

Central Administrative Tribunal Principal Bench

OA No.3596/2013

New Delhi this the 19th day of July, 2016.

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

1. Smt. Ammini Rajan
W/o Shri K.R. Rajan,
R/o 1183, Sector 37,
Arun Vihar, Noida-201303

2. Shri R.K.D. Mangal
S/o Late Shri Jia Lal,
R/o C-22 D, Hari Nagar, New Delhi-110064

3. Shri Baldev Singh,
S/o Pragati Apartments Paschim Vihar,
New Delhi-110063

4. Shri G.K.Pandey,
S/o Shri B.M. Pandey,
R/o 40/21-A Gautam Nagar,
New Delhi-110049.

... Applicants

(By Advocate Shri R. Tanwar)

Versus

1. Union of India, through
Secretary,
Ministry of Defence,
South Block,
New Delhi-110011
2. JS (Trg.) and CAO,
Ministry of Defence,
'E' Block Hutments,
Dalhousie Road,
New Delhi-110011.

(By Advocate: Shri Rajesh Katyal)

O R D E R (ORAL)

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

This Original Application (OA) has been filed by the applicants, who are retired officers of Armed Forces Headquarters Civil Service, under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for read as under:

“(a) Quash and Set-aside the impugned orders at ANNEXURE A-1 AND A-2 and the resultant promotion lists in the grade of CSO (Dy Dir), SCSO (Joint Director) and Director (issued on the basis of the impugned lists) not being in consonance with the MG Bansal’s judgment dated 01.04.2002, in OA No.1356/1997 in Ammini Rajan’s case and in judgment dated 01.09.2005 in OA No.2484/2004 in AFHQ (Direct Recruit-Gazetted) Officers Association. All these judgments have been approved by the Hon’ble Supreme Court in CA No.1384/2008 and 1385/2008 decided on 19.2.2008.

(b) Direct the respondents to restore the seniority of the applicants from the dates when they had initially joined on promotion on being selected to the grade of ACSO on the basis of Select Lists for the years 1978, 1979 and 1980 as under Rule 5 (2) of the Regulations for promotion of officers they once selected cannot be ousted from that Select List.

(c) Direct the respondent to restore their consequential promotion to the grade of CSO (Dy Director) from the dates when they initially joined on being selected by the DPC under the aegis of UPSC for the years 1982 and 1983.

(d) Direct the respondents to re-fix seniority of DRs from the date they had actually joined service and not from the date of occurrence of vacancies.

(e) Direct respondent No.2 to issue year wise seniority list only in all the grades so that a proper accounting of vacancies is done on the basis of the sanctioned permanent strength of service.

(f) Direct the respondents to give the applicants all the consequential benefits of service and pay arising out of the re-fixation of their seniority.

(g) Direct the respondents not to indulge in review of Select Lists of the applicants in any grade as those Select Lists had never been a matter of judicial scrutiny and are still legally valid documents.

(h) Any other relief this Hon'ble Tribunal considers fit and appropriate in the interest of justice."

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

2.1 Under Article 309 of the Constitution of India, Government of India created a new Service called Armed Forces Headquarters Civil Service (AFHCS), vide Annexure A-4 order dated 28.11.1968. The Government also notified the Rules for the Service on 01.04.1968 vide Annexure A-3 for AFHCS. In the 2nd Schedule of the Rules, four grades in AFHCS with their sanctioned strengths are indicated as under:

	Grade	Authorised Permanent Strength
(i)	Selection Grade	...(13)
(ii)	Civilian Staff Officer	...(194)
(iii)	Assistant Civilian Staff Officer	...(506)
(iv)	Assistant	...(1066) (Including 97) Lean reserve (posts)

2.2 The applicants were appointed to the entry grade of Assistant and later they earned promotions in due course. As per the 3rd Schedule of the Rules, 75% posts of Assistant

Civilian Staff Officer (ACSO) are to be filled up by promotion from the grade of Assistants and the remaining 25% of the posts are to be filled up by direct recruitment through UPSC. The applicants are departmental promotees (DPs) to the posts of ACSO. The direct recruits (DRs) started joining AFHCS from October, 1970. A controversy arose with regard to inter-se seniority of DPs and DRs in the grade of ACSO. A series of litigation took place between the DPs and DRs before this Tribunal, Hon'ble High Court of Delhi and Hon'ble Supreme Court. Finally, the matter landed up in the Hon'ble Supreme Court in Civil Appeal No.3536/1990 (Arising out of SLP (Civil) no.11315/1999) – **Union of India and others v. M.O. Bansal** and Civil Appeal no.3357/1990 (Arising out of SLP (Civil) no.4581/1999) – **Jai Prakash & Anr. v. M.O. Bansal & Others.** In the said Civil Appeals the order passed by this Tribunal in the case of **M.O. Bansal & Ors. v. Union of India & Ors.** (TA No.356/1985, order dated 02.06.1989) was adjudicated by the Hon'ble Supreme Court. This Tribunal in the said TA-356/1985 had examined the legality of the seniority list of ACSOs as on 01.10.1997, which was notified on 18.10.1997. The Tribunal had made the following observations in the said order:

“In the circumstances, we have to hold that there has been break down of the quota/rota rule and as such the determination of seniority as between the promoters and direct recruits has to be

made on the principle of continuous officiation as in the case of Assistants, from the date of regular appointment.

11. *The counsel for the respondents 1 and 2 placed strong reliance on the decision of the Supreme Court in Gonal Beemappa vs. State of Karnataka (1987 (4)- SLR-526) and submitted that an officer who get his promotion before it became due is not entitled to claim seniority on the date of such promotion. It has to be pointed out that the Supreme Court was considering a case where there was a mandate in the rule under which the promotees have to make room for the direct recruits, when the direct recruitment take place. It was on that account that it was held that in such a situation, the promotees would not be entitled to claim any further benefit than the advantage of being in a promotional post not due to him, but yet filled by him in the absence of a direct recruit. As the rule in the instant case is different and having regard to the principles followed in the case of Assistants governed by the same rule, we are of the view that the said decision cannot be applied to the facts of this case.”*

2.3 The Tribunal had quashed the impugned seniority list of ACSOs as on 01.10.1997. The operative part of the order is extracted below:

“12. In the result, we quash the impugned seniority list of ACSOs and on 01.10.1977, issued on 18.10.1977, and direct the first respondent to draw up a fresh seniority list of ACSOs, following the principle adopted in the case of the Assistants in the matter of inter-seniority as between direct recruits and promotees”

2.4 The Hon’ble Supreme Court, after considering the matter, vide their Annexure A-2-A order dated 20.07.1990, allowed the appeals and set aside the Tribunal’s order and remitted the matter to the Tribunal. The relevant portion of the judgment of the Hon’ble Supreme Court is extracted below:

“We accordingly, allow these appeals and set aside the Tribunal’s order and remit the matter to the Tribunal for a fresh decision. The Tribunal shall proceed to decide the matter

afresh after hearing the concerned parties. It would be open to the parties to under all their contentions, including the controversy regarding, applicability of the Rules. In view of the fact that considerable time has elapsed and early resolution of the controversy would be desirable, we expect the Tribunal to decide the matter within four months of the date on which the parties appear before it. We make it clear that the department would be entitled to make the promotions according to the existing seniority list but those promotions would be subject to the final decision of the dispute. “

2.5 On remand of the case, the Tribunal re-adjudicated the controversy involved and finally vide order dated 20.11.1992 (TA-356/1985) (CWP-3/1978) gave direction for revising the 1977 seniority list of the ACSO grade. Some of the significant observations made by the Tribunal in the said order are extracted below:

“(a) It is held that Rule 16 (7) and Schedule Third so far as it relates to appointment of the promotes and direct recruits in their respective quota and determination of seniority on the basis of quota and rota is held valid and these are not ultra-virus of Articles 14 & 16 of the Constitution of India.”

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“The hopes and aspirations of the promotees aforesaid cannot be related to availability or non-availability of direct recruits filling their quota in that particular year and only it can be when there is total collapse and break down of the quota for a number of years”.

2.6 The operative part of the Tribunal's order directing the revision of the 1997 seniority list is reproduced below:

“(g) None of the parties including the official respondents have given relevant date as to when the actual promotion of Assistants were made to the temporary cadre of ACSO in the direct recruit quota under Note 2 of Schedule 3; the official respondents on the other hand have taken the stand in the chart quoted in the body of the judgment that none of such vacancies in the direct recruit quota were left unfilled and have been filled temporarily by the Assistants by

making departmental promotions and since the exact number is not coming forth and also the position whether such departmental promotes were absorbed in the subsequent vacancies within their quota of 75%, a direction is issued to revise the impugned seniority list in the light of the observations made in the above sub-paras which shall be made final after hearing the objections on the same, and the petitioners, who have since retired, shall be entitled to any consequential benefits occasioned on account of the revision of the seniority list. The impugned seniority list of 1977 shall stand quashed to that extent."

2.7 These applicants had also filed OA-1356/1997 before this Tribunal, involving the same controversy, which was disposed of on 01.04.2002.

2.8 There was yet another OA-2740/2005 filed by Shri Sanjay Sinha and others who were also promotees, questioning the 1997 seniority list. The said OA was disposed of on 08.02.2007. The orders passed by this Tribunal mentioned hereinabove were challenged by both promotees and direct recruits in WPC no.4058/2002, WPC no.4458/2002 and WPC no.62/2003. The Hon'ble Delhi High Court, by a common order dated 14.11.2006, disposed of these Writ Petitions; the operative part of which reads as under:

"19. In view of our foregoing conclusions we allow CWP No.4058/2002 and CWP No.5396/2002 and consequently the order dated 1st April, 2002 of the CAT in OA NO.1356/1997 is set aside. The issue of seniority shall now be determined in accordance with the judgment of CAT in T.A. No.356/1985 dated 20th November, 1992. WP(C) No.62/2003 and WP (C) No.4458/2002 filed by the DPs are accordingly dismissed. There will be no order as to the costs."

2.9 The matter then landed up in the Hon'ble Supreme Court in Civil Appeal No.1384/2008 and Civil Appeal No.1385/2008. These Civil Appeals were disposed by the Hon'ble Supreme Court by a common order dated 19.02.2008; operative part of the order reads as under:

“32. In the light of the above factual situation, service rules governing the conditions of service of employees and the settled proposition of law, we are of the opinion that the judgment and order dated 14.11.2006 in C.W.P. No.4058/2002, CWP No.5396/2002 and subsequent judgment dated 15.01.2007 in CWP No.18073/2005 of the High Court of Delhi passed in AFHQ Civil Service Officers Association v. Union of India & Ors. are not sustainable and deserve to be set aside to the extent of setting aside the order of the Tribunal in Smt. Ammini Rajan's case holding that the said order is contrary to the earlier judgment of the CAT dated 20.11.1992 recorded in M.G. Bansal's case. This view of the High Court apparently appears to be contrary and contradictory to the judgment and order of the CAT dated 20.11.1992 passed in T.A. No.356/1985 (CW 3/1978) titled Shri M.G. Bansal & Ors. v. Union of India & Ors. in which the impugned seniority list of 1977 stood quashed and the respondent(s)-authority were directed to implement the said judgment in terms of the observations/directions contained in paragraph 25 of the said judgment. The judgment of the CAT in M.G. Bansal's case has attained finality when two SLPs filed by the DRs against the said judgment came to be dismissed by this Court on 20.01.1995. Consequently, the Writ Petition CWP No.4058/2002 of the AFHQ Civil Service (Direct Recruits- Gazetted) Officers' Association and CWP No.5396/2002 preferred by Union of India against the order of the CAT in OA No.1356/1997 titled Smt. Ammini Rajan & Ors. v. Union of India & Ors. are dismissed. CWP No.62/2003 and CWP No.4458/2002 filed by the DPs shall stand allowed accordingly. CWP No.18073/2005 shall also stand disposed of in terms of this judgment. As the dispute and controversy relating to inter se seniority between the DPs and DRs has remained unsettled and is lingering over the past many years, the respondent-authority is directed to determine and settle the seniority list in strict compliance and spirit of the judgment of the CAT dated 20.11.1992 in TA No.356/1985 (CW 3/1978) rendered in Shri M.G. Bansal & Ors. v. Union of India & Ors. The directions so contained in the said judgment shall be carried out within three months from the date of this judgment.”

2.10 Pursuant to the order dated 19.02.2008 of the Hon'ble Supreme Court, the department prepared Annexure A-1 final

seniority list of ACSOs dated 13.08.2008 indicating year-wise utilization of 75% quota meant for DPs and 25% quota meant for DRs. The same is at pages 57-117 of the paper-book.

2.11 The applicants filed Contempt Petition (CP) No.289/2009 in CA no.1358/2008, complaining of wilful and deliberate violation of the directions of the Hon'ble Supreme Court contained in order dated 19.02.2008. The said CP was closed by the Hon'ble Supreme Court vide Annexure-2 A-2 order dated 02.01.2013. The Hon'ble Supreme Court observed that the seniority list prepared is in consonance with the directions given by them as well as by this Tribunal in **M.G. Bansal's** case (supra). The Hon'ble Apex Court, however, observed that errors may have been committed with regard to the dates of appointment of the respective parties and thus gave liberty to the applicants to challenge the seniority list only on this limited ground. The relevant extract from the order of the Hon'ble Apex Court is reproduced below:

"It is quite possible that while computing the seniority of the respective parties, errors may have been committed with regard to the dates of appointment of the respective parties. That, however, in our view, is not within the scope of the contempt petition but could give rise to a fresh cause of action with regard to the preparation of the fresh seniority list.

Accordingly, we are not inclined to entertain the contempt petition, which is dismissed, but we make it clear that this will not prevent the petitioners from challenging the seniority list, as prepared, in appropriate proceedings."

2.12 Utilizing the liberty given by the Hon'ble Apex Court in their order dated 02.01.2013, the applicants have filed the present OA.

3. After completion of the pleadings, the case was taken up for hearing the arguments of the parties on 17.05.2016. Shri R. Tanwar, learned counsel for the applicants and Shri Rajesh Katyal, learned counsel for the respondents argued the case at length. We observed that in the impugned Annexure A-1 seniority list dated 13.08.2008, names of 3107 officers in the grade of ACSOs are indicated whereas the sanctioned strength of the ACSOs grade is only 506. Shri Rajesh Katyal, the learned counsel for the respondents was directed to clarify this position on the next date of hearing.

4. The arguments of the parties were heard again today. Shri Katyal clarified that Annexure A-1 seniority contains names of officers in the grade of ACSOs right from the year 1968 year-wise and it also gives the break-up of DPs and DRs as per their respective quota. He said that a large number of officers have already retired and that the total number of officers in the grade of ACSOs in a particular year never exceeded the sanctioned strength of 506.

5. The adjudication of the matter in the present OA is to be done within the limited canvas provided in the Hon'ble

Supreme Court's order dated 02.10.2013. In the said order, the Hon'ble Apex Court has noted that "errors may have been committed with regard to the dates of appointment of the respective parties". Thus the scope in this OA is just to verify as to whether the dates of appointments of the officers mentioned in the Annexure A-1 seniority list are correct or not.

6. It is seen from Annexure A-1 seniority list that dates of appointment of individual DP/DR officers have been correctly indicated in the seniority list. This aspect has not been disputed by either of the two parties. The learned counsel for the applicants tried to argue the controversy of inter-se seniority of DPs and DRs *ab initio* but he was told by the Tribunal that the arguments have to be confined to the scope provided in the Annexure A-2A order dated 02.01.2013 of the Hon'ble Supreme Court and that the parties are not allowed to argue on the issue of inter-se seniority, which has since been settled by the said order of the Hon'ble Supreme Court.

7. From the perusal of the records and by scrutinizing the Annexure A-1 seniority list, we are fully convinced that the seniority list is in accordance with the directions of the Hon'ble Supreme Court contained in their order dated 19.02.2008 in SLP no.4545/2007 and 5853/2007. As such, we do not find any merit in the OA. The OA is accordingly dismissed.

8. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’