of the Tribunal, praying *inter alia* amendment of the seniority lists and for grant of NFSG to him in the grade pay of Rs.10,000/-. The said OA was disposed of vide order dated 3.6.2011 with the following directions:

“Having heard the learned counsel for the applicant and examined the records of the case, without going into the controversy on merits, at this stage we direct the Surveyor General of India, Dehradun, Uttarakhand, second respondent herein to deal with the representation dated 18.10.2010 of the applicant and all others, who have likewise made representations, and pass orders thereon in accordance with law. The applicant may file additional grounds in support of the representation already made. Surely, the concerned authority would hear all those who may be adversely affected by the orders to be passed”.

3.4 In compliance with the *ibid* order of the Tribunal dated 03.06.2011 in OA No.2129/2011 filed by the applicant, the representations of the applicant and others were duly considered but were rejected vide the impugned Annexure A-1 order dated 22.09.2011.

3.5 The applicant has again approached this Tribunal in the instant OA, challenging the Annexure A-1 order dated 22.09.2011. He has again questioned the year-wise seniority lists issued vide letter dated 24.09.2010 and has again prayed for grant of NFSG to him in the grade pay of Rs.10,000/- w.e.f. 26.10.2010. In this regard, it is stated that the seniority lists of STS (Civil Stream) have been revised in compliance of the Annexure R-2 order dated 04.01.2006 of the Bangalore Bench of the Tribunal in the case of **P.V. Rajshekhran v. Union of India & others**, OA No.737/2004 and the revised seniority lists compelled the applicant to amend the OA and accordingly the applicant has filed the amended OA.

3.6 The seniority lists issued vide letter dated 2.2.2102 were challenged by one Shri D.S. Sahu, STS in OA No.169/2012 before the Ahmedabad Bench of the Tribunal, which was dismissed vide order dated 22.07.2013. The said order of the Tribunal has been upheld by the Hon'ble High Court of Gujarat while dismissing the Writ Petition filed by Shri D. Sahu, challenging the said order of the Ahmedabad Bench.

3.7 The seniority lists issued on 2.2.2012 have been acted upon by the UPSC in the matter of conduct of review DPC.

3.8 The vacancies in the post of STS have been re-calculated as per the directions of the Bangalore Bench of the Tribunal and accordingly the applicant has been promoted against the vacancy for the year 1995. Respondent no.3 has been promoted to the post of STS against the vacancy of the year 1989 on the recommendations of the review DPC and hence that vacancy cannot be allotted to the applicant.

4. The applicant has filed rejoinder in which, he has, more or less reiterated his averments in the OA.

5. On completion of the pleadings the case was taken up for hearing the arguments of the learned counsel for the parties on 06.11.2017.

6. Ms. Harvinder Oberoi, learned counsel for the applicant submitted that although the applicant was initially selected as OS (Group B) in the year 1975 but was allowed to join on 09.02.1981 due to certain litigations. He was placed at serial no.14 of the seniority list of the OS (Group B) as on 1.1.1982 (Annexure A-7). The recruitment of officers at Group B level, i.e., OS was stopped by UPSC thereafter and thus the applicant's batch was the last batch to be recruited at Group B level.

6.1 A DPC was convened on 27.09.1982 to fill up 22 posts of STS (8 for the year 1981 and 16 for the year 1982). The applicant was not considered for promotion on the pretext that he had not completed five years service at par with DSS, albeit RRs for Group B officers did not have any such stipulation.

6.2 The applicant completed five years service in February, 1986. The respondent no.2 moved a proposal for filling up 26 vacancies of STS vide letter dated 31.08.1987 (Annexure A-11). The applicant's name appeared at serial no.2 in the list of eligible officers for promotion to the post of STS. The vacancies were later on reduced from 26 to 24.

6.3 As many as 13 DSS (Group A) and 18 OS (Group A) including applicant were promoted on ad hoc basis as STS from 28.10.1988.

6.4 After the 1989 Rules came into effect from 17.6.1989, a DPC was convened on 13, 14 & 14th February, 1990 for promoting 24 Group B officers to the grade of STS. The applicant was not promoted as he had average grading of 'Good' whereas the threshold was 'Very Good'. He, however, was again promoted to the post of STS w.e.f. 07.06.1990 on ad hoc basis.

6.5 The sanctioned strength of STS in the civilian stream was 90 when the 1989 Rules were notified. Against this sanctioned strength of 90, posted strength was 60. Since 24 vacancies of STS

had been filled up as per the old rules, only 06 vacancies were left over to be filled up as per the 1989 Rules.

6.6 The applicant was promoted to the post of STS on regular basis w.e.f. 21.12.1991, as is evident from Annexures A-14, A-15 . The respondents had conducted a DPC in 1989 in terms of the 1989 Rules and promoted 11 directly recruited DSS to the post of STS on their completing four years of service. The respondents have failed to fix the inter-se-seniority of these 11 direct recruits vis-a-vis officers from Group B (OS) even after lapse of 26 years. Due to non-fixation of inter-se-seniority, the applicant had been denied the benefits of Non-Functional upgradation.

6.7 The respondents have made the judgment of Bangalore Bench of the Tribunal in **P.V. Rajshekhnan** (supra) as the main plank for revising the seniority lists. They have failed to notice that Bangalore Bench had never directed to convene review/fresh DPC.

6.8 The official respondents may be directed to club the seniority of 11 direct recruits DSS for whom the DPC was held in 1989 for promotion to the post of STS after the 1989 Rules were notified vis-a-vis the Group B officers (OS) promoted in the year 1991 against the vacancies for the years 1989, 1990 and 1991 in the ratio of 1:1. The applicant deserves to be allotted the same batch as the one allotted to respondent no.3 by virtue of Rule 9 (A) of 1989 Rules. He is required to be placed above respondent no.3 in the seniority

list as on 1.1.1991. He is thus also eligible for grant of NFSG in the grade pay of Rs.10,000/- as has been granted to respondent no.3.

7. Per contra, Shri Rajinder Nischal, learned counsel for the respondents, besides reiterating the averments made in the counter-reply filed on behalf of the respondents, stated that following the judgment of the Bangalore Bench of the Tribunal in **P.V. Rajshekhran** (supra), the respondents revised the seniority list of the STS (Civil Stream) from 1.1990 to 1.1.2012 and notified the same on 2.2.2012 (Annexure R-12) and that the Ahmedabad Bench of the Tribunal in **D. Sahu** (supra) has endorsed that the seniority lists drawn up in accordance with the rules and had rejected the quashment of the seniority lists as prayed for by the applicant therein and that the judgment of Ahmedabad Bench of the Tribunal in **D. Sahu** (supra) has been upheld by the Hon'ble High Court of Gujarat. He thus argued that the applicant's prayers in the instant OA are required to be rejected since he has sought quashment of the same seniority lists notified on 2.2.2012 and in accordance with which his representation has been rejected by the respondents vide impugned Annexure A-1 order dated 22.09.2011.

8. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. Indisputably, the applicant had joined as OS in the Survey of India on 09.02.1981 and after serving in the same

capacity had become eligible for consideration for promotion to the post of STS. The RRs prior to 1989 did not specify residency period for OS for promotion to the post of STS but had provided a residency period of five years for promotion from the cadre of DSS to STS. Admittedly, DSS is a Group A post whereas OS is a Group B post. Since the residency period for promotion for DSS to STS provided was five years, an officer in the cadre of OS could not have been promoted to the post of STS earlier to five years, considering the fact that OS is a Group B post, whereas the DSS is a Group A post. After the notification of the 1989 Rules, the Survey of India has done away with the recruitment of OS and thus DSS has become the exclusive feeder cadre for promotion to the post of STS.

9. The applicant was considered for promotion in the DPC meeting held in UPSC on 13th, 14th and 15th February, 1990 obviously in terms of the 1989 Rules. Since his overall ACR grading was only 'Good' and the benchmark for promotion was 'Very Good' he could not be promoted. The applicant had been promoted as STS on ad hoc basis on 28.10.1988, although he claims that he got his regular promotion as STS w.e.f. 21.12.1991 against a vacancy of the year 1990 referring to Annexures A-14 and A-15 documents. But he has failed to produce any proper order of the official respondents promoting him on regular basis to the post of STS in the year 1991, as claimed by him. Be that as it may, the fact remains that following the judgment of the Bangalore Bench of the

Tribunal in **P.V. Rajshekhran** (supra), the respondents have published fresh seniority lists of STS cadre from 1.1.1990 to 1.1.2012 vide Annexure A-2 order dated 2.12.2012. These seniority lists have attained finality since challenge against them before the Ahmedabad Bench of the Tribunal in the case of **D. Sahu** (supra) had been repelled by the Ahmedabad Bench vide order dated 22.07.2013 and the said order of the Ahmedabad Bench has been upheld by the Hon'ble High Court of Gujarat. The applicant has challenged the validity of the seniority list published on 2.2.2012 in this OA, which is hit by the principle of *res judicata* in view of the judgment of the Ahmedabad Bench of the Tribunal in **D. Sahu** (supra). The representation of the applicant for re-fixation of his seniority position in the grade of STS and further request for granting NFSG to him in the grade pay of Rs.10,000/- have been rejected by the respondents vide impugned Annexure A-1 order dated 22.09.2011 in the backdrop of the seniority lists notified vide Annexure A-2 OM dated 2.2.2012. Since the applicant has been assigned seniority of the year 1995 in the grade of STS, he has been declared non-eligible for grant of NFSG in the grade of Rs.10,000/- in terms of the DoPT OM dated 24.04.2009 (Annexure A-3). Hence, we do not find any infirmity or illegality in the impugned Annexure A-1 order.

10. In the conspectus of the discussions in the foregoing paras, we do not find any merit in this OA. The OA is accordingly dismissed.

11. There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’