REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2021
(Arising out of SLP(Civil) No(s).6572 OF 2014)

SUDHIR KUMAR ATREY .....APPELLANT(S)

VERSUS

UNION OF INDIA & ORS. .....RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). OF 2021
(Arising out of SLP(Civil) No(s).5275 OF 2021)

J U D G M E N T

Rastogi, J.

1. Leave granted.

2. Both the above appeals, although have been decided by separate judgment by the High Court of Delhi and the Punjab and Haryana High Court, but since the self-same question is being raised

in the instant appeals, hence are being decided by the present judgment.

3. The undisputed facts in brief relevant for the purpose are that headed by the Engineer-in-Chief since its inception, the Military Engineering Service for administrative purposes was bifurcated into five Commands being the Eastern, Western, Northern, Southern and the Central Command with an officer of the rank of Chief Engineer being the administrative head and controller of each Command. There existed a separate cadre of Superintendents for buildings and roads and a separate cadre for electrical and mechanical equipment having the posts of Superintendent (B/R) Grade II and Grade I as also Superintendent (E/M) Grade II and Grade I. The service conditions are governed by the Military Engineering Service (Non-Industrial Class III and IV Posts) Rules, 1971 (hereinafter being referred to as "1971 Rules").

4. On 9th December, 1982 a letter was sent from the office of the Engineer-in-Chief Branch, Army Headquarters to the Chief Engineers of all the five Commands for initiating the recruitment of

Group 'C' personnel in the Grade of Superintendent (B/R) Grade II and Superintendent (E/M) Grade II, intimating as under :

"90027/A/E1C(I) 09 DEC 82

The Chief Engineer

HQ Southern Command, Pune

HQ Eastern Command, Calcutta

HQ Western Command, Simla

HQ Central Command, Lucknow

HQ Northern Command, C/o 56 APO

PLANNING OF RECRUITMENT OF PERSONAL IN THE GRADE OF SUPDT B/R AND SUPDT E/M GDE II

As a result of the recent promotions of Supdt B/R and Supdt E/M Gde II to Supdt Dde and keeping in view the likely increase in the establishment during the next year it is expected that nearly 700 to 1000 Supdt B/R and E/M Gde-II will have to be recruited to make good the deficiencies in these categories. Command wise break down of the approximate requirement of personal is estimated as under:

Command	Approximate requirement of Superintendent	
	B/R Gde II	E/M Gde II
Southern Command	250	60
HQ Eastern Command	50	25
HQ Western Command	280	20
HQ Central Command	160	50
HQ Northern Command	60	15
Total	800	170

2. In order to meet the requirement on the ground, it is essential to plan the recruitment action well in advance. Please therefore, advised the CE Zones to probe all State Govt/Central Govt. employment exchanges and ascertain availability of suitable candidates (Diploma Holders) for appointment to the above posts.

Please also cause letters to be issued by employment exchanges diploma courses institution on opening available.

3. Board of officers with presiding officers not below the rank of Lt Col/SE will be convened by CE Command to interview and select suitable candidates to be sponsored by employment exchanges.

4. In order to reduce the posting of personal from one State to another to the barest minimum, it will be helpful if the recruitment is made from the concerned region for filling up the vacancies existing/likely to occur in that regions.

5. The result of the communication made to various employment exchanges as per para 2 above may be intimated to this HQ by 10 Mar 83.

6. Please acknowledge."

5. Pursuant to the directives issued from the Headquarters, process of selection at the same time was initiated by the office of Chief Engineer in all the five Commands followed with the separate select list in the order of merit in each of the respective Commands came to be published in the year 1983. In Western Command, a select panel of 261 candidates was published on 29th June, 1983. In sequel thereof, appointments were made as per the select list notified based on the order of merit in their respective Commands. The trouble arose when candidates who were selected and placed in the select panel dated 29th June, 1983 of the Western Command but curiously after 5 years down the line were appointed from April 1987 to April 1988 in the Western Command and their names are

indicated from S. Nos.258 to 277 as under. It may be noticed that S. No.257 in Western Command was appointed on 2nd November, 1983 from the same select panel of 29th June, 1983.

"REVISED ALL INDIA SENIORITY LIST OF JE (CIV) AS ON 01.04.2004

SER NO.	COMD	MES NO. & NAME OF THE OFFICER	DATE OF REGULAR APPTT TO THE GDE OF B/R 1	YEAR OF PROMOTION/ PANEL
257.	WC	313753 Ashok Kumar Garg	02.11.83 B/R-II	83/057 29.06.83
258.	WC	344542 Sudhir Kumar Atrey	27.04.87 B/R-II	83/065 29.06.83
259.	WC	314685 Bharat Bhushan	05.06.87 B/R-II	83/068 29.06.83
260.	WC	314436 Kuldip Singh	20.04.87 B/R-II	83/116 29.06.83
261	WC	314503 Suresh Kumar Yadav	25.04.87 B/R-II	83/125 29.06.83
262	WC	314738 Anil Kumar	23.04.87 B/R-II	83/127 29.06.83
263	WC	314555 Om Prakash	24.04.87 B/R-II	83/188 29.06.83
264	WC	314894 Brij Prakash	25.04.88 B/R-II	83/150 29.06.83
265	WC	314814 Dharma Vir Singh	30.04.88 B/R-II	83/152 29.06.83
266	WC	314644 Ranbir Singh Verma	10.04.87 B/R-II	83/158 29.06.83
267	WC	314495 Parash Ram	22.04.87 B/R-II	83/159 29.06.83
268	WC	314811 Satish Kumar Sharma	07.05.88 B/R-II	83/164 29.06.83
269	WC	314506 Narender Singh	22.04.87 B/R-II	83/169 29.06.83
270	WC	314786 Subhash Chander Bajaj	12.04.88 B/R-II	83/183 29.06.83
271	WC	314972 Arun Kumar	18.04.88 B/R-II	83/184 29.06.83

272	WC	314978 Bharat Bhushan	08.04.88 B/R-II	83/188 29.06.83
273	WC	314875 Suresh Chander	22.04.88 B/R-II	83/199 29.06.83
274	WC	314836 Ved Singh	29.04.88 B/R-II	83/209 29.06.83
275	WC	314837 Bhagirath Swamy	29.04.88 B/R-II	83/214 29.06.83
276	WC	314876 Hardev Singh	21.04.88 B/R-II	83/221 29.06.83
277	WC	314840 Jatinder Pal	15.04.88 B/R-II	83/223 29.06.83

6. These candidates were appointed from the select list of June 1983 in the Western Command from April 1987 to April 1988. Their seniority was accordingly determined by the respondents on the basis of their date of joining. Their grievance was that as they are the candidates of the select panel of June 1983 and as per the consistent practice and as per the OM issued by the Government of India dated 3rd July, 1986, seniority of the candidates who are selected by direct recruitment is to be determined in the order of merit regardless to their date of joining are entitled to claim seniority with their counterparts who were appointed out of the select panel dated 29th June, 1983 of Western Command in the year 1983 and after rounds of litigation before Central Administrative Tribunal/High Court, the matter has travelled to this Court to determine the inter se seniority of such persons who, although

selected in June 1983 in Western Command, but whether their date of joining service at a later stage will be a guiding factor when the combined All India seniority of the five Commands is prepared or seniority will relate back to their placement assigned in the select panel of June 1983 of Western Command regardless to the fact of their joining at a later stage, anterior to the period one has taken birth in the Department.

7. It is an admitted position that at the given point of time, selections were held independently by the respective Chief Engineer to whom powers have been delegated to hold recruitment in their respective Commands, but after the appointments are made, a consolidated inter se seniority list of the Commands at All India level was to be notified and since officers are holding transferable posts could be transferred from one Command to the other in exigency of service and indisputedly there is no provision under the Scheme of 1971 Rules or guidelines which would govern the seniority of persons who are appointed in their respective Commands, how their inter se combined seniority of Commands at All India level is to be published.

8. To shorten the litigation, Central Administrative Tribunal, Principal Bench in OA No.164 of 2007, while examining the afore-stated question took note of the Scheme of Rules and posed the question as to whether such applicants, who although were approved in the panel prepared by the Western Command in 1983, but were appointed after a gap of 5 years in 1987/1988, are they entitled for determination of their seniority as per their placement in the order of merit in the select panel of the year 1983 or will be entitled to claim seniority from the date of their appointment, and to be more specific, the incumbents who raised their grievance in claiming seniority are Sudhir Kumar Atrey, appellant in Civil Appeal @ SLP (C) No.6572 of 2014 and Satish Kumar Sharma and Jatinder Pal, respondents in Civil Appeal @ SLP (C) No.5275 of 2021 and their names in the list of candidates have been referred to in the seniority list, at serial nos.258, 268 and 277 respectively.

9. Since 1971 Rules were silent in determining seniority inter se of the candidates selected in their respective Command at the stage when a combined All India seniority list is to be prepared and for determination of seniority, reliance was placed on the DoPT OM

dated 3rd July, 1986 which broadly examined the determination of seniority between the direct recruits and promotees, seniority of transferees, seniority of special type of cases, as adverted to.

10. The Office Memorandum dated 3rd July, 1986 issued by the DoPT laying down the principles for determination of seniority of persons appointed to service on posts in Central Government, of direct recruits and promotees of one and the same select panel, seniority of transferees and those who are recruited in special type of cases and the extract of the OM with which we are concerned is referred to hereunder:

> "OFFICE MEMORANDUM
>
> Subject : SENIORITY – Consolidated orders on.
>
> The undersigned is directed to say that instructions have been issued by this Department from time to time laying down the principles for determining seniority of persons appointed to services and posts under the Central Government. For facility of reference, the important orders on the subject have been consolidated in this Office Memorandum. The number and date of the original communication has been quoted in the margin so that the users may refer to it to understand fully the context in which the order in question was issued.
>
> SENIORITY OF DIRECT RECRUITS AND PROMOTEES
> (MHA O.M. No.9/11/55-RPS dated 22.12.59)
>
> 2.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the U.P.S.C. or other selecting authority, persons appointed as a result of an earlier

selection being senior to those appointed as a result of a subsequent selection.

2.2 Where promotions are made on the basis of selection by a D.P.C., the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him."

11. The OM dated 3rd July, 1986 deals with determination of seniority of direct recruits who are selected and placed in one and the same select panel by the order of merit in the select list and those who are selected in the earlier selection shall remain senior to such persons who are appointed in the later selection.

12. Admittedly, the different Commands carried out separate selections and published its select panel in the year 1983, the normal principle of adjudging seniority in their respective intra Command can be on the basis of placement in the order of merit, but this principle may not apply when the separate selections are held by the respective Command and later a combined inter se seniority list

at the headquarters is to be prepared at All India level is not meted out in OM dated 3rd July, 1986.

13. To sum up the situation, Central Administrative Tribunal, Principal Bench, in dealing with the situation as emerged afore-stated, in its order dated 26th May, 2008, observed in paras 23 and 24 as under:

> "23. From Annexure 'O', we can gather that the real issue required to be examined with reference to this dispute, had not been attempted. Office Memoranda referred to in the order could not have had any application as far as the case at hand was concerned. The applicants were entitled to get seniority from the date of their initial appointment and so far as this has been overlooked in Annexure 'O', the same is required to be appropriately modified. The general question, whether seniority from the date of appointment, or the date of panel, cannot have application in these circumstances since appointments had not been made by one and the same Command. Even if it was applicable by stretching, the long delay in conferment of appointment could not have been gone unnoticed.
>
> 24. However, we do not think it is necessary to unsettle the whole list at this point of time. We direct that in the matter of adjudging seniority, the principle of initial date of appointment/continuous officiation should be borne in mind and the principle of panel seniority was inapplicable and not possible to be followed as far as claims of applicants and similarly situated are concerned vis-à-vis respondents 4 to 9. Consequently, we direct that appropriate modification to the seniority list appended to Annexure 'O' is to be brought, and circulated. The applicants will be entitled to the aforesaid benefits as declared by us and their seniority should be with reference to their date of appointment. O.A. is disposed of. No costs."

14. The Tribunal finally observed that while adjudging seniority in such a complex situation where scheme of Rules or guidelines are

silent in determining inter se seniority of the Commands at All India level, the only possibility and the rationale rule would be to have their seniority reckoned from the date of entering into service when he is compared to the person who belonged to yet another Command and it will be illogical if the incumbent who was appointed earlier is pushed down below the persons who were later appointed as in the instant case after almost 4 to 5 years of the select panel being published in June 1983 and has not even taken birth in the Department are allowed to claim seniority anterior to the date of joining service.

15. The Tribunal and the High Court in the judgment impugned has made strong observations and commented in regard to the manner in which the appointments were made from the select panel of 1983 after it has outlived its life in the year 1987-1988 and ordinarily it was not open to be operated upon and such appointments are nothing but a clear abuse of the discretion vested with the competent authority and we also have our serious reservation in regard to the procedure/manner which was adopted by the authority in making appointments in Western Command from the select panel of

29th June, 1983 after a lapse of 4-5 years in the year 1987-1988, when the successive selections are held in the interregnum, but it reveals from the record that no one has questioned their appointments and by this time more than 34 years have rolled by and much water has flown in the Ganges and persons have later promoted to their promotional posts and few of them have retired and some of them are at the verge of retirement.

16. At the same time, two incumbents who approached the Central Administrative Tribunal at Chandigarh and succeeded in claiming seniority from the date of their placement in the select panel of 29th June, 1983 regardless of their appointment in the year 1987 or 1988 respectively and confirmed by the High Court on dismissal of the writ petition filed at the instance of the Union of India by a judgment dated 17th September, 2018, the seniority list qua them was revised and they were further promoted on the higher promotional posts and after full term of service being rendered, Jatinder Pal respondent no.1 in Civil Appeal arising out of SLP(C) No.5275 of 2021 is going to retire in March 2022 and Satish Kumar Sharma, respondent no.2 in Civil

Appeal arising out of SLP(C) No.5275 of 2021 had retired from service in October, 2018.

17. It is not disputed that there is no rule or guidelines issued by the respondents which may determine the inter se seniority when a combined seniority list at the All India level is to be prepared under the Scheme of 1971 Rules and the respondents were taking assistance of Office Memorandum of DoPT dated 3rd July, 1986 which deals with the determination of seniority of direct recruits who were selected and placed in one and the same select panel to be determined by the order of merit in the select list and those who are selected in the earlier selection shall remain senior to such persons who were appointed in the later selection and also with regard to relative seniority of direct recruits vis-a-vis the promotees in the cadre.

18. We are also of the view that in the matter of adjudging seniority of the candidates selected in one and the same selection, placement in the order of merit can be adopted as a principle for determination of seniority but where the selections are held separately by different recruiting authorities, the principle of initial date of

appointment/continuous officiation may be the valid principle to be considered for adjudging inter se seniority of the officers in the absence of any rule or guidelines in determining seniority to the contrary.

19. Adverting to the facts of the instant case when all the five Commands have initiated the process of selection independently at the same time pursuant to the directives of the Engineer-in-Chief, Army Headquarters dated 9th December, 1982 while adjudging their combined inter se seniority list, the principle of initial date of appointment/continuous officiation may be the valid principle to be considered for determination of inter se seniority in the absence of any rule or guidelines to the contrary keeping in view the principles laid down by the Constitution Bench of this Court in ***Direct Recruit Class II Engineering Officers' Association*** **Vs.** ***State of Maharashtra & Ors.***[1].

20. The Division Bench of the High Court of Delhi in its impugned judgment has expressed its conformity with the view expressed by the Tribunal so far as the determination of combined inter se

[1] (1990) 2 SCC 715

seniority at the All India level is concerned, but at the same time has made strong observations regarding the procedure being followed by the authority in making appointments from the select panel of June 1983 after 5 years of the selection in the year 1987/1988.

21. The appointment of individual which was made at a later stage after five years from the select panel notified on 29th June, 1983 in the Western Command cannot be countenanced by this Court but in the peculiar circumstances, we are not inclined to open the dead issue at this stage, but as a matter of caution, we would like to observe that the authorities must be held accountable for their arbitrary action and save the institution from uncalled for litigation.

22. In compliance of the Tribunal's order dated 26th May, 2008, seniority list was to be drawn with reference to para 24 of the judgment of which reference has been made and we are in agreement with what has been expressed by the Tribunal while recasting the inter se consolidated seniority list of five Commands based on their initial date of appointment/from the date of entry into service. If any person is aggrieved with his placement in the re-casted seniority list prepared in compliance with the order of the Tribunal, he will always

be at liberty to assail his placement in seniority in the independent proceedings in accordance with law.

23. At the same time, we disapprove the view expressed by the High Court of Punjab and Haryana in its judgment dated 17th September, 2018. Since the seniority list of the respondents in Civil Appeal @ SLP (C) No.5275 of 2021 was revised pursuant to the judgment impugned, although the principles laid down have not been approved by this Court, but the fact remains that both the incumbents were promoted in terms of their revised seniority to the higher promotional post and one of them had retired from service in October 2018 and the other incumbent is at the verge of retirement in March 2022, in these peculiar circumstances, this Court in exercise of its power under Article 142 of the Constitution to do complete justice is not inclined to disturb the seniority which has been assigned to them in compliance with the order of the Tribunal although on principle has not been accepted/approved by this Court.

24. Consequently, Civil Appeal @ SLP(C) No.6572 of 2014 is dismissed and Civil Appeal @ SLP (C) No.5275 of 2021 succeeds and is allowed and the impugned judgment dated 17th September, 2018

is set aside without disturbing the status of the respondents (Jatinder Pal and Satish Kumar Sharma).

25. Pending applications, if any, stand disposed of.

.....J.
(AJAY RASTOGI)

.....J.
(ABHAY S. OKA)

NEW DELHI
OCTOBER 26, 2021