

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

....

OA NO. 3065/2002

NEW DELHI THIS THE 3rd DAY OF OCTOBER, 2003

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)

IN THE MATTER OF:

1. **MRS. USHA ANAND**

W/O Shri S.C. Anand,

Aged about: 55 Years,

Resident of: 48, Sharda Apartments,

3, West Enclave,

Pitampura,

DELHI - 110054

AND EMPLOYED AS:

Lecturer (Senior Scale) (Electronics) in the

Guru Nanak Dev Polytechnic,

Sector 15, Rohini,

DELHI - 110085

2. **D.N.K. GAWRI**

S/O Late Shri R.L. Gawri,

Aged about: 52 years,

R/O B-2/226, Paschim Vihar,

NEW DELHI - 110063

AND EMPLOYED AS:

Lecturer (Senior Scale) (Electronics),

Pusa Polytechnic,

Pusa

NEW DELHI - 110012

3. S.B. MATHUR

S/O Late Shri K.B. Mathur,

Aged about: 57 ½ years,

Resident of: E-3, Pant Polytechnic Campus,

DELHI - 110020

AND EMPLOYED AS:

Lecturer (Senior Scale) (Mechanical Engineering),

G.B. Pant Polytechnic,

DELHI - 110020

4. OM PRAKASH

S/O Shri Bhavi Singh,

Aged about: 60 years,

Resident of: C-337, Shalimar Garden Extension-II,

Sahibabad (Ghaziabad),

UTTAR PRADESH

AND RETIRED AS:

*Head of the Department (Civil),
from Aryabhat Polytechnic,
DELHI*

5. S.P. KHANNA

*S/O: Shri S.S.D. Khanna,
Aged about: 52 years,
Resident of: 18, Amardeep Society,
Plot No.13/2, Sector 9,
Rohini,
Delhi - 110085,*

AND EMPLOYED AS:

*Officiating as Head of the Department (Architecture),
Aryabhat Polytechnic,
G.T. Karnal Road,
DELHI - 110033*

6. H.L. NAGPAL

*S/O Shri J.C. Nagpal,
Aged about: 63 years,
Resident of: 3062, Lane No.10,
Old Ranjit Nagar, Delhi - 110008*



AND RETIRED AS:

Lecturer (Mechanical Engineering),

From Pusa Polytechnic,

Pusa, New Delhi – 110012

7. S.C. ANAND

S/O Shri Balwant Rai Anand,

Aged about: 56 years,

Resident of: 48, Sharda Apartments,

3, West Enclave,

Pitampura, Delhi - 110054

AND EMPLOYED AS:

Lecturer (Senior Scale) (Civil Engineering)

Aryabhat Polytechnic,

G.T. Karnal Road,

DELHI

8. V. NARAYANAN

S/O Shri V. Ramesh Nambodiri

Aged about: 58 years,

Resident of: A-103, Shalimar Garden,

Main Sahibabad,

Ghaziabad (U.P.)

AND EMPLOYED AS:

*Lecturer (Mechanical Engg.) in the
Directorate of Training and Technical Education,
Muni Maya Ram Marg,
Pitampura, Delhi*

9. G.P. SAXENA

*S/O Late Shri B.S. Saxena,
Aged about: 56 years,
Resident of: A-45, Arun Park,
Shakkarpur, Delhi - 110092*

AND EMPLOYED AS:

*Lecturer (Senior Scale)(Printing Technology)
Pusa Polytechnic,
Pusa, New Delhi - 110012*

10. H.S. BAWA

*S/O Shri Harbans Singh Bawa,
Aged about: 60 years,
Resident of: WZ-67/A,
Mukherjee Park,
Near Tilak Nagar,
NEW DELHI - 110018*

AND RETIRED AS:

Lecturer (Mechanical Engineering)

Pusa Polytechnic,

Pusa, New Delhi – 110012

11. A.K. CHHABRA

S/O Late Shri Guran Ditta Mal,

Aged about: 52 years,

Resident of: T.C.P.O. Office Flats,

AO-59, Kala Kunj,

Shalimar Bagh,

Delhi - 110088

AND EMPLOYED AS:

Lecturer (Senior Scale) (Electronics Engg.)

Pusa Polytechnic,

Pusa, New Delhi – 110012

12. R.K. BHAGI

S/O Shri Satpal Bhagi,

Aged about: 49 years,

Resident of: 13/27, Shakti Nagar,

Delhi - 110007

AND EMPLOYED AS:

Lecturer (Senior Scale) (Printing Technology)

Pusa Polytechnic,

Pusa, New Delhi – 110012,

13. ASHOK KUMAR DUA

S/O Late Shri Nand Lal,

Aged about: 58 years,

Resident of: 24-B, 1st Floor,

Sector 7, Pocket 1.

D.D.A. SFS Category III Flats,

Dwarka, New Delhi

AND EMPLOYED AS:

Lecturer (Senior Scale) (Mechanical Engineering)

Pusa Polytechnic,

Pusa,

New Delhi – 110012

14. VIRANDER ANAND

S/O Shri Shanti Prakash Anand,

Aged about: 57 ½ years,

Resident of: C-2/35-C, Lawrence Road,

Delhi - 110035

AND EMPLOYED AS:

Lecturer (Senior Scale) (Mechanical Engineering)

Pusa Polytechnic,

Pusa,

New Delhi – 110012

15. ANJULA BHATTACHARYA

W/O Shri Bijan Bhattachary,

Aged about: 55 years,

Resident of: C-531.

Chittaranjan Park,

New Delhi – 110019

AND EMPLOYED AS:

Lady Lecturer (Senior Scale) (Commercial Art),

Aryabhat Polytechnic,

G.T. Karnal Road,

Delhi – 110033

16. MRS. GARGI GUPTA

W/O Shri P.N. Gupta,

Aged about: 61 years,

Resident of: 19-D, D.D.A. Flats,

Masjid Moth Phase I,

New Delhi – 110045

AND RETIRED AS:

Lecturer (Senior Scale) (Commercial Art)

From Meerabhai Polytechnic,

Maharani Bagh,

New Delhi

17. MRS. SUSHMA CHAWLA

W/O Shri M.M. Chawla,

Aged about: 48 years,

Resident of: 29/26,

Old Rajinder Nagar,

New Delhi – 110060

AND EMPLOYED AS:

Lecturer (Electronics),

Pusa Polytechnic,

Pusa,

New Delhi

....APPLICANTS

(By Shri B.B. Raval, Advocate)

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VERSUS

1. Government of National Capital Territory of Delhi, through the Chief Secretary, Delhi Schivalaaya, I.P. Estate, New Delhi - 110 002.
2. The Principal Secretary cum Director, Directorate of Training & Technical Education, Muni Maya Ram Marg, Pitam Pura, New Delhi. ... Respondents

(By Shri George Parackin, Advocate)

ORDER

Order delivered by Mr. Shanker Raju, Member III

Being aggrieved with non-disposal of the representations submitted by applicants for counting of ad hoc services for the purposes of seniority and promotion, present OA seeking the following relief's has been filed:-

i) To direct the respondents to accord appropriate seniority to the applicants with effect from 12th December, 1988 instead of 28th May, 1990 counting the period as regular service for the purpose of seniority with all consequential benefits.

ii) Consequent to relief t (i) being granted, direct the respondents to issue an upto-date seniority list interpolating the names of the applicants at appropriate slots, pay the arrears of difference of pay and allowances from 12th December, 1988 according to the revised seniority and only thereafter held the Departmental Promotion Committee for promotion to the next higher post of Head of the Department.

iii) To direct the respondents to prepare separate seniority lists of male and female cadres of Lecturers as was done earlier on the implementation of recommendations of the Madan Committee but mysteriously mixed up only for the post of Lecturer while continuing the same for the posts of Head of the Department and the Principals.

iv) AWARD exemplary cost for this application with a further request to pass any other order/orders or direction/directions or

grant any other relief/reliefs as deemed fit and proper in the light of the facts and circumstances of the case".

2. Applicants, who were holding group A posts such as Junior Lecturers, Instructors and Demonstrators, on the recommendations of Madan Committee to revise the existing staff structure of Polytechnic where the lowest recommended post was that of a Lecturer and to abolish the lower level teaching post of Lecturer- Group 'A' post, recruitment rules provide for direct appointment on recommendations of UPSC. Applicants, in view of the recommendations of Madan Committee, which were accepted by the Government, were promoted as Lecturer on ad hoc basis pending regularisation by UPSC. UPSC recommended regularisation of the applicants w.e.f. 28.05.1990 effected through order dated 10.04.1992.

3. While implementing the Career Advancement Scheme of Lecturers w.e.f. 1.11.1996, the ad hoc services rendered by the applicants were not taken into account.

4. Earlier the Association of Gazetted Officers of Technical Education aggrieved with non-regularisation, despite being recommended by UPSC, preferred OA No. 1263/1991 wherein, keeping in view the fact that once the UPSC had recommended regularisation, no review is permissible to adjudge the suitability of persons by undisclosed criteria, directions have been issued to the respondents to take necessary steps to implement the recommendations of UPSC and to pass formal orders regarding regular appointment of the

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applicants and those who were similarly situated as Lecturers. This would entail reckoning of their seniority from the date of ad hoc appointments and the aforesaid period of ad hoc officiation would also to count as a qualifying service for pension and other retiral benefits. The aforesaid decision was reiterated in several decisions.

5. A final seniority was drawn up of Lecturers against which representations have been preferred by the applicants. As no orders have been passed on representations, the present OA.

6. Respondents in their reply vehemently opposed the contentions of the applicants and took preliminary objection that the applicants, who are members of Association of Gazetted Officers in Technical Education, had earlier approached this Court. Now on the same cause of action, the issue, which has laid at rest and attained finality, cannot be agitated being barred by doctrine of res judicata.

7. It is further stated that if the applicants were not satisfied with the compliance of the directions contained in OA 1263/1991, nothing precluded them from taking appropriate steps in accordance with law.

8. It is further stated that at this belated stage under the guise of seniority list, applicants are seeking their regularisation from ad hoc officiation

which was from 1988, the issue is barred by limitation and would unsettle the settled position.

9. Learned counsel for the respondents Shri George Parackin, contends that the order dated 10.04.1992 clearly observes that regularisation of the applicants was from 28.5.1990. As no objection had been taken for ten long years, the same cannot be entertained at this belated stage. Moreover, it is contended that a tentative seniority list was issued vide letter dated 11.11.1999 with liberty to file objections so as to finalise the seniority list on the basis of objections received upto April, 2000. As no objections had been put forth by the applicants between 11.11.1999 to 7.7.2000, the seniority list was issued.

10. In so far as their upgradation is concerned, it is stated that the ad hoc service cannot be treated as qualifying service as, in view of Madan Committee, applicants were only appointed on ad hoc basis being Group A employees and for regularisation UPSC's approval is mandatory. But as a special dispensation, the applicants have been promoted as Lecturers and the ad hoc officiation would not have confirmed any claim for seniority. UPSC regularized them w.e.f. 1990 and this has been followed by the respondents.

11. By reckoning ad hoc officiation for seniority, the claim of those who stood tested on merits

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on account of competitive recruitment, in so far as their merit is concerned, would be adversely effected and as none of them is implemented as a necessary party, OA is liable to be rejected for non-joinder of parties.

12. In the rejoinder, applicants reiterated their pleas taken in the OA.

13. On the recommendations of Madan Committee, though the applicants were in group C, were appointed on ad hoc basis as Lecturers - group A post. A batch of employees, who despite being recommended for regularisation in May, 1990, approached this tribunal for the grievance that they are being subjected to another selection process in OA 1263/1991. This court holding that after recommendation no review can be held to assess the suitability, directed the respondents to take necessary steps to implement the recommendations of UPSC for regular appointments of the applicants as Lecturers. Moreover, the seniority from the date of ad hoc appointment has been accorded treating the aforesaid period as qualifying service for pension and other retiral benefits.

14. The aforesaid decision was partly complied with. The ad hoc officiation was counted towards qualifying service for ^{or} pensionary benefits. In so far as seniority is concerned, no orders have been passed. As the final seniority list has been issued in the year 2000 where the seniority position of the applicants

reflect that their earlier ad hoc officiation has not been reckoned, representations have been preferred taking resort to the earlier decision in Association of Gazetted Officers in OA 1263/1991. As the same are not responded to, the present OA has been filed.

15. In so far as res judicata is concerned, the pre-condition for its invocation is that an identical issue has been finally adjudicated between the same parties. We find that though the Association had taken the case of those officers in whose case despite regularisation by UPSC necessary steps have not been taken, directions have been accordingly issued. In the present case, the applicants, who had already been accorded regularisation, are being aggrieved with not counting their ad hoc officiation towards seniority as directed in OA 1263/1991. Once the directions have been issued to reckon their seniority from the date of ad hoc appointments, the same consideration should have been made in the case of the applicants as well. Constitutional Bench of the Apex Court in K.C. Sharma vs. Union of India, JJ 1997 (7) SC 58 has held that one should not be dragged to the court if the decision is in rem and covers the case of the identically situated. Law of limitation would also not apply in such case.

16. However, keeping note of the fact that the representations preferred by the applicants are still pending disposal, the present OA has been filed raising a grievance of non-disposal of representations for

reckoning ad hoc officiation towards seniority and promotion, OA is disposed of with directions to the respondents to treat the present OA as a supplementary representation apart from the original representations preferred by the applicants and consider the claim of the applicants through a detailed and speaking order in the light of the decision in OA No. 1263/1991 within three months from the date of receipt of a copy of this order. No costs.



(R.K. Upadhyaya)
Member (A)



(Shanker Raju)
Member (J)

/n:/