

**Central Administrative Tribunal  
Principal Bench**

OA No.695/1993

Order reserved on: 10.08.2016.

Pronounced on: 19.08.2016.

**Hon'ble Mr. Justice M.S. Sullar, Member (J)**

**Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. Chattar Singh, ACSO  
S/o Sh. Nathru Ram,  
F-287/18 Lado Sarai,  
P.O. Mehrauli  
New Delhi.
2. Komal Singh, CSO  
S/o Sh. Shyam Lal,  
40 B Prasad Nagar, Karol Bagh,  
New Delhi.
3. Kartar Singh, CSO  
S/o Sh. Ganga Ram  
13/98 Dev Nagar, Karol Bagh  
New Delhi.
4. Itwari Singh, ACSO  
S/o Sh. Kacheru,  
116 C/IV, Pushp Vihar,  
New Delhi.
5. Brijesh Kumar, ACSO  
S/o Sh. Mohan Lal,  
147F/IV, Pushp Vihar,  
New Delhi.
6. Kishan Chand, ACSO  
S/o Sh. Bhima,  
738, L.R. Complex, New Delhi.
7. Sis Ram, ACSO  
S/o Sh. Mangat Ram  
H.No.57, Yusuf Sarai, New Delhi.
8. Nirman Singh, ACSO  
S/o Sh. Ujagar Ram

WZ/24A Sant Garh (Shahpura),  
Tilak Nagar, New Delhi.

9. Shangara Ram, ACSO  
S/o Sh. Hari Ram  
84, Ram Puri, Kalkaji,  
New Delhi.
10. Ram Swarup, ACSO  
S/o Sh. Goverdhan Dass,  
3053 Arya Pura, Subzimandi,  
Delhi-7
11. Rijpal Singh, ACSO  
S/o Sh. Karan Singh,  
R-7, Brahpuri Colony,  
Delhi-53.
12. Bhagwan Singh, ACSO  
S/o Sh. Panna Lal,  
S-III/1654, Pushp Vihar,  
New Delhi.
13. C.B. Jarodhia, ACSO  
S/o Sh. Phusa Ram  
G-269 Nanakpura  
New Delhi.
14. Ram Prasad, ACSO  
S/o Sh. Sukh Ram  
310 Sector II, Sadiq Nagar,  
New Delhi.
15. Agya Ram, ACSO  
S/o Sh. Chura Ram  
IIB, CGH Complex,  
Vasant Vihar, New Delhi.
16. Hari Singh, ACSO  
S/o Sh. Kundan Lal,  
7/893 Pushp Vihar, New Delhi.
17. Ganga Saran Suman, ACSO  
S/o Sh. Narain Dev,  
101-R Aram Bagh, New Delhi.

(All employed under the Joint Secretary (Admn)  
And Chief Administrative Officer, Government of India,

Ministry of Defence, DHQ PO, New Delhi.)

-Applicants

(By Advocate: Shri Sarvesh Bisaria)

**Versus**

1. Union of India, through  
Defence Secretary,  
South Block,  
New Delhi.
2. The Joint Secretary (Administration) and  
Chief Administrative Officer,  
Government of India, Ministry of Defence,  
C-II, Hutments, DHQ PO New Delhi.

-Respondents

(By Advocate: Dr. Ch. Shamsuddin Khan)

**ORDER**

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

This case has a chequered history of litigation. The Tribunal has examined it twice in the past. The first order of the Tribunal is dated 28.09.1995 and the second order is dated 06.03.2003. The Tribunal's order dated 06.03.2003 was challenged in Writ Petition (Civil) no.3724/2003 by the applicants and the Hon'ble High Court has remanded the case to this Tribunal for reconsideration. That is how we are seized of the matter. The reliefs sought by the applicants, read as under:

"8.1 Respondents be directed to apply the direction of the Hon'ble Tribunals to persons who are situated similar to shri D.P. Sharma

and not to the applicants and all SC/ST employees similarly situated.

8.2 The direction of the Hon'ble Tribunal should apply only to persons who had failed to pass the typing test by the extended date or had not passed the typing test and whose seniority was relegated.

8.3 The reserved vacancies filled in by SC/ST employees who had completed the statutory minimum period of 5 years continuous service in UD grade before promotion to Assistant should not be dereserved because of erroneous application and implementation of the direction of the Hon'ble Tribunal in respect of the applicants and other SC/ST employees similarly situated.

8.4 The respondents should be permanently restrained from carrying out reversions of the applicants and other SC/ST employees similarly situated as a result of erroneous implementation of the Hon'ble Tribunals direction.

8.5 The figure of 4400 – given by the respondents before the Hon'ble Tribunal being wrong, false and fictitious, they should not deviate and implement the directions of the Hon'ble Tribunal in a similar manner as has been done in the implementation of the judgements of the Delhi High Court in N. Sundram Vs. UOI in respect of 107 employees and judgment of the Supreme Court in DP Sharma's case in respect of 88 employees.

8.6 The respondents be directed not to disturb the seniority and promotion of the applicants and other SC/ST employees similarly situated.

8.7 Any other relief which the Hon'ble Tribunal deems fit and proper in the circumstances of the case may also kindly be granted to the applicants."

2. The brief facts of this case are as under.

2.1 The applicants, who belong to SC/ST categories, are retired employees of Armed Forces Headquarters Civil Service (AFHQ Civil Service) which was started in the year 1968. These applicants had joined as Lower Division Clerk (LDC) in the AFHQ Civil Service. They secured regular promotions to the higher grades of Upper Division Clerk (UDC), Assistant and Section Officer (ACSO).

2.2 The issue involved is with regard to the inter-se seniority of general category and SC/ST category officials. This issue was considered by the Hon'ble Supreme Court in the case of **Shri D.P. Sharma & others v. Union of India & another**, [Civil Appeal nos.4133-34 of 1984]. The Hon'ble Apex Court was hearing an appeal against the judgment of a Division Bench (DB) of Hon'ble High Court of Delhi. The matter had been first considered by a Single Bench (SB) of the Hon'ble High Court of Delhi, who in its judgment dated 08.04.1991 had held that the seniority of the petitioners shall be decided by the principle of length of service and not by the date of confirmation in the service. The relevant portion of the order is extracted below:

*"It is not disputed by the respondents that the only principle of seniority laid down by various Memoranda was the principle of seniority laid down by various Memoranda was the principle of length of service. No memoranda of Administrative Instructions are brought to my notice by the respondents, where any other principle has been laid down. The petitioners, in all the three petitioners were originally in common LDC cadre and are in the common cadre of U.D.C. now. It cannot be said that some of them (Writ Petition No. 423 of 1975) will all be governed by the principles of length of service and no others because they have not expressly stated that their seniority should be fixed on the principles of length of service. It may be noted that in 1959 the Home Ministry issued general principles of seniority to be followed in all Government services except where a service follows a different set of principles. The said Memorandum lays down that seniority of all Government employees, employed subsequent to the issuance of the said Memoranda, will be decided on the basis of the date of confirmation. It further lays down that all confirmed employees would be treated senior to the non-confirmed employees. The petitioners would have been ordinarily governed by these principles since they joined the Armed Forces on transfer after 1959. But the Ministry of Defence preferred to continue the principles of length of service (which they had been following prior to 1959), even after the 1959 Memorandum came into operation. The 1963 Memorandum of the Defence Ministry incorporated the said principles and all Memoranda issued thereafter reiterated the principles of length of service. In these circumstances, the contention of respondents cannot be accepted.*

*The seniority of the petitioners shall be decided by the principle of length of service, that is, their date of joining the Army Headquarters as LDCs. Of course, some of them entitled to additional benefit of past service under the said Memorandum were given that benefit. Since this is the question raised in Civil Writ Petition No. 423/1975, it must succeed."*

2.3 The said judgment of the learned Single Judge was overturned by the DB of the Hon'ble High Court of Delhi against which the petitioners, Shri D.P. Sharma and others preferred an appeal before the Hon'ble Apex Court, who vide their order dated 22.02.1989 upheld the view taken by the learned single Judge and set aside the order of the DB. The relevant portion of the Hon'ble Apex Court order is extracted below:

*"We have perused the judgment of the Division Bench and also considered the submissions of the parties. The view taken by the Division Bench appears to be erroneous. The Rules, no doubt provide that all persons substantially appointed to a grade shall rank senior to those holding officiating appointments in the grade. But the Rules have no retrospective effect. It could not impair the existing rights of officials who were appointed long prior to the Rules came into force. The office memorandums to which learned single Judge has referred in detail and which we have extracted above clearly laid down that length of service should be the guiding principle of arranging the inter-se seniority of officials. The appellants being governed by those memorandums had the right to have their seniority determined accordingly before the Rules came into force. That being their right, the Rules cannot take it away to their prejudice. The Division Bench was, therefore, clearly in error in directing that the seniority shall follow their respective confirmations. In construing similar office memorandums in a different context, this is what this Court has observed in Union of India v. M. Ravi Varma & Anr., [1972] 2 SCR 992 at 1002:*

*"As the said Office Memorandum has, except in certain cases with which we are not concerned, applied the rule of seniority contained in the Annexure thereto only to employees appointed after the date of that Memorandum, there is no escape from the conclusion that the seniority of Ganapathi Kini and Ravi Varma, respondents, who were*

*appointed prior to December 22, 1959. would have to be determined on the basis of their length of service in accordance with Office Memorandum dated June 22, 1949 and not on the basis of the date of their confirmation."*

*These considerations apply equally to the present case as well. The general rule is if seniority is to be regulated in a particular manner in a given period, it shall be given effect to, and shall not be varied to disadvantage retrospectively. The view taken by the Division Bench, which is in substance contrary to this principle is not sound and cannot be supported."*

The case is famously known as **D.P. Sharma's** case. There were 82 petitioners in it.

2.4 This matter was also adjudicated earlier by the Hon'ble High Court of Delhi in the case of **N. Sundram**, in which 107 identically placed petitioners were involved. In **S. Sundram** case also the Hon'ble High Court has taken the same view that length of service should determine the seniority and not the date of confirmation.

2.5 The respondents implemented the judgment of the Hon'ble Apex Court in **D.P. Sharma's** case (supra) and also the judgment of the Hon'ble High Court of Delhi in the case of **N. Sundram** case. The new inter-se seniority list pushed down the applicants in the instant OA in the order of seniority. These applicants had secured promotions to higher grades of UDC/Assistant/ACSO and hence were on the threat of reversion.

2.6 They approached this Tribunal by filing the instant OA. The Tribunal came to the conclusion that the applicants were not aggrieved by the new seniority list *per se* and that they were only aggrieved by the impugned order dated 19.04.1993 by which some of them have been reverted. The Tribunal quashed the impugned order dated 14.09.1993 vide its order dated 28.09.1995. The relevant portion of the Tribunal's order is reproduced below:

*"46. The question is what relief the applicants are entitled to. Though we have held that the respondents have proceeded in a totally unwarranted manner to implement the judgment in Gaba's case, thereby passing orders which are to the detriment of persons like the applicants, who ought not to have been affected by such implementation, the revised seniority lists prepared in the course of such implementation are not in challenge in these applications. The applicants are only aggrieved by the impugned order dated 19.4.93 which reverts some of them. Therefore, their interest can be protected by issuing suitable directions to the respondents.*

*47. Accordingly, we quash the impugned order No.A/05111/93-CAO-P1 dated 19.4.93, i.e., which has been directly impugned in OAs-962/93 and 1168/93 and which has been brought on record in OA-695/93, in so far as it orders the reversion of some applicants in these three OAs, details of which are given in para-32 supra. We further declare that the applicants have been validly included in the panels for promotion as ACSOs on the dates on which such panels were prepared in the first instance, and that they have been correctly and validly promoted as ACSOs from the dates they were so promoted. Such of those reverted applicants who have not been repromoted shall be reinstated to the posts from which they have been reverted within two months from the date of receipt of this order. All the applicants reverted by the impugned order shall be given uninterrupted continuity in service on those posts as if they had not been reverted at all and given the full monetary benefits as a consequence within one month from the date of their reinstatement. They shall also be entitled to be considered for consequential promotion to higher grades on the basis of the continuous service rendered by them as ACSOs. We, however, make it clear that the applicants, or for that matter anyone else, shall be liable to be reverted in accordance with law, if the need so arises, after the order of the Tribunal in Gaba's case is properly implemented, after keeping in mind the observations we have made in that regard in paras 34 and 35 of this order."*



2.7 The Tribunal's order was challenged in appeal by **Shri O.P. Gupta and others** before the Hon'ble Supreme Court in Civil Appeal nos.3489-91 of 1996. The Hon'ble Apex Court remanded the case back to the Tribunal for reconsideration. The relevant portion of the Hon'ble Apex Court's order is extracted below:

*"The criteria for promotion from the post of LDC to UDC and from the UDC to that of the Assistant being on the basis of seniority, once the seniority in the LDC is re-determined, it may necessitate reversion of some of those who might have got accelerated promotion on the basis of erroneous seniority. The reversion in question alleged to be on that score. We see no force in the reasoning of the Tribunal that the reverted employees were entitled to an opportunity of hearing at that stage. We therefore set aside the conclusion of the Tribunal on the aforesaid two grounds. We would have ordinarily disposed of the matter by allowing this appeal, but for the contentions raised and noticed in paragraph 45 of the impugned judgment of the Tribunal to the effect that the reverted employees did claim that their promotion to the post of UDC and Assistant was on the basis of reservation and against the roaster point, and that question the Tribunal has not considered or answered. In the aforesaid premises, while we set aside the impugned reasonings and judgment of the Tribunal, we remit the matter to the Tribunal for re-consideration of the question as to whether, if any one of the reverted employees were in fact promoted to the post of UDC or Assistant or got any higher promotion against any roaster point as a reserved candidate, and in such an event whether they could be directed to be reverted notwithstanding their re-determination of seniority in the cadre of LDC in implementation of the judgment of this Court in Sharma or Khosla."*

2.8 After the remand of the case the matter was reconsidered by the Tribunal. The Tribunal disposed of the matter on 06.03.2003, holding that the seniority positions of the applicants would change consequent to the re-determination of the seniority. The operative part of the order is extracted below:

*“Consequently, after the redetermination of the seniority, the position of the applicants in the seniority list would also change and they cannot retain their promotions on the basis of their earlier seniority list. Their eligibility for promotion and zone of consideration is to be considered on the basis of revised seniority list.”*

2.9 The applicants challenged the Tribunal’s order dated 06.03.2003 in Writ Petition (Civil) 3724/2003 before a DB of Hon’ble High Court of Delhi, who vide order dated 24.07.2014 remanded the case to the Tribunal for reconsideration by making the following observations:

*“8. It is evident that the general rule or principle indicated by the Supreme Court in the O.P. Gupta (supra) case was that the date of initial entry into a grade or cadre is to be the determinative point of time for reckoning seniority. However, the Supreme Court was alive to the fact that the application of this rule would result in wholesale reversion that such a consequence might affect the reserved category employees; it was likely to disturb the ratio between general candidates and those in the reserved categories. In these circumstances, it directed the respondents to review the promotion so as to ensure that the reservations in accordance with the existing roster allocations were maintained. This necessarily implied that while re-working the seniority for each post, i.e. LDC,UDC and Assistant, the respondent had to also ensure that reversion of SC candidates could be resorted to only if the vacancy slots were filled by another identically placed reserved category candidate.*

xxx      xxx    xxx    xxx

*10. We are also of the opinion that the question as to consideration of the eligibility condition has to be examined in the peculiar circumstances in which the remand was directed. Firstly, the premise of the respondent that the eligibility service for promotion to the post of LDC is 8 years is erroneous; this condition was imposed by an amendment in 1988 and not at the relevant time when the petitioners were eligible to be promoted to the post of UDC, i.e. sometime in 1970s. Likewise, the eligibility for promotion to the post of Assistant was 5 years in the grade of UDC. If the second premise which the Tribunal would have to examine as in the context of reserved vacancies, the eligibility or the zone of consideration would relate to the candidates concerned; it cannot be mixed up with the eligibility of general candidates. In other words, if there are two vacancies in a particular cadre, one reserved and other unreserved, for the first post the existing guideline might require consideration of five candidates. In such*

*an event, even if the SC/ST candidate is lower or beyond the zone of consideration, since he is only eligible being a reserved candidate, he has to be considered for the other vacancy. No other interpretation can be adopted because any other consideration would defeat the object of reserved post.”*

3. The arguments of the parties were heard on 01.04.2016 and finally on 10.08.2016. Shri Sarvesh Bisaria, learned counsel for the applicants and Dr. Ch. Shamsuddin Khan, learned counsel for the respondents argued the matter at length.

4. The learned counsel for the applicants submitted that the applicants on account of their reversion, following the new seniority list prepared in terms of Hon'ble Apex Court order in **D.P. Sharma** (supra), have suffered immensely in terms of their career progression and financial benefits. He said that they continue to suffer by way of getting lesser amount of pension. The learned counsel emphatically argued that a reserved post meant for SC/ST candidates cannot be allowed to be held by a general category candidate. He drew our attention to the observations of the DB of the Hon'ble High Court dated 24.07.2014 wherein it is clearly stated that even if an SC/ST candidate is lower or beyond the zone of consideration, since he is only eligible, being a reserved candidate, he has to be considered for the vacancy. He submitted that on account of new seniority list, many vacancies meant for SC/ST candidates have in fact gone to the

general category candidates, which is legally not permitted. Concluding his arguments, the learned counsel submitted that in the light of the *ibid* observations of the Hon'ble High Court of Delhi, the applicants are entitled to all consequential benefits, including pensionary benefits.

5. Per contra, Dr. Ch, Shamsuddin Khan, learned counsel appearing for the respondents submitted that AFHQ Civil Service is governed by AFHQ Civil Service Rules, 1968, as amended from time to time. These rules provide that promotee Assistants would get the benefit of seniority only on confirmation in the grade. He said that all the orders of promotion, due to pending litigations, were subject to the outcome of the various court cases, which might have an effect on the seniority. He submitted that in the case of **D.P. Sharma** (supra), the Hon'ble Apex Court has clearly held that continuous officiation in the grade would be the guiding factor. Accordingly, the seniority was re-fixed of LDCs, which entailed into many persons gaining seniority and many losing. The review DPCs were held with reference to the revised seniority list and promotions were accordingly done. He further submitted that this Tribunal vide order dated 28.09.1995 had put some impediments in the way of reverting certain officials but the same was turned down by the Hon'ble Supreme Court in **O.P. Gupta's** case (supra). The matter was re-considered

by this Tribunal on 06.03.2003 in which it was noted that the seniority list has been prepared on the basis of the principle laid down by the Hon'ble Apex Court in **D.P. Sharma's** case (supra) and hence on redetermination of seniority, the positions of the applicants in the seniority list would also change and they cannot retain their promotions on the basis of the earlier seniority list. The learned counsel stated that out of the present 17 applicants, only 09 were reverted whereas the remaining 08 continued to function in the grade of ACSO. The learned counsel further submitted that no recovery has been made or ordered from those 09 applicants who were reverted towards any excess salary paid. Concluding his arguments, he submitted that there is no merit in the OA and as such it is liable to be dismissed.

6. We have considered the arguments put-forth by the learned counsel for the parties and we have also perused the earlier judgments of this Tribunal as well as the judgments of the Hon'ble High Court of Delhi and Hon'ble Supreme Court. Our observations are as under:

i) The Hon'ble Apex Court in the case of **D.P. Sharma** (supra) has clearly held that inter-se seniority has to be based on date of joining (length of service) and not on the basis of

date of confirmation. The respondents were, therefore, obliged to re-determine the inter-se seniority following this principle.

ii) Consequent to the redetermination of the seniority, some officials were bound to gain at the cost of others. The applicants who had secured promotions earlier on the basis of the earlier seniority list were bound to lose such promotions. The Tribunal's order dated 28.09.1995 against reversion was set aside by the Hon'ble Apex Court in **O.P. Gupta's** case (supra).

iii) All the applicants have now retired. Only 09 of them were reverted on account of re-determination of the seniority. Mercifully, no recovery has been made from these 09 applicants.

iv) The Hon'ble High Court in its order dated 24.07.2014 has observed that the posts meant for SC/ST category cannot be held by others and that SC/ST candidates have to be considered against these posts even if they are not in the zone of consideration and has consequently asked the Tribunal to revisit the issue. Considering that more than two decades have elapsed since the seniority list was revised in 1993, following the judgment of Hon'ble Apex Court in **D.P. Sharma** (supra), it would not be worthwhile to unsettle a settled position.

v) This Tribunal had observed in its order dated 28.09.1995 that the applicants were not against the new seniority list but their grievance was against the possible reversion of some of them. Hence the action taken by the respondents based on the revised seniority list prepared as per the judgment of the Hon'ble Apex Court in the case of **D.P. Sharma** (supra) cannot be re-opened.

vi) There are some landmark judgments of the Hon'ble Supreme Court in the matter of reservation in promotion in the recent years, which would also have to be taken into account, if the issue is to be re-opened. Furthermore, the Hon'ble Supreme Court in its judgment in the case of **Direct Recruit Class-II Engineering Officers' Association and Others v. State of Maharashtra and Others**, [(1990) 2 SCC 715], has observed that:

*"(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position."*

7. In view of the observations made supra and taking into consideration the principles laid down by the Hon'ble Apex Court in **Direct Recruit Class-II Engineering Officers' Association** (supra), we are of the firm opinion that nothing should be done at this stage to unsettle the issue which has been settled long time back. Accordingly we dismiss the OA.

8. No order as to costs.

**(K.N. Shrivastava)**  
**Member (A)**

**(Justice M.S. Sullar)**  
**Member (J)**

‘San.’