

V. Vincent Velankanni

v.

The Union of India and Others

(Civil Appeal No(s). 8617 of 2013)

30 September 2024

[Sandeep Mehta* and R. Mahadevan, JJ.]

Issue for Consideration

Whether the seniority of the appellant is to be reckoned from the date of induction/initial appointment or as per the date of promotion/confirmation in the skilled grade.

Headnotes[†]

Service Law – Promotion – Seniority – Date of induction – Date of promotion – The GO dated 24.12.2002 issued by the Ordinance Factory Board placed on record clarifies the position regarding counting of seniority by laying down that seniority will be counted from the date of promotion to skilled grade and not from the date of induction/entry/promotion in semi-skilled grade – However, the appellant has placed reliance on GO dated 04.08.2015, the rule position qua the fixation of seniority has been restored to be governed by OM dated 04.11.1992, according to which the relevant date for fixation of seniority would be the date of initial appointment and not the date of upgradation/promotion to the skilled grade:

Held: The clarification issued vide GO dated 04.08.2015 does not operate retrospectively as it is specifically provided in the said GO that “henceforth”, the seniority in respect of Industrial Establishments will be governed by the relevant clause of OM dated 04.11.1992 – It is trite law that an Office Memorandum/ Government Order cannot have a retrospective effect unless and until there is an express provision to make its effect retrospective or that the operation thereof is retrospective by necessary implication – If a Government Order is treated to be in the nature of a clarification of an earlier Government Order, it may be made applicable retrospectively – Conversely, if a subsequent Government Order is held to be a modification/amendment of the earlier Government Order, its application would be prospective as retrospective application thereof would result in withdrawal of

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vested rights which is impermissible in law and the same may also entail recoveries to be made – In the instant case, the subsequent GO dated 04.08.2015 cannot be read simply as a clarification and therefore cannot be made applicable retrospectively – The said GO has substantively modified the position governing seniority in the Industrial Establishments by reviving the earlier OM dated 04.11.1992, and supersedes the orders/circulars dated 24.12.2002 and 13.01.2003, which were holding the field over more than a decade – Therefore, giving retrospective effect to the GO dated 04.08.2015 would have catastrophic effect on the seniority of the entire cadre – As much water has flown under the bridge and retrospective application of the GO issued in 2015 would open floodgates of litigation and would disturb the seniority of many employees causing them grave prejudice and heartburn as it would disturb the crystallized rights regarding seniority, rank and promotion which would have accrued to them during the intervening period – This Court is of the view that applicability of the Government Order dated 04.08.2015 cannot enure to the benefit of the appellant as its operation is clearly prospective. [Paras 41, 42, 43, 50, 51]

Case Law Cited

Pawan Pratap Singh and Others v. Reevan Singh and Others [2011] 2 SCR 831 : (2011) 3 SCC 267; *Sonia v. Oriental Insurance Co. Ltd. and Others* [2007] 8 SCR 883 : (2007) 10 SCC 627; *Sree Sankaracharya University of Sanskrit and Others v. Dr. Manu and Another* [2023] 7 SCR 366 : 2023 SCC OnLine SC 640; *Malcom Lawrence Cecil D'Souza v. Union of India and Others* (1976) 1 SCC 599; *R.S. Makashi and Others v. I.M. Menon and Others* [1982] 2 SCR 69 : (1982) 1 SCC 379; *K.R. Mudgal and Others v. R.P. Singh and Others* [1986] 3 SCR 993 : (1986) 4 SCC 531; *B.S. Bajwa and Another v. State of Punjab and Others* [1997] Supp. 6 SCR 451 : (1998) 2 SCC 523 – relied on.

BSNL v. R. Santhakumari Velusamy [2011] 14 SCR 502 : (2011) 9 SCC 510; *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra* [1990] 2 SCR 900 : (1990) 2 SCC 715; *Suresh Chandra Jha v. State of Bihar and Others* [2006] Supp. 8 SCR 831 : (2007) 1 SCC 405; *L. Chandrakishore Singh v. State of Manipur and Others* [1999] Supp. 3 SCR 323 : (1999) 8 SCC 287; *Ajit Kumar Rath v. State of Orissa and Others* [1999] Supp. 4 SCR 302 : (1999) 9 SCC 596; *L. Chandrakishore Singh v. State of Haryana*, AIR 1975 SC 613 – referred to.

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List of Keywords

Service Law; Promotion; Date of induction; Date of promotion; Seniority; GO dated 04.08.2015; GO dated 24.12.2002 issued by Ordinance Factory Board; Industrial establishment; Skilled grade; Semi-skilled grade; Retrospective effect; Prospective operation.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8617 of 2013
From the Judgment and Order dated 10.10.2011 of the High Court of Madras in WP No. 583 of 2011

With

Civil Appeal Nos. 10944 - 10946 of 2024

Appearances for Parties

R Nedumaran, Vijay Kumar, Prashant Bhushan, Anurag Tiwary, Advs. for the Appellant.

Vikramjeet Banerjee, ASG, Rupesh Kumar, Sr. Adv., Abid Ali Beeran P, Saswat Adhyapak, Sarath S Janardanan, Joydip Bhattacharya, Mrs. Anil Katiyar, Nachiketa Joshi, Ms. Priya Mishra, Rajesh Kumar Singh, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

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1. The instant appeal by special leave takes exception to the judgment dated 10th October, 2011 passed by the High Court of Judicature at Madras in Writ Petition,¹ whereby the Division Bench of the High Court accepted the writ petition² preferred by the private respondents herein³ and reversed the judgment dated 24th December, 2010 passed by the Central Administrative Tribunal, Madras Bench⁴ in Original

1 Writ Petition No. 583 of 2011

2 *Ibid*

3 Respondent Nos. 3, 4 and 5

4 'CAT', hereafter

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Application⁵ preferred by the private respondents herein. The CAT had rejected the Original Application,⁶ challenging the proposed action of revision and fixation of their seniority in the Engine Factory, Avadi, Chennai.⁷

2. The brief facts in a nutshell, relevant and essential for the disposal of the instant appeal are noted hereinbelow.
3. The appellant and the private respondents were engaged on semi-skilled posts such as Fitters and Machinists in respondent No.2-Factory. A common select list of candidates based on merit was issued by the General Manager of respondent No.2-Factory in the year 1995 wherein the appellant herein was placed at a higher position than the private respondents. An appointment order dated 17th January, 1996 was issued in the favour of the appellant for the post of 'Fitter General(semi-skilled)' in respondent No.2-Factory. He was initially placed on probation for a period of two years which was further extended for a period of six months w.e.f. 17th January, 1998. The appellant satisfactorily completed the probation period on 16th July, 1998. Thereafter, he was promoted to the 'Skilled' grade on 6th January, 1999.
4. A draft seniority list dated 28th July, 2006 was issued by respondent No.2-Factory, whereby the seniority of 'Fitters' was fixed as per their respective dates of promotion to the skilled grade and the appellant was placed at a lower position than the private respondents.
5. Aggrieved of the draft seniority list,⁸ the appellant submitted a representation dated 13th November, 2006 to the General Manager of respondent No.2-Factory seeking necessary amendments in the draft seniority list and to fix his position appropriately and thereafter, to publish a final seniority list. The General Manager rejected the aforesaid representation submitted by the appellant *vide* communication dated 9th July, 2007, observing that his seniority had been fixed from the date of holding the skilled grade, and thus the position of the appellant in the seniority list was not liable to be altered.

5 Original Application No. 318 of 2009

6 *Ibid*

7 'respondent No. 2-Factory', hereafter

8 Dated 28th July, 2006

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6. Being aggrieved, the appellant preferred Original Application No. 821 of 2007 before the CAT challenging the draft seniority list dated 28th July, 2006.
7. Another employee, namely, Mr. P. Kumaresan who was appointed as a Mechanist in respondent No.2-Factory in January 1996, also filed Original Application No. 831 of 2007, before the CAT, wherein Mr. P. Kumaresan also claimed that he had to be placed at the 6th position instead of the 27th position as set out in the draft seniority list. Original Application⁹ preferred by Mr. P. Kumaresan came to be allowed by the CAT holding that the seniority fixed in the draft list was incorrect. The CAT noted that respondent No.2-Factory had allowed the promotion to the juniors of Mr. P. Kumaresan on the ground that he was still undergoing the extended period of probation. The CAT held that it is settled law that once the extended period of probation is completed, the employee should be confirmed in service from the date of initial selection and should be assigned the original rank in the seniority list. Thus, once the extended period of probation came to an end and the employee was found suitable, he had to be confirmed in service, promoted with seniority and all consequential benefits to the next grade with reference to the date of initial appointment.
8. The CAT allowed Original Application No. 821 of 2007 preferred by the appellant herein *vide* order dated 23rd January, 2009, basing its decision on the order passed in Original Application No. 831 of 2007 considering the fact that both the workers were identically employed in respondent No.2-Factory and directed that the appellant was entitled to be considered for his claim of seniority and directed the respondents¹⁰ to revise the seniority list accordingly.
9. The private respondents herein filed Original Application No. 318 of 2009 before CAT against the proposed action of revision of seniority list and promotions in accordance with the order dated 23rd January, 2009 passed in the Original Application No. 821 of 2007 filed by the appellant. The said Original Application¹¹ was dismissed by CAT *vide* order dated 24th December, 2010 while granting the liberty to

9 Original Application No. 831 of 2007

10 Respondent Nos. 1 and 2

11 Original Application No.318 of 2009

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the applicants therein(private respondents herein) to file a review application for assailing the orders passed in Original Application No. 831 of 2007 and Original Application No. 821 of 2007.

10. However, private respondents herein rather than filing a review application, chose to assail the orders passed by the CAT by preferring a Writ Petition¹² before the Madras High Court which came to be allowed *vide* order dated 10th October, 2011. The Union of India¹³ and respondent No. 2-Factory were directed by the High Court to restore the seniority of the writ petitioners(private respondents herein), holding that the writ petitioners are senior to the appellant herein, both as per the date of initial appointment and also in the promotional post of skilled grade. The High Court held that an employee selected in the semi-skilled grade is required to complete the probation period satisfactorily and has to pass the requisite trade test prescribed for the post before he can be confirmed and promoted to the skilled grade. Due to the extension of the probation period of the respondents in the Writ Petition No.583 of 2011(including the appellant herein), they were required to be placed below the persons who were promoted to the skilled grade earlier to them. The High Court held that in the skilled grade, the writ petitioners(private respondents herein) were senior to the third respondent(appellant herein). It was also held that the promotions to the skilled grade and the highly skilled grade were carried out in the years 1998 and 2003, respectively but the third respondent (appellant herein) chose to file the Original Application¹⁴ in the year 2007 and no reason was forthcoming for the gross delay. The relevant extract from the High Court's judgment dated 10th October, 2011 is reproduced hereinbelow: -

“7. A mere reading of the counter affidavit would show that the probation of the third respondent in W.P. No. 583 of 2011 was extended by six months and for the third respondent in W.P. No. 584 of 2011, it was extended by three months by virtue of their failure to complete probation of two years and to pass the required trade test prescribed for the posts. Accordingly, the third respondent in W.P. No. 583 of

12 Writ Petition No. 583 of 2011

13 Respondent No. 1

14 Original Application No. 821 of 2007

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2011 was placed in the skilled grade only with effect from 6.1.1999 and third respondent in W.P. No. 584 of 2011 was promoted only with effect from 5.10.1998 whereas the petitioners in both the petitions were promoted to the skilled grade on 3.7.1998.

8. It is not in dispute that the Semi-Skilled grade is only has to complete the probation period satisfactorily and pass the requisite trade tests prescribed for the posts. In the present case, it is clear that due to extension of the probation period, the respondents were placed below the persons who were promoted to Skilled grade earlier than them. Even if the date of appointment is taken into consideration, the petitioners are seniors to the third respondent in these petitions.

9. That apart, the petitioners were promoted to the skilled grade in the year 1998 and to the highly skilled grade in the year 2003. But the third respondent in these petitions have chosen to file the original applications only in the year 2007 and no reason is forthcoming for the delay.

10. In view of the counter affidavit filed by the Department which is in favour of the petitioners and the fact that the petitioners are seniors to the third respondent in these petitions both as per the date of initial appointment and also the date of promotion to the skilled grade, we are of the view that revising the seniority list at the instance of the third respondent in the Writ Petitions in the guise of implementing the order of the Tribunal, is illegal. Therefore, in our considered opinion, the order of the Tribunal is to be interfered with.

11. For the aforesaid reasons, the writ petitions are allowed and the order of the Tribunal is set aside. The respondents 1 and 2 are directed to restore the seniority of the petitioners confirming their original date of promotion to the Highly Skilled Grade. After revising the seniority, the respondents are further directed to consider the case of the petitioners for subsequent promotion on par with their juniors.”

(quoted verbatim from the paper book)

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The judgment dated 10th October, 2011 passed by the Division Bench of the High Court is the subject matter of challenge in the instant appeal.

Submissions on behalf of the appellant:

11. Learned counsel appearing for the appellant urged that the High Court premised its findings on a totally erroneous reasoning that the challenge laid by the appellant to the draft seniority list was delayed and that the private respondents herein(writ petitioners) were senior to the appellant as on the date of initial appointment.
12. Learned counsel contended that the draft seniority list in the appellant's cadre was published in the year 2006 for the first time after the appointment of the appellant as well as the private respondents. Immediately on receiving the draft seniority list, the appellant herein made a representation against the same and when a favourable decision was not forthcoming, he approached the CAT for challenging the validity thereof. He submitted that the finding of the High Court that the private respondents herein(writ petitioners) were senior to the appellant as on the date of initial appointment is totally against the record.
13. He further urged that the extant rules do not provide that the promotion from Fitter(semi-skilled) to Fitter(skilled) would be dependent on passing the trade test. Thus, as soon as the appellant completed the probation period, his services would have to be confirmed and reckoned from the date of initial appointment, and by virtue thereof, the appellant would be entitled to be placed above the private respondents in the order of seniority.
14. Learned counsel submitted that the period spent during training/probation has to be reckoned for computation of length of service and the same cannot be excluded while assigning seniority to an employee. In support of his arguments, learned counsel placed reliance on the judgment of this Court in the case of **L. Chandrakishore Singh v. State of Haryana**.¹⁵
15. He further submitted that the movement of the employee from semi-skilled to skilled grade tantamounts to confirmation/ upgradation and

¹⁵ AIR 1975 SC 613

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not a promotion. In support of this contention, reliance was placed on the judgment of this Court in the case of *BSNL v. R. Santhakumari Velusamy*.¹⁶

16. Learned counsel also placed reliance on the Office Memorandum¹⁷ dated 4th November, 1992, issued by the Government of India, Department of Personnel and Training, which was in force at the time when the appellant and the private respondents were appointed, wherein, it is provided: -

“Seniority for Promotion

Order effective from 4th November, 1992

[Government of India, Department of Personnel and Training, Office Memorandum No. 20011/5/90-Estt. (D), dated the 4th November, 1992]

Seniority to be determined by the order of merit indicated at the time of initial appointment.- The seniority of Government servants is determined in accordance with the general principles of seniority contained in M.H.A., O.M. No. 9/11155-RPS, dated the 22nd December, 1959 (See Section II). One of the basic principles enunciated in the said OM is that, seniority follows confirmation and consequently permanent officers in each grade shall rank senior to those who are officiating in that grade.

2. This principle has been coming under judicial scrutiny in a number of cases in the past; the last important judgment being the one delivered by the Supreme Court on 2-5-1990, in the case of *Class II Direct Recruits Engineering Officers' Association v. State of Maharashtra*. In Para. 47 (A) of the said judgment, the Supreme Court has held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not-according to the date of his confirmation.

3. The general principle of seniority mentioned above has been examined in the light of the judicial pronouncement

¹⁶ [\[2011\] 14 SCR 502](#) : (2011) 9 SCC 510

¹⁷ 'OM', hereafter

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referred to above and it has been decided that seniority may be delinked from confirmation as per the directive of the Supreme Court in Para, 47 (A) of its judgment, dated 2-5-1990. **Accordingly, in modification of the General Principle 3, proviso to General Principle 4 and proviso to General Principle 5 (i) contained in O.M. No. 9/11155-RPS, dated the 22nd December, 1959 and Para. 2.3 of O.M., dated the 3rd July, 1986, it has been decided that the seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation.**

4. These orders shall take effect from the date of issue of this Office Memorandum. Seniority already determined according to the existing principles on the date of issue of these orders will not be reopened even if in some cases seniority has already been challenged or is in dispute and it will continue to be determined on the basis of the principles already existing prior to the date of issue of these orders.”

(emphasis supplied)

He thus urged that the seniority of a person regularly appointed would have to be reckoned based on the merit indicated at the time of the initial appointment and not as per the date of confirmation. To support this submission, he also placed reliance on the Constitution Bench decision of this Court in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra*.¹⁸

He thus implored the Court to accept the appeal, set aside the impugned judgment rendered by the High Court, and restore the judgment of the CAT.

Submissions on behalf of the respondents:

17. *Per contra*, learned counsel appearing for respondent Nos. 1 and 2 submitted that the appellant was appointed as Fitter General(semi-

18 [\[1990\] 2 SCR 900](#) : (1990) 2 SCC 715

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skilled) on 17th January, 1996. The semi-skilled grade is only a trainee grade and in order to be confirmed in service and for being promoted to the skilled grade, the employee would have to complete the probation period satisfactorily and pass the requisite trade test prescribed for promotion to the skilled grade. Only on passing the trade test, the employee would qualify for a permanent status and promotion to the skilled grade.

18. He further submitted that it is a settled law that in cases where there are no rules governing the field, it is the placement in the initial merit list that will decide the seniority, however, if the rules are in vogue, then the same will prevail. In this regard, he placed reliance on [*Suresh Chandra Jha v. State of Bihar and Others*](#).¹⁹
19. Learned counsel for the respondents placed reliance on Statutory Regulatory Order²⁰ No. 185 of 1994 dated 1st November, 1994 to urge that any appointment in the industrial establishment is done against the skilled grade and hence, the period spent in the semi-skilled grade till completion of probation period and qualifying the prescribed trade test for promotion to the skilled grade is considered only as a trainee grade. Resultantly, the seniority/merit position at the time of induction in the trainee grade would have no bearing on the *inter se* seniority of the employees which would have to be reckoned from the date the employee is confirmed and promoted to the skilled grade upon completing the probation period and clearing the trade test.
20. He further placed reliance upon the Government Order²¹ dated 24th December, 2002 issued by the Ordinance Factory Board, Ministry of Defence, Government of India, which was issued to clarify the counting of seniority in trades mentioned in SRO No. 185 of 1994 applicable to the Industrial Establishments and urged that the said GO clarifies beyond the pale of doubt that the semi-skilled grade is a trainee grade and the seniority will be counted from the date of promotion to the skilled grade and not from the date of induction/entry in the semi-skilled grade.

19 [\[2006\] Supp. 8 SCR 831](#) : (2007) 1 SCC 405

20 'SRO', hereafter

21 'GO', hereafter

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21. Learned counsel pointed out that the two years' probation period of the appellant was extended by six months w.e.f. 17th January, 1998, and the appellant could complete the probation period only on 16th July, 1998. Subsequently, upon passing the trade test, he was promoted to the skilled grade w.e.f. 6th January, 1999. The appellant lost the seniority on account of his failure to complete probation in the period of two years and clearing the trade test whereas, the private respondents herein had completed probation in time and were found to be fit in the trade test and therefore, they were promoted to the skilled grade much before the appellant. Consequently, these employees i.e. private respondents herein were placed higher in seniority, as per clarification issued by Ordinance Factory Board *vide* GO dated 24th December, 2002.

On these grounds, learned counsel for the respondents implored the Court to dismiss the appeal and affirm the order passed by the High Court.

22. Learned counsel for the private respondents herein²² adopted the submissions advanced by learned counsel for respondent Nos. 1 and 2.
23. We have given our thoughtful consideration to the submissions advanced at the bar by learned counsel for the parties and have gone through the impugned judgment and the material placed on record.

Discussion and Conclusion:

24. The fact that the appellant and private respondents were inducted as semi-skilled grade employees in respondent No. 2-Factory in the year 1996 is not in dispute. The common select list dated 22nd November, 1995 is not placed on record by the parties. However, appellant filed an RTI,²³ and the reply thereto dated 29th December, 2011 clearly shows that at the time of initial induction, appellant was placed at the 7th position, whereas the private respondents²⁴ were placed at the 30th, 31st and 32nd positions, respectively in the select list based on merit.

22 Respondent Nos. 3, 4, and 5

23 Right to Information

24 Respondent Nos. 3, 4 and 5

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25. The Division Bench of the High Court in the impugned judgment dated 10th October, 2011 has recorded a categorical finding that even if the date of appointment is taken into consideration, the writ petitioners(private respondents herein) are senior to respondent No.3(appellant herein). This finding seems to be *prima facie* erroneous because admittedly, the appellant herein was placed at 7th position and the private respondents were placed at the 30th, 31st and 32nd positions in the order of merit, as borne out from the record. Further, in writ petition²⁵ filed by the private respondents before the High Court and the counter affidavit filed by the respondents herein before this Court, there is no averment that these respondents were placed above to the appellant at the time of initial appointment. Rather the sole ground taken by the writ petitioners(private respondents herein) to oppose the prayer of the appellant was that the appellant was not able to complete his probation period and pass the trade test on time and thus, he was placed below the private respondents in the draft seniority list.
26. Before we adjudicate upon the issue of *inter se* seniority amongst the litigating parties, we find it necessary to comment on the appellant's approach towards filing his claim concerning his promotion in the highly skilled grade.
27. The appellant and the private respondents faced a common selection process and were appointed in the semi-skilled grade in the year 1996. The private respondents herein were promoted to the skilled grade on 11th January, 1998 and further promoted to the highly skilled grade on 20th May, 2003. On the other hand, the appellant was promoted to the skilled grade on 17th July, 1998(after completing his extended probation period of 6 months and clearing the mandatory trade test). Considering that the private respondents were promoted to highly skilled grade in May, 2003, the appellant in the normal course should also have been promoted to highly skilled grade by the end of the year 2003. However, as per the factual matrix, he was promoted to the highly skilled grade after around 5 years i.e. on 26th March, 2008. A tabular chart depicting the date of appointment and the date of promotion to skilled and highly skilled grade is placed below: -

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Name	Date of appointment in the Semi Skilled grade	Extension of probation	Effective date of satisfactory completion of probation	Date of promotion to Skilled grade	Date of promotion to the Highly skilled grade
V. Sivaraman (Respondent No. 3)	11.01.1996	NA	11.01.1998	03.07.1998	20.05.2003
G. Sudhakar (Respondent No. 4)	11.01.1996	NA	11.01.1998	03.07.1998	20.05.2003
P. Ramesh (Respondent No. 5)	11.01.1996	NA	11.01.1998	03.07.1998	20.05.2003
V. Vincent Velankanni (Appellant)	17.01.1996	By 6 months w.e.f. 17.1.1998 by order dated 5.2.1998	17.07.1988	06.01.1999	26.03.2008

28. The draft seniority list was published on 28th July, 2006. The appellant never questioned the denial of promotion to the highly skilled grade, till much after the publication of the draft seniority list. Admittedly, co-employees who were below the appellant in the select list of the year 1996 were promoted in the intervening period without any objection being raised by the appellant. After the publication of the draft seniority list in the year 2006, he chose to challenge the same and to consider his promotion to highly skilled grade with effect from 20th May, 2003 by filing an Original Application²⁶ before CAT only in the year 2007. Thus, it was the first time in 2007 that the appellant claimed his promotion with retrospective effect. However, this benefit of retrospective promotion was neither granted by the CAT nor by the High Court and thus, there is no need to delve into this aspect further.
29. The primary issue which requires adjudication is as to whether the seniority of the appellant is to be reckoned from the date of induction/initial appointment or as per the date of promotion/confirmation in the skilled grade.
30. It is a well-settled proposition that once an incumbent is appointed to a post according to the rules, his seniority has to be reckoned from

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the date of the initial appointment and not according to the date of confirmation, unless the rules provide otherwise.

31. In the case of [L. Chandrakishore Singh v. State of Manipur and Others](#),²⁷ this Court held that in cases of probationary or officiating appointments which are followed by a confirmation, unless a contrary rule is shown, the services rendered as the officiating appointment or on probation cannot be ignored while reckoning the length of service for determining the position in the seniority list. This view has been reiterated in the case of [Ajit Kumar Rath v. State of Orissa and Others](#).²⁸
32. The Constitution Bench of this Court in [Direct Recruit Class II Engg Officers' Assn. \(supra\)](#) stated the legal position with regard to *inter se* seniority of direct recruits and promotees and while doing so, *inter alia*, it was held that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.
33. This Court summarised the legal principles with regard to the determination of seniority in [Pawan Pratap Singh and Others v. Reevan Singh and Others](#)²⁹ in the following terms:
 45. From the above, the legal position with regard to determination of seniority in service can be summarised as follows:
 - (i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.
 - (ii) *Inter se* seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority *inter se* between one officer or the other or between

27 [\[1999\] Supp. 3 SCR 323](#) : (1999) 8 SCC 287

28 [\[1999\] Supp. 4 SCR 302](#) : (1999) 9 SCC 596

29 [\[2011\] 2 SCR 831](#) : (2011) 3 SCC 267

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one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

- (iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.
- (iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.

- 34.** Thus, it is trite that when an employee completes the probation period and is confirmed in service *albeit* with some delay, the confirmation in service shall relate back to the date of the initial appointment. Any departure from this principle in the form of statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution of India.
- 35.** In the backdrop of the above legal and factual background, let us now examine if whether the extant rules/regulations/circulars prevailing in the establishment³⁰ contained any stipulation that the completion of the probation period and the passing of the trade test is *sin qua non* for being promoted to the skilled grade and if so, whether the seniority of the employees selected on the same date would have to be reckoned from the date of confirmation/passing the trade test or from the date of initial appointment.
- 36.** A pertinent averment is made in the counter affidavit filed by the respondents emphasizing their stand that the semi-skilled grade is only a trainee grade and in order to place an employee in the skilled grade, he would have to complete the probation period satisfactorily

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and also clear the trade test as laid down in the SRO No. 185 of 1994. The relevant extract from SRO No. 185 of 1994 dated 1st November, 1994 is reproduced hereinbelow for the sake of ready reference. Note 6 of the said SRO reads as below: -

“Note 6. Wherever “Trade Test” is laid down in Column 12 of this Schedule such trade test shall be prescribed by the General manager of the factory or the Ordnance Factory Board. The term “Trade Test” will include written, oral and practical examination and aptitude test and interview and also statutory qualification test where applicable.”

37. The GO dated 24th December, 2002 issued by the Ordnance Factory Board placed on record clarifies the position regarding counting of seniority in the trades of SRO No. 185 of 1994 for the industrial establishments. The language of this GO is considered germane to the controversy and hence, the relevant portion thereof is extracted hereinbelow: -

“With a view to overcome doubts in counting of seniority in respect of industrial employees who are working in trades listed at Annexure ‘A’ of SRO 185/1994 it has been decided to interpret rules relating to seniority in consonance with existing SRO provisions. Accordingly, the following rules for determining seniority may be followed in all OFs with immediate effect.

1) Semi-skilled posts are training post for skilled posts of trades listed at Annexure ‘A’ of SRO 185/1994.

2) Educational Qualification/Technical Qualification will not be deciding factor while counting seniority for trades listed at Annexure ‘A’ of SRO 185/1994.

However, where passing of trade test/competency test or any other statutory certificate is required, the same must be adhered to and cannot be done away with.

3) Seniority will be counted from the date of promotion to Skilled grade and not from the date of induction/entry/promotion in semi-skilled grade.

4).....

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5).....

6) The above orders are in consonance with the existing SRO provisions and various court orders on the subject.”

(emphasis supplied)

- 38.** The validity of this GO³¹ was never assailed by the appellant at any stage either before the CAT or the High Court. A conjoint reading of SRO No. 185 of 1994 and the GO dated 24th December, 2002, which indisputably were applicable to the cadre of semi-skilled and skilled fitters in the respondent establishment³² at the relevant point of time would make it clear that the seniority in the skilled grade would have to be reckoned from the date of promotion to the skilled grade and not from the date of induction/entry in the semi-skilled grade and the candidate joining service in the semi-skilled grade would be mandatorily required to complete the probation period and also to clear the trade test for being promoted to the skilled grade. In the event of either of the two conditions not being met, the employee concerned would not be entitled to be promoted to the skilled grade.
- 39.** The appellant, in support of his plea, has placed reliance on a GO dated 4th August, 2015, whereby the GO dated 24th December, 2002 has been superseded and it has been decided by the Competent Authority that “henceforth”, the seniority in respect of Industrial Establishments would be governed by the relevant clause of OM dated 4th November, 1992(reproduced *supra*). The said GO dated 4th August, 2015 is reproduced hereinbelow for the sake of ready reference: -

“No. Per/I/Seniority/2015-16

Date: 04-08-2015

To

The Sr. General Managers/ General Managers

All Ordnance & Ordnance Equipment Factories

Sub: Determination of Seniority in connection with direct Recruitment in the Industrial Establishment.

Ref: (i) OFB Circular No. 590/OFBOL/A/I dated 24.12.2002

³¹ Dated 24th December, 2002

³² Engine Factory, Avadi, Chennai

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(ii) OFB Circular No. 590/OFBOL/A/I dated 13.01.2003

In connection with counting of Seniority in Annexure-A trades of SRO 185/1994 in the Industrial Establishment, above referred OFB Circulars clarified and directed that seniority in respect of Industrial Employees will be counted from the date of up-gradation to Skilled Grade and not from the date of induction/entry/promotion in the Semi-skilled grade.

Several references in this regard have been received at OFB and after due examination, it has been observed that the OFB Circulars under reference are not in line with the principles of seniority as laid down by DOPT from time to time.

Therefore, the Competent Authority has decided that in supersession of the above referred OFB Circulars dated 24.12.2002 and 13.01.2003, **henceforth**, seniority in respect of IEs will be governed by the relevant clause of DOPT OM No.20011/5/90-Estt(D) dated 4th November, 1992 and OM No.22011/7/86-Estt(D) dated 3rd July, 1986. Accordingly, promotion from Skilled to Highly Skilled Grade-II will be made as per the seniority fixed for Semi-skilled grade (entry grade) which will be arrived at as per merit of the select panel, without making any linkage to the date of up-gradation to the Skilled Grade.

It may so happen that a person lower in the merit list of recruitment (in Semi-skilled grade) joins earlier due to early clearance of PVR. In such case, the person lower in the merit list will complete his/her qualifying service and be up-graded to Skilled Grade on earlier date as compared to a person higher in the merit list. However, person higher in the merit list will not lose his seniority and will be placed above the person lower in the merit list after getting up-gradation to Skilled Grade.

(S. K. Singh)

Director/IR

For Director General, Ordnance Factories”

(emphasis supplied)

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40. By virtue of the above GO,³³ the rule position *qua* the fixation of seniority has been restored to be governed by OM dated 4th November, 1992(*reproduced supra*), according to which the relevant date for fixation of seniority would be the date of initial appointment and not the date of upgradation/promotion to the skilled grade. The OM dated 4th August, 2015 further clarifies that the person higher in the merit list will not lose his seniority and will be placed above the person lower in the merit list after getting upgradation to the skilled grade.
41. However, the clarification issued *vide* GO dated 4th August, 2015 does not operate retrospectively as it is specifically provided in the said GO that “**henceforth**”, the seniority in respect of Industrial Establishments will be governed by the relevant clause of OM dated 4th November, 1992.
42. It is trite law that an Office Memorandum/Government Order cannot have a retrospective effect unless and until there is an express provision to make its effect retrospective or that the operation thereof is retrospective by necessary implication. In this regard, we are benefitted by the observations of this Court in [*Sonia v. Oriental Insurance Co. Ltd. and Others*](#),³⁴ wherein it was held that:
- “11.In any view of the matter, law is well settled that an Office Memorandum cannot have a retrospective effect unless and until intention of the authorities to make it as such is revealed expressly or by necessary implication in the Office Memorandum.”
43. If a Government Order is treated to be in the nature of a clarification of an earlier Government Order, it may be made applicable retrospectively. Conversely, if a subsequent Government Order is held to be a modification/amendment of the earlier Government Order, its application would be prospective as retrospective application thereof would result in withdrawal of vested rights which is impermissible in law and the same may also entail recoveries to be made. The principles in this regard were culled out by this Court in a recent judgment of [*Sree Sankaracharya University of*](#)

33 Dated 4th August, 2015

34 [\[2007\] 8 SCR 883](#) : (2007) 10 SCC 627

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Sanskrit and Others v. Dr. Manu and Another,³⁵ in the following terms: -

“52. From the aforesaid authorities, the following principles could be culled out:

- i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.
- ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.
- iii) An explanation/clarification may not expand or alter the scope of the original provision.
- iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.”

44. Applying these principles to the case at hand, we are of the view that the subsequent GO dated 4th August, 2015 cannot be read simply as a clarification and therefore cannot be made applicable retrospectively. The said GO has substantively modified the position governing seniority in the Industrial Establishments by reviving the earlier OM dated 4th November, 1992, and supersedes the orders/circulars dated 24th December, 2002 and 13th January, 2003, which were holding the field over more than a decade. Therefore, giving retrospective effect to the GO dated 4th August, 2015 would have catastrophic effect on the seniority of the entire cadre.

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45. This Court has time and again dealt with the effect of altering the seniority list at a belated stage and how it may adversely affect the employees whose seniority and rank has been determined in the meantime. In this connection, reference may be made to ***Malcom Lawrence Cecil D'Souza v. Union of India and Others***,³⁶ wherein this Court held that: -

“9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one’s position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years..... Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

46. In ***R.S. Makashi and Others v. I.M. Menon and Others***,³⁷ this Court observed as follows: -

“33. We must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.”

47. In ***K.R. Mudgal and Others v. R.P. Singh and Others***,³⁸ this Court observed in the following terms: -

“2. ... A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years

36 (1976) 1 SCC 599

37 [\[1982\] 2 SCR 69](#) : (1982) 1 SCC 379

38 [\[1986\] 3 SCR 993](#) : (1986) 4 SCC 531

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of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity.”

48. In *B.S. Bajwa and Another v. State of Punjab and Others*,³⁹ this Court held that the seniority list should not be reopened after a lapse of reasonable period as it would disturb the settled position which is unjustifiable. The relevant extract is as follows: -

“7. ... It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable....”

49. It can easily be inferred that in the intervening period, before the GO dated 4th August, 2015 came to be issued, seniority of multitudes of employees must have been fixed according to the GO dated 24th December, 2002, which is according to the date of promotion to skilled grade and not from the date of induction/entry in semi-skilled grade. As a matter of fact, respondent Nos. 3, 4 and 5 who were below the appellant in the order of merit at the time of induction in the semi-skilled grade, have been promoted to the skilled grade and the highly skilled grade much before the appellant by application of the GO dated 24th December, 2002. The appellant did not question their promotions before any Court or Tribunal at any stage.
50. Thus, much water has flown under the bridge and retrospective application of the GO issued in 2015 would open floodgates of litigation and would disturb the seniority of many employees causing them grave prejudice and heartburn as it would disturb the crystallized rights regarding seniority, rank and promotion which would have accrued to them during the intervening period. To alter a seniority list after such a long period would be totally unjust to the multitudes of employees who could get caught in the labyrinth of uncertainty for no fault of theirs and may suffer loss of their seniority rights retrospectively.
51. Keeping in mind the afore-stated principles, we are of the view that applicability of the Government Order dated 4th August, 2015 cannot enure to the benefit of the appellant as its operation is clearly prospective.

39 [\[1997\] Supp. 6 SCR 451](#) : (1998) 2 SCC 523

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52. In wake of the above discussion, we find that the impugned judgment of the High Court does not suffer from any infirmity warranting interference.
53. This appeal is dismissed as being devoid of merit. No order as to costs.
54. Pending application(s), if any, shall stand disposed of.
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55. Delay condoned.
56. Leave granted.
57. In terms of the judgment passed in Civil Appeal No(s). 8617 of 2013, the present appeals are disposed of. No order as to costs.
58. Pending application(s), if any, shall stand disposed of.

Result of the Case: Appeals disposed of.

†Headnotes prepared by: Ankit Gyan