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**Central Administrative Tribunal
Principal Bench**

**OA No.1206/1993
OA No.1288/1993
OA No.1603/2001
OA No.339/2002**

New Delhi, this the ^{26th} day of July, 2010

**Hon'ble Dr. Ramesh Chandra Panda, Member (A)
Hon'ble Dr. Dharam Paul Sharma, Member (J)**

OA NO.1206/1993

1. Shri Nagesh Singh,
S/o Shri Thakur Prasad Singh,
R/o 20/33, Rajpur Road,
Delhi Administration Officers Flats,
Behind STA, Delhi-110054.
2. Shri B. Bhandari,
S/o late Shri K.S. Bhandari,
SRO, Deptt. of Economic Affairs,
North Block, New Delhi.

...Applicants.

(By Advocate : None)

Versus

1. Union of India through
Ministry of Finance,
Dept. of Economic Affairs,
IES Cadre Controlling Authority,
New Delhi.
2. Shri P.D. Tshering,
C/o Respondent No.1.
3. Shri Suraj Bhan,
Adviser, Planning Commission.
4. Shri Surinder Singh,
Dy. Adviser, Planning Commission.
5. Shri Sodhi Lal Raulia,
Dy. Adviser, Planning Commission.

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6. Shri Sat Pasl,
Dy. Adviser, Planning Commission.
7. Shri B.D. Virdi,
Jt. Director,
Dept. of Company Affairs,
New Delhi.
8. Shri J.S. Negi,
9. Shri S.S. Negi
10. Shri M.P. Singh
11. Shri R.K. Chandolia
12. Shri S. Naik
13. Shri Yash Pal
14. Shri Amar Singh
15. Shri R. Swata
16. Shri Synram
17. Shri Sujan Singh
18. Shri O.P. Shemar
19. Shri D.P.S. Negi
20. Shri S. Chandra Shekar
21. Shri Om Prakash
22. Shri B.S. Mussania
23. Shri Jagdish Chander
24. Shri K.M.M. Alimaligshi

....Respondents

(By Advocate : Shri R.N. Singh)

OA No.1288/1993

Dr. A.K. Belwal,
R/o 137, Sukhdev Vihar,
New Delhi-110025.

...Applicant

(By Advocate : None)

Versus

Union of India through

1. The Secretary,
Ministry of Finance,
Dept. of Economic Affairs,
IES Cadre Section,
New Delhi.
2. The Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Dept. of Personnel & Training,
New Delhi.

My a/c

3. The Secretary,
UPSC, Dholpur House,
New Delhi.
4. Shri M. Ganesan,
Director (Economics),
Central Water Commission,
R/o DA-5C, DDA Flats,
Munirka, New Delhi-67.
5. Shri S.K. Ghorai,
Dy. Adviser, Planning Commission,
6. Shri P.P.P. Babu,
Economic Adviser,
Labour & Employment Adviser,
Ministry of Labour,
New Delhi.
7. Shri K.S Ludu
8. Shri J.K. Chahal
9. Shri S.C. Gautam
10. Shri A.S. Nikhade
11. Shri Swami Nath
12. Shri Brij Bhushan
13. Shri T.P. Biswas
14. Shri T. Yoganand
15. Shri M.R. Dohare
16. Shri Om Prakash
17. Shri V.I. Velayudhan
18. Shri Jai Deb Dass
19. Smt. Chandrakha Malaviya
20. Shri R.S. Kanade
21. Shri C. Chander Mohan
22. Shri B.C. Muda
23. Shri J.H. Ramfangzauva
24. Shri Debabata Dass
25. Smt. Gur Pyari
26. Shri M.S. Virdi
27. Shri Avtar Singh

...Respondents

(By Advocate : Shri R.N. Singh)

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OA No.1603/2001

Dr. A.K. Belwal,
 S/o Shri P.N. Belwal
 Aged about 55 years
 R/o 137, Sukhdev Vihar,
 New Delhi

...Applicant

(By Advocate : None)

Versus

1. Union of India through
 Secretary, Deptt. of Economic Affairs,
 Ministry of Finance,
 North Block, New Delhi.
2. The Secretary,
 Department of Personnel & Training,
 North Block, New Delhi.
3. The Secretary,
 UPSC,
 Shahjahan Road,
 New Delhi.

...Respondents

(By Advocate : Shri R.N. Singh)

OA NO.339/2002

1. Shri S.C. Gautam,
 Adviser,
 Commission for Agricultural Costs and Prices,
 Ministry of Agriculture and Cooperation,
 Krishi Bhavan, New Delhi-110001.
2. Shri Balram
 Adviser,
 Directorate of Economics and Statistics,
 Ministry of Agriculture and Cooperation,
 Krishi Bhavan, New Delhi-110001.
3. Shri M. Ganesan,
 Adviser (Transport Research),
 Ministry of Road Transport and Highways,
 IDA Building, Jamnagar House,
 Shh Jahan Road, New Delhi-110011.

My a/w

4. Shri K.S. Ludu,
Additional Development Commissioner,
Office of the Development Commissioner
Small Scale Industries, Ministry of Industry,
Nirman Bhavan, New Delhi-110011.
5. Shri J.K. Chehal,
Adviser,
Department of Economic Affairs,
Ministry of Finance,
North Block, New Delhi-110001.
6. Shri Brij Bhushan,
Adviser,
Department of Economic Affairs,
Ministry of Finance,
North Block, New Delhi-110001.
7. Shri Jai Deb Das,
Director,
Commission for Agricultural Costs and Prices,
Ministry of Agriculture and Cooperation,
Shastri Bhavan, New Delhi-110001.
8. Shri T.P. Biswas,
Director,
Planning Commission,
Yojana Bhavan, New Delhi-110001.
9. Shri T. Yganand,
Director,
National Building Organisation,
Ministry of Urban Affairs,
Nirman Bhavan, New Delhi-110011.
10. Smt. C. Malviya,
Director,
Ministry of Textiles,
Udyog Bhavan, New Delhi-110011.
11. Shri Chandra Mohan,
Director,
State Planning Board,
Government of Tamil Nadu,
Chennai.

My a/c

12. Shri A.S. Nikhade,
Director,
Mahanagar Telephone Nigam Limited,
Mumbai.
13. Shri Ramfangzauva,
Secretary,
Department of Planning,
Govt. of Mizoram,
Aizwal.
14. Shri R.S. Kanade,
Director,
Planning Commissioner,
Yojana Bhavan,
New Delhi-110001.
15. Shri B.C. Munda,
Director,
Planning Commission,
Yojana Bhavan, New Delhi-110001.
16. Shri M.S. Virdi,
Director,
Department of Economic Affairs,
Ministry of Finance,
North Block, New Delhi-110001.
17. Shri Avtar Singh,
Director,
Department of Rural Developmen,
Krishi Bhavan, New Delhi-110001.
18. Smt. Gur Pyari,
Director,
Tariff Commission,
Ministry of Commerce and Industry,
Lok Nayak Bhavan, New Delhi-110003.
19. Shri Deba Brata Das,
Director,
Planning Commission,
Yojana Bhavan,
New Delhi-110001.

... Applicants.

(By Advocate : None)

Versus

My cause

1. Union of India,
Through its Cabinet Secretary,
Cabinet Secretariat,
Rastrapati Bhawan, New Delhi-110001.
2. Union of India,
Through its Secretary,
Department of Economic Affairs,
Ministry of Finance,
North Block, New Delhi-110001.
3. Union of India,
Through its Secretary,
Department of Personnel and Training,
North Block, New Delhi-110001.
4. Secretary,
Union Public Service Commission,
Dholpur House,
Shah Jahan Road,
New Delhi-110011.

.... **Respondents.**

(By Advocate : Shri R.N. Singh)

: O R D E R (ORAL) :

Dr. Ramesh Chandra Panda, Member (A)

We are considering a batch of OAs [OA No.1206/1993, OA No.1288/1993, OA No.1603/2001 and OA No.339/2002], in this common order, as these cases relate to the similar matter of seniority of the Indian Economic Service (IES) Officers for promotion to Higher Administrative Grade (HAG) and Senior Administrative Grade (SAG). Same issue was considered by the Tribunal and a common order in OA No.1206/1993 and OA No.1288/1993. After this Tribunal passed orders in said OAs on 07.01.1999, these were challenged in the Hon'ble High Court of Delhi which quashed the Tribunal order and

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referred back to the Tribunal. Hon'ble High Court order was assailed before the Hon'ble Supreme Court. Noting the above circumstances all these OAs were placed in the **sine die** list leaving the same open to the parties to revive the OAs after the orders are pronounced by the Hon'ble Supreme Court. However, as considerable time has lapsed these OAs were placed before the Special Bench for further orders. Notices were issued to the parties for hearing. We heard the cases on 3.5.2010, 26.5.2010 and 26.7.2010. None appear for the Applicants but Shri R.N. Singh, learned counsel appeared for the Respondents and apprising us the status of the cases, submitted copy of the judgment dated 24.7.2008 of Hon'ble Supreme Court.

2. This Tribunal, *inter alia*, passed the following order and we take extracts of Para 35 and 36 of the said order which read thus:

"35. In the result these two OAs succeed and are allowed to the extent that following the Hon'ble Supreme Court's judgment in SHri Mohanty's case (supra), the promotions made of those SC/ST candidates under Rule 13 (unamended), IES Rules, 1961 without considering the case of the applicants in the two O.As before us, is held by us to be legally unsustainable. Furthermore, the retrospective operation of the amendment to Rule 13, IES Rules to the extent that the same takes away the vested rights of the applicants and other general category candidates is also unreasonable, arbitrary and as such violative of Articles 14 & 16 of the Constitution and is, therefore, struck down.

36. In the light of the above, respondents are directed to review the impugned promotions and consider the cases of the applicants for promotions from the date of the impugned promotions were made, with all consequential benefits. While doing so the Respondents should make all efforts to protect the promotions of reserved category candidates to the extent possible, but if it becomes

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absolutely necessary to revert them from the higher posts to which they have been promoted under the unamended or amended Rules, that may be done. While doing so, however, any financial benefits given to them while working in the higher posts should not be withdrawn and should be protected as personal to them."

A Contempt Application (CP No.266 of 1999 in OA 1288 of 1993) was filed which was decided on 10.12.1999 where the Counsel for Respondents reported about the implementation of the said orders passed by this Tribunal. Thus the CP was disposed of. In view of the above while implementing the Tribunal order, the Respondents revised the seniority lists and review DPC meetings were held for various grades of IES.

3. The SC/ST category officers challenged the said orders of the Tribunal dated 07.01.1999 through Writ Petitions, namely, **CWP NO.508/1999, CWP No.888/1999 and CWP No.223/2001**. While setting aside this Tribunal order dated 7.1.1999, the Hon'ble High Court of Delhi in its order dated 22.07.2003 decided the matter as follows :-

"35. It is also not in dispute that pursuant to or in furtherance of the directions of the Supreme Court in **Narender Chadha**, a list of 250 officers in IES and 178 officers in ISS was prepared. The question as to whether by reason of the subsequent judgment of the Apex Court in Mohanty, the effect and purport of the seniority list prepared in terms of the decision of the Apex court in **Narender Chadha** had been taken away or not has not been answered by the Central Administrative Tribunal. The question as to whether such seniority list having the blessings of the Apex court have been interfered with or not, is the question which should have been posed and answered by the learned Tribunal. Similarly, the learned Tribunal in its judgment has merely followed Mohanty. In that case, as noticed hereinbefore, the Apex Court merely

My answer

struck down the retrospectivity of Rule 13. It did not say that the executive instructions operating in the field were also bad in law. No question was raised as regards the vires of the said executive instructions. Rule 13, as it stood before its amendment, clearly postulates that the policy of reservation can be given effect to by issuing executive instructions. Otherwise also, a policy of reservation can be effected by executive instructions. Reservation made in terms of clause 4 of Article 16 of the Constitution of India, it is trite, need not be carried out only by a statute or statutory rules. Thus, although the legality of the promotion granted to the petitioners was thus, required to be judged not only on the touchstone of amended Rule 13 but also on the touchstone of the executive instructions which were operating in the field read with amended Rule 13.

36. Judgment of the learned Tribunal, therefore in our opinion, cannot be sustained as these vital questions had not been determined by it. We have, therefore, no other alternative but to set aside the judgments of the Tribunal and remit the matter back to it for consideration of the matter afresh."

4. Consequently, the general category IES officers being the original Applicants in the OAs No.1206/1993 and 1288/1993 before the Tribunal, having been aggrieved by the directions of the Hon'ble High Court approached the Hon'ble Supreme Court in **SLP No.18793-94 of 2003** against the directions of the Hon'ble High Court which was adjudicated as CA No.1366-67/2004. The Hon'ble Supreme Court vide order dated 24.7.2008 quashed and set aside the judgment of Hon'ble High Court and restored the decision of the Tribunal dated 7.1.1999. Hon'ble Supreme Court judgment is reproduced below

"Therefore, ratio of this case is equally applicable in this service also. The net result of above discussion is that at the time when the respondents were promoted there was no rule and it was only administrative instruction which was sought to be given a legal sanction

My case →

by amending the Rule 13 from 1972 but that retrospectivity has already been set aside in the case of Mohanty (supra).

Therefore, on the basis of the reasoning given by the Hon'ble Sawant, J. in Union of India vs. V. Mohanty's we read down the Rule 13 that it cannot be given retrospectively. Accordingly, we set aside the order of the Division Bench of the Delhi High Court and restore the order of the Tribunal passed in OA No.1206/93 and direct that the case of both these appellants before us shall be considered by the respondents from the date when their juniors were promoted to the post of Deputy Director, Grade III. However, we direct that whatever monetary benefits which have been accrued to these respondents shall not be deprived to them.

We have been informed that both these appellants have already been granted retrospective promotion and all the benefits flowing therefrom.

The appeals are allowed and the order of the Delhi High Court is set aside. All the applications filed by Appellant No.3-in person-are permitted to be withdrawn."

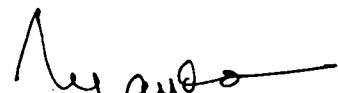
5. We heard counsel for Respondents Shri R.N. Singh today. At the bar, he submitted a copy of the letter of Ministry of Finance, Department of Economic Affairs (IES Division) letter No.F.No.11024/2/2002-IES dated 21.07.2010 which confirms the above facts and decisions of the Tribunal, Hon'ble High Court and Hon'ble Supreme Court. The said letter has been taken on record. As per the said letter, following the Hon'ble Supreme Court order dated 24.07.2008, the Respondents have implemented the directions issued by this Tribunal in OA No.1206/1993 and OA No.1288/1993 passed on 07.01.1999. Thus, the order dated 7.1.1999 of this Tribunal has reached finality and is being implemented.

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6. In view of the above facts, all these OAs are disposed of in terms of the directions given by the Hon'ble Supreme Court vide its order dated 24.07.2008 upholding this Tribunal's order dated 07.01.1999 in OA No.1206/1993 and OA No.1288/1993. Let a copy of this order be placed in the files of all four OAs.



(Dr. Dharam Paul Sharma)
Member (J)



(Dr. Ramesh Chandra Panda)
Member (A)

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