

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 291/26/2012
&
ORIGINAL APPLICATION NO. 291/27/2012**

Order Reserved on: 24.09.2018

DATE OF ORDER: 16.10.2018

CORAM

**HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER
HON'BLE MR. A. MUKHOPADHAYA, ADMINISTRATIVE MEMBER**

OA No. 291/26/2012

Suresh Khatri S/o late Shri Daulat Ram Khatri, aged about 47 years, R/o Plot No. 54/121, Heerapath, Mansarovar, Jaipur, presently working as Section Officer, Armed Force Tribunal, Jaipur Bench.

....Applicant

Ms. Kavita Bhati : counsel for applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) Jeevan Deep Building, Parliament Street, New Delhi – 110001.
2. The Registrar, Debts Recovery Tribunal, S.F.E. 3/4 Nehru Palace, Tonk Road, Jaipur.
3. Shri Vinod Singh Rauthan, Section Officer, Debts Recovery Tribunal, S.F.E. 3/4 Nehru Palace, Tonk Road, Jaipur.

....Respondents

Mr. N.C. Goyal : counsel for respondents no. 1 & 2.
Mr. Amit Mathur : counsel for respondent no. 3.

OA No. 291/27/2012

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Mr. Amit Mathur : counsel for respondent no. 3.

ORDER

Per: Suresh Kumar Monga, Judicial Member

Original Application No. 26/2012 and Original Application No. 27/2012 are taken up together for decision as in Original Application No. 27/2012, the applicant has claimed seniority in the cadre of Assistant over and above respondent no. 3 and consequent thereto he has claimed promotion by way of Original Application No. 26/2012 from the date his junior was promoted as Section Officer.

2. The factual matrix emanating from the record and the pleadings is that the applicant was appointed as a Lower Division Clerk in the High Court of Rajasthan at Jodhpur vide order dated 17.07.1986 and he joined his duties as such with effect from 22.07.1986. He was thereafter transferred to the Court of District and Sessions Judge, Sikar vide order dated 23.07.1986. He was again transferred to the Court of District and Sessions Judge, Jaipur on 08.02.1988 from where he was sent on deputation to the Debts Recovery Tribunal vide order dated

OA No. 291/26/2012 & OA No. 291/27/2012

07.11.1994. Consequent to the order of his deputation, he joined his duties in the office of respondent no. 2 on 09.11.1994. It has been averred by the applicant that he came to be promoted as Upper Division Clerk vide order dated 05.05.1995 and thereafter he was absorbed in the office of respondent no. 2 vide order dated 03.03.2000. It has further been pleaded by the applicant that respondent no. 3 was also sent on deputation to the office of respondent no. 2 vide order dated 16.12.1994 and he was further promoted to the post of Upper Division Clerk vide order dated 14.12.1995 i.e. 07 months later than the date of promotion of the applicant as Upper Division Clerk. It has further been stated by the applicant that both of them were absorbed in the office of respondent no. 2 on 03.03.2000. It is the case of the applicant that both of them were appointed in temporary capacity in the Court of District and Sessions Judge and they were appointed in substantive capacity in the Debts Recovery Tribunal on 03.03.2000. No seniority list was ever prepared by the Department i.e. the Court of District and Sessions Judge. The applicant was further promoted to the post of Assistant on adhoc basis vide order dated 19.05.2000 and he was subsequently regularized on the post of Assistant vide order dated 28.03.2002. The respondent no. 3 was promoted to the post of Accounts Assistant on adhoc basis. He was promoted as Assistant looking to the fact that one Shri Dinesh Kumar Sharma had applied for the post of Recovery Inspector and he was taken on that post on deputation thereby rendering one post as vacant. A note below the order dated 28.03.2002 was given that the seniority of the officials i.e. the applicant and the respondent no. 3 shall be determined as and when occasion arises as per rules of seniority of the staff. The respondent no. 2

OA No. 291/26/2012 & OA No. 291/27/2012

issued a provisional seniority list of Assistants on 31.05.2006 whereby the applicant was shown as senior to respondent no. 3 and the respondent no. 3 being aggrieved with the provisional seniority list filed his objections on 16.06.2006. In reply thereto, the applicant also submitted a representation dated 31.07.2006 clarifying therein about all the circumstances. However, without considering the submissions of the applicant, the respondent no. 2 issued the final seniority list on 24.01.2011 thereby placing the respondent no. 3 above the applicant in the final seniority list. Thereafter on 02nd May, 2011, the Departmental Promotion Committee was convened for making promotion to the post of Section Officer from amongst the Assistants. In the DPC meeting, name of respondent no. 3 was considered for promotion ignoring the candidature of the applicant in total contravention of the Recruitment Rules of 2001 only on the ground that the applicant was shown junior to respondent no. 3 in the final seniority list. Aggrieved by the said action of respondent no. 2, the applicant preferred O.A. No. 384/2011 challenging the final seniority list and the promotion order of respondent no. 3. The said Original Application was disposed of on 30.08.2011 with a direction to the respondents to decide the applicant's legal notice by way of passing a reasoned order. Consequent thereto, the respondent no. 2 decided the legal notice of the applicant and rejected the same vide order dated 01.12.2011. Aggrieved by the said order, the applicant has preferred two separate Original Applications i.e. O.A. No. 27/2012 challenging the seniority of respondent no. 3 and O.A. No. 26/2012 challenging his promotion on the post of Section Officer.

3. The respondents no. 1 & 2 by way of filing a joint reply have opposed the claim of the applicant and prayed for dismissal of both the Original Applications. The respondent no. 3 has filed his separate reply and he has also opposed the claim of the applicant by justifying his seniority and consequent promotion on the post of Section Officer.

4. The respondents no. 1 & 2 in their joint reply have submitted that vide order dated 03.03.2000, the applicant and respondent no. 3 were absorbed in Debts Recovery Tribunal, Jaipur on the post of Upper Division Clerks and on the basis of their appointments in their parent department, the respondent no. 3 was declared senior to applicant. The applicant never challenged the order dated 03.03.2000 whereby the respondent no. 3 was declared senior to him on the basis of his initial appointment in the parent department. Both the officials belong to the same department and initially came on deputation to Debts Recovery Tribunal, Jaipur on the post of Lower Division Clerk and later on absorbed in Debts Recovery Tribunal. It has further been averred that neither the applicant nor respondent no. 3 were ever promoted to the post of Upper Division Clerk in Debts Recovery Tribunal, Jaipur as well as in their parent department. In fact, the applicant and respondent no. 3 who were initially on deputation in Debts Recovery Tribunal, Jaipur on the post of Lower Division Clerk were later on appointed on the post of Upper Division Clerk with the consent of their parent department vide orders dated 05.05.1995 and 14.12.1995, respectively. The said appointments cannot be treated promotions by any means as both the officials were retaining their lien in their parent department at that point of time. Later on both the

officials were absorbed in Debts Recovery Tribunal, Jaipur vide order dated 03.03.2000 on the post of Upper Division Clerk. Para 2 of the order clearly speaks that service rendered in the parent department and service rendered in Debts Recovery Tribunal will be counted as their total service. Furthermore, para 3 of the order speaks that respondent no. 3 will be senior as he was appointed in his parent department prior to the applicant. The applicant never challenged the seniority of Upper Division Clerk determined by the said order. The Recruitment Rules for Non-Gazetted Staff came into existence in the year 1998 and became effective with effect from 29.12.1998, which laid down the terms and conditions for appointment on the posts of Group 'C' and 'D' in Debts Recovery Tribunal, Jaipur. After the promulgation of the Rules and while keeping in view the requirement of staff in Debts Recovery Tribunal, Jaipur, a proposal was initiated for absorption of the applicant and respondent no. 3 on the post of Upper Division Clerk in the scale of pay of Rs. 4000-100-6000 (pre revised). A duly constituted Departmental Promotion Committee considered the proposal and after scrutinizing the relevant documents and their performance, both the officials were recommended for their absorptions for the post of Upper Division Clerks in Debts Recovery Tribunal, Jaipur. Consequent thereto, both of them were absorbed as Upper Division Clerks vide order dated 03.03.2000. It was clearly stipulated in the said order that respondent no. 3 being appointed prior to the applicant in the parent department would be senior to him. It has further been averred that there is no infirmity at all in the aforesaid order so far as the seniority of these two officials is concerned. The order of seniority was decided at the time of absorption of these officials and the same

OA No. 291/26/2012 & OA No. 291/27/2012

was never challenged by the applicant. Denying the allegations that the respondent no. 2 has not considered the representation dated 26.04.2011, it has been pleaded that the applicant is on deputation from September, 2009 in Armed Forces Tribunal and the representation dated 26.04.2011 was not sent by him through proper channel. All the points raised in his representation have been dealt with by the scrutiny committee constituted for consideration of objections put forward by the concerned officials against the provisional seniority list. While justifying their action in granting promotion to respondent no. 3 as Section Officer, the respondents no. 1 & 2 while filing their joint reply in OA No. 26/2012 have averred that the Debts Recovery Tribunal, Jaipur, after finalization of seniority list in the grade of Assistants, initiated a proposal for filling up of one post of Section Officer in the pay scale of Rs. 6500-200-10500 (pre revised) by way of promotion / deputation basis. The vacancy was circulated / advertised on 03.02.2011 and the applications were also invited from the outsiders on deputation basis. However, no outsider had applied for the post and, thus, only two officials, who were holding the post of Assistant in Debts Recovery Tribunal, Jaipur on regular basis were found eligible for consideration for promotion to the post of Section Officer. As such, the Departmental Promotion Committee constituted to consider the candidature of the available eligible officials for promotion met on 02.05.2011 and after perusing the available service records and keeping in view the instructions on the subject matter had recommended the name of respondent no. 3 for promotion to the post of Section Officer on regular basis. Accordingly, respondent no. 3 was appointed as Section Officer in Debts Recovery Tribunal vide order dated 02.05.2011.

OA No. 291/26/2012 & OA No. 291/27/2012

Aggrieved by the said order, the applicant preferred O.A. No. 384/2011 before this Tribunal challenging therein the final seniority list and the promotion order of respondent no. 3. The said O.A. was disposed of by this Tribunal vide order dated 30.08.2011 with a direction to decide the notice of the applicant by way of passing a speaking order and pursuant thereto the order dated 01.12.2011 has been passed in accordance with law. While denying the assertion of the applicant that candidature of respondent no. 3 was considered for promotion despite contemplation of disciplinary action, it has been submitted by respondents no. 1 & 2 that no such disciplinary proceedings were initiated against him. It has further been averred that the vigilance clearance to a Government servant, as per extent instructions, cannot be denied unless the competent authority has ordered for disciplinary proceedings and the charge-sheet has been issued to him. The respondents no. 1 & 2 have specifically relied upon a noting portion vide which the vigilance clearance was given to respondent no. 3. With all the above assertions, the respondents no. 1 & 2 have prayed for dismissal of both the Original Applications.

5. The applicant by way of filing rejoinders, apart from reiterating the assertions made in the Original Applications, further submitted that as per the Recruitment Rules, in the present matter, the date of regular appointment of both the officials is the same as they were regularly appointed vide order dated 03.03.2000. Prior to said date, both of them were working in temporary capacity and, therefore, the question of seniority in the parent department does not arise at all. It has further been averred that in view of the settled principle of law that where the

OA No. 291/26/2012 & OA No. 291/27/2012

date of appointment of two officials is the same then in such cases seniority can be determined on the basis of date of birth as has not been done in the present case. It has further been averred that respondents no. 1 & 2 while granting promotion to respondent no. 3 have totally ignored the provisions of Recruitment Rules of 2001, according to which preference was required to be given to a person having experience in legal or judicial work. The applicant is possessing the legal work experience as he has undergone the training in disciplinary proceedings and establishment rules from ISTM, New Delhi and is also a law graduate. Whereas, the respondent no. 3 is only a graduate and has no experience of legal work. It has been averred that the promotion to respondent no. 3 as Section Officer cannot be sustained and both the Original Applications deserve to be allowed.

6. The respondent no. 3 in his reply has stated that no promotion was granted to him as well as to applicant on the post of Upper Division Clerk in the pay scale of Rs. 1200-2040. It has been averred by him that their parent department i.e. the Court of District and Sessions Judge, Jaipur granted first financial upgradation to both of them on completion of 09 years of continuous service in the light of the Notification / Circular dated 25.01.1992 issued by the State Government. In terms of the said notification, the State Government has granted the benefits to its employees those who were working on the isolated posts and are not having any promotional avenues in their service career. The benefit of first financial upgradation on completion of 09 years of continuous services was granted to the applicant as well as to respondent no. 3 on 22.07.1995 and

22.02.1995, respectively. Thereafter, the applicant as well as respondent no. 3 had submitted their representations before respondent no. 2 to consider their candidature for appointment on the post of Upper Division Clerk on deputation in the office of Debts Recovery Tribunal, Jaipur because their parent department had granted the first financial upgradation and fixed their pay scale accordingly. The pay scale which they were given by the State Government and of the Upper Division Clerk was the same. The request made by applicant as well as respondent no. 3 was considered in consultation with the parent department and they were appointed against the post of Upper Division Clerk in the pay scale of Rs. 1200-2040 on deputation for a period of one year including the services rendered as Lower Division Clerk with effect from 09.11.1994. It has further been averred that the applicant and respondent no. 3 both were absorbed on the post of Upper Division Clerk vide order dated 03.03.2000 in the Debts Recovery Tribunal, Jaipur as per the provisions of Recruitment Rules, 1998, which came into force with effect from 29.12.1998. The applicant has failed to challenge the order dated 03.03.2000 whereby the issue of seniority was crystallized. While justifying his promotion as Section Officer, respondent no. 3 has stated that he has rightly been granted the promotion on the basis of his seniority. With all these pleadings, respondent no. 3 has also prayed for dismissal of both the Original Applications.

7. Heard learned counsels for the parties.

8. Ms. Kavita Bhati, learned counsel for the applicant submitted that the applicant and respondent no. 3 both were absorbed as Upper Division Clerk in Debts Recovery Tribunal on 03.03.2000.

On 28.03.2002, their services were regularized. In the order dated 28th March, 2002, it was categorically mentioned that the seniority of the officials will be determined as and when occasion arises as per rules framed for seniority of the staff and officials of the DRT. Her contention was that until 2002, no seniority list was circulated by respondents no. 1 & 2. First time in the year 2006, provisional seniority list was circulated wherein the applicant was shown senior. The respondent no. 3 submitted his objections and the applicant also gave his representation. While misconstruing the representation of the applicant, the respondent no. 3 has wrongly been granted the seniority over and above the applicant. Learned counsel contended that seniority to respondent no. 3 over and above the applicant cannot be granted only on the ground that the respondent no. 3 joined the parent department earlier to the applicant. She placed reliance upon a judgment of the Hon'ble Supreme Court in the case of **Director, Central Bureau of Investigation & Anr. vs. Shri D.P. Singh** (Civil Appeal No. 1485/2003) decided on 16th December, 2009 and contended that the seniority should be counted from the date of absorption of an employee who comes on deputation. Since both the employees were absorbed on the same date, therefore, the seniority should have been determined on the basis of their date of birth. Learned counsel while opposing the promotion of respondent no. 3 as Section Officer contended that the applicant has a claim of seniority over and above respondent no. 3 and, therefore, he is entitled to get promotion from the date his junior got the promotion. She further contended that the Departmental Promotion Committee while considering the applicant's candidature has totally ignored the provisions of Recruitment Rules according to which the

applicant ought to have been given preference as he was having legal experience, apart from a degree in law, which the respondent no. 3 was not having.

9. Per contra, Shri N.C. Goyal, learned counsel for respondents no. 1 & 2 contended that respondent no. 3 has been rightly assigned the seniority as Assistant while keeping in view the date of his joining in the parent department. He further submitted that the Departmental Promotion Committee, while considering the candidatures of applicant as well as respondent no. 3, had taken into consideration the record of both the officials and both of them were found equally meritorious and, thus, the seniority of respondent no. 3 weighed over and above the applicant's claim. Learned counsel further contended that there is no fallacy in the orders granting seniority to respondent no. 3 over and above the applicant and further promotion to him as Section Officer.

10. Shri Amit Mathur, learned counsel for respondent no. 3 contended that respondent no. 3 was appointed in the parent department on 22.02.1986. Whereas, the applicant was appointed on 17.07.1986. No further promotion was granted to both of them as Upper Division Clerk in their parent department and even their deputation was on the post of Lower Division Clerk. He while drawing our attention towards the order dated 03.03.2000 (Annexure A/6) submitted that issue with regard to seniority to respondent no. 3 on the basis of his appointment in the parent department was settled, which was never challenged by the applicant at any point of time. While keeping in view the terms of order dated 03rd March, 2000, the respondent no. 3 has

rightly been assigned the seniority by respondent no. 2. The objections submitted by respondent no. 3 to tentative seniority list have been rightly considered and the order dated 24.01.2011 assigning him seniority over and above the applicant does not suffer from any infirmity. Learned counsel further submitted that while keeping in view the seniority of respondent no. 3, he has rightly been granted promotion as Section Officer and the same deserves to be sustained.

11. Considered the rival contentions of learned counsels for the parties and perused the record.

12. The fact which is not in dispute is that the applicant as well as respondent no. 3, both originally belong to the Court of District and Sessions Judge, Jaipur where they were initially appointed on the post of Lower Division Clerk (Group 'C' Non Gazetted). Both of them were sent on deputation to Debts Recovery Tribunal, Jaipur as Lower Division Clerks in the pay scale of Rs. 950-1500 (pre revised) with effect from 01.03.1995. It has come up on record that on receipt of first financial upgradation in the pre revised pay scale of Rs. 1200-30-1560-40-2040 in the parent department, both the officials had submitted their representations to Debts Recovery Tribunal for consideration of their cases for appointment on the post of Upper Division Clerk on deputation basis in the pay scale of Rs. 1200-30-1560-40-2040 on the ground that they had already been placed in the same pay scale in their parent organization. The said request of both these officials was considered in consultation with their parent organization and it was decided to appoint them as Upper Division Clerks in the pay scale of Rs.

1200-30-1560-40-2040 on deputation basis. Accordingly, applicant was appointed as Upper Division Clerk in the pay scale of Rs. 1200-30-1560-40-2040 on deputation basis for a period of one year with effect from 05.05.1995 and respondent no. 3 was also appointed as Upper Division Clerk on deputation basis for a period of one year with effect from 14.12.1995. The terms of deputation on the post of Upper Division Clerk in Debts Recovery Tribunal were extended from time to time. During the extended terms of their deputation, the Recruitment Rules namely the Debts Recovery Tribunal, Jaipur, (Group 'C' and 'D' posts, Non-Gazetted) Recruitment Rules, 1998 were promulgated and came into existence with effect from 29.12.1998. The said Rules laid down the detailed terms and conditions of appointment to various Group 'C' and 'D' posts in Debts Recovery Tribunal, Jaipur, apart from making a provision for absorption of the employees already working. The Debts Recovery Tribunal, Jaipur while keeping in view the provisions of '1998 Rules' and the requirement of staff had initiated a proposal for absorption of applicant as well as respondent no. 3 as Upper Division Clerks in the pay scale of Rs. 4000-100-6000 (revised). The said proposal was considered by Departmental Promotion Committee and, accordingly, on the recommendation of said committee, both of them were absorbed on the post of Upper Division Clerk with effect from 03.03.2000. A perusal of the said order dated 03.03.2000 reveals that the issue with regard to grant of seniority to respondent no. 3 on the basis of his appointment prior in time than the applicant in the parent organization was settled. It was clearly stipulated that respondent no. 3 shall be senior on the basis of his appointment in the parent organization. There is no dispute with regard to the fact that

respondent no. 3 was initially appointed in his parent organization on 22.02.1986. Whereas, the applicant was initially appointed in the same very organization on 17.07.1986. The order dated 03.03.2000, wherein the issue assigning the seniority to respondent no. 3 was settled in categorical terms, was never challenged by the applicant at any point of time. After promulgation of '1998 Rules', the Debts Recovery Tribunal, while keeping in view the provisions of Rule 7 of the said Rules opted to absorb both these officials and, therefore, the matter was considered by the Departmental Promotion Committee and, accordingly, both of them were absorbed as Upper Division Clerk vide order dated 03.03.2000. Sub-rule 2 of Rule 7 of '1998 Rules' makes a provision that the seniority of officers absorbed in terms of sub-rule 1 shall be determined with reference to the dates of their regular appointment to the post concerned. However, a proviso to sub-rule 2 of Rule 7 creates an exception to grant seniority to those officials recruited from the same source and lays down that their seniority held in the parent department shall not be disturbed. Rule 7 of '1998 Rules' is reproduced as under:

"7. Regularisation/Absorption.-(1) Notwithstanding anything contained in the provisions of these rules, the persons holding the posts in the Debts Recovery Tribunal, Jaipur, on the date of commencement of these rules, either on transfer or on deputation basis and who fulfil the qualifications and experience laid down in these rules and who are considered suitable by the Departmental Promotion Committee shall be eligible for regularisation or absorption in the respective grade subject to the condition that such persons exercise their option for the absorption and that their parent Departments do not have any objection to their being absorbed in the Tribunal.

(2) The seniority of officers mentioned in sub-rule (1) shall be determined with reference to the dates of their regular appointment to the post concerned.

Provided that the seniority of officers recruited from the same source and in the posts held by them in the parent Department shall not be disbursed.

(3). The suitability of persons for absorption may be considered by a Departmental Promotion Committee."

While passing the order dated 03.03.2000, the respondent no. 2 was aware of the fact that respondent no. 3 was appointed in the parent organization prior in time than the applicant and, therefore, while keeping in view the proviso to sub-rule 2 of Rule 7 of the '1998 Rules', it was stipulated in a very clear term that the respondent no. 3 shall be senior on the basis of his prior appointment in the parent organization. The said term in the order dated 03.03.2000 was never challenged by the applicant. The respondent no. 2, while taking into consideration all these aspects, rightly assigned the seniority to respondent no. 3 vide order dated 24.01.2011. We do not find any infirmity in the said order.

13. The judgment in the case of **Director, Central Bureau of Investigation & Anr. vs. Shri D.P. Singh** (supra) cited by learned counsel for the applicant cannot be applied in the case in hand as a guiding principle, as while keeping in view the proviso to sub-rule 2 of Rule 7 of the '1998 Rules', a specific term was stipulated in the order dated 03.03.2000 with regard to seniority of respondent no. 3 on the basis of his prior appointment in the parent organization.

14. After finalisation of the aforesaid seniority, a proposal was initiated to fill up one post of Section Officer by promotion / deputation basis by the Debts Recovery Tribunal, Jaipur. The

said vacancy was circulated / advertised on 03.02.2011 inviting outsiders on deputation basis. However, no outsider had applied for the post and, therefore, the candidatures of applicant as well as respondent no. 3 who were holding the post of Assistants on regular basis were considered for promotion. As such, a meeting of Departmental Promotion Committee was convened on 02.05.2011 to consider their suitability. The respondents no. 1 & 2 have placed on record the minutes of Departmental Promotion Committee as Annexure R/4 wherein it has clearly been recorded that both the candidates are in the fit zone as per the Benchmark and, therefore, their inter se seniority was considered for the purpose of promotion. Since the respondent no. 3 was senior as Assistant as per the final seniority list circulated vide order dated 24.01.2011, therefore, his name was recommended for promotion as Section Officer. While acting upon the said recommendations, the respondent no. 2 has granted promotion to respondent no. 3 as Section Officer vide order dated 02.05.2011. The argument of learned counsel for the applicant that the applicant's legal experience and his degree in law was not given preference while considering the case for promotion does not find favour with us as the Departmental Promotion Committee has very categorically stated in its minutes of meeting that the candidates are in the fit zone as per the Benchmark. Since both the candidates were assessed on their relative merit and both of them were found in the fit zone as per the Benchmark, therefore, we do not find any illegality when the criteria of inter se seniority was adopted to make recommendation for promotion to the post of Section Officer. Thus, we do not find any infirmity in the order of promotion vide

OA No. 291/26/2012 & OA No. 291/27/2012

which respondent no. 3 has been granted promotion as Section Officer.

15. In the conspectus of discussions made hereinabove, we do not find any merit in both the Original Applications and, accordingly, those are hereby dismissed. However, there shall be no order as to costs.

(A. MUKHOPADHAYA)
ADMINISTRATIVE MEMBER

(SURESH KUMAR MONGA)
JUDICIAL MEMBER

Kumawat