

**(2010) 07 DEL CK 0316**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 1230 of 1999

Union of India (UOI) and Another

APPELLANT

Vs

A.K. Singhal and Others

RESPONDENT

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**Date of Decision :** 29-07-2010

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 20(2)  
Constitution of India, 1950 — Article 226, 227

**Citation :** (2010) 07 DEL CK 0316

**Hon'ble Judges :** Valmiki J Mehta, J; Sanjay Kishan Kaul, J

**Bench :** Division Bench

**Advocate :** R.V. Sinha, A.S. Singh and Sangeeta Raj, for the Appellant; K.T. Anantharaman, for the Respondent

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## **Judgement**

Valmiki J Mehta, J.—By means of this petition under Articles 226 and 227 of the Constitution of India, the Union of India through the Secretary, Ministry of Power and the Central Electricity Authority, the petitioners, seek setting aside of the order dated 24.9.1998 passed by the Central Administrative Tribunal (CAT). By the impugned order dated 24.9.1998, the Original Application (OA) filed by the private respondent Nos. 1 to 4 herein (hereinafter referred to as the "successful private respondents") before CAT was allowed whereby they were given seniority over the private respondent Nos. 3 to 9 in O.A. No. 266/94 and the private respondents Nos. 3 to 14 in O.A. No. 267/94. These latter private respondents are hereinafter referred to as the "unsuccessful private respondents".

2. Two points arise for determination in the present case and were so canvassed by the counsel appearing on behalf of the petitioners. The first issue and the ground of challenge raised was that the OAs were either barred by the limitation or by the principle of delay and laches. The second argument and issue is that the grant of seniority to the successful private respondents herein (applicants in the OAs) was in violation of the Office Memorandums issued by the Ministry of Home Affairs on 22.12.1959, 20.4.1961 and 12.9.1968. It is argued that as per

these office memorandums, the seniority of the unsuccessful private respondents ought to have been over the successful private respondents because the seniority is not on the basis of the seniority as per the select list prepared as per the original appointments but on the basis of differing dates of confirmations of the private respondents.

3. The facts of the case are that the private respondents belong to the Central Power Engineering Services Group-A. These private respondents, i.e. both these successful and unsuccessful private respondents belong to the 1979 and 1980 batch. The recruitment of these private respondents was through regular channel through examination and selection as per the merit list prepared and approved by the UPSC. In this select list, as prepared by the UPSC, the successful private respondents were placed higher than the unsuccessful private respondents. Subsequently, on 25.8.1986 a provisional seniority list was issued wherein the unsuccessful private respondents were shown higher in the seniority list than the successful private respondents. Other seniority lists followed thereafter between 1986 to 1991, though no promotions were made pursuant to these subsequent lists. A representation was given by one of the successful private respondents to the seniority list of 1986, however, this representation was not decided. Thereafter, the seniority list was issued on 26.9.1991 which again showed the successful private respondents below the unsuccessful private respondents and again a representation dated 25.6.1992 was made to the petitioners which failed to elicit any response. The petitioners, thereafter, published the impugned seniority list dated 24.2.1993 which reflected materially the same position as in the seniority lists of 1986 and 1991. Since promotions were sought to be effected on the basis of this seniority list of the year 1993, the successful private respondents approached CAT and have succeeded in their OAs thereby granting them seniority over the unsuccessful private respondents.

4. So far as the issue of limitation and delay/laches is concerned, we do not find that there is any error in the impugned order. Admittedly, no promotions of the unsuccessful private respondents took place pursuant to the earlier seniority lists and therefore there was no immediate cause of action for the successful private respondents to have approached CAT. Not only that, the list of 1986 was admittedly only a provisional seniority list and there was therefore no need to challenge the same except making a representation there against and which admittedly was made. There would not arise the issue of applicability of the petition being barred u/s 20(2) of the Administrative Tribunals Act, 1985 inasmuch as admittedly there are no rules prescribing a representation and consequently there would not be an issue of any limitation with respect to such a representation. The Tribunal has on the issue of limitation rightly observed as under:

15. We have carefully considered the rival submissions. First we will take up the plea of limitation. We notice that the OA has been admitted. The applicant has filed this OA on 3.1.1994. He has challenged the seniority list as Annexure-A-10

dated 24.2.1993 because he has not received any reply to his representations to earlier seniority lists dated 25.6.1992 and because the seniority list dated 24.2.1993 perpetuated according to them the illegality of the earlier seniority lists. The respondents only state that the representations were not traceable. The genuineness of the filing of the representations was not denied. If the 1993 seniority list was only a repetition of earlier seniority list, the question at issue is why it was issued at all? The moment the 1993 seniority list is issued, for whatever reasons, it gives a cause of action to the applicants. We will presently see that the inter se seniority fixed by the respondents is not based on correct law. We are satisfied that the grounds relating to limitation would not apply in the special facts and circumstances of this particular case.

5. So far as the second issue is concerned viz of applicability of the Office Memorandums of the years 1959, 1961 and 1968, we need to refer to only one memorandum of the year 1959 as all other memorandums are same. A reference to this office memorandum of the year 1959, and which is relied upon by the learned Counsel for the petitioner to contend that the seniority list will be in terms of differing dates of confirmations and not as per the order of merit in the select list prepared at the time of initial appointments, we find that the said memorandum does not apply to the facts of the present case as it applies only where persons are recruited on temporary basis. Admittedly, the successful private respondents as also the unsuccessful private respondents were appointed on a regular basis through examination and interview and after approval of UPSC. It cannot be therefore contended that the private respondents were appointed on a temporary basis. They were, in fact, appointed on a regular basis, subject, of course, to completion of the probation period. The learned Counsel for the petitioners does not dispute that the letters of appointments of the private respondents refer to the appointments of these private respondents on "officiating" basis, i.e. surely not on temporary basis. The appointments of the private respondents thus not being temporary, there is no scope for applicability of the OMs relied on behalf of the petitioners.

6. At this stage, we may note that the counsel for the petitioners has strenuously challenged certain observations made in paras 20 and 21 of the impugned order with regard to roster point system for promotion and other directions. During the course of hearing, it transpires that these directions have not been followed by the petitioners and therefore parties are agreed that the observations made in paras 20 and 21 in the impugned order were really not necessary for the Tribunal to decide this case and in fact are also not necessary for us to pronounce upon for deciding the present case. Therefore, we make it clear that we are leaving the issues open with respect to the directions given by the Tribunal in paras 20 and 21 of the impugned order and we express no opinion either way on the observations made therein.

7. Finally, we take on record the statements made by the counsel appearing for the successful private respondents that these successful private respondents are

not claiming any monetary benefits pursuant to the impugned order and nor are they claiming any acceleratory promotion. They only seek to sustain the impugned order for the purpose of drawing up of a seniority list in their present post viz. of Director on such basis and the further promotions made or to be made.

8. Accordingly, we do not find any merit in this petition to exercise our jurisdiction under Articles 226 and 227 of the Constitution of India. No gross illegality or perversity has been shown in the impugned order. The petition is, therefore, dismissed and we direct the petitioners to draw a seniority list in terms of the impugned order whereby the OAs were allowed giving benefit of seniority to the successful private respondents as against the unsuccessful private respondents. The necessary seniority list be now made showing the proper placement of the successful private respondents in their present posts of Directors in the petitioner No. 2 and all promotions effected or to be effected should be according to the seniority in the post of Director.

The petition is accordingly disposed of, leaving the parties to bear their own costs.