

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 4302/2015, M.A. No. 1237/2018

With

O.A. No.328/2016, M.A. No. 576/2016

O.A. No.1742/2016, M.A. No. 1698/2016

O.A. No.2321/2016

O.A. No. 2322/2016

O.A. No.2323/2016

O.A. No. 2324/2016

O.A. No.2325/2016

O.A. No. 2326/2016

O.A. No. 1114/2015, M.A. No. 1025/2015

O.A. No.2875/2015,

M.A. No. 3522/2015

M.A. No. 3631/2015

M.A. No. 2544/2015

M.A. No. 3653/2015

M.A. No. 3968/2015

New Delhi, this the 24th day of July, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

O.A. 4302/2015

V.P. Munghate
S/o Late Pundlikrao Munghate,
Age 55 years, Male
Regional Director,
Regional Controllerate of Safety (WR),
T-12, Club Road, Ordnance Estate,
Khadki, PUNE-411003.

.. Applicant

Versus

1. Union of India
Through Secretary,
Department of Defence Production & Supplies,
Ministry of Defence,
South Block,

New Delhi – 110 011.

2. The Chairman & Director General
Ordnance Factory Board (OFB)
10-A, S.K. Bose Road,
Kolkata-700001, West Bengal.
3. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
4. The Secretary,
Ministry of Personnel & Public Grievances,
North Block, New Delhi-110 011.
5. N.K. Choudhary,
Addl. G.M. Ordnance Factory,
Aruvankadu, Tamilnadu-643202.
6. M.K. Mahapatra,
Addl. G.M.
Heavy Vehicle Factory
Avadi, Tamilnadu-600054.
7. D.V. Rao,
Addl. G.M.
Metal and Steel Factory
Nawabganj, Ichapore
24 Pargans North, Ichapore,
West Bengal-743144.
8. R. Varma
Addl. G.M.
Machine Tool Prototype Factory
Ambernath, Distt. Thane-421502.
9. Vasistha Upendra
Zonal Development Commissioner
Kandla SEZ
Gaandhi Dham, Distt.-Kutch
Gujarat-370230.

10. M.K. Garg
Addl. G.M.
Ordinance Factory, Itarsi
Madhya Pradesh-461122.
11. V.Ravindran
Deputy Director General
Finance Division
Ordinance Factory Board
Kolkata-700001.
12. R.S. Jha
Addl. G.M.
Ordinance Factory, Katni
M.P.-483503.
13. N. Sivananda
Addl.G.M.
Ordinance Factory, Bhadrawati
Distt. – Chandrapur
Maharashtra-442501.
14. Sanjeev Kishore
Deputy Director General
Ordinance Factory Board,
Kolkata-700001.
15. Anil Kumar
Addl.G.M.
Small Arms Factory
Kanpur, U.P.-208002.
16. S.D. Bajpai
Addl. G.M.
Ordinance Factory Itarsi
M.P.-461122
17. S. Sahadev
Addl.G.M.
Gun Carriage Factory, Jabalpur
M.P.-482705.
18. Pradeep Gupta
Officer on Special Duty

Ordinance Factory Board
New Delhi Office, H-Block,
New Delhi-110011.

19. Govind Mohan
Addl. G.M.
Vehicle Factory,
Jabalpur (M.P.)-482009.
20. Rajnish Johari
Addl.G.M.
Gun Carriage Factory,
Jabalpur (M.P.)-482009.
21. L. Mohanti
Deputy Director General
(Engineering Divison)
Ordinance Factory Board
10-A S.K. Bose Road
Kolkata-700001.
22. Kanta Prasad Gairole
Principal Director
Ordinance Factories Institute of Learning
Dehradun (Uttarkhand)-242002.
23. K. Satya Narayana
Addl.G.M.
Ordinance Clothing Factory
Shahjahanpur, U.P. -242002.
24. P. Narsimhan
Joint General Manager
Ordinance Factory
Tiruchairapalli
Tamil Nadu-620016.
25. Kailash Nath Arya
Addl.G.M.
Ordinance Equipment Factory
Kanpur (U.P.) -208001
26. A. Shanmugam
Addl.G.M.

Heavy Vehicle Factory
Avadi, Tamilnadu-600054.

27. V. Muthu Krishnan
Joint General Manager
Ordinance Cable Factory
Chandigarh-160002.
28. S.K. Mishra
Addl.G.M.
Vehicle Factory, Jabalpur
M.P-482009.
- 29) Shailendra Nath
Deputy Director General
Ordinance Factory Board
New Delhi Office
'H' Block, New Delhi-110011.
30. M.S. Rao
Addl.G.M.
Metal and Steel Factory
Nawabganj, Ichapore
4 Paragans North
West Bengal-743144.
31. Sanjay Chawla
Addl.G.M.
Ordinance Factory, Ambajhari
Nagpur-440021.
32. H.R.Dixit
Addl. G.M.
Ordinance Factory, Varangaon
Toluka-Bhusawal,
Distt. Jalgaon -425308.
33. Y.S. Pundir
Addl.G.M.
Ordinance Factory, Dehradun
Uttar Khan-248008.
34. S.K. Acharya
Addl.G.M.

Ordinance Equipment Factories
Head Quarter, Kanpur
U.P.-208013.

35. K.Y. Barapatre
Addl.G.M.
Ordinance Parachute Factory
Kanpur, U.P. -208013.
 36. P.K. Garg
Deputy Director General
Ordinance Factory Board
10-A, S.K. Bose Road,
Kolkata-700001.
 37. R.J. Battarcharya
Dy Director General (Budget)
Ordinance Factory Board
10-A, S.K. Bose Road,
Kolkata-700001.
- .. Respondents

O.A. 328/2016

1. K. Appa Rao,
S/o Sri Singaiash,
Aged 58 years,
OCC: General Manager,
Ordinance Factory
Tiruchirapalli, Tamil Nadu- 620016
R/o Ordinance Factory Estate,
Tricuhirapally-620016.
2. Sharad Kumar Ghodke,
S/o Sri T.R. Ghodke,
Aged about 57 years
Occ: General Manager,
Ordinance Factory Project Nalanda,
Dist. Rajgir, Bihar-803 121,
R/o Ordinance Factory Project Estate,
Nalanda, Dist.Rajgir, Bihar-803121.
3. S. Rangarajan,
S/o Sri S. Seshadri,

Occ.: Addl. General Manager,
Heavy Vehicle Factory Avadi,
Tamil Nadu-600 054,
R/o Chormepet, Chennai,
Tamil Nadu.

4. M.P. Sharma
S/o Sri Radha Krishna Sharma
Aged about -55 years
Occ: Senior Director/ODC
Ordnance Factory Ambajhari,
Nagpur: 440 021
R/o Ordnance Factory Estate,
Ambajhary, Nagpur-440 021,
Maharashtra State.
5. Ashish Kumar Maiti,
S/o Sri Madhu Sudan Maiti,
Aged about 55 Years
Occ: Addl. General Manager,
Gun Carriage Factory,
Jabalpur, Madhya Pradesh -482 075.
R/o Gun Carriage Factory,
Jabalpur, Madhya Pradesh -482 075.
6. Musharraf Ali,
S/o Late Shri Niyamat Ali,
Aged about 55 years
Occ: Addl. General Manager,
Ordnance Equipment Factory,
Hazratpur, Firozabad, U.P. 283 103,
R/o Ordnance Equipment Factory Estate,
Hazratpur, Firozabad, U.P. 283 103.
7. P. Ramakrishna,
S/o Sri P.S.R.V. Anjaneyulu,
Aged about 55 years,
Occ. Deputy Director General
Ordnance Factory Board Office,
At Embarkation HQ,
Gresham Assurance House,
3rd Floor, Sir P.M.Road,
Fort, Mumbai, 400001
R/o Mumbai Maharashtra State. .. Applicants

Versus

1. Secretary
Department of Defence Production and Supplies,
Ministry of Defence, South Block,
New Delhi-110 011.
 2. Chairman and Director General
Ordnance Factory Board,
10-A, S K Bose Road,
Kolkatta-700 001,
West Bengal.
 3. Secretary,
Ministry of Personnel and Public Grievances,
North Block,
New Delhi-110 011.
 4. Chairman,
Union Public Service Commission,
Dholpur House,
New Delhi.
- .. Respondents

O.A.1742/2016

1. Ashish Kumar Maiti,
S/o Sri Madhu Sudan Maiti,
Aged about 55 years
Occupation: Regional Director,
Regional Marketing Center,
Ordnance Factory Board
Level 6, East Block-10
Sector -1, R-K Puram
New Delhi-110066.
 2. V.P. Munghate,
S/o Late Pundlikrao G. Munghate,
Aged about 55 years
Occupation: Regional Director
Controllerate of Safety, Ordnance Estate,
Khadki, Pune - 411003
R/o 11, River Side Road, Ordnance Estate,
Khadki, Pune-411003.
- .. Applicants

Versus

1. Union of India
Through its Secretary,
Department of Defence Production & Supplies,
Ministry of Defence,
South Block, New Delhi-110 011.
2. Ordnance Factory Board (OFB)
Through its Secretary
Ordnance Factory Board,
10-A, S K Bose Road,
Kolkatta -700 001, West Bengal.
3. Ministry of Personnel & Public Grievances
Through its Secretary
North Block, New Delhi-110 011.
4. Union Public Service Commission
Through its Secretary/ Authorized Officer,
Dholpur House, New Delhi.
5. Shri M.K. Mahapatra
Age: 54 Years
General Manager,
S/o Shri Rahunath Mohapatra,
Cordite Factory
Aruvanakadu-643202(Tamilnadu).
6. Shri D.V. Rao
Age: 56 Years
General Manager
S/o Late Shri D.H. Rao
Ordnance Factory,
Katni -483503 (M.P)
7. Shri Ratneshwar Varma
Age 58 Years
General Manager,
S/o Late Shri K.K. Varma
Rifle Factory,
Ishapore-743144 (W.B.).

8. V. Ravindran
Age: 57 Years
General Manager
Ordnance Equipment Factory
Hazratpur-283103
Firozabad(U.P.)
9. Shri R.S. Jha
Age: 55 Yrs
General Manager
Ordnance Factory,
Dum Dum,
Kolkata-700028 (W.B.)
10. Shri N. Sivanand
Age: 56 Yrs
General Manager
Ordnance Clothing Factory
Shahjahanpur-242 001 (U.P.)
11. Shri Sanjeev Kishore
Age: 53 Yrs
Deputy Director General
Ordnance Factory Board
10-A, S.K. Bose Road,
Kolkata-700001.
12. Shri Anil Kumar
Age: 55 Yrs
General Manager,
Engine Factory
Avadi-600 054(Tamilnadu). .. Respondents

O.A. 2321/2016

P. Ramakrishna,
S/o Sri P.S.R.V. Anjaneyulu,
Age: 54 years,
Occ: Additional General Manager,
Ordnance Factory,
Resident of Q. No. 5008,
Ordnance Factory Estate,

Yeddumailaram, Medak Dist.
PIN 502 205, Telangana.

(The address for service of summons and other correspondence in relation to the applicants is the same as mentioned above or that of his counsel Mr. K. Ram Murthy, Advocate, H. No. 2-2/7, F.C.I. Colony, Miyapur, Hyderabad-500 049)

.. Applicant

Versus

1. Union of India
Represented by its Secretary
Department of Defence Production & Supplies,
Ministry of Defence
South Block, New Delhi-110 001.
2. The Director General & Chairman,
Ordnance Factories,
10 A, S.K. Bose Road,
Kolkatta, -700 001, West Bengal.

(The address for service of summons and other correspondence in relation to the respondents is the same as mentioned in the cause title).

.. Respondents

O.A. 2322/16

Ashish Kumar Maiti,
S/o Shri Madhusudan Maiti,
Aged about 54 years
Additional General Manager,
G.C.F., Jabalpur,
R/o Type-V, Abhudaya Nagar,
G.C.F. Estate,
Jabalpur (M.P.) 482001.

.. Applicant

Versus

1. Union of India
Through its Secretary

Department of Defence Production
Ministry of Defence,
139, South Block
New Delhi-110001.

2. Secretary, M/o Public Grievances and Pension
Department of Personnel and Training,
North Block, New Delhi-110001.
 3. Director General of Ordnance Factories
and Chairman, Ordnance Factory Board,
10-A, S.K. Bose Road, Kolkata-700001.
 4. Shri N.K. Choudhary
AGM Cordite Factory, Arvan Kadu
Tamil Nadu-643202.
 5. Shri N.K. Mahapatra
AGM Heavy Vehicle Factory Avadi
Tamil Nadu-600054.
- .. Respondents

O.A. 2323/2016

K. Appa Rao
S/o Sri K. Singaiah
Age Major,
Occ: Additional General Manger,
Ordnance Factory,
Resident of Q.No. 5060,
Ordnance Factory Estate,
Yeddumailaram Medak Dist. Telangana.

(The address for service of summons and other correspondence in relation to the applicants is the same as mentioned above or that of his counsel Mr. K. Ram Murthy & I. Sreenu, Advocate, H. No. 2-2/7, F.C.I. Colony, Miyapur, Hyderabad-500 049)

..Applicant

Versus

1. Union of India
Represented by its Secretary

Department of Defence Production & Supplies,
Ministry of Defence
South Block, New Delhi.

2. The Director General & Chairman,
Ordnance Factories, 10 A,
S.K. Bose Road,
Kolkatta -700 001, West Bengal.

(The address for service of summons and other correspondence in relation to the respondents is the same as mentioned in the cause title).

.. Respondents

O.A. 2324/2016

Shri Sharad Kumar Ghodke,
Son of Late Shri T.R. Ghodke,
Aged about 56 years,
Working for gain as Addl. General Manager,
Ordnance Factory, Ambarnath,
Thane (MS), under the DGOF & Chairman,
Ordnance Factory Board, Kolkata-700001
and residing at Quarter No. D-16,
Ordnance Estate, Ambarnath,
Thane-421502.

.. Applicant

Versus

1. The Union of India service through
the Secretary,
Ministry of Defence,
Department of Defence Production,
having its office at South Block,
New Delhi-110011.
2. Ordnance Factory Board service through
the DGOF & Chairman,
Ordnance Factory Board, 10-A,
S.K. Bose Road,
Kolkata-700001.

3. The Director/G (T),
Ordnance Factory Board, 10-A,
S.K. Bose Road, Kolkata-700001.

.. Respondents

O.A. 2325/2016

K. Appa Rao
S/o Sri K. Singaiah
Age Major,
Occ: Additional General Manger,
Ordnance Factory,
Resident of Q.No. 5060,
Ordnance Factory Estate,
Yeddumailaram Medak Dist. Telangana.

(The address for service of summons and other correspondence in relation to the applicants is the same as mentioned above or that of his counsel Mr. K. Ram Murthy, Advocate, H. No. 2-2/7, F.C.I. Colony, Miyapur, Hyderabad-500 049)

.. Applicant

Versus

1. Union of India
Represented by its Secretary
Department of Defence Production & Supplies,
Ministry of Defence,
South Block, New Delhi.
2. The Director General & Chairman,
Ordnance Factories, 10-A,
S.K. Bose Road,
Kolkatta -700 001, West Bengal.

(The address for service of summons and other correspondence in relation to the respondents is the same as mentioned in the cause title).

.. Respondents

O.A. 2326/2016

S. Rangarajan
 Additional General Manager
 Heavy Vehicles Factory,
 Avadi, Chennai-5.

.. Applicant

Versus

1. The Union of India
 Rep by the Secretary to Government of India
 Department of Defence Production
 Ministry of Defence
 New Delhi.

2. The Director General
 Ordnance Factory,
 Ordnance Factories Board,
 Kolkatta.

.. Respondents

O.A. 1114/2015

Musharraf Ali, Age 54 years
 S/o Shri Niyamat Ali
 Presently posted as
 Additional General Manager,
 Ordnance Equipment Factory,
 Hazratpur, Firozabad-283103 (UP).

.. Applicant

Versus

1. Union of India
 Through the Secretary,
 Ministry of Defence,
 Department of Defence Production,
 New Delhi.

2. Director General
 Ordnance Factories and Chairman,
 Ordnance Factories Board,
 10-A, Auckland Road,
 Kolkata

Having their Co-ordination officer represented by:-

Deputy Director General (Co-ordination)
Ordnance Factories Board, New Delhi Office
G-Block, Opposite Air Headquarters,
New Delhi-110011.

3. Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi. .. Respondents

O.A. 2875/2015

1. Shri N.K. Choudhari
S/o Shri Gouri Shankar Choudhari,
R/o Cordite Factory
Aruvankadu-643202.
2. Shri M.K. Mohapatra
S/o Shri Rahunath Mohapatra
R/o Type VI-7
HVF Estate, Avadi,
Chennai 600054.
3. Shri D.V. Rao
S/o Late Shri D.H. Rao
R/o No.72, The Park Estate
P.O. Nawab Ganj
Ichapur-743144 (WB).
4. Shri Rateshwar Varma
S/o Late Shri K.K. Varma
MTPF Ambernath
B-402, 4th Floor,
Gemini Hiranandani Meadows
OFF Pokhran Road, No.2, Thane. .. Applicants

Versus

1. Union of India through
Secretary, Department of Defence Production

Ministry of Defence,
New Delhi.

2. Secretary,
Department of Personnel & Training,
New Delhi.
3. Director General
Factories and Chairman
Ordnance Factory Board
Kolkata
4. K. Appa Rao
S/o Shri K. Singaiah
Age 58 years
General Manager
R/o Ordnance Factory Estate,
Tiruchirapalli,
Tamil Nadu-620016.
5. S. Rangarajan
S/o Late Sri Seshadri,
Age: 57 years
Additional General Manager
R/o Heavy Vehicles Factory,
Avadi, Chennai,
Tamilnadu-600054.
6. P. Ramakrishna
S/o Sri P.S.R.V. Anjaneyulu
Age: 55 years
Deputy Director General
R/o Ordnance Factory Board,
Mumbai Office, 3rd Floor, Gresham
Assurance House
Sir P.M. Road, Fort Mumbai
Maharashtra-400001.
7. S.K. Ghodke
S/o Sri T.R. Ghodke
Age: 58 years
General Manager
Ordnance Factory Project Nalanda
PO-Rajgir, District: Nalanda, Bihar-803121.

8. V.P. Munghate
 Age: 55 years
 Regional Director
 Controllorate of Safety
 Ordnance Estate, Khadki,
 Pune-411003. .. Respondents

For Applicants - By Advs. : Shri Vardhman Kaushik,
 Shri Ranjit Sharma and
 Shri Sameer Sharma

For Respondents - By Advs.: Shri V.S.R. Krishna,
 Shri Gyanendra Singh,
 Shri K.M. Singh,
 Shri U. Srivastava and
 Shri R.V. Sinha for UPSC

O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman

In this batch of O.As., filed by the officers of Indian Ordnance Factories Service (IOFS), the seniority list pertaining to the post of Junior Administrative Grade (Selection Grade) dated 12.09.2014 and other consequential steps are challenged in different ways. The proceedings which are challenged in this batch are stated to have been issued in compliance with the directions issued or observations made, by this Tribunal in Order dated 22.09.2010 passed by this Tribunal in OA No.2274/2009 and Batch (***Dr. J.J.B Prasad vs Union of***

India). The facts pertaining to this case are fairly complicated. An attempt is made to present them in a manner as simple as possible.

2. The induction into IOFS is at the stage of Junior Time Scale (JTS). It is through direct recruitment as well as promotion to be undertaken by UPSC. There are 9 categories in JTS, such as Engineers, Chemists, Designers, Psychologists, Physicists. The IOFS, in turn has 9 levels, viz. Director General, Additional Director General, Senior General Manager, Senior Administrative Grade (SAG) (Level-I), SAG (Level-II), JAG (Selection Grade), JAG (Ordinary Grade), Senior Time Scale and Junior Time Scale. The appointment/promotion to the various posts in the IOFS is governed by the “Indian Ordnance Factories Service (Group -A) Recruitment Rules, 1972” (1972 Rules, for short). According to these Rules, the promotion to STS is from JTS in the respective categories. Hardly any selection process is involved and the UPSC does not figure at that stage. For the remaining posts, the promotion is by way of selection.

3. In the context of promotion from JTS to STS, a candidate is required to have a minimum

service/standing of 4 years. There were instances where the UPSC selected the candidates simultaneously for various categories in JTS, but orders of appointment were delayed in certain cases on account of the belated receipt of verification of antecedents. One Mr. S.P. Saxena was selected in the year 1983, but was issued order of appointment in the year 1984 and posted in Ordnance Factory at Madras. The promotions to the STS through JTS took place in the year 1987 by reckoning the eligibility, as on 31.12.1987. Mr. S.P. Saxena did not have the requisite service of 4 years by that date. The DPC which met on 25.03.1987 did not recommend his case for promotion to STS, whereas several persons, who figured much below in the merit list, were recommended for promotion. It is in that context, that Mr. S.P. Saxena filed O.A. No.679/1991 before the Madras Bench of the Tribunal. The O.A. was allowed and relief was granted, directing that he be treated as eligible since his juniors were found eligible for promotion. Similar relief was granted in the cases of Mr. Narendra Kumar and Shri Prabhat Varma, who filed O.A. Nos. 2218/1995 and 2279/1995, before the Principal Bench.

4. The respondents published the seniority list for STS, category-wise on 01.07.1990. However, stating it to be for the purpose of fixing the zone of consideration or the eligibility, a combined seniority list of STS for all the 9 categories was published as on 01.09.1994. This did not disturb the seniority/place of the officers at STS in their respective categories. However, in the name of implementation of the orders passed in O.A. No.679/1991 by Madras Bench and in O.A. Nos.2218/1995 and 2279/1995 by the Principal Bench of the Tribunal, the respondents issued proceeding dated 04.02.2008 under the caption "Seniority List in the Grade of STS in IOFS as on 01.01.1992 (After Revision)". The places that were assigned to the officers of STS in the 1994 list were completely changed to the detriments of many, in the seniority list dated 04.02.2008.

5. Representations were made complaining of the disadvantages suffered by certain officers. An order was passed on 10.04.2008. The procedure adopted by them in preparing the list dated 04.02.2008 was indicated in detail. In para (g) of the same, it was mentioned that the concept of "Dovetailing" was adopted to ensure that the

officers of various categories in JTS are inter-mixed, duly taking into account, the date of induction into service etc. Feeling aggrieved by that, a batch of O.As. bearing No.2274/2009 and others by **Dr. J.J.B. Prasad and Others** was filed before this Tribunal. On hearing both the parties, the Tribunal found that the respondents were not justified in issuing the proceeding dated 04.02.2008 in the pretext of implementation of orders passed in O.A. No.679/1991; and that the application of para (g) in the order dated 10.04.2008 for that purpose was totally inappropriate. However, it was left open to the respondents to undertake independent exercise for the purpose of “dovetailing” the Seniority List, in the STS.

6. Stating to be in compliance of that, the respondents issued the seniority list of IOFS officers at the level of JAG on 12.09.2014, reiterating and re-affirming the stand taken by them in the order dated 10.04.2008. Certain seniority list for the post of JAG (Selection Grade) was also issued. The same is challenged in these O.As.

7. The applicants contend that there was absolutely no justification by the respondents in issuing both the proceedings. According to them, the promotion to various

posts is governed by the 1972 Rules and in the name of implementation of the orders in O.A. No.679/1991, the respondents have, in the year 2008, disturbed the entire seniority list of STS. It is also stated that this Tribunal in O.A. No.2274/2009 and batch has categorically held that the procedure adopted by the respondents in issuing the seniority list dated 04.02.2008, that too by applying para (g) contained in the order dated 10.04.2008, was totally impermissible; and despite that, they have not only reiterated the said paragraph and continued the state of affairs that resulted from the said seniority list, but also brought into existence, the seniority list dated 12.09.2014 for the post of JAG (Selection Grade) in contravention of law and rules/norms. Various contentions are also urged in different forms in all the O.As.

8. Detailed counter affidavits have been filed by the respondents and history of the litigation commencing from the orders passed by the Madras Bench of this Tribunal in O.A. No.679/1991 is narrated. It is stated that the promotion from STS to JAG is by way of selection and since there are as many as 9 categories in STS, necessity has arisen to prepare a common list. It is also

stated that since the procedure for selection/appointment to the various categories of JTS/STS is different, the process of “dovetailing” was adopted to ensure that chances of the officers in one category getting promotion too early, resulting in disadvantages to the officers of other categories. It is also stated that the exercise in the impugned order was undertaken in accordance with the observations made by the Madras Bench of this Tribunal in O.A. No.679/1991.

9. We heard Shri Vardhman Kaushik, Shri Ranjit Sharma and Shri Sameer Sharma, learned counsel for the applicants and Shri V.S.R. Krishna, Shri Gyanendra Singh, Shri K.M. Singh, Shri U. Srivasrtava, learned counsel for the respondents and Shri R.V. Sinha, learned counsel for the UPSC.

10. If one takes into account, the facts that have been pleaded in the various OAs that were filed earlier, or the steps taken by the respondents from time to time, the issue is fairly complicated. Another aspect is that in the voluminous litigation that has taken place earlier, no effort was made by the parties to bring to the notice of the Tribunal, the Recruitment Rules of 1972. The emphasis

was only made to examine the steps taken by the respondents, without reference to the Rules. Therefore, we have taken the liberty to address the issue with reference to the Rules of 1972 even while keeping the observations made in earlier rounds of litigation and the proceedings that ensued at different stages.

11. The IOFS comprises of as many as 9 Levels as under:-

S/No.	Designation of the post	No. of posts	Scale of Pay
1.	Director General of Ordnance Factories/Chairman	1	Rs. 3500/- (Fixed)
2.	Additional Director General of Ordnance Factories/Member	8	Rs. 3000 (Fixed)
2A.	Senior General Manager	4	Rs. 7300-100-7600
3.	Senior Administrative Grade (Level-I)	15	Rs. 2500-125/2-2750
4.	Senior Administrative Grade (Level-II)	15	RS. 2250-125/2-2500
5.	Junior Administrative Grade (Selection Grade)	54	Rs. 2000-125/2-2250
6.	Junior Administrative Grade (Ordinary Grade)	220	Rs. 1500-60-1800-100-2000
7.	Senior Time Scale	367	Rs. 1100-(6 th year or under) 50-1600
8.	Junior Time Scale	355	Rs. 700-40-900-EB-40-1100-50-1300

The recruitment/promotion thereto is governed by 1972 Rules. The lowest post is Junior Time Scale (JTS), and it

comprises of 9 categories, as mentioned in post Appendix-I. In Appendix-II, the method of promotion and minimum qualifying service are indicated for all the posts in service. In note 2, it is mentioned as under:-

“Staff Asstt. (Psychologist) is eligible for promotion to the post in the Junior Scale of Rs.700-1300 in the discipline of Psychology only.”

12. The posts in Senior Time Scale are non-selection in nature. For promotion to STS, the following criterion is stipulated in the Appendix-II :

“Officers in Junior Time Scale with 4 years regular service in the grade.”

The promotions to STS have been made upto the year 1994 and seniority list was being maintained for each category.

13. One Mr. S.P. Saxena, a JTS Officer, was not considered for promotion to STS, on the ground that he did not have 4 years of service in JTS by 31.12.1987. His plea was that if the ranking assigned by the UPSC is taken into account, he is senior to many of his juniors, who were considered for promotion to STS. Accepting that

plea, relief was granted to him in O.A. No.679/1991 filed in the Madras Bench of this Tribunal. Similar relief was granted in OA Nos. 2218/1995 and 2279/1995 by the Principal Bench.

14. The only way of implementation of those directions was just to promote those three officers to STS and since their seniority is already fixed in JTS, the same would have been reflected in STS. That occasion was, however, availed to bring about the wholesale change in the entire process of promotion to the next higher post. Though there existed a category-wise STS list as well as a combined list thereof upto the year 1994, the respondents have prepared another seniority list of STS on 04.02.2008. The change was so phenomenal that places which were assigned to the officers of STS in the year 1994 were changed upwards or downwards up to more than 100 places. For example, the applicant in O.A. No. 4302/2015 was shown in the 1994 list at S.No. 127, whereas he was pushed down to the place of 336 in the 2008 seniority list. The officer occurring immediately below him, i.e., Mr. N.K. Choudhary, however, was placed at S.No.149 and the one who figured at S.No. 129, Mr. M.

K. Mohapatra was placed at S.No.151 in the 2008 list. Mr. Musharraf Ali, applicant in O.A. No.1114/2015 figured at S.No. 115 in the 1994 list and he was pushed down to 243 in 2008 list. When the aggrieved persons made representations, an order dated 10.04.2008 was passed in view of the procedure adopted for the purpose. The emphasis was made on para 'g'.

“(g) However, since inter-discipline seniority is not strictly comparable, there are officers of any particular discipline (say Metallurgists) who have been placed as juniors even to those officers of different discipline(s) (say engineers) whose date(s) of recommendation(s) is (are) much later than the former. This is due to differences in the availability of trade-wise vacancies in the grade of STS where due to more number of vacancies in one discipline in the grade of STS officers with a later date of recommendation got promoted to the grade of STS and consequent seniority, whereas due to less number of vacancies in another discipline in STS officers even with earlier date of recommendation could get promoted to STS only on a later date and consequently, in spite of having earlier date of recommendation, became junior to those officers of the other discipline who got promoted to STS in the earlier DPC. Thus, in the dovetailed Seniority List officers of same batch of any particular discipline having same date of recommendation have been intercepted by the presence of officers of other discipline(s) having later date(s) of recommendation(s) due to differences in availability of trade-wise vacancies in the grade of STS.”

15. It was, in this context, that challenge was made to the seniority list dated 04.02.2008 and the order dated 10.04.2008 in O.A. No. 2274/2009 and batch. A Division Bench of this Tribunal dealt with the matter extensively.

However, the Recruitment Rules of 1972 were not brought to its notice. After referring to the various steps taken by the respondents and the orders passed by this Bench and the Madras Bench of the Tribunal, the Tribunal observed as under:-

“While implementing the judgment in Saxena’s case, the department conducted review DPC in 1994 in which two applicants in OA Nos.2218/1995 and 2279/1995, i.e., Narendra Kumar and Prabhat Varma, lost their seniority on the ground that at the time of consideration for promotion, they had not completed their two years probation. Inasmuch as, their seniority was sought to be disturbed in implementing the order of the Chennai Bench, they filed the said two OAs in the Principal Bench. The only plea raised by them was that irrespective of their not completing two years probation period, they could not be ignored in the matter of promotion in preference to their juniors. The directions given by the Tribunal, as mentioned above, were to consider them for promotion, irrespective of their not completing two years of probation. The writ filed against the order of the Tribunal was dismissed by the High Court of Delhi. There is no doubt whatsoever that the judgments passed by the Chennai and the Principal Benches have to be implemented, but what we find from the pleadings and the impugned orders, and in particular order dated 8/10.4.2008, is that the respondents in the guise of implementing the directions of the Tribunal are attempting to recast the seniority by applying certain criteria which was not in the least the subject matter of discussion, consideration and decision in the orders passed by the Tribunal referred to above. We have already mentioned above that the specific plea raised repeatedly by the applicant on that behalf in the body of the OA has not been specifically refuted in the reply filed on behalf of the respondents. It is no doubt true that while passing the order/proceeding dated 4.2.2008 revising the seniority list of officers in the STS as on 1.1.1992, objections were invited from those who may be adversely affected, like the applicant and others. It is also true that the applicant gave his

reply and his objections have been rejected vide impugned order dated 8/10.4.2008, but the question that may stare the parties on their face is as to whether such dimensions as mentioned in clause g) of the impugned order dated 8/10.4.2008 could be added in the purported exercise of implementing the judgments of this Tribunal in the OAs decided by the Chennai and the Principal Benches. The answer to the same has to be an emphatic NO. The parties may have variety of arguments for and against the criteria for working out seniority in the grade of STS, but we are not inclined to go into the same at this stage. The respondents, in pure and simple exercise of implementing the judgments of this Tribunal, for which purpose alone a committee came to be constituted, cannot travel beyond anything that might have been directed in the orders passed by this Tribunal from time to time. If at this distance of time another criteria for fixing inter se seniority is to be worked out, the same has to be a subject matter of separate proceedings, which the respondents may do even now if the law may so permit, but surely, such an exercise cannot be undertaken in the guise of implementing the judgments of the Tribunal passed from time to time as mentioned above. Clause g) of the impugned order dated 8/10.4.2008, in our considered view, cannot be given effect to while implementing the judgments of the Tribunal. The respondents are thus directed to work out the seniority strictly as per the parameters fixed by the Chennai and Principal Benches of this Tribunal. If permissible under law, they may deal with the aspect of the case as mentioned in clause g) of the impugned order dated 8/10.4.2008 by separate proceedings. Surely, while undertaking such an exercise, the respondents would always keep in mind as to whether it would be justifiable to do so at this distance of time.

9. Insofar as, OA No.2351/2009 is concerned, Shri Padma Kumar S., contends that the applicant is challenging the very orders passed by the Tribunal, and in particular the order passed by the Principal Bench in OA Nos. 2279/1995 and 2218/1995 filed by Narendra Kumar and Prabhat Varma. The applicant was admittedly a party respondent in the above mentioned OAs. All that is urged by the learned counsel is that he was not properly served. Once, he was a party respondent in the said OAs, he cannot be permitted to challenge the said decision by a separate OA. His remedy, if any, was, if not

served properly, to seek setting aside the order by representing it to be a case of ex parte decision, or to challenge the same in a higher judicial forum.”

16. From a perusal of the same and in particular, the underlined portion, it becomes clear that the exercise leading to the Seniority List dated 04.02.2008 and the order dated 10.04.2008 was found fault with, in the form of an emphatic ‘NO’. It is also made clear that respondents were not justified in undertaking such an exercise in the name of implementation of order in O.A. 679/1991. It was left open to the respondents to undertake an exercise separately, if they are otherwise permitted under the law.

17. The Result of the order passed by the Tribunal is that the Seniority List dated 04.02.2008 was found to be improper and the principles contained in order dated 10.04.2008 are inapplicable in such exercise. Therefore, the said seniority list did not have any legality or applicability. Fresh exercise, in context of implementation of orders in OA No. 679/1991 of Madras Bench and OA Nos. 2218/1995 and 2279/1995 of the Principal Bench

or to bring about a totally different exercise, unconnected with that, was permitted, subject to compliance with law.

18. The respondents, however, passed the impugned order, stating it to be in compliance with the observations made by this Tribunal in OA Nos. 2218/1995 and 2279/1995. It is an order running into six pages. The result of the discussion undertaken up to para-9 is summarised in paras 10 and 11. It read as under:-

“10. As a result of this administrative exercise, clause ‘g’ has been found to be in consonance with the then existing SRO 8 dated 28.01.1972 and discipline wise availability of vacancies for promotion to STS. This is also consistent with DOP&T’s view tendered for promotion to STS. This is also consistent with DOP&T’s view tendered in the instant matter that seniority on promotion in the grade of STS will not be based on the UPSC rank or date of recommendation by UPSC. Officers promoted on recommendation of earlier DPCs will, therefore, have to be treated senior to those Officers who are promoted on the recommendation of subsequent DPCs, while dovetailing the seniority. Officers of different disciplines may move up differently i.e., not necessarily at the same time, depending on availability of vacancies in their respective disciplines. Accordingly, the seniority list of Group ‘A’ officers in IOFS in the grade of JAG (SG), published under this office letter No. 401/A/G dated 01.11.2010 is found to be in accordance with the general principles of seniority, SRO existing at the relevant time in line with the views of Ministry of Defence, DOP&T and the opinion of Ministry of Law & Justice on the matter.

11. Hence, the aforesaid seniority of IOFS Officers in the grade of JAG (SG) as on 01.01.2006 as circulated under OFB letter No. 401/A/G dated 01-11-2010 is hereby made operational, with the only change in the seniority position of V. P.

Munghate (serial 171) placing him below Shri R S Singh (Serial 144) above Shri R J Bhattacharya (Serial 145) as already published vide the IOFS Seniority as on 01.01.1994. Copy of the said seniority list of IOFS Officers in the grade of JAG (SG) as on 01.01.2006 is enclosed as Anenxure to this letter.”

The seniority list for the post of JAG (Selection Grade) was appended thereto. Not even once, any reference was made to the 1972 Rules, in such a lengthy order.

19. We are really surprised about the attitude of the respondents and the nature of the steps taken at various stages. When this Tribunal found fault with the process of “dovetailing” and alteration of the entire seniority list of STS, in the name of implementation of the orders passed in OA No. 679/1991, the proper exercise ought to have been to address the issue specifically. Instead, not only they added finality and legality to the exercise leading to the seniority list dated 04.02.2008 for the post of STS but also have taken the same to the further level of JAG (Selection Grade). In between, there existed a stage of JAG (Ordinary Grade) (S.No.6 in Appendix-I) and they were purposely skipped.

20. The manner in which the promotion from one post to another has to take place is mentioned in Rules 25 and 26 of the rules. They read as under:-

“25. Recruitment to the post of Junior Time Scale Officer by Promotion: Recruitment by promotion of Junior Time Scale Officer mentioned in serial number 8 of Appendix – I annexed to these rules shall be made by selection on merit from among suitable person from the lower posts indicated therein on the recommendations of a duly constituted Departmental Promotion Committee. In case where a member of the Commission is included in the Departmental Promotion Committee, he shall act as Chairman.

26. Recruitment to certain posts by promotion:-

(1) Promotion to posts or grades or Time Scales shown at serial numbers 1 to 4 and 6 of Appendix I annexed to these rules shall normally be made by selection on merit from the lower grades. Promotion to posts of Junior Administrative Grade (Selection Grade) at serial number 5, shall be made according to seniority based on suitability taking in to account the overall performance, experience and other related matters. Promotion to posts in senior Time Scale at serial number 7 of Appendix I shall be made on the basis of seniority-cum fitness from amongst suitable officers from the corresponding lower posts on the recommendations of a duly constituted Departmental Promotion Committee.

(2) The minimum years of service to be rendered in the various posts or grades or time scales for the purpose of promotion specified in Appendix –II annexed to these rules.”

21. From Rule 26, it is evident that the promotion from JTS (S.No.8) to STS in (S.No.7) is on the basis of seniority-cum-fitness among the suitable officers from

corresponding lower posts and the promotion from JAG (ordinary grade) to JAG (Selection Grade) (S.No.5) is by way of selection. Once the selection process is involved, the seniority has to be fixed as per the rank assigned by the Selection Committee. The seniority held by the officers in the feeder category virtually becomes irrelevant. When such is the clarity under the rules, the respondents have virtually brought about a parallel system through an order dated 10.04.2008. Though, this Tribunal expressed its reservations about it, the respondents proceeded to add legality to the same and implemented the same at various stages.

22. It is fairly well settled that when a particular Service is governed by a set of rules, the administrative instructions or orders cannot substitute the same. If the authorities intend to undertake an exercise different, from the one contained in the rules, or to supply certain additional aspects, it is open to them to do so only by amending the rules and not otherwise. Since entire exercise undertaken by the respondents is contrary to the 1972 Rules, it cannot be sustained in law.

23. Though the applicants have claimed reliefs in different forms, such as to protect their positions that existed earlier or to restore them to the same places in some other posts, we are not addressing the same individually. Since the issue is recurring in nature, we feel it appropriate to require the respondents to undertake the exercise, strictly in accordance with the 1972 Rules. In case, any method of induction at the level of STS for the purpose of promotion to JTS (Ordinary Grade) other than the one provided for under the 1972 Rules or the practice that existed by the year 1994 is felt necessary, it can only be by amendment of the Rules, that too for future selections. Any steps taken in any different way are required to be corrected.

24. We are conscious of the fact that several promotions have taken place and many employees have retired over the years. The corrective steps to be taken by the respondents shall be in the form of assigning the proper place to the officers by strictly applying the 1972 Rules. In case of retired employees, no further steps need be taken. As regards the officers who are still in service, they shall be assigned the proper place in the posts at various

levels by taking the 1994 seniority list of STS as basis. In case it becomes necessary to revert them to a lower post, the procedure prescribed shall be followed by issuing a show cause notice.

25. We, therefore, allow the O.As. by:

- (a) setting aside the order dated 12.09.2014 and the seniority list appended thereto;
- (b) directing the respondents to undertake promotions and to prepare seniority list at various levels in the IOFS strictly in accordance with the Indian Ordnance Factories Service (Group-A) Recruitment Rules, 1972; and
- (c) directing the respondents to undertake the exercise of assigning the proper place to various officers at various stages in service, on a notional basis. If an officer has retired from service, nothing needs to be done, and for those in service, proper places shall be assigned by taking the Seniority list of STS 1994 as basis. If this results in detriment to any other officer or reversion, the affected parties shall be issued notice before taking final action.

In some of the O.As., the UPSC is impleaded as party. Throughout the discussion, we do not find any steps taken by the UPSC. Therefore, we discharge the UPSC from the array of parties.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/Jyoti/Ankit/