

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A.NO.751/2001 & M.A.NO.2774/2001
WITH
O.A.NO.2854/2001, M.A.NO.2336/2001 &
M.A.NO.2773/2001

Monday, this the 1st day of April, 2002

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

OA-751/2001

1. YC Sharma
Assistant Director
Tariff Commission
Lok Nayak Bhawan
Khan Market
New Delhi
2. MC Arya
Research Officer
Planning Commission
Sansad Marg
New Delhi
3. JS Nigam
Assistant Director
O/O Economic Adviser
Udyog Bhawan
New Delhi
4. Dr. NK Sinha
Research Officer
Ministry of Rural Development
Krishi Bhawan
New Delhi
5. Ram Pal Singh
Assistant Director
Ministry of Surface Transport
Jam Nagar House
New Delhi
6. S. Roy
Research Officer
Planning Commission
Yojna Bhawan
Sansad Marg
New Delhi
7. Mohinder Singh
Research Officer
O/O Deputy Commissioner
Small Scale Industries
Nirman Bhawan
New Delhi
8. R.K. Sharma
Research Officer
Department of Economic Affairs
Ministry of Finance
North Block
New Delhi

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9. Rakesh Yadav
Assistant Director
Department of Economic Affairs
Ministry of Finance
North Block
New Delhi
10. BB Sharma
Research Officer
Planning Commission
Yojna Bhawan
Sansad Marg
New Delhi
11. Narain Singh
Research Officer
Planning Commission
Yojna Bhawan
Sansad Marg
New Delhi
12. Ashit Ranjan Dey
Research Officer
O/O Deputy Commissioner
Small Scale Industries
Nirman Bhawan
New Delhi
13. Ram Vir Singh
Assistant Director
Department of Economic Affairs
Ministry of Finance
North Block
New Delhi
14. Smt. Komal Gulati
Research Officer
Ministry of Commerce
Udyog Bhawan
New Delhi
15. RNP Singh
Assistant Director
Ministry of Labour
Jaisalmer House
North Block
New Delhi
16. Vinod Kumar
Assistant Director
Ministry of Labour
Shram Shakti Bhawan
New Delhi
17. C. Chinappa
Research Officer
Planning Commission
Yojna Bhawan
Sansad Marg
New Delhi

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18. Ranjan Mukherjee
Assistant Director
Department of Economic Affairs

Ministry of Finance
North Block
New Delhi

19. Sube Singh
Research Officer
Ministry of Rural Development
Krishi Bhawan
New Delhi

20. AA Rizvi
Assistant Director
Ministry of Labour
Shram Shakti Bhawan
New Delhi

21. Dr. Sharad Pant
Research Officer
Planning Commission
Yojna Bhawan
Sansad Marg
New Delhi

22. Dr. Mahipal
Research Officer
Planning Commission
Yojna Bhawan
Sansad Marg
New Delhi

..Applicants

(By Advocates: Shri Subhash Sharma & Shri M.R. Vij)

OA-2854/2001

1. Vijay Kumar Gupta
M/O Finance, Department of Economic Affairs
North Block
New Delhi
2. Sher Singh
Dte. of Economics & Statistics
Department of Agriculture & Coop.
Ministry of Agriculture
Krishi Bhawan
New Delhi
3. Kailash Kochhar
Dte. of Economics & Statistics,
Department of Agriculture & Coop.
Ministry of Agriculture
Krishi Bhawan
New Delhi
4. Pillu-Ram-Mefna
O/o The D.C. (SSI) 7th Floor
Nirman Bhawan
New Delhi-11
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5. Ganga Ram
M/O Finance, Department of Economic Affairs
North Block, New Delhi
6. Kali Charan
M/O Finance, Department of Economic Affairs
North Block, New Delhi-1
7. Hukmi Lal Meena
M/O Finance, Department of Economic Affairs
North Block, New Delhi-1
8. S.P.S. Chauhan
Central Water Commission
R.K. Puram, New Delhi
New Delhi
9. P.B. Dhyani
M/O Statistics & Programme Implementation
P.I. Wing
Patel Bhawan
New Delhi
10. Rajendra Prasad Misra
Central Water Commission
R.K. Puram
New Delhi-66

..Applicants

(By Advocates: Shri Subhash Sharma & Shri M.R. Vij)

Versus

1. Union of India through Secretary.
Ministry of Finance
(Department of Economic Affairs)
North Block
New Delhi
2. The Chairman
Union Public Service Commission
Dhaulpur House
New Delhi
3. The Secretary
Ministry of Personnel
Public Grievances
Pensions, Department of Personnel &
Training, North Block
New Delhi
4. Cabinet Secretary
and Chairman IES Board
Rashtrapati Bhawan
New Delhi

..Respondents

(By Advocate: Shri R.V. Sinha in both the OAs)

O R D E R (ORAL)

Hon'ble Shri S.A.T. Rizvi, Member (A):

MA-627/2001 in OA-751/2001 and MA-2336/2001 in
OA-2854/2001 for joinging together are allowed.

2. Both these OAs raise similar issues of law and fact and are, therefore, taken up together for passing this common order.

3. In OA-751/2001, there are 22 applicants, whereas in the other OA, being OA-2854/2001, the number of applicants is 10. The applicants in both the OAs were promoted as Assistant Director or to equivalent posts on ad-hoc basis for a year by similar orders passed by the respondents with a further stipulation that their promotions could be terminated earlier than one year. The applicants, however, continued to work in the upgraded posts of Grade.IV of the Indian Economic Service (IES) on ad-hoc basis for two years or more. Subsequently, they all stood reverted to lower posts, not included in the IES, in May, 2000. The prayer made is for a direction to the respondents to promote the applicants on a regular basis to the posts of Assistant Director and Research Officer in Grade-IV of the IES by holding DPC meetings to fill up year-wise vacancies/posts to be determined in turn on the basis of 40% quota earmarked for promotion for the period 1994-95 to 2000-01, separately for each year.

4. One of the present OAs, being OA-751/2001, was, in the first instance, disposed of on 22.3.2001 in the absence of the respondents' counsel with a direction to the respondents to hold the DPC meetings for the period from 1994-95 to 2000-01 in accordance with the IES Rules for filling up the year-wise vacancies/posts after determining the correct number of vacancies in

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consultation with the Union Public Service Commission. Non-compliance of the aforesaid direction led to the filing of a Contempt Petition (No.312/2001) before this very Tribunal, which was disposed of by it on 5.9.2001 after noting on the basis of respondent supplied information that no vacancies existed in the 40% promotion quota and accordingly, the directions given could not be complied with, literally. The Tribunal had also noted that as many as 89 posts have been over-filled in the promotion quota. Having disposed of the Contempt Petition as above, the Tribunal proceeded to recall the OA and directed that the same be restored to file. We are thus considering the same OA since restored to file. The other OA, being OA-2854/2001, has come up before us only now for the first time.

5. The learned counsel appearing on behalf of the respondents has, at the outset, made a submission by relying on K.G. Derasari & Anr. Versus Union of India & Ors. decided by the Hon'ble Supreme Court on 10.12.1999 and reported in JT 1999 (10) SC 486. Paragraph 7 of the aforesaid judgement which is relevant for the purpose of adjudication of the present case, reads as under:-

"7. Having considered the rival submissions at the bar, we have no hesitation to come to the conclusion that the Tribunal was not entitled to in a contempt proceeding, to consider the legality of its earlier order which has reached finality not being assailed for annulled by a competent forum. If the Tribunal has not looked into any previous decision of this Court which is the law of the land and by which it was bound, the remedy available to the aggrieved person was to file an application for review. Admittedly, no review application was filed before the

Tribunal. In an application for contempt, the Tribunal was only concerned with the question whether the earlier decision has reached its finality and whether the same has been complied with or not. It would not be permissible for a Tribunal or Court to examine the correctness of the earlier decision which has not been assailed, and reverse its earlier decision. In that view of the matter, the impugned order cannot be sustained, the same being beyond the powers and jurisdiction of the Tribunal in a contempt proceedings."

6. If one has regard to what the Supreme Court has held in the above paragraph, a view can be taken that the order dated 22.3.2001 passed in OA-751/2001 could not be recalled and, therefore, the same OA could not have been restored to file. We have considered this submission carefully and find that, if that were the case, the order initially passed by this Tribunal on 22.3.2001 would still remain in place and continue to be enforceable and it should be possible for us to examine whether and to what extent the directions then given have been complied with. The Contempt Petition in question has been disposed of by taking note of certain facts placed before the Tribunal on behalf of the respondents. The Tribunal also had, in view of the facts and circumstances brought to its notice while dealing with the Contempt Petition, in a way, indirectly and tacitly held that there was no contumacious or willful disobedience of the directions given. Since the facts then placed before the Tribunal are now in controversy, this cannot mean, in our judgement, that whether or not the directions given had actually been complied with, cannot be looked into de-novo at this stage of the proceedings. With this in mind, we decide to proceed further in this case with a view to finding out for ourselves whether the directions

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given on 22.3.2001 have been complied with and if so, to what extent compliance has been made.

7. The learned counsel appearing on behalf of the respondents has placed before us the vacancy position of the direct recruitment quota (DRQ) as well as the departmental promotion quota (DPQ) in the form of a table forming part of the reply filed on their behalf. The table in question contained in paragraph 4.14 of the respondents' reply shows the position of year-wise vacancies both in respect of DRQ as well as the DPQ. A perusal of the table shows that for the period from 1986-87 to 2000-01, as against the DPQ of 40% resulting in 116 vacancies/posts, 205 stood filled by promotion. Thus, a much large number than warranted under the 40% quota stood filled by promotion for the entire period from 1986-87 to 2000-01.

8. The learned counsel appearing on behalf of the applicants submits that the 115 DPQ posts shown in the aforesaid table for the year 1989-90 relate to and arose in the wake of the judgement of the Hon'ble Supreme Court delivered on 11.9.1990 in B.S. Kapila & Ors. Versus Cabinet Secretary & Ors. (A-3). The relevant portion taken from the aforesaid judgement runs as follows:-

"...The posts which Union of India has agreed to create and/or to which on promotion, fitment would be done would lapse with the superannuation of each of the incumbents of the benefit and would not be treated to be a permanent post in the cadre..."

The learned counsel appearing on behalf of the applicants submits that by holding as above, the Supreme Court

clearly intended creation of supernumerary posts so as to enable the respondents to grant promotions to all those who were found senior to Shri N. Chaddha and others. The posts so created were to be phased out with the retirement of the incumbents. In this view of the matter, according to him, the regular posts meant to be filled by way of promotion would still remain intact for being filled in accordance with the rules and the applicants should have been considered for promotion accordingly. The fact that the aforesaid 115 posts released for DPQ and shown in the aforesaid table have actually arisen in the wake of the aforesaid judgement made by the Supreme Court, has not been seriously disputed by the respondents. By excluding the aforesaid 115 posts from the calculation depicted in the aforesaid table, a position will emerge, according to the learned counsel, in which promotional quota posts/ vacancies would be found to be available enabling the respondents to consider the claim of the applicants for promotion.

9. The learned counsel appearing on behalf of the respondents has placed considerable reliance on the decision taken by the respondents at the highest level in regard to filling up of DRQ and DPQ vacancies. We have perused the departmental file placed before us by the learned counsel and find that the IES Board, which is apparently the apex body for deciding on the question of creation and filling up of vacancies, has decided to adhere to the decision taken earlier by it on 4.5.1998 to recruit only 5-6 officers in one year or 10-12 officers in every two years for some more time. The aforesaid

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decision has been taken on 25.6.1999. Later, apparently after a review of the entire position, the same position has been affirmed in December, 2000/January, 2001. While affirming the aforesaid position, the competent authority has further noted that the over all promotion of the officers under the DPQ having exceeded 40%, their number might be frozen by not filling up any vacancies in Grade-IV/junior time scale of the IES during the years in which no DR has taken place. From the above, we find that the authorities have clearly noted that the DPQ has been over filled giving rise to the need for freezing the vacancies by not filling them. However, while arriving at the aforesaid conclusion, the authorities have evidently taken into account the 115 vacancies filled by promotion in 1989-90, to which a reference has already been made above. The learned counsel appearing on behalf of the applicants vehemently argues that having regard to the spirit and the letter of the order passed by the Supreme Court in B.S. Kapila's cases (supra), the respondents ought not to have taken the aforesaid 115 posts into account for the purpose of deciding the question of granting regular promotions to whosoever had become
/ entitled for promotion in accordance with the relevant rules. On a careful consideration of the issues involved herein, we are inclined to go along with the aforesaid contentions raised on behalf of the applicants. In the circumstances, therefore, we feel that it will be just and proper to dispose of the present OAs in the following terms:

10. The respondents will recalculate the vacancies/posts available against DR and DP quotas for

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(11)

the period from 1986-87 to 2000-01 by excluding 115 posts which were filled in 1989-90 in compliance of the order passed by the Supreme Court. Thereafter, if the respondents find that regular posts have become available for being filled by promotion under the 40% quota, they will proceed to determine the year-wise vacancies/posts and hold a DPC on year-wise basis and while doing so, consider the claims of the applicants in these OAs in accordance with the relevant rules. The respondents are directed accordingly. They are also directed to carry out the aforementioned exercise expeditiously and in any event within a period of three months from the date of receipt of a copy of this order.

11. In the circumstances, both the OAs are disposed of in the aforestated terms without any order as to costs.

12. Registry is directed to place a copy of this order in the case file of OA-2854/2001.

13. MA-2774/2001 in OA-751/2001 and MA-2773/2001 in OA-2854/2001 stand disposed of.

(S.A.T.Rizvi)
Member (A)

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Attested
NS/Anwar
CO. CI

(Ashok Agarwal)
Chairman