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Central Administrative Tribunal, Principal Bench

O.A. No. 1840/2001

With

O.A. No. 3176/2002

New Delhi this the 21 day of September, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. N.D. Dayal, Member (A)

OA No. 1840/2001

1. Shri R.S. Bohra
S/o Late Shri L.S. Bohra
R/o A-32, Shiv Lok Colony,
Ladpur, P.O. Raipur,
Dehradun.
2. Shri Jeet Singh
S/o Late Shri Munna Lal
R/o 31/3 Vijay Colony,
New Cantt. Road,
Dehradun.
3. Shri Shyam Singh
S/o Late Shri Amar Singh
R/o 10/2, Vigyan Vihar,
P.O. Raipur,
Dehradun.
4. Shri Nirmal Singh Negi
S/o Late Shri Pratap Singh Negi
R/o Village Sunderwala,
P.O. Raipur,
Dehradun.
5. Shri M.P. Nautiyal
S/o Shri S.R. Nautiyal
Ladpur Barthwal Marg,
P.O. Raipur,
Dehradun.
6. Shri Hari Prasad
S/o Late Shri Vidya Dutt
R/o Bhagwat Singh Colony,
Adhoiwala, Dehradun.
7. Shri S.P. Roy
S/o Late Shri G.P. Roy
R/o Satiwala Bagh,
P.O. Ranjhawala, Raipur, Dehradun.
8. Shri Bishamber Singh
S/o Late Shri Daviya
R/o Village & Post Nehm Gram (Dandi)
Dehradun.

....Applicants

By Advocate: Shri Naveen R. Nath.

[Signature]

Versus

1. Union of India
Through Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Scientific Advisor to Raksha Mantri
Department of Research & Development Organisation,
Sena Bhawan,
Government of India,
New Delhi.
3. The Director,
Instrument Research & Development,
Establishment Raipur,
Dehradun.Respondents

By Advocate: Shri H.K. Gangwani.

OA No. 3176/2002

Shri Sohan Singh
S/o Shri Gokal Singh
13/30 Man Singh Wala,
Dehradun (Uttranchal)Applicant

By Advocate: Shri K.K. Patel.

Versus

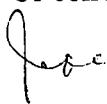
1. Union of India
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Dehradun (Uttranchal).Respondents

By Advocate: Shri H.K. Gangwani.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

This common order will decide two OAs bearing No.1840/2001 and OA No. 3176/2002 as common questions of facts and law are involved and they may be conveniently decided by this order.





2. OA No.1840/2001 is filed by 8 persons out of whom S/Shri Jeet Singh, Shyam Singh, Hari Prasad and Bishamber Singh, the applicant Nos. 2, 3, 6 and 8 respectively, have retired from service on attaining the age of superannuation. This OA has been filed for quashing the order of the respondents dated 10.7.2001 (Annexure A-16) whereby the date of promotion of the applicants to the higher grades is being postdated and they are also sought to be reverted to the lower grade. They seek a declaration that the applicant Nos.1, 2 and 8 were entitled to continue in service on the post of Technical Officer Grade 'B' (hereinafter referred to as TO 'B') and the applicant Nos. 3 to 7 are entitled to be continued on the post of Technical Officer Grade 'A' (hereinafter referred to as TO 'A') and that they are also entitled to be considered for further promotion as per the Service Rules.

3. Shri Shyam Singh, who has filed OA NO. 3176/2002 was party to the OA No. 835/1996 titled Harnam Singh and Others Vs. U.O.I. and Others decided on 21.8.1991 and had obtained a favourable order where-under the respondents were to consider him along with 12 other applicants in the OA for their promotion to the grade of Chargeman Grade-I by convening a review DPC. But he has not been granted promotion on the premises that the vacancies were not available. He has sought a direction to the respondents to promote him from the post of Precision Mechanic (hereinafter referred to as PM) to TO 'B' with all financial benefits.

4. There is a long chequered history of litigation in the background of this case but summarizing the case of the 8 applicants in OA No. 1840/2001, it may be stated that they had joined as PM between 1978 to 1981 in Instruments Research and Development Establishment (IRDE) under Ministry of Defence in the pay scale of Rs.380-560. In due course they were promoted to the post of Chargeman-I in the pay scale of Rs.425-700 on being selected by a duly constituted DPC. The Government decided to upgrade the pay scale of PMs who were in position as on 31.12.1972 to the pay scale of Rs.425-700. Some of the PMs who were not granted this benefit, filed a Writ Petition for grant of higher pay scale to them. The Writ Petitions were transferred to this Tribunal and were

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allowed, first by the Hyderabad Bench and later by the Bangalore Bench. These orders attained finality and were implemented vide orders dated 20.2.1992 extending benefit of higher pay scale to all PMs. The consequential monetary benefits were also released. After being put in the pay scale of Rs.425-700, PMs came to be in the pay scale attached to the promotional post of Chargeman-II. Chargeman-II then filed OA before the Tribunal for their promotion to Chargeman-I with retrospective effect. It was allowed and the respondents were directed to convene a review DPC. This order was also implemented in 1994. In 1994 pursuant to the order of the Tribunal, review DPCs were convened for considering the promotions of the PMs which were in the pay scale of Rs.425-700 as on 12.9.1981 to Chargeman-I and above and the applicants were granted promotion with effect from 15.9.1984. They got further promotion as Assistant Foreman with effect from 17.3.1986 and to the post of Foreman with effect from 15.9.1989. The applicants are presently working as TO 'B' and TO 'A', as in 1995 the Defence Research and Development Organisation Technical Cadre Recruitment Rules, 1995 (RRs) came into force wherein the posts were redesignated and the Foreman became TO 'A'. Under the new Recruitment Rules further promotion to the higher post was governed by a Scheme called Flexible Complementing Scheme. Under this Scheme the incumbent was to be assessed by a Central Assessment Board after 5 years of service for promotion. In 1997 a list of the officers eligible for promotion to TO 'B' in the assessment year 1995-96 was issued. The applicant No.1 was shown at Sl.No.22 and was promoted as To 'B' with effect from 1.1.1995. Applicant Nos.2 and 8 were promoted as TO 'B' w.e.f. 2.9.1996. In December, 1999 the applicants came to know that the dates of their promotions as Chargeman Grade-I and Assistant Foreman Grade-I were being postdated without any reason and without notice. The applicant No.1 was shown as Assistant Foreman with effect form 16.9.1991 although he had been promoted as Foreman much prior to 15.9.1989. The date of promotion of other applicants was also similarly changed.

5. It appears that the said order came to be issued in the process of the implementation of the order of this Tribunal passed in the case of Harman Singh

and Others (Supra). The grievance of the applicants in that case was that they were re-designated from the post of PM to Tradesman Grade 'A' and by orders issued in March and April, 1996, they were required to appear in a trade test for being considered for promotion as Chargeman Grade-II. The Tribunal allowed the said OA on 21.8.1997. The applicants in the OA No. 1840/2001 were not party to the said proceeding. The Writ Petition assailing the order of the Tribunal was dismissed by the High Court and the SLP was dismissed by the Hon'ble Supreme Court. The applicants in Harnam Singh's case were junior to the applicants in the present OA. In compliance with the directions passed in the case of Harnam Singh, the respondents initiated steps for considering the case of all the 13 applicants in Harnam Singh's case for their promotion. Those 13 applicants were treated to be a separate class and the review DPC was also to consider only their cases.

6. On coming to know that the applicants promotion was being postdated, they made representation for supplying the reasons and furnishing the details which the respondents rejected. These applicants thereupon filed OA No. 423/2000 assailing the order dated 1.12.1999. The Tribunal by order dated 21.3.2001 quashed the order dated 1.12.1999 and directed the respondents to serve show cause notice and provide an opportunity of hearing to the applicants before taking a decision. The respondent No.3, Director, Instrument Research and Development Establishment, Raipur, Dehradun in which the applicants were working, thereafter sent show cause notices to the applicants individually. The applicants filed reply to the show cause notice raising various objections but the respondents maintained the order of postdating of the promotion of the applicants and their reversion by identical orders dated 16.7.2001. For the first time the respondents disclosed that the review of the promotions of the applicants became necessary because while implementing the order of the Tribunal in the case bearing No.OA 600 of 1991 in the case tilted **R. Anbalagan and Others Vs. The Director, Aeronautical Development Establishment, Bangalore** decided on 6.4.1993 and the orders passed in certain other OAs a combined seniority list of

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CM-II and PMs was prepared, when it transpired that the applicants are promoted erroneously against non-existent vacancies.

7. The applicants in OA No. 1840/2001 have assailed the order of the respondents dated 10.7.2001 on the ground that in the case of Harnam Singh (Supra) the review DPC was to consider the cases of only the applicants of that case and there was no justification for altering the settled status of the applicants in the present OA. The case of the applicants in the case of Harnam Singh (Supra) was on separate footing and they were to constitute a separate class as appeared from the order dated 28.5.1999, the respondents are, therefore, estopped from reverting the present applicants as there was no mandate to go behind the promotions/appointments reviewed by the earlier DPC. The applicants are admittedly senior to the applicants in Harnam Singh's case (Supra) and there was no conflict amongst the two sets. Some of the applicants have earned repeated promotions and are working on Class-I Gazetted post. The applicants in Harnam Singh (Supra) were considered for promotion and review DPC had rejected them. (To be correct out of 13 applicants in Harnam Singh's case, two were granted promotion on the recommendation of the DPC). The applicants could also not be reverted from the promotional post after the implementation of the Flexible Complementing Scheme as those promotions were to be considered on proper assessment of merit by an external central assessment agency. In Harnam Singh's case there was no plea that the promotions were made against non-available vacancies, therefore, the justification, which has been given by the respondents, is untenable in law. It is also inequitable and erroneous since there was no dispute regarding inter-se seniority between the applicants and others. The decision dated 20.2.1992 and 11.4.1994 (the latter being issued in the name of the President of India) was still in force and the applicants were granted the promotions based on merit and those orders have not been rescinded or superseded. The impugned orders were violative of Article 14 of the Constitution of India.

8. In their counter, the respondents have raised a preliminary objection that the OA was not maintainable as the impugned order has been passed in compliance with the order of the Tribunal dated 21.8.1997 passed in OA

835/1996 (Haranam Singh's case) (Supra) and the order dated 21.3.2001 passed in OA No.423/2000 (Anil Kumar Gupta Vs. U.O.I. decided on 21.3.2001), it was stated that incorrect erroneous promotion granted by misreading the Service Rule or such promotions granted in pursuance to the judicial order contrary to the Service Rules, cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory service rules. Besides, it was submitted that the applicants have not exhausted the remedies available for redressal of their grievances. According to the respondents, SRO 221/1981 (RRS) came into force with effect 22.8.1981. The Recruitment Rules for the Industrial Cadres were amended and the erstwhile posts which were trade-wise, were re-grouped pay scale wise and were recategorised as Tradesman 'A', 'B', 'C', 'D', 'E' and as Helper. As a result of recruitment of industrial cadre based on the trade names like Precision Mechanic etc. were discontinued. In compliance with the orders of the Hyderabad and Bangalore Bench in the various OAs, the pay scale of the erstwhile PMs was revised to Rs.425-700 by administrative order dated 20.2.1992. It was applicable to those PMs who were appointed prior to new Recruitment Rules. But when it was found that in one of the Labs confusion persisted, an amendment of clarificatory nature was issued on 22.6.1995. The Bangalore Bench of the Tribunal in ON No.600/1991 (R. Anbalagan (Supra)) directed the respondents to consider PMs, who were in the pay scale of Rs.425-700 for promotion against vacancies which existed between 12.9.1981 to 20.1.1992. As the promotion/appointment by trade name was discontinued vide SRO 221/1981, the promotion of PMs to Chargeman Grade-I was restricted to those PMs, who were in the pay scale of Rs.425-700 (pre-revised) on 12.9.1981. Orders were issued vide two letters dated 11.4.1994.

9. The respondents further submitted that the implementation of the above said orders involved preparation of the combined seniority list of Chargeman Grade-II and PMs and review of all affected DPCs for Chargeman Grade-I, Assistant Foreman and Foreman. In the process the promotion of many persons in various Labs and Establishment had to be postdated or they were reverted to the lower post as the total sanctioned strength in each grade could not be

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exceeded. Some of the affected persons filed OAs before the Mumbai Bench of the Tribunal challenging the order of postdation or their reversion. The Tribunal by order dated 4.3.1997 directed the respondents to serve show cause notices on the affected persons and to redecide the matter after providing an opportunity of hearing. The department served show cause notices on all the 4 applicants and subsequently passed reversion orders. Those orders were again challenged by the applicants in OA Nos.765/97, 884/97, 885/97, 886/97 and 371/1992 and all of them were dismissed by the Mumbai Bench by a decision dated 28.1.1998 (OA No. 765/1997 and other connected OAs titled Shoba A. and Others Vs. U.O.I. along with 4 others). In IRDE, Dehradun 13 persons were promoted as PMs in the pay scale of Rs.380-560 in 1982 and 1983 even though there was no provision for entry to that grade in the existing SRO. As the wrong nomenclature of PMs continued even in 1992, these 13 persons were also given the higher pay scale of Rs.425-700 (pre-revised) erroneously. This discrepancy came to light in DRDO Headquarters when the concerned establishment initiated action to review the DPCs in order to comply with the decision of the Bangalore Bench of the Tribunal in OA No. 600/1991 {R. Anbalagan and Others (Supra)}. It was noticed that the appointment of 13 employees as PMs in 1982 and 1983 was in contravention of the Recruitment Rules/SRO 221/1981 as they should, in fact, have been designated as Tradesman 'A' in the pay scale of Rs.380-560. Corrective action was taken by issuing letter dated 22.3.1996 and those persons were redesignated as Tradesman 'A' and were placed in the pay scale of Rs.380-560 from the date of their appointment. Aggrieved by the order for appearing at the trade test for Chargeman Grade-II those 13 persons filed OA No.835/1996 (Harnam Singh and Others (Supra) against their recategorisation as Tradesman 'A' and asking them to appear at the test. The Tribunal allowed the OA on 21.8.1997 with a direction to convene a review DPC to consider promotion of the said applicants as Chargeman Grade-I and above from the same date other similarly situated PMs in DRDO Laboratories had become eligible with all consequential benefits. The Hon'ble Supreme Court upheld the decision of the Tribunal.

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10. It is stated in the counter-reply that the implementation of the above said order involved preparation of combined seniority list of Chargeman and PM and review of all the affected DPCs for the post of Chargeman Grade-I, Assistant Foreman and Foreman. After preparing the combined seniority list by interpolating 13 applicants in the case of Harnam Singh (Supra), the review DPC on 25.11.1999 considered those 13 applicants for promotion to the grade of Chargeman Grade-I and above as per the SRO applicable to the erstwhile PMs from time to time and based on availability of vacancies. This exercise covered the period from 1984 to 1994 since a new Scheme called DRTC came into effect from 26.8.1995. In the course of implementation of the order of the Tribunal dated 21.8.1997, it came to the notice that the review DPC conducted to review the DPCs held between 1981 to 1992 convened in compliance of the order of the Tribunal dated 6.4.1994 in OA No. 600/1991 (R. Anbalagan) (Supra) some of the seniors and juniors of the applicant in the OA No. 835/1996 (Harnam Singh's case)(Supra) had been considered and promoted to various grades without taking into consideration the vacancies available at that time. The review DPC held on 25.11.1999 had to rectify this error as continuance would have meant undue and illegal benefit by allowing them illegal march other other candidates placed in other 51 Labs. In the process of reviewing the promotion of the persons, who had been promoted earlier, were either postdated or they were reverted to the lower post since the total sanctioned/number of vacancies allotted/earmarked for each grade could not be exceeded as similar procedure has been followed all other Labs/Establishment also. The order correcting the postdating of the promotion was issued on 1.12.1999. The show cause notices were issued on 28.2.2000 to the applicants as to why their promotions made earlier may not be postdated or they may not be reverted to the lower post. They deliberately avoided to receive the show cause notices and straightway filed OA No. 423/2000 and obtained a stay order on 9.3.2000. The applicant Nos.1, 4, 5 and 7 which subsequently received the notices and submitted their reply on 10.4.2000. The Tribunal after hearing the parties disposed off the OA on 21.3.2001 directing the respondents to issue fresh show cause notices to the applicants. Accordingly, the show cause notices were

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served on the applicants on 1.6.2001 and opportunity of hearing was granted.

After considering the reply of the respondents, the competent authority on 10.7.2001, passed a speaking order giving detailed reason for shifting the applicants' seniority or reverting them from pre-DRTC post to as per their entitled post. The respondents, as such, repudiated the claim of the applicants and justified the impugned order as the promotion of the applicants was against the vacancies which were not available and being erroneous order, the mistake has been rectified.

11. In the rejoinder, the applicants have reiterated their own case.
12. The case of the applicant in OA 3176/2002 is substantially the same as pleaded in OA 1840/2001 discussed above. However, it will be pertinent to mention a few facts which are peculiar to the case. Sohan Singh was one of the applicants in the case of Harnam Singh and Others (Supra). He filed C.P. No. 21/2002, which was disposed of by order dated 20.11.2001 allowing the applicant to agitate his claim separately. The applicant then made a representation on 11.2.2002 to the Director IRDE for implementation of the order passed in OA 835/1996 (Harnam Singh (Supra) and in Contempt Petition No.21/2000. Since there was no response from the respondents, the applicant again filed a Contempt Petition 115/2002, which was disposed off by the Tribunal on 15.3.2002 giving liberty to the applicant to file a substantive application/OA for redressal of his grievances. As a result, the present OA has been filed. The case of the applicant is that as per the direction of the Tribunal and as a consequence of quashing of the letters dated 22.3.1996 and 19.4.1996 the respondents were supposed to issue a formal order designating the applicant as PM in the pay scale of Rs.425-700 (pre-revised) which has not been done and the applicant's pay is still being drawn as Tradesman 'A' (Industrial) which is contrary to the order of the Tribunal and is contempt. The direction of the Tribunal for convening a DPC has also not been implemented as the basic requirement of review DPC was to prepare a combined seniority list of PM/Chargeman Grade-II as per the order passed in OA No.600/1991 which has also not been done. The applicant has not been considered for promotion as Chargeman Grade-I. 11 out of 13 applicants in the

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case of Harnams Singh's case (Supra) were not promoted on the ground that adequate number of vacancies were not available which argument was not advanced during the hearing of the OA. It is further submitted that the review DPC held on 25.11.1999 for considering all the 13 applicants in the Harnam Singh's case (Supra) had recommended promotion of 9 of the applicants but their promotion as Chargeman Grade-I was not approved and notified for grant of consequential benefit. All the persons in the combined seniority list except the petitioner have been approved and notified and are working as Chargeman Grade-I. The applicant has prayed for a direction to the respondents to promote the applicant from the post of PM to TO 'B' with all consequential monetary benefit w.e.f. 28.1.1990.

13. The respondents in their counter-reply have stated that applicant is seeking promotion from the post of PM to TO 'B' when he knows that the grade of TO 'B' did not exist in the organization on 28.11.1990. According to the respondents, the order of the Tribunal dated 21.8.1997 has been fully implemented and in case any of the applicants in the said case had any grievance, he should have approached the Tribunal or the Hon'ble High Court in appropriate proceedings. The applicant along with 12 others was appointed erroneously as PM in one of the Labs or Establishment of the DRDO. They should have been appointed as Trademan 'A' as per the Recruitment Rules as the category of PM stood superseded. The pay scale of erstwhile PM was revised to Rs.425-700 by letter dated 20.2.1992 in respect of those PMs who were appointed prior to publication of SRO 221/1981 but later when it was found that one of the Labs was not clear about the Government instructions, a clarificatory letter was issued on 22.6.1995. In OA 600/1991 decided on 6.4.1993 the respondents were directed to consider PMs for promotion to the grade of Chargeman-I and above against the vacancies which existed between 12.9.1981 to 18.1.1992. On examination of the record it was found that 13 persons were appointed/promoted to the grade of PMs contrary to the statutory rules in force on the date of their appointment. The competent authority re-designated them as Tradesman 'A' and directed them to appear for the trade test for consideration for promotion to the grade of

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Chargeman Grade-II. The order was quashed in OA No.835/1996 on 21.8.1997 and the respondents were directed to convene the review DPC to consider the suitability of the applicants for promotion as Chargeman Grade-I and above similar to the cases of other similarly situated persons. The order had been duly implemented and based on the review, certain persons in some Labs reverted/promoted were postdated. Some of the reverted employees challenged the orders in the Mumbai Bench of the Tribunal but remained unsuccessful.

14. In the rejoinder the applicant has reaffirmed his own case.

15. These cases were initially heard by the Bench on 13.2.2004 which took notice of the order of this Tribunal in the case of J.K. Jain Vs. U.O.I. and Others in OA 1733/2001 decided on 26.5.2003 by the Principal Bench. The order was as under:-

“7. From the facts, it appears that the implementation of the judgment involved preparation of a combined seniority list of Chargeman II and the Precision Mechanics and review of the earlier Departmental Promotion Committees. In this process, the promotions of many individuals had to be postdated as some had to be reverted. All the applicants herein were given show cause notices and thereafter considering the same the reversion orders had been passed. There is, therefore, no illegality to prompt us to interfere.

8. Resultantly, applications, namely OA Nos. 1733/2001, 1931/2001 and 2000/2001 being without merit must fail and are dismissed”.

16. The Bench was of the view that certain important aspect of the matter and position of the law as existed, which could have estopped the respondents from postdating the promotion of the applicants and unsettling the settled position, were not decided and further that Presidential Order which was the basis of the promotion of the applicant has not been set aside or superseded and also in Harnam Singh's case (Supra) 13 PMs were treated as a separate class and were to be considered for promotion to Chargeman Grade-I at par with other PMs. The Bench, therefore, did not subscribe to the view/decision of the order of this Bench dated 28.5.2003 (In J.K. Jain's case {supra}). Accordingly, it referred the matter for a decision by a Larger Bench. The Full Bench of this Tribunal disposed off the reference by order dated 14.7.2004. Since question was not framed in the order of reference, the Full Bench framed it as under:-

1. In the case of J.K. Jain Vs. U.O.I. and Others in OA 1733/2001, the order of this Bench dated 26.5.2003 is set aside.

"(i) Whether judgment given in Jain's case in OA No.1733/2001 and others is binding on the Division Bench or not?

17. The Full Bench after elaborately discussing the question, decided the reference as under:-

"27. It was further stated that the review DPC held on 25.11.1999 had to rectify various errors as continuance of the mistake would have meant undue and illegal benefit to them by allowing them illegal march over other candidates. In the process of review, the promotions of the individuals who had been earlier promoted were either postdated or they were reverted to the lower posts. It was further stated that when these DPCs were reviewed on 25.11.1999 it was observed that the present applicants were given promotion to various grades without taking into account the vacancy position contrary to the directions given by the Bangalore Bench of the Tribunal in OA 600/1991. Thus the reply suggest that it is not only the implementation of Harnam Singh's but the applicants are being demoted or their promotion is being postponed because of the reasons that they were given promotions to various grades without taking into account the vacancy position contrary to the Bangalore Bench in OA 600/1991. Thus the respondents had enlarged the scope of review beyond the directions given in the case of Harnam Singh's case so we would not like to make any observation on this aspect and leave it open for the Division Bench to decide the issue. However, we find that the judgment given in Jain's case is binding on the Division Bench to the extent that the question regarding reverting/postponing the date of promotion of applicants if it is in pursuance of the case of judgment given in Harnam Singh's case as the said judgment is binding on the Bench and in case the reversions are being made beyond the scope of the judgment in Harnam Singh's case. For that the Division Bench can give independent findings. The question is answered accordingly.

18. The Full Bench, as such, held that the order of the Tribunal passed in J.K. Jain's case (Supra) is of binding nature on the Co-ordinate Bench and that if the postdating of the promotion of the applicant or their reversion is consequential to the implementation of the order of the Tribunal in Harnam Singh's case (Supra) that will be unassailable. But in case the postdating of the promotions or the reversions or for some other reasons not covered by the order in Harnam Singh's case (Supra), the Division Bench will decide it on its own merit.

19. In the present two OAs the case of the respondents is that the order of the Tribunal in Harnam Singh (Supra) has been duly implemented but in the process of implementation of the order of this Tribunal in that case and other cases, in particular, the case of R. Anbalagan (Supra), it was found that the promotions of the applicants (applicants in OA 1840/2001) was erroneously made by the DPCs in the year 1994/1995/1996 since no vacancies for their promotion was available at that time. The case of the respondents in the OA filed by Shri Sohan Singh (OA No. 3176/2002) is that the order of the Tribunal in Sohan Singh's case

(Supra) in which this applicant was a party had been implemented and the applicant could not be given promotion, inter alia, as adequate vacancies were not available in the higher post.

20. The result is that if the impugned orders of postdating of promotion/reversion or non-promotion have been passed by the respondents as a consequence of the implementation of the order of the Tribunal made in Harnam Singh's case (Supra), the same could not be challenged in view of the judgment of this Tribunal passed in J.K.Jain's case (Supra). The Mumbai Bench of this Tribunal has also dismissed the OAs filed by similarly situated persons who had challenged their reversion which was occasioned on implementation of the order passed in Harnam Singh's case (Supra). In view of this were are constrained to observe that the impugned order, if passed as a consequence of the implementation of the order of the Tribunal in Harnam Singh's case (Supra), will not be illegal and vitiates to be interfered with by this Tribunal.

21. A careful perusal of the case pleaded in OA 1840/2001 discloses that for implementing the order the Tribunal in R.Anbalagan and Others (Supra) a combined seniority list of CM-II and PMs was prepared when it was found that the applicants' promotion through DPCs held in 1994 was erroneously made since no vacancy was available for their promotion at that time. The impugned promotions were made in 1996 and the show cause notice was served on the applicants in OA No. 1840/2001 in 2001. Though the respondents have produced before us the minutes of the meeting of the DPC held in 1994 but they have failed to produce the departmental file and office notings to show as to how many vacancies were worked out and how they were worked out for the consideration of the applicants for promotion by the DPCs. After taking several opportunities the respondents have produced before us the departmental file pertaining to the year 1999 when the order of the Tribunal in Harnam Singh's case was sought to be implemented.

22. It is fervently argued on behalf of the respondents in OA 1840/2001 that these applicants were promoted and have since been promoted further to the higher post even in accordance with the new promotion scheme Flexible



Complementing Scheme and, therefore, unsettling their status by their reversion or postdating their promotions on the lower post should not be allowed. The learned counsel has cited before us Balbir Singh Vs. State of H.P. and Others, 2000 (10) SCC 166 where the Hon'ble Supreme Court has set aside the reversion of an employee which the department has claimed was erroneously made. But the facts of the case were peculiarly distinguishable. In this case when the promotion of the said employee was challenged by another person, the department justified the promotion on the ground that the said employee belonged to ST category. But later on the department reverted the said employee and when it was challenged, it took a stand that as promotion was erroneous as the benefit of reservation was not available on promotion. The Hon'ble Supreme Court has held that the Government was estopped from claiming that the promotion was erroneously made and it cannot be allowed to approbate or reprobate the same. Conversely the respondents have cited I.C.A.R. and Another Vs. T.K. Suryanarayan and Others, 1998 (1) ALSLJ 76. It was a case where certain employees, Central Government servants claimed accelerated promotion alleging that they were being discriminated against as certain similarly situated persons had been given promotion either by the department of its own or under the order of this Tribunal. On being denied this promotion, they challenged it before this Tribunal, which allowed their prayer. It was submitted before the Hon'ble Supreme Court that it would cause hardship if the order of the Tribunal was interfered with. The Hon'ble Supreme Court found that the rules did not permit the promotion as demanded by the applicants in the OA. It was held that mistake committed by promoting some persons against the rule cannot be allowed to be perpetuated by the courts and cannot be a ground for similar treatment to others. Accordingly, the order of the Tribunal was set aside.

23. In the present case the applicants in OA No.1840/2001 are not challenging the impugned orders of postdating of their promotion or reversion on the ground that persons similarly circumstanced and similarly placed have also been erroneously promoted against non-existent vacancies or otherwise, but they (erroneously promoted) are not given similar treatment and reverted from

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promoted post or their promotion is not postdated in like manner. Their case is that the case of 13 applicants in Harnam Singh's case (Supra) was treated to be a class apart and the respondents have decided to implement the order of the Tribunal and it was the case of the respondents that it will not require creation of new posts. They have stated that their promotion was as per rules and their further promotion to the higher post under Flexible Complementing Scheme, which was on merit, could have not been challenged.

24. The respondents have also referred to the decision of the Hon'ble Supreme Court in M/s Faridabad Ct. Scan Centre Vs. D.G. Health Services and Others, JT 1997 (8) SC 171 in which it was held that Article 14 of the Constitution of India will not be attracted where wrong orders were issued in favour of others. Since wrong orders could not be perpetuated with the help of Article 14 that such wrong orders were passed in favour of some other persons and, therefore, there will be discrimination against others, if correct orders are passed against them. In Union of India (Railway Board) and Others Vs. J.V. Subhaiah and Others, 1996 (2) SCC 258 the Hon'ble Supreme Court has observed that Article 14 does not apply when the order relied upon is unsustainable in law and is illegal and such order could not attract Article 14 of the Constitution of India. As observed above, the applicants in OA No.1840/2001 are not claiming parity in the matter of promotions etc. with certain other employees who were also erroneously given similar promotions. These case law, thus, would not apply to the facts of the present case.

25. Similarly the learned counsel for the respondents placed reliance on the judgment of the Hon'ble Supreme Court in Secretary, Jaipur Development Authority, Jaipur Vs. Dualat Mal Jain and Others, 1997 (1) SCC 35 where it was held that if some persons have derived benefit illegally, others similarly circumstanced cannot claim the same benefit on the ground of equality under Article 14 of the Constitution of India as it would amount to perpetuating the illegality through judicial process which the court cannot do. Needless to reiterate that the case of the applicant is not based on the plea of discrimination against them with other similarly circumstanced and similarly placed persons who have

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been granted promotion to the higher post erroneously against non-existent vacancies. This judgment, therefore, is not relevant to the question under consideration.

26. Now reverting back to the question before us we may reiterate that the respondents have not been able to produce record to show how the vacancies were calculated when the applicants' promotion in 1994/1995 was erroneously made. But the respondents have stated that they have undertaken exercise in respect of 51 Labs and have prepared a combined seniority list of their employees and then they found that the promotion of these applicants was in excess of the vacancies, which were available at the relevant time. It is submitted that the order of the Tribunal in Harnam Singh's case (Supra) has been implemented and as a consequence number of persons have been reverted and staff promoted in their place. This fact has not been denied by the applicants.

27. This Tribunal in its reference order dated 13.5.2004 made certain observations which are in the nature of finding and which cannot be ignored by the co-ordinate bench. In paras 18 to 22, had made the following observation:-

“18. We find that the important aspect of the matter and the position of law as existed, which would have certainly estopped the respondents from postdating the promotions of applicants after a number of years has not been gone into. The contentions raised in this OA had not been there in the OA had made a difference. In our considered view unless the Presidential Order is not set aside or superseded the same has an effect which is the genesis of promotion to applicants. Moreover in Harnam Singh's case (supra) the decision of 13 PMs was constituted as a separate class and was to be processed for promotion to Chargemen Grade-A at par with PMs, no directions had been issued to review the entire cadre.

20. Moreover, we find that some of the applicants after revision of their promotion had earned merit promotion and have risen to Class-I service also.

21. The aspect of unsettling the settled position has not been gone into. We also find that the decision of the Full Bench of the Mumbai bench in OA 18/1995 and others referred to in the rejoinder filed to the additional affidavit on 3.3.2003 the challenge to the Presidential Order dated 11.4.1994 and the directions in Ambalgam's case (supra) has been turned down, upholding the reasoning in the aforesaid case and approved the principles in the Presidential Order dated 11.4.1994. This over-rules the decision of the Division Bench.

22. In the light of the aforesaid submission as we do not subscribe to the reasoning given in order dated 26.5.2003 in OA 1733/2001 in J.K. Jain's case (supra) and others, in disagreement the only course left open is keeping in view the doctrine of precedent

and the decision in SI Rooplal (Supra) to refer the issue to a Larger Bench. Accordingly, papers may be placed before the Hon'ble Chairman for appropriate orders".

28. From these observations it is clear that the Co-ordinate Bench was of the view that the question of application of the principles of estoppel was not considered and had it been considered, it would have made a difference. The Presidential Order was not set aside or superseded which formed the basis of the promotion. It also took into consideration that in Harnam Singh's case (Supra) 13 applicants were considered as a separate class and were to be considered for promotion to Chargeman Grade-I at par with PMs and there was a direction that the exercise of entire cadre review will be undertaken. Lastly it also observed that the unsettling the settled position has also not been gone into. From these observations it was clear that the Tribunal was not inclined to interfere with the order of the Tribunal but was of the view that the directions of the Tribunal in J.K. Jain's case (Supra) came in its way so the reference was made.

29. The Full Bench decision and its observation, reproduced above, clearly spelt out firstly that if the impugned orders were made by the respondents as a result of the implementation of the order of the Tribunal in Harnam Singh's case, the orders impugned, i.e., the order of the postdating of promotion/reversions passed against the applicants in OA No. 1840/2001 were in order and legal and could not be challenged. But if the orders were passed for some other reason, not as a result of the implementation of the order in Harnam Singh's case (Supra), they could be challenged. In the present case a careful scrutiny of the case pleaded by the respondents makes it clear that the postdating and reversion of the applicants in OA 1840/2001 is not sought to be justified on the ground that it is in consequence to the implementation of Harnam Singh's case (Supra). It is not the case of the respondents that certain employees who were considered for promotion in compliance with the order in Harnam Singh's case (Supra) could not be given promotion because the vacancies to which they were to be promoted were occupied by the applicants in OA No. 1840/201. Had it been so, there was no hinderance in the way of the respondents in passing the order of postdating the promotions or reversion of the applicants to make the vacancies available to the

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persons who were entitled to these promotions in terms of the order of this Tribunal in Harnam Singh's case (Supra).

30. Conversely the case of the respondents is that the scrutiny of the record in the process of implementation of the order of the Tribunal in Harnam Singh's case (Supra) revealed that no vacancy was available when the promotion of the applicants was considered by the DPC in the year 1994. The administrative authority has a right to rectify the mistake in executive orders. If the promotion of the applicant was de hors the Recruitment Rules/Government Instructions on the subject or otherwise erroneously made the rectification order passed by the Government is unassailable. A Government servant does not have indefeasible right to continue on the promoted post even though his promotion was de hors the rules or it was otherwise illegal and invalid. Of course if the promotions had continued for a pretty long time say 10 years or so it may in entirely given circumstance unjust to unsettle a settled status after a long lapse of time.

31. Of course the respondents have not produced the complete record before us relating to the promotion of the applicants by DPC in 1994. But at the same time it is the case of the respondents that they have prepared combined seniority list of all the employees working in all the 52 Labs spread over the country and in that process came to know that vacancies were not available when the DPC considered the applicant for promotion. We have no reason to doubt the veracity of the claim of the respondents in this regard. The vacancies were not available in 1994 when the applicants in OA No.1840/2001 were promoted. But we cannot ignore the fact that not only these applicants have been promoted and worked on in the higher grades but have since been further promoted to the higher post as much as three of them, the applicant Nos.1, 2 and 8 have been promoted to the Gazetted rank of TO 'B' others have been promoted to the grade of TO 'A'. These promotions have been earned by them in accordance with the Flexible Complementing Scheme of the respondents and under the new Recruitment Rules. Therefore, disturbing the promotion of these applicants seems to us, as also appears from the observation of the Co-ordinate Bench, unjust. Reverting

them to the lower feeder grade after working for over 10 years on the higher posts and also as TO 'A' or TO 'B', therefore, should not be interfered with.

32. As regards Sohan Singh, applicant in OA No. 3176/2002, suffice to say that he has not been able to justify his claim. The respondents have implemented the order of the Tribunal in Harnam Singh's case (Supra) in which he was also an applicant. Two out of 13 applicants have been granted promotions. Others have not been granted promotion because vacancies were not available for them. We have no reason to disbelieve the case of the applicants. Therefore, we do not find any merit in the case of this applicant.

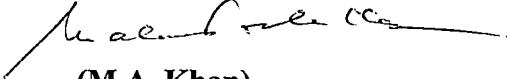
33. Accordingly, OA No. 3176/2002 is dismissed.

34. OA No. 1840/2001 is partly allowed. The impugned orders are set aside to the extent they sought to revert the applicants in OA No. 1840/2001 from the post of TO 'B'/T6 'A' presently held by them as the case may be. Under the interim orders these applicants have continued to work in the present position. However, we clarify that this order shall not be taken as a precedent and the promotions upto the present post held by the applicants in OA No.1840/2001 shall be treated as purely personal to them. Their further promotions shall be made strictly in accordance with their deemed seniority position determined on implementation of the impugned postdated promotion/reversion orders and from the due date in accordance with the existing Recruitment Rules and not solely on the basis of the present post held by them.

35. Both the OAs stands disposed off in terms of the above order with no order as to costs. No costs.

Let a copy of this order be placed in both the case files.


(N.D. Dayal)
Member (A)


(M.A. Khan)
Vice Chairman (J)

Rakesh