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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 1546/2001

New Delhi, this 2nd day of August 2001

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

1. Shri P.K. Tyagi, S/o Sh. R N Tyagi,
Business Executive,
Publication Division,
Min. of I&B
Govt. of India,
Old Secretariat, Delhi.
2. Sh. S.L. Kothari S/o Sh. R D Kothari,
Business Executive, Journals Unit,
Publications Division
Min. of I&B, Govt. of India
R.K. Puram,
New Delhi.

.....Applicants.

(By Shri B.S. Mainee, Advocate)

Versus

1. Union of India
through Secretary, Min. of I&B
Government of India,
Shastri Bhavan,
New Delhi.
2. The Director,
Publication Division,
Min. of I&B
Govt. of India,
Patiala House, New Delhi
3. The Secretary
U.P.S.C.
Dholpur House, New Delhi.

.....Respondents

(By Shri A.K. Bhardwaj, Advocate)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (A)

S/Shri P.K. Tyagi and S.L. Kothari challenge in this
O.A. the action of the respondents disturbing their interse
seniority as Business Executives (B.E.).

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2. M.A. No. 1316/2001 for joining is allowed.

3. Order No. A-32014/2/99. Adm I dated 19.3.2000, is assailed in this O.A. It was heard along with OA 1546, where also the same order is impugned. However, two separate orders are being issued while disposing the OAs, as there is difference in the issues under challenge, though marginally.

4. Heard the learned counsel - Shri B. S. Mainee for the applicant and Sh. A.K. Bhardwaj for the respondent s and also perused the relevant papers.

5. Shri Tyagi, applicant No. 1, who joined Publication Division, the respondent, as Sales Assistant on 17.1.1979, became an Sales representative (S.R.) on ad hoc basis on 24.12.1981 and was regularised on 16.4.1984. He became a Business Executive (B.E.), on ad hoc basis on 26.12.1985 and was regularised on 26.12.1983. Thereafter, he worked in two spells as Asstt. Business Manager (ABM) during 1995 as well as 1996-97, and was on deputation with Ministry of Defence. Following his repatriation on 11.12.1998, he was reverted as BE, and he is working as such since 13.1.1999. Shri Kothari, applicant No. 2 has likewise joined as Sales Asstt. on 5.10.1979, became an ad hoc S.R. in 1982, in which ^{post} he was regularised w.e.f. 31.1.1985. His promotion as B.E. dates from 12.5.1992 on ad hoc basis and from 17.4.1995 on regular basis. He worked as ABM from June to October 1995 as well as from

January 1998 to June 2000. Since then he is working as B.E. Thus both the applicants have been working as B.E. for quite some time, nearly 15 years in the case of Applicant 1 and 9 years in the case of applicant 2. Still they have been made to suffer in their seniority by the impugned order. Hence this application.

6. Applicants point out that though Recruitment Rules provide for filling up the post of BE and ABM by both direct recruitment and promotion in the ratio of 1:1, no direct recruitment has been made in either of the cadres since 1983 and 1986 and all the vacancies have been filled by promotion. In the circumstances, quota rule in the Recruitment Rules had collapsed and in view of the Hon'ble Supreme Court's decision in Narendar Chhaddas case [AIR 1986 (1)49], the respondents cannot go back on the same. The direction of the Hon'ble Apex Court in the case of A.N. Pathak & Others Vs. Secretary Ministry of Defence and Air [ATLJ 1987 (1)385] directing that "delay in making the appointments by direct recruitment should not visit the promotees with adverse consequences denying them the benefits of their service" would also come to their help. That being the case both the applicants are entitled for regularisation as BEs from the dates they have been working as ad hoc BEs from the dates they have been working as ad hoc BEs i.e. from 1985 in the case of applicant No. 1 and from 1992 in the case of applicant No.2. Their promotions having been made against regular vacancies and on selection by the competent DPC, they should get the

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— benefit of the Hon'ble Apex Courts decision in Rudrakumar Sain's case also [ATJ 2000(3)392] and their appointments cannot be termed stop-gap ad hoc. As four vacancies arose in the grade of ABMs-3 in 1997 and 1 in 1998, the applicants should have been considered for promotion to the above, being the seniormost as they also held the post in shorter spells, more so as it has been decided to fill up the post of ABM only by promotion, following the adoption of 5th CPC recommendation, but the respondents have failed to do so. The applicants also state that in between Staff Inspection Unit (SIU) of the Ministry of Finance Deptt. of Expenditure had made certain recommendations for restructuring of the cadre, which have not been implemented. Still the respondents have, by their letter dated 19.3.2001, unsettled the long settled position and decided ^{to convert} their regular promotion as ad hoc promotion with retrospective effect and have threatened their replacement with direct recruits. This move is illegal, improper, arbitrary and against the principles of law settled by the Hon'ble Supreme Court and the Tribunal. The applicants' representations have not been responded but they have been orally informed that the above decision was final. respondents are also understood to have moved the UPSC for holding selection to the post of ABMs. Hence this application, seeking protection of their rights against illegal denial of rightful seniority leading to unfavourable consequences.

7. In their rebuttal, the respondents contend that the OA was premature and as no order ^{has} been passed, no cause of action has arisen. They state that the posts of BE and ABM are to be filled up by direct recruitment and promotion in the ratio of 1:1 with Sales Representatives

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and Business Executives being the feeder cadres for B.Es and ABMs. following the filing by, the Tribunal, respondents undertook the review of their own records which showed that regular promotions, that too with retrospective effect had been ordered without DPC and that vacancies for direct recruitment had been diverted for promotees. The impugned notice dt. 19.3.2001 has been issued indicating proposed action to rectify the above mistakes and the same was not any order as alleged. Shri Tyagi filed three representations on 30.3.2001, 9.4.2001 and 16.4.2001, but they were for securing copies of recruitment rules and also ^{for} making vague submission ^{and} intended to secure for himself undue advantages, not provided for in the Recruitment Rules. Shri Kothari also filed representations almost along the same lines. His case for promotion as BE can be considered only when a vacancy arises in promotion quota. This would show that the applicants have been given ample opportunity to explain their case and nothing further was required to be done. Respondents also rely upon the decision of the Mumbai Bench of the Tribunal in Manoj Mahajan & ors Vs UOI and others in OA No. 1133/1994 directing that those "promoted in excess of the quota are not entitled to seniority and their seniority is to be considered from the date, ^{when} of quota is available" and that of the Hon'ble Apex Court in State of Bihar and Others Vs Kameshwar Prasad Singh & Others holding that the counting of the period of officiation for the purpose of seniority where such officiation was ad hoc is not permissible. It is further pointed out that 7 posts of ABM were being earmarked for promotion or direct recruitment by rotation till 1.7.1997 and thereafter

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following instructions, 3 fell in DR quota and 4 in promotion quota. Three promotees are already in position and DPC is to meet for selecting someone for filling up the fourth post. UPSC who have been approached for recommending candidates for filling up the DR quota have already completed the exercise and once the names are received, appointments will be ordered. The applicants have no case at all and the applications deserve to be dismissed, urge the respondents.

8. In their oral submissions both the parties stoutly defended their respective pleas. According to Shri Mainee, learned counsel for applicant, the quota system in the relevant recruitment rules, having totally collapsed, there having been no direct recruitment for more than a decade, those like the applicants who have to come occupy the post of Business Executive, (B.E.) on ad hoc basis to start with and on regular basis subsequently and have put in a few years service in that grade cannot be discriminated and brought down in seniority as has been sought to be done by the respondents. The said steps were harsh, arbitrary and discriminatory and against
of law and justice, pleads Sh. Mainee. On the other hand, Shri Ashok Bhardwaj, learned counsel for respondents pleads that the applicants who have been working on posts which did not actually belong to them cannot claim regularisation ^{in those posts} as of right merely because they have been given benefits on account of some incorrect steps taken earlier and which have been reviewed. When the Government orders corrective steps the same will have to be followed

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by all irrespective of whether it hurts the interests of a single individual or not as the common good depends on the same. The applicants' case should therefore fail in law, according to the learned counsel for the respondents.

9. We have carefully considered the rival contentions. Both the applicants who are regular BEs in the organisation of the respondents are challenging the move in terms of the impugned letter dated 19.3.2001 disturbing their seniority and bringing them down in their own grade. The relevant portion of the letter reads as below:

"10. Against the next vacancy in promotion quota which became available on 17.6.1995 the following Business Executives could be considered:

- i) Shri V.S. Rawat.
- ii) Shri P.K. Tyagi.
- iii) Shri S. L. Kothari
- iv) Shri V.N. Goyal

Shri V.S. Rawat was found fit for appointment as Business Executive as per his seniority and satisfaction of bench mark prescribed for promotion at the level of Business Executive. Hence in the case of Shri Rawat regular promotion to the post of Business Executive is proposed to be ordered w.e.f. 17.6.1995 instead of 14.10.1993.6

11. As per rotation of vacancies for direct recruitment and promotion the turn of S/Shri P.K. Tyagi, Shri S.L. Kothari and Shri V.N. Goyal as regular Business Executives did not arrive. There are two vacancies in the promotion quota in the grade of Assistant Business Manager (including the post held by Shri B.D. Prasad). On appointment of the 2 regularly appointed Business Executive by promotion to the post of Asstt. Business Manager one vacancy will become available in the promotion quota for appointment by promotion and against this vacancy these three persons will be considered. The remaining two will be replaced in the post of Business executive by the direct recruits. Till such time the direct recruits are appointed they may be continued as Business Executive on ad-hoc basis, subject to the approval by the Competent Authority."

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10. The above is being proposed as part of the 'rectification exercise' undertaken by the respondents to correct the mistakes, which have been noticed while undertaking the review of the promotions policy followed by them, in the light of the filing of the OA 962/99 by Shri V.S. Rawat. According to the respondents, while filling up the posts of both the BEs and ABMs will have to be undertaken by promotion and or direct recruitment in the ratio of 1:1. For nearly 15 years no direct recruitment at all had taken place and all the vacancies were filled up only by promotions. This has distorted the picture which called for correction. It is on account of this mistake that the applicants were promoted as Business Executive on 26.12.1985 on ad hoc basis and on 26.12.1993 on regular basis (as in the case of Iyagi) and promoted on ad hoc basis on 12.5.1992 and on regular basis on 17.4.1995 (as in the case of Kothari), whereas their turn for promotion on regular basis had not come, according to the respondents. This submission on behalf of the respondents does not place the efficiency of respondents' organisation in any favourable or complimentary light. The respondents' who have promoted both the applicants against the vacant posts of BEs first on ad hoc basis and then on regular basis were fully aware of the fact that the post of BE had to be filled both by direct recruitment and promotion in the ratio of 1:1 in terms of the Recruitment Rules. Still they had not taken any steps all these years to have to the posts filled up in terms of the rules by approaching the competent authorities but had filled them by promotion themselves, through duly constituted selection/promotion Committees; obviously as they had felt that the promotion promotions filled the bill for the purpose. That being the case, it is too late in the day for the respondents to turn

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round and say that the applicants who have been promoted in the meanwhile and regularised in the position shall have no right to hold the position and that they would have to await their turn for regularisation once again as indicated in the impugned letter. Neither of the decisions cited by the respondents in support their action - in the cases of Manoj Kumar Mahajan, & Kameswar Prasad Singh - would come to their rescue to defeat the cause of the applicant. Dates of regularisation accorded to them i.e. 26.12.1993 in the case of Sh. Tyagi, 1st applicant and 17.4.1994 in the case of Sh. Kothari, 2nd applicant, would have to remain inviolable. To that extent the proposal in the impugned letter cannot be permitted of become operative.

11. At the same time, the applicants' request that they should be given the benefit of regularisation from the dates on which they were promoted as B.Es. appointed on ad hoc basis, i.e. their dates of regularisation should be advanced to their dates of ad hoc appointments i.e. from 26.12.93 to 24.5.1985 in the case of applicant No. 1 (Shri Tyagi) and from 17.4.95 to 12.5.92 in the case of applicant No. 2 (Sh. Kothari) cannot be accepted, as it is found that in terms of the Recruitment Rules the posts against which they were promoted early did not fall in the promotee quota and procedure has now been initiated to fill up the posts on direct recruit quota in terms of the Recruitment Rules and reportedly completed. The benefit already accrued by them, though originally on incorrect application of the quota is not being denied, as they have been granted the same long ago by a selection committee, and they have been functioning in the posts since then, but permitting the said benefits to be extended by advancing the date of regularisation would be bad in law. This request therefore merits rejection.

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12. In the above ⁻¹⁰⁻view of the matter, the application succeeds to a substantial extent and is accordingly disposed of. The impugned letter No. A-32014/2/99-Adm.I dated 19.3.2000 is quashed and set aside as far as it relates to the move to convert the applicants' regularisation into ad hoc appointment as Business Executives. The respondents are directed to treat the two applicants as having been appointed on regular basis as B.Es. w.e.f. 26.12.93 in the case of 1st applicant Sh. Tyagi and 12.5.92 in the case of 2nd applicant Sh. Kothari. Their further request for advancing their dates of regularisation is rejected.

No costs.

S. Raju

(Shanker Raju)
Member(J)

(Govindaraj S. Tampi)
Member (A)

Patwal/