

Central Administrative Tribunal
Principal Bench

OA-2518/2002

New Delhi, this the 17th day of September, 2003

Hon'ble Sh. V.K.Majotra, Member (A)
Hon'ble Sh. Shanker Raju, Member (J)

1. H.S.Dube
Foreign Trade Development Officer
Directorate General of Foreign Trade
Ministry of Commerce & Industry
Udyog Bhawan, New Delhi.

(presently posted and residing at Bhopal)
2. R.P.Meena
Foreign Trade Development Officer
Directorate General of Foreign Trade
Ministry of Commerce & Industry
Udyog Bhawan, New Delhi.
3. Smt. Ganpathy Ramanathan
Foreign Trade Development Officer
Directorate General of Foreign Trade
Ministry of Commerce & Industry
Udyog Bhawan, New Delhi.
4. M.K.Kaushal
Senior Investigator
Directorate General of Foreign Trade
Ministry of Commerce & Industry
Udyog Bhawan, New Delhi.

...Applicants.

(By Advocate Sh. R.R.Bharti)

Vs.

1. Union of India through Secretary
Ministry of Commerce & Industry
Directorate General of Foreign Trade
Udyog Bhawan, New Delhi.
2. Director General
Directorate General of Foreign Trade
Ministry of Commerce & Industry
Udyog Bhawan, New Delhi.
3. Deputy Director General
Directorate General of Foreign Trade
Ministry of Commerce & Industry
Udyog Bhawan, New Delhi.
4. Smt. Rita Mahna, Senior Investigator
Directorate General of Foreign Trade
Ministry of Commerce & Industry
Udyog Bhawan, New Delhi.

...Respondents

(By Advocate Sh. Rajiv Bansal for official
respondents and Sh. V.S.R.Krishna for private
respondents).

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ORDER

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By Sh. V.K.Majotra,

Applicant No.1 having passed away and his legal heirs not having been brought on record despite opportunity having been granted, OA abates in respect of applicant No.1 H.S. Dubey.

2. Applicants have challenged Annexure A-1 dated 18.6.2002 whereby respondents 4 to 7 who had been appointed as Statistical Investigator Grade-II on the basis of Investigators Examination 1988 conducted by the Staff Selection Commission (SSC) in the pre-revised pay scale of Rs.1400-2300 are redesignated/appointed as Investigator on the basis of the said examination retrospectively from the dates indicated against their names (February-March, 1989). It is alleged that Annexure A-1 has resulted in seniority list of Investigators in the Directorate General of Foreign Trade (Headquarters) as on 1.1.1991 respectively and consequently respondents 4 to 7 have been promoted as Senior Investigators retrospectively from 26.7.94 and seniority list in the grade of Senior Investigator has also been revised on 22.8.2002 (Annexure A-3) favouring respondents 4 to 7. Applicants have stated that no show cause notice has been issued to them for revising the said seniority list. Applicants have sought quashing of Annexures A-1, A-2 and A-3.

3. Learned counsel of the applicants stated that Statistical Investigator Grade-II and



Investigator are two separate cadres under the DGFT (Respondent No.2) having separate Recruitment Rules. These cadres had identical scale of pay before 1996 when Statistical Investigators Grade-II were given higher scale of pay of Rs.5000-8000 while Investigators were provided scale of pay of Rs.4500-7000. The channel of promotion from Statistical Investigator Grade-II is to the posts of Statistical Investigator Grade-I (Group 'B') in scale of pay of Rs.6500-10500 which in turn constitutes feeder cadre for entry against promotion quota to the Indian Economic services and Indian Statistical Services, both Group 'A' services. The channel of promotion from the post of Investigator is to the post of Senior Investigator in the scale of pay of Rs.5500-9000 and thereafter to the post of FTDO in the scale of Rs.6500-10500 which is the feeder cadre for entry to Indian Trade Service Group 'A' against promotion quota. The designations of Statistical Investigators Grade II and Grade I have been changed to that of Junior and Senior Investigators respectively from 23.2.99 without any change in their revised upgraded scales of pay. Respondents 4 to 7 were initially appointed as Statistical Investigators Grade II on the basis of nomination by the SSC in response to requisition dated 29.7.97. Applicants 1 and 2 were appointed as Investigators on the basis of nomination by SSC against a later requisition dated 22.2.88 and they joined on the post of Investigators on 22.5.89 and 26.7.89 respectively. Applicants 3 and 4 were subsequently appointed as Investigators on



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1.5.91 and 16.1.96 respectively. While applicants 1 to 4 were confirmed in the posts of Investigators, respondents 4 to 7 were confirmed as Statistical Investigators Grade II. It has been pointed out by the learned counsel of the applicants that respondents 4 to 7 have made representation dated 8.9.1989 (Annexure R-18) against their appointment on the post of Statistical Investigator Grade II and appointment of applicants who were lower in merit on the post of Investigator. However, this representation was rejected by respondents vide Annexure R-19 dated 6.7.1989. Learned counsel of the applicants relied on Uday Pratap Singh and others Vs. State of Bihar and others 1995 (1) SCSLJ 27 contending that seniority settled long ago cannot ^{be} destroyed with retrospective effect by executive orders.

4. On the other hand learned counsel of the private respondents 4 to 7 contended that applicants No. 1 and 2 were only in the reserve list of candidates and their names did not figure in the list of successful ~~list~~ recommended by the SSC. Wait listed candidates can be considered only in case some selected candidates do not join or leave posts or die within the period of six months of their joining. As such, applicants No.1 and 2 were not entitled to be appointed on the basis of the said examination unless there were unfilled vacancies due to non-joining of selected candidates etc. He further contended that it is established law that vacancies which were not advertised cannot be filled up from the reserve

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5 candidates and that unadvertised vacancies have to be first advertised so that all eligible candidates can apply in response to such advertisement. While no reserved vacancies for orthopaedically handicapped persons were advertised, applicant No.1 was appointed against a non-existent reserved vacancy in the orthopaedically handicapped quota. The other two posts having been already reserved in favour of SC and ST categories, the reservation of the third post for orthopaedically handicapped persons that too after declaration of the results of the examination was illegal for want of vacancy in the quota which resulted in 100% reservation in the recruitment, which is illegal. Learned counsel maintained that the private respondents had obtained higher merit in the examination but were not provided option in the post of Investigator and were appointed as Statistical Investigator. Learned counsel further stated that as the applicants were in the waiting list, they were not eligible for filling up unadvertised vacancies. Their appointment on unadvertised vacancies in collusion with the concerned officials amounted to fraud and such appointments are void ab-initio. Learned counsel of the official respondents endorsed the contentions of the learned counsel for private respondents and stated that investigations had revealed that calculation and reporting of vacancies to Staff Selection Commission was not done in accordance with rules, instructions and procedures for the purpose. The following glaring irregularities were discovered:-

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- "(i) sending requisitions in a fragmented manner;
 - (ii) working out the vacancies in excess of direct recruitment quota in violation of the recruitment rules;
 - (iii) modifying the requisition subsequent to the declaration of the results by Staff Selection Commission, by increasing the quota for orthopaedically handicapped category overlooking the claims of blind and deaf categories and in excess of the permissible limit and without following order;
 - (iv) accepting nominations (for the posts of Investigators) in contrast with the requisition sent and thereby making 100% reservation in a recruitment year."

He further stated that Director General has initiated enquiries against the delinquent employees.

5. It has been stated on behalf of the respondents that while applicants 3 and 4 were appointed on 24.4.1991 and 16.1.1996 as such their seniority has not at all been affected. Again, while OA against applicant No.1 stands abated and respondents 4 to 7 were appointed during February-March 1989, applicant No.2 had been appointed later than them, i.e., in May 1989. Second requisition to SSC had been sent only after diverting the respondents to the posts of Statistical Investigators. Applicants' names were not included in the list of selected candidates. As such, these wait listed applicants could not have taken precedence over the respondents 4 to 7 who were in the merit list for appointment on the post of Investigator. Learned counsel stated that though show cause notices were

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issued to the applicants, it is not necessary to issue any show cause notice when mistakes of Government are rectified for giving relief to the Government servants. Learned counsel relied on Punjab and Haryana High Court DB decision dated 14.8.1971 in 1974 SLWR 479 Shri Manohar Singh Lamba Vs. Dr. Gurbir Singh Dhillon.

6. We have considered the rival contentions carefully and also perused the material on record.

7. The results of Investigators Examination 1988 held by SSC do not include the names of the applicants among the selected candidates. They were placed in the waiting list. From Agenda for special Departmental Promotion Committee for promotion of Statistical Investigator Grade II of 1988 Batch ~~which~~ ^{it} is clear that while the first requisition for filling up of posts of Statistical Investigator Grade II was sent on 29.7.1987 on the basis of which respondent Nos.4 to 7 among others were selected, another requisition was sent to SSC on 22.2.88 for filling up three posts of Investigators and applicants were selected from the wait list against the first requisition to fill up vacancies on the basis of the second requisition. Obviously, respondents were higher in merit in the examination and as such were included in the list of successful candidates by the SSC. Applicants were in the waiting list, they were provided against the posts of Investigator after the

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meritorious selected candidates, i.e., respondents 4 to 7 had been appointed as Statistical Investigators. Applicants could not have been accommodated on unadvertised vacancies. It has been established by the investigations held by the respondents that serious irregularities were committed by the respondents in advertising the vacancies in a fragmented manner and modification of the requisitions subsequent to declaration of results. Filling up of unadvertised vacancies by the applicants who were in the waiting list is basically void ab initio. However, according to the respondents they have not taken any action towards termination of the services of the applicants. They have merely assigned correct seniority to respondents 4 to 7 in view of their merit position in the selection held by SSC on the basis of the first requisition. There is nothing wrong in providing relief to respondents 4 to 7 with retrospective effect by rectifying the omission/commission of the Government through the impugned orders. The ratio in the case of Manohar Singh Lamba (supra) renders support to such action. Normally seniority long settled has not to be disturbed but in a case where erroneous administrative actions not attributed to the employees have adversely affected their seniority prospects etc, there is nothing wrong if seniority of others has been changed even though it had been accorded several years ago as in the present case.

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no

8. In the result, there is no merit in the claim of the OA which must fail and is accordingly dismissed. However, without any costs.

S. Raju

(Shanker Raju)
Member (J)

V. K. Majotra

(V. K. Majotra)
Member (A)

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