

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On: 16th August, 2010*
Judgment Delivered On: 10th September, 2010

+ **WP(C) 3090/2008**

DIRECTOR GENERAL I.C.F.R.E. & ANR. ...Petitioners
Through : Mr.Sanjay Katyal, Advocate

Versus

RAM PRAKASH & ORS. ...Respondents
Through: Ms.Jagriti, Advocate for
Mr.M.K.Bhardwaj, Advocate

WP(C) 3476/2008

J.S.SAXENA & ORS. ...Petitioners
Through : Mr.D.S.Mahendru, Advocate

Versus

UOI & ORS. ...Respondents
Through: Mr.I.S.Kohli, Advocate for
Mr.A.K.Sharma, Advocate for UOI

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Vide resolution No.1-8/89-RT dated 22.06.1990, Ministry of Environment and Forests, Government of India, decided to convert its attached unit 'Indian Council of Forestry Research and Education' (hereinafter referred to as "ICFRE") and its allied research institutes into an autonomous institution. Vide resolution No.1-8/87-RT issued by Department of Environment Forests and Wildlife, Ministry of Environment and Forests,

Government of India, modalities of the said conversion were prescribed, which resolution reads as under:-

“Whereas Government of India, have decided to constitute the Indian Council of Forestry Research and Education, a subordinate office of the Ministry of Environment and Forests into an autonomous institution vide Resolution No. 1-8/89-RT dated 22.6.1999 and,

Whereas the Indian Council of Forestry Research and Education Society, herein after called the society, has been constituted and registered as under the Societies Registration Act, 1860 vide Registration No.596/1990-91 dated 12.3.1991 of the Assistant Registrar Societies, Firms and Chits, Government of UP, Dehra Dun.

Now, therefore, Government of India hereby transfers w.e.f. June 1, 1991 the offices of the Indian Council of Forestry Research and Education, Dehra Dun, together with its research institutions set out below:-

- (1)Forest Research Institute, Dehra Dun.
 - (2)Institute of Forest Genetics and Tree Breeding, Coimbatore.
 - (3)Institute of Wood Science and Technology, Bangalore.
 - (4)Institute of Deciduous Forests, Jabalpur.
 - (5)Institute of Arid Zone Forestry Research, Jodhpur.
 - (6)Institute of Rain and Moist Deciduous Forest Research, Jorhat.
- to the Indian Council of Forestry Research and Education Society.

The Director General of Indian Council of Forestry Research and Education, and every employee holding office under him immediately before the handing over of the Council to the Society, shall be treated as on deputation with the Society but shall hold his office in the Society by the same tenure and upon same terms and conditions of other terminal benefits as he would have held such office, if the Society had not been constituted and shall continue to do so until the Society duly absorbs such employee in its regular service.

Provided that during the period of deputation of any such employee with the Society, the Society shall pay to the Central Government in respect of every such employee, such contribution towards his leave, salary, pension and gratuity as a Central Government may by order determine.

Provided that any such employee who has in respect of the proposal of the Society to absorb him in regular service intimated within such time as may be specified in this behalf by the Society, shall be absorbed by the Society.

Orders regarding transfer of assets and liabilities of the Indian Council of Forestry Research and Education, Dehra Dun to the Indian Council of Forestry Research and Education Society Dehra Dun would issue separately. Pending issue of the orders in this behalf, the Society would be entitled to the use of the assets in use at any or all of the subordinate officers afore-mentioned.” (Emphasis Supplied)

2. As evident from a reading of the resolution dated 30.05.1991, the employees working in ICFRE were placed on compulsory deputation under the newly constituted society. On 13.03.1992, resolution No.16-28/91-ICFRE was notified by the newly constituted society which provided that an option is being given to the employees working in ICFRE, either to get permanently absorbed in the society or to revert to the Central Government service; that the employees should exercise their option by 31.03.1992 and that the employees who would not opt for permanent absorption in the society will be placed at the disposal of Ministry of Environment and Forests which may accommodate them against suitable vacancies or transfer them to Central Surplus Staff Cell for redeployment.

3. Pursuant thereto, 3/4th of the employees working in ICFRE i.e. about 1448 employees decided to get permanently absorbed in the society and accordingly applied for being so absorbed. On 29.06.1992 resolution No.12-2/92-FE was

notified by Ministry of Environment and Forests, Government of India, informing that permanent absorption of ICFRE employees in ICFRE society shall take effect from 01.04.1993.

4. In view of the fact that a considerable number of ICFRE employees did not opt for permanent absorption in the society, another opportunity was given to the employees who had not opted for permanent absorption in ICFRE society; to opt for the same, vide resolution No.2-10/92-FE dated 31.07.1992 notified by the Ministry of Environment and Forests, Government of India. Be it noted here that the said resolution provided that the employees should exercise the option by 30.09.1992 and that the permanent absorption of the employees in the society shall take effect from 01.04.1993. Relevant also would be to note that along with the said resolution two notes containing clarifications in respect of doubts raised by the associations of employees of ICFRE as also detailing the service conditions of permanently absorbed of ICFRE society were also circulated.

5. Thereafter two more opportunities were given to the employees who had not opted for permanent absorption in the society to opt for the same vide circulars Nos.16-28/96-ICFRE dated 12.12.1996 and 16-28/97-ICFRE dated 09.10.1997 issued by the society.

6. In view of the fact that about 800 ICFRE employees were yet to exercise their options for permanent absorption in the society, another opportunity was given to the said employees to opt for the same vide resolution No.2-1/97-FE dated 21.05.1998 notified by Ministry of Environment and Forests, Government of India. The relevant portion of the said resolution reads as under:-

“9. The Central Government have now decided that a third and final opportunity be given to the Central Government employees in ICFRE by allowing them to exercise the option for absorption in the ICFRE society by 30th June 1998. Those

Central Government employees who would prefer to continue their present status are liable to be declared as "Surplus Staff" and also transferred from Dehra Dun to other Central Government establishments in or under the Ministry at any moment. If necessary, they can also be re-deployed at any time in accordance with the rules and provisions applicable to surplus Central Government employees. The services of the Central Government employees will also be reviewed in accordance with the provisions of FR 56 (j).

10. The Central Government employees who exercise options for absorption in the ICFRE will get all the benefits, including the two additional increments, given to all other absorbed employees and there will be no distinction in the matter of promotion and other service matters between the regular employees of the ICFRE and the newly absorbed Central Government employees."

7. Be it noted here that along with the afore-noted resolution dated 21.05.1998 detailed clarifications in response to the doubts raised by the associations of the employees of ICFRE were also issued by Ministry of Environment and Forests. It is most apposite to quote one of the clarifications issued by the Ministry:-

"(7) The seniority of the employees after their absorption in the Society in the existing grade/post should be protected and the services rendered by the employees in the existing post prior to absorption, shall also be counted alongwith the services rendered in the ICFRE society for the purposes of future promotion/early growth and their designation should not be changed.

There will be no distinction between the existing ICFRE employees and the Central Govt. optees absorbed in ICFRE on a later date as the Govt. has allowed retrospective absorption of the Central Govt. optees w.e.f. 1.4.93. The seniority and other service terms and conditions will be same once the Central Govt. optees get absorbed in ICFRE."

8. Thereafter another opportunity was given to the employees who had still not opted for permanent absorption in the society, to opt for the same, vide memorandum No.16-28/2000-ICFRE dated 14.08.2000 issued by the society, the relevant portion whereof reads as under:-

“The Govt. of India, Ministry of Environment and Forests, vide their letter No.2-1/97-FE dated 12.6.2000 have decided that all the Central Govt. employees working in ICFRE, who had earlier not opted for absorption in the service of this Council, may be provided the final opportunity to do so, giving a clear period of 6 weeks. The Ministry has asked to explain to such Central Govt. employees that in the event of their not opting for absorption in ICFRE, they will be treated as Central Govt. servants and they will be liable for redeployment through the Central Surplus Cell anywhere in the country under a Central Govt. office as per the existing rules/norms of the Central Surplus Scheme. The Ministry has further clarified vide their letter of even number dated 08.08.2000 that the Central Govt. employees opting for absorption in ICFRE will be absorbed with effect from a prospective date, i.e. 15.9.2000.....”

9. In spite of repeated opportunities given by the government, around 647 employees did not submit their options for permanent absorption in the society. Vide memorandums dated 01.01.2001 and 19.02.2001 issued by Ministry of Environment and Forests, the said 647 employees were declared as surplus staff and were directed to be re-deployed in other Central Government offices in terms of Central Surplus Scheme.

10. Aggrieved by the issuance of the memorandums dated 01.01.2001 and 19.02.2001 by Ministry of Environment and Forests, one ‘Van Anusandhan Sansthan Karamchari Sangh’ (herein after referred to as the “Association”), an association representing the interests of the employees working in erstwhile ICFRE who had not opted for permanent absorption

in the society as also some of the employees who had not opted for permanent absorption in the society filed an application bearing No.1372/2001 under Section 19, Administrative Tribunals Act, 1985 before Central Administrative Tribunal (hereinafter referred to as "CAT"), Principal Bench, New Delhi inter-alia seeking that:- (i) memorandums dated 01.01.2001 and 19.02.2001 declaring them as surplus staff be quashed and (ii) they be allowed to remain on compulsory deputation in the society till their superannuation, which application was dismissed vide judgment dated 03.01.2003. The relevant portion of the judgment passed by the Tribunal reads as under:-

"8. We have carefully considered the matter and perused the documents brought on record. The applicants, working with Indian Council of Forest Research and Education and an Association representing them are aggrieved that they have been rendered surplus. When the same Council was converted into a registered society, the staff were sent on deputation and permitted to exercise the option to join the Society. To start with 1448 employees joined the society with 838 persons staying back as Govt. employees. Thereafter more people joined the society, leaving 651 individuals remaining aloof, which included the applicants. These persons are found to have been given as many as four opportunities to decide their future with the society. They did not do so. Obviously therefore they remained Govt. servants and when the Govt. decided by its order F.No.2-63-2001-FE of 6.5.2002 to commission a number of posts, including those held by the applicants have been rendered surplus. The applicants have sought to forestall by this OA, requesting that they should be kept on compulsory deputation as was done and permitted to demit office in that manner, on their superannuation. Respondents have justifiably contested the claims. Applicants also do not deny that they have been given options to join the society on 28.2.96, 31.12.96 and 21.5.98, but they had not done so, each time seeking some

clarification or other and claiming that the respondents were holding vital information. It is also on record that the respondents had supplied to them, following the decision of the Allahabad Bench of the Tribunal in OA 660/92, Compendium of Rules and Regulations for the employees. This also has not satisfied them. Their only complaint is that the resolution of 22.6.90, converting the autonomous organization into a society has not been communicated to them which was improper. From the perusal of the said communication dated 22.6.90, brought on record by the respondent it is evident that it was only a letter intimating that the Govt. decided to convert the organization into a society. We are not at all convinced that this letter has affected the rights and service conditions of the applicants in any manner. On the other hand, we are confirmed in our view that the applicants have only been taking an intransigent attitude which no organization, much less a Govt. organization could be expected to put up with. It definitely is not for a minority of the staff to dictate terms as to how the concerned organization should function, when the Govt. at the highest level - in spite of the baseless protestation by the applicants - had taken a policy decision. It is also not for the staff to decide how they would like to be governed in the organization. While it may be justified by the staff to demand that their rights are not prejudicially affected the same right does not extend to directing that the organization should subjugate its interest to succumb to their demand. This is exactly what the applicants in this OA demand. In the facts and circumstances of the case as brought out on records it is clear that the respondents have acted fairly and reasonably. Nothing further could have been demanded by them.

9. We also note that the applicants are making a request that they be given status of compulsory deputationists with the Council/Society till their date of superannuation as in the case of ICAR, CSIR and Nuclear Power Corporation. The respondents have very clearly indicated that functions-wise and structure-wise the position in ICFRE is different from the other organization. We find the same to be so.” (Emphasis Supplied)

11. Aggrieved by the judgment and order dated 03.01.2003 by the tribunal, the applicants in O.A.No.1372/2001 before the tribunal filed a writ petition bearing No.1178/2003 under Articles 226 and 227 of Constitution of India before this Court. Vide order dated 24.07.2006, this Court disposed of the said petition, relevant portion whereof reads as under:-

“.....Learned Counsel for the respondents Mr. Sanjay Katyal, Standing Counsel, Central Government and on behalf of ICFRE, on instructions from the Secretary, ICFRE Mr. S. P. Singh, who is present in Court, says that he is instructed to make statement. Let his statement be recorded without oath.

Counsel for the parties have nothing further to add. Parties shall abide by the statements made today in Court. In terms of the statements made, nothing survives in this petition.

Petition stands disposed of.”

“STATEMENT OF MR. SANJAY KATYAL, ADVOCATE, COUNSEL FOR THE PETITIONER, WITHOUT OATH

The Central Government as a one time measure without it being a precedent is willing to absorb all the petitioners including all other eligible employees on deputation, who exercise their option to be absorbed with ICFRE within 30 days from today. The absorption shall be prospective. It is made clear that the period of deputation spent by the petitioners or other eligible employees who are similarly placed in service on compulsory deputation from Central Government, would be taken into consideration as past service for the purpose of determining the qualifying period for grant of pension. Pension is to be paid by ICFRE.

I have made this statement on the instructions of Mr.S.P. Singh, Secretary, ICFRE, who is present in Court.”

“STATEMENT OF MR. S.P. SINGH, S/O LATE SHRI S.P. SINGH, PRESENTLY SECRETARY OF ICFRE, R/O NEW FOREST FRI CAMPUS, DEHRADUN ON S.A.

I have heard the statement made by Mr. Sanjay Katyal, Central Government Standing Counsel, on my instructions. It would be the responsibility of the ICFRE to make the payment of pensionary benefits to eligible employees including petitioners and others, who exercise the option for being absorbed with ICFRE within 30 days from today. We shall also circulate and inform other employees/deputationists of this last chance being provided. Due provision and necessary financial arrangement for pensionary benefits would be made by us with assistance from the Central Government.” (Emphasis Supplied)

12. On 09.08.2006 memorandum No.1-1/2000/Pension Cell/ICFRE/Option was issued by ICFRE society, relevant portion whereof reads as under:-

“The Govt. of India, Ministry of Environment & Forests, vide their letter No.12-9/2003-FE dated 8th August, 2006, in pursuance of the Order passed by Hon’ble High Court Delhi in the matter of VASKS v/s UOI in CWP No.1178/2003 dated 24.07.2006, as a one time measure a final opportunity is given to the Central Govt. employees working in the ICFRE by allowing them to exercise their option for absorption in the regular services of the ICFRE Society latest by 24th August, 2006. Their absorption shall be from prospective date only. The Central Govt. employees who exercise their option for absorption in the ICFRE will get all the pensionary benefits as directed by the Hon’ble High Court in their final Order of 24th July, 2006 in the above CWP No.1178 of 2003...” (Emphasis Supplied)

13. Thereafter the applicants in O.A.No.1372/2001 before the tribunal filed an application bearing No.10352/2006 in W.P.(C) No.1178/2003 before this Court inter-alia, amongst others, seeking a direction to the effect that there shall be no distinction between the employees who were permanently

absorbed in terms of the order dated 24.04.2006 passed by this Court and the employees who were absorbed prior thereto regarding the matters of seniority, promotion and other service conditions. Vide order dated 25.08.2006, this Court disposed of the said application, the relevant portion whereof reads as under:-

“....Similarly, Mr. Rajeshwar K. Gupta points out that in his statement Mr. Sanjay Katyal has been described as “Counsel for the petitioner” which is not correct as it should read as “Counsel for the Respondent”. The same has also been corrected and initialed today.

As regards the remaining contents of the application, we are of the view that petitioners should first exercise their option and act on it and thereafter, whatever their legitimate grievances, can be represented to the Central Government and/or appropriate Appellate Forum and decided.

Mr. Sanjay Katyal, learned Counsel for the respondent legitimately points out that the petitioners on the one hand are not exercising their option and want to continue with their current position.

Mr. Rajeshwar K. Gupta, learned Counsel for the petitioners prays that 15 days time be granted for exercise of option as the option was circulated on 9th August, 2006. Learned Counsel for the respondent has no objection to the same. Accordingly, time to exercise option is extended by 15 days i.e. latest by 08 September, 2006.” (Emphasis Supplied)

14. Pursuant thereto, 96 employees including the respondents decided to opt for their permanent absorption in the society. The application(s) submitted by the respondents Nos.1-23 in the said regard reads as under:-

“With reference to the ICFRE Memorandum No.1-1/2006/Pension Cell/ICFRE/Option dated 9.8.06 on the subject cited above, I hereby opt for

absorption in the ICFRE Society with effect from the prospective date of 24.8.2006.

As my absorption will be subject to my resignation from the Central Government service, accordingly, this letter may please be treated as my technical resignation from the services of the Central Govt. with effect from my date of absorption in the ICFRE Society in terms of the aforesaid memorandum dated 9.8.06.

I also understand that this is the final opportunity of exercising option and no further chance in the matter will be given hereafter.”
(Emphasis Supplied)

15. On 02.04.2007 resolution No.36-1/2006-ICFRE was issued by the society, the relevant portion whereof reads as under:-

“1. As per ICFRE letter No.1-1/2006/Pension Cell/ICFRE/Option dated 29.01.2007 those Central Government employees who opted in favour of ICFRE society services as per decision of the Hon’ble High Court, New Delhi dated 24.07.2006 in the matter of Civil Writ Petition No.1178 of 2003 have been absorbed in the regular service of the ICFRE Society w.e.f. 09.09.2006. Accordingly, these fresh absorbed employees now become employees of the ICFRE Society w.e.f. 09.09.2006.

2. They are eligible for consideration for promotion as per Recruitment and Promotion Rules of ICFRE Society w.e.f. prospective date.

3. As already communicated to the Ministry, the seniority I respect of Central Government employees on their absorption in ICFRE Society w.e.f. 09.09.2006 shall be determined in accordance with the date of their absorption and with prospective effect only. As such, they will be placed below in the corresponding category/grade all existing ICFRE employees appointed from time to time on regular basis to the particular grade on the date (prospective date) of absorption of Central Government employees. The fixation of seniority of fresh absorbees will not any regular promotion to the next higher grade made prior to the effective prospective date of such promotion.”

16. In terms of the aforesaid resolution dated 02.04.2007, a provisional list dated 18.04.2007 was issued by the society wherein the employees who were absorbed in pursuance of the order dated 24.07.2006 passed by this Court in W.P.(C) No.1178/2003 including the respondents were placed below the employees who were absorbed prior thereto.

17. Aggrieved by the issuance of the resolution dated 02.04.2007 and provisional list dated 18.04.2007 by the society, the respondents filed representations before the society inter-alia seeking that date of their absorption in the society be taken as 01.04.1993 i.e. the date of absorption of the employees who had opted for permanent absorption in the society prior to the passing of the order dated 24.07.2007 passed by this Court in W.P.(C) No.1178/2003 and that their seniority be fixed on the said basis.

18. When the aforesaid representations filed by the respondents bore no fruitful results, the respondents filed an application under Section 19, Central Administrative Tribunals Act, 1985 before the tribunal. The case projected by the respondents before the tribunal was that:- (i) in view of ratio laid down by the Supreme Court in the decisions reported as K. Madhavan v Union of India (1987) 4 SCC 576 and Sub-Inspector Rooplal v Lt. Governor (2000) 1 SCC 644 that in case of a person who is initially taken on deputation and absorbed later, the service rendered by him in the same or equivalent grade in his parent department shall be taken into account in fixing his seniority in transferred department, the society was duty bound to take into account the services rendered by the respondents in the society prior to their absorption while fixing their seniority and (ii) the classification made between the employees who were absorbed in the society in pursuance of the order dated 24.07.2006 passed by

this Court in W.P.(C) No.1178/2003 and the employees who were absorbed prior thereto is not valid particularly in view of the resolution dated 21.05.1998 issued by Ministry of Environment and Forests, Government of India wherein the employees who had not opted for absorption in the society in the first instance were similarly placed with the employees who had done so. That the classification made between the respondents and employees who had also not opted for absorption in the society at the first instance on the basis of date of exercise of option for absorption in the society is patently illegal and violative of Articles 14 and 16 of Constitution of India.

19. In response thereto, it was contended on behalf of the society that it was expressly made clear to the employees who had filed W.P.(C) No.1178/2003 before this Court including the respondents that their absorption in the society shall be effective from prospective date i.e. 09.09.2006. Having opted for permanent absorption in the society on the specific condition that their absorption shall be effective from prospective date i.e. 09.09.2006, the respondents are estopped from claiming that their absorption be made effective from a retrospective date i.e. 01.04.1993.

20. During the pendency of the aforesaid application, the association filed a petition for Special Leave to Appeal under Article 136 of Constitution of India before Supreme Court challenging the order dated 24.07.2006 passed by this Court in W.P.(C) No.1178/2003, which petition was dismissed vide order dated 08.01.2008. The order dated 08.01.2008 passed by Supreme Court reads as under:-

“Inordinate delay of 403 days has not been explained properly. Permission to file SLP is declined. Special leave petition is dismissed.”

21. Vide judgment dated 31.03.2008 the Tribunal allowed the aforesaid application filed by the respondents. In a nutshell, it was held by the Tribunal that in view of clarification issued by the society that there will be no distinction between the employees who had opted for permanent absorption in the society in the first instance and those who had opted for the same at a subsequent stage it is not open to the society to treat the respondents differently from the employees who had not opted for permanent absorption in the society in the first instance and that in view of ratio laid down by the Supreme Court in the decision reported as Attar Singh Kaushik v Transport Department (2008) 1 SCC 440 that the deputationists who were senior to other deputationists in the parent department in the equivalent post shall continue to remain senior to such other deputationists in the transferred department, unless there exists a statutory rule to the contrary, the society could not have prepared the seniority list in complete disregard to the seniority of the respondents in their parent department. With regard to the plea of waiver and estoppel set up by the society, it was held by the Tribunal that the order dated 25.08.2006 passed by this Court in C.M. No. 10352/2006 in W.P.(C) No.1178/2003 makes it clear that the respondents by accepting the condition that their absorption in the society shall take effect from prospective date had not made any concession with respect to fixation of their seniority for had that been the case this Court would not have granted liberty to the respondents to raise their legitimate grievances including the grievances pertaining to fixation of seniority with the society and that it is a fundamental right to every government employee to be considered for promotion and

thus seniority being the determining factor for promotion cannot be waived off or subjected to the principle of estoppel.

22. Aggrieved by the impugned judgment and order dated 31.03.2008 passed by the Tribunal, the society as also some of the employees who were placed above the respondents in the provisional list dated 18.04.2007 have filed the afore-captioned petitions under Articles 226 and 227 of Constitution of India.

23. During the hearing before us, learned counsel for the parties reiterated the submissions advanced before the Tribunal.

24. In view of the contentions advanced by the parties and the impugned judgment passed by the Tribunal, following three questions arise for determination in the present petitions:-

I Whether the decision of Supreme Court in Attar Singh's case (supra) has been correctly applied by the Tribunal in the present case?

II Whether the classification made between the employees (including the respondents) who had opted for permanent absorption in the society in terms of the order dated 24.07.2006 passed by this court in W.P.(C) No.1178/2003 and the employees who had opted for the same in terms of the resolution dated 21.05.1998 issued by Ministry of Environment and Forests, Government of India by the society is violative of Articles 14 and 16 of Constitution of India?

III Whether the respondents had accepted the condition that the period spent by them in the society prior to their deputation shall not be taken into consideration for the purposes of fixation of their seniority?

25. Before dealing with the submission urged it may be highlighted at the outset that the claimants before the

Tribunal were taking obdurate postures evidenced by the facts that those who were given an option to be permanently absorbed under the society were clearly notified, on 2 occasions, firstly on 31.7.1992 and thereafter on 21.5.1998 that all benefits to which they were entitled to (including pension) as employees of the Central Government would be available to them. Wrongly taking a stand that terms of absorption in the society were not clearly informed to them, these persons did not opt for permanent absorption under the society. There may be nothing wrong with said act of not opting for permanent absorption under the society because the said persons had an option to opt or not to opt. But as a result of not opting for absorption under the society, they could not resist, being declared as surplus staff under the Government and requiring to be redeployed in other Central Government offices in terms of the Central Surplus Scheme. By no means could they compel the Government to treat them on compulsory deputation in the society. Suffice would it be to state that as a result of hiving off a unit by creating a society the Government no longer had jobs under it and was well within its right to have abolished the posts and in that view of the matter the person holding the post had to go home or be redeployed if there was a redeployment scheme. It is apparent that these persons were trying to ride on two boats and were predating on their options and were not acting bona fide.

26. We now deal with the three questions which arise for consideration and as noted above.

27. In Re: Question No. (I): In Attar Singh's case (supra), eight Assistant Sub-Inspectors of Delhi Police including Attar Singh came on deputation to Transport Department, Government of NCT of Delhi on different dates and they all

gave their willingness for absorption in the Transport Department. On 29.04.2003 Attar Singh got absorbed prior to the other seven officers although he was not the first one to come on deputation. The other seven officers got absorbed on 29.05.2003 i.e. a month after the absorption of Attar Singh Kaushik. A provisional seniority list was issued by the Transport Department wherein Attar Singh was placed above the other seven officers on basis of the fact that he was absorbed prior to the other seven officers. Feeling aggrieved by the placement of Attar Singh in the provisional seniority list, the other seven officers filed application (s) under Section 19, Administrative Tribunals Act, 1985 before the Tribunal, which application was allowed by the Tribunal. Feeling aggrieved by the judgment of the Tribunal, Attar Singh filed a writ petition under Articles 226 and 227 of Constitution of India before this Court. After having examined the relevant rules, particularly clauses pertaining to seniority of persons absorbed contained in Swamy's Manual on Establishment and Administration, and the records of the case, vide judgment dated 13.09.2006 in W.P.(C) No.6710, 6736/2003 and 1678/2004 titled as 'Ramesh Chander & Anr vs. Vishveshwar Dayal Sharma & Anr' it was held by this court that the Transport Department had committed an illegality in placing Attar Singh above the other seven officers in the provisional seniority list. Feeling aggrieved by the aforesaid judgment passed by this Court, Attar Singh filed a petition for Special Leave to Appeal before Supreme Court, which petition was dismissed by Supreme Court. The relevant portion of the aforesaid judgment of Supreme Court reads as under:-

“.....13. Clauses 3.1 and 3.4.1 of the Rules relating to seniority of the absorbtees from *Swamy's Manual on Establishment and Administration* read as under:

“Seniority of Absorbees

3.1. The relative seniority of persons appointed by absorption to a Central service from the subordinate officers of the Central Government or other departments of the Central or a State Government shall be determined in accordance with the order of their selection for such absorption.

3.4.1. In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for 'deputation/absorption'), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. *If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from—*

- the date he has been holding the post on deputation.

(or)

- *the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is earlier."*

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15. A bare perusal of the said provisions would furthermore clearly go to show that the position of the employees concerned in the same or equivalent cadre on regular basis in the parent department is a relevant factor for determining the inter se seniority. The date from which the employee had been holding the post on deputation is another relevant factor. However, it has also been provided that the date from which he has been appointed on regular post to the same or equivalent grade in his parent department, whichever is earlier would be considered for determining the inter se seniority. The Rules have rightly been interpreted by the High Court keeping in view its purport and tenor. The Rules are required to be interpreted harmoniously so as to give effect to all the relevant provisions. Makers of the Rules furthermore must be presumed to have in mind, while laying down the same, to give justice to all concerned. It is axiomatic that those who were senior in the parent department in the equivalent post should continue to be senior in

the deputed post unless there exists a statutory rule to the contrary....” (Emphasis Supplied)

28. From the afore-noted portion of judgment in Attar Singh's case (supra) it is apparent that the observations of the Supreme Court that *‘it is axiomatic that those who were senior in the parent department in the equivalent post should continue to be senior in the deputed post unless there exists a statutory rule to the contrary’* were made after harmoniously interpreting clauses 3.1 and 3.4.1 of Swamy's Manual on Establishment and Administration.

29. The clauses pertaining to seniority of persons absorbed, contained in Swamy's Manual on Establishment and Administration reads as under:-

“Seniority of Absorbers:

3.1. The relative seniority of persons appointed by absorption to a Central service from the Subordinate Offices of the Central Government or other departments of the Central or a State Government shall be determined in accordance with the order of their selection for such absorption.

3.2 Where such Absorbers are effected against specific quotas prescribed in the Recruitment Rules, the relative seniority of such Absorbers vis-a-vis direct recruits or promotees shall be determined according to the rotation of vacancies which shall be based on the quotas reserved for absorption, direct recruitment and promotion respectively in the Recruitment Rules. Where the vacancies in any quota or quotas are carried forward, the principles stated in Para 2.4.2 will apply, mutates mutants in determining inter se seniority of the appointees.

3.3 Where a person is appointed by absorption in accordance with the provisions in the Recruitment Rules providing of such absorption in the event of non-availability of suitable candidate by direct recruitment or promotion, such absorbee shall be grouped with direct recruits or promotees, as the

case may be. He shall be ranked below all direct recruits or promotees, as the case may be, selected on the same occasion.

3.4.1. In the case of a person who is initially taken on deputation and absorbed later (i.e, where the relevant Recruitment Rules provide for 'deputation/absorption'), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from- -the date he has been holding the post on deputation.

(or)

The date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is earlier.

3.4.2 The fixation of seniority of an absorbee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

3.5 In cases in which Absorbers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption. It was urged that the date of absorption would be determinative for the purposes of reckoning seniority.” (Emphasis Supplied)

30. A perusal of the aforesaid clauses shows that they would apply in cases where a person is appointed by absorption to a Central service from the subordinate officers of Central Government or other departments of Central or State Government.

31. In the instant case the respondents and other deputationists were appointed by absorption in the society which was an autonomous organization and not a department of Central Government. Thus, the provisions pertaining to seniority of persons absorbed contained in Swamy's Manual on Establishment and Administration would not apply in the present case, which in turn implies that judgment of Supreme Court in Attar Singh's case (supra) has no application in the present case. The Tribunal failed to take note of the said subtle but material distinction between Attar Singh's case (supra) and the present case and thus committed an illegality in applying the ratio laid down by Supreme Court in Attar Singh's case (supra) to the present case.

32. As regards the decisions of Supreme Court relied upon by counsel for the respondents to contend that the seniority of the respondents should have been fixed from a date prior to their absorption in the society, suffice would it be to state that the said decisions would have no application in the present case for the said cases pertain to fixation of seniority of deputationists in the transferred department vis-à-vis regular employees of the transferred department whereas the issue involved in the present petitions pertains to fixation of inter-se seniority of the deputationists in the transferred department.

33. No rule or judicial decision has been shown to us by the respondents to the effect that the society which is an autonomous organization was required to fix the seniority of the respondents from a date prior to their absorption in the society.

34. In Re: Question No. (II): Pursuant to conversion of ICFRE into an autonomous organization and creation of ICFRE society, vide resolution dated 30.05.1991 issued by Ministry

of Environment and Forests, an option was given to the employees working in ICFRE and its allied research institutes either to get permanently absorb in the society or to revert back in Central Government service. A considerable number of employees chose to not to opt for permanent absorption in the society on the ground that there is an uncertainty in the conditions of service in the society. Thereafter as many as three opportunities were given to the employees to opt for permanent absorption in the society. In order to address the doubts expressed by the employees who had not opted for permanent absorption in the society, clarificatory notes as also notes detailing conditions of service in society were circulated to the said employees. Despite that, considerable number of the employees still chose to not to opt for permanent absorption in the society.

35. To put a quietus to the matter, resolution dated 21.05.1998 was issued by Ministry of Environment and Forests, Government of India wherein detailed answers were given in response to the clarifications sought by the employees who had not yet opted for permanent absorption in the society. Furthermore, a benefit was extended to the said employees that there will be no distinction between the employees who would opt for permanent absorption in the society in terms of the resolution dated 21.05.1998 and the employees who had opted for the same prior thereto. In spite of that, some of the employees including the respondents persisted with their decision of not opting for permanent absorption in the society. At this stage, in view of the fact that Ministry of Environment and Forests, Government of India had answered all queries raised by the employees with respect to condition of service in the society and had also extended a

benefit to them, there was no valid reason for the said employees for refusing permanent absorption in the society.

36. Thereafter two more opportunities were given to the said employees to opt for permanent absorption in the society. The first opportunity was given vide memorandum dated 14.08.2000 issued by the society and the second opportunity was given during the pendency of W.P.(C) No.1178/2003 before this court. On both the occasions, it was made clear to the employees that their absorption shall take effect from a prospective date. The said employees opted for permanent absorption in the society only when they were declared surplus by the government and had no option but to opt for the same.

37. From the aforesaid conspectus of facts, it is crystal clear that the said employees were adopting 'wait and watch' policy and were travelling in two boats at the same time. It is apparent that the said employees were watching the progress of their respective cadres in central government service and the society and were seeking to join the cadre which would emerge as a better cadre in the future.

38. Article 14 of Constitution of India is designed to prevent discrimination. It seeks to prohibit a person or class of persons from being singled out from others similarly situated or circumstanced for the purpose of being specially subjected to discrimination. It, however, does not prohibit classification, if such classification is based on legal and relevant considerations.

39. In the instant case, the employees who had opted for permanent absorption in the society in terms of the resolution dated 21.05.1998 issued by Ministry of Environment and Forests, Government of India were refusing to opt for the same for bona fide reasons as some of the doubts raised by

them regarding conditions of service in the society were not fully addressed by the government till that time. In that view of the matter, the government decided to give them the benefit of retrospective operation of the date of their absorption in the society. Whereas the employees who had opted for permanent absorption in the society in terms of the order dated 24.07.2006 passed by this court in W.P.(C) No.1178/2003 were refusing to opt for the same for mala fide reasons as already stated in foregoing paras. Thus, in view of their conduct, the said employees were not entitled to get any benefit from the government. In such circumstances, the government was well justified in classifying the aforesaid two sets of employees for the purposes of determining the date of their absorption in the society.

40. In Re: Question No. (III): The order dated 24.07.2006 passed by this court in W.P.(C) No.1178/2003 records that the absorption of the employees who had filed the said writ petition and other similarly situated employees would take effect from a prospective date and that the period on deputation spent by such employees in the society would be taken into consideration as past service for the purpose of determining the qualifying period for grant of pension. The office memorandum dated 09.08.2006 issued by the society in pursuant to order dated 24.07.2006 passed by this court reiterated that the absorption of the employees in question would take effect from a prospective date. The condition prescribed for absorption of the employees in question in the society that the absorption of the said employees would take effect from a prospective date necessarily implies that the period spent by such employees in the society prior to date of their absorption could not be taken into consideration for determining their seniority in the society. The only concession

given in respect of past services of the employees in the society was for the purposes of determining the amount of pension payable to them.

41. Whether the Tribunal has correctly held that the order dated 25.08.2006 passed by this court in C.M.No.10352/2006 in W.P.(C) No.1178/2003 can be read to mean that the condition prescribed for the absorption of the said employees in the society that the absorption of the said employees would take effect from a prospective date does not imply that the period spent by such employees in the society prior to date of their absorption could not be taken into consideration for determining their seniority in the society?

42. As already noted herein above, C.M.No.10352/2006 was filed seeking a direction to the effect that there shall be no distinction between the employees who were permanently absorbed in the society in terms of the order dated 24.07.2006 by this Court in W.P.(C) No.1178/2003 and the employees who were absorbed prior thereto regarding the matters of seniority, promotion and other service conditions. While disposing of the said application, this court gave the liberty to the employees in question to raise their 'legitimate grievances' before Central Government and/or appropriate Appellate Forum. This court nowhere opined that the grievances raised by the employees in question are legitimate but left the issue pertaining to legitimacy of the grievances for the consideration of Central Government and/or appropriate Appellate Forum. In that view of the matter, the answer to the question posed in para 38 above is NO.

43. In the decision reported as Indu Shekhar Singh v State of UP (2006) 8 SCC 129, respondents Nos.2, 3, 4 and 6 therein were appointed in U.P. Jal Nigam on diverse dates. State of U.P. created Ghaziabad Development Authority in exercise of

its power under UP Urban Planning and Development Act, 1973 (herein after referred to as the "Act"). On 25.06.1985 State of U.P. notified UP Development Authorities Centralised Service Rules 1996 (herein after referred to as the "Rules") in exercise of its power under the Act. Respondents Nos. 2, 3 4 and 6 were deputed to Ghaziabad Development Authority on diverse dates. Rule 5-A of the Rules provided for absorption only of the employees deputed from Development Authorities in Centralised Service. Notwithstanding the fact that UP Jal Nigam was not a development authority, vide letters dated 27.08.1987 and 28.11.1991 issued to respondents Nos.2 and 4 they were asked to communicate their acceptance for absorption in Centralised Service subject to the conditions specified in the said letter. One of the conditions specified therein was that service of the respondents in UP Jal Nigam would not be taken into consideration for determination of their seniority in Centralised Service and that they would be placed below the employees appointed on regular basis in the seniority list. The offer contained in the aforesaid letters was accepted by the respondents Nos.2 and 4 therein. Respondents Nos.3 and 6 therein opted on their own for absorption in Centralised Service. An office order was issued by Government of UP wherein the employees who had joined the Centralised Service on a regular basis were placed above respondents Nos.2, 3, 4 and 6 therein in the seniority list, which order was impugned by respondents Nos.2 and 4 therein by filing a writ petition before the Allahabad High Court, which writ petition was allowed. In appeal, the Supreme Court set aside the judgment passed by the High Court. The observations made by the Supreme Court with regard to acceptance of condition prescribed in the offer letter issued to respondents Nos.2, 3, 4 and 6 are being noted herein under:-

"25. The respondents exercised their right of election. They could have accepted the said offer or rejected the same. While making the said offer, the State categorically stated that for the purpose of fixation of seniority, they would not be obtaining the benefits of services rendered in the U.P. Jal Nigam and would be placed below in the cadre till the date of absorption. The submission of Mr Verma that the period for which they were with the Authority by way of deputation, should have been considered towards seniority cannot be accepted simply for the reason that till they were absorbed, they continued to be in the employment of the Jal Nigam. Furthermore, the said condition imposed is backed by another condition that the deputed employee who is seeking for absorption shall be placed below the officers appointed in the cadre till the date of absorption. Respondents 2 to 4 accepted the said offer without any demur on 3-9-1987, 28-11-1991 and 6-4-1987 respectively.

26. They, therefore, exercised their right of option. Once they obtained entry on the basis of election, they cannot be allowed to turn round and contend that the conditions are illegal. (See *R.N. Gosain v. Yashpal Dhir*^o, *Ramankutty Guptan v. Avara*^l and *Bank of India v. O.P. Swarnaka*.)....

44. In the instant case, the respondents accepted the condition that the date of their absorption in the society shall take effect from a prospective date. The application submitted by the respondents for permanent absorption in the society itself recorded that the date of absorption of the respondents in the society shall take effect from a prospective date. Thus, in view of ratio laid down by the Supreme Court in *Indu Shekhar*'s case (supra), it has to be held that having accepted the condition that the date of their absorption in the society shall take effect from a prospective date, the respondents are estopped from claiming that their absorption in the society shall be deemed to take effect from a retrospective date and that their seniority be fixed on the said basis.

45. The net result of the above discussion is that the impugned judgment dated 31.03.2008 passed by the Tribunal deserves to be set aside.

46. Thus the petitions are allowed. Impugned judgment and order dated 31.3.2008 passed by the Tribunal is set aside. OA No.2171/2007 is dismissed.

47. There shall be no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

SEPTEMBER 10, 2010
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