

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.864/95

New Delhi this the 11<sup>th</sup> day of November, 1999.

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HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN(J)  
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

1. Shri Roshan ~~Singh~~ Singh  
S/o Shri Badam Singh
2. Shri R.K. Markande,  
S/o late Shri Din Dayal Markande
3. Shri R.P. Gupta,  
S/o late Shri Mewa Ram Gupta
4. Shri Prem Prakash,  
S/o Late Shri Pooran Mal
5. Shri S. Ramanathan,  
S/o Late Shri S. Seshadhori ...Applicants

(All are working as Asstt. Director ISS  
Grade IV in DGS&D New Delhi except  
Shri S. Ramanathan, who has since ret'd.  
R/o Gayatri Apartments Flat No.28 D  
Sector IX, Rohini, New Delhi-110085).

(By Advocate Shri T.C. Aggarwal)

-Versus-

1. Union of India through  
Secretary, ISS,  
Deptt. of Statistics,  
Ministry of Planning,  
Sardar Patel Bhawan,  
New Delhi-110 001.
2. Director General Supplies  
and Disposals,  
Jeevan Tara Building,  
Parliament Street,  
New Delhi.
3. Shri Tushar Ranjan Mohanty,  
S/o Shri Rabi Narayan Mohanty,  
Computer Literate,  
Inter-State Council Secretariat,  
Ministry of Home Affairs,  
Vigyan Bhawan Annexe,  
Maulana Azad Road,  
New Delhi-110 011.
4. Shri Pravin Srivastava,  
S/o Dr. K.S. Srivastava,  
Asstt. Director,  
Central Statistical Organisation,  
Department of Statistics,  
Ministry of Planning and  
Programme Implementation,  
425-B, Sardar Patel Bhavan,  
New Delhi-110 001.

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5. Shri Krishna Kumar,  
S/o Shri Lal Ji Lal Srivstava,  
Senior Research Officer,  
Planning Commission,  
Ministry of Planning and  
Programme Implementation,  
330, Yojana Bhawan,  
New Delhi-110 001.

6. Ms. G. Mythili,  
W/o Shri Y.S.R. Murthy,  
Research Officer,  
Planning Commission,  
Ministry of Planning and  
Programme Implementation,  
229-B Yojana Bhawan,  
New Delhi-110 001.

... Respondents

(Respondents No. 1 By Advocate Shri K.C.D. Ganwani)

(Respondents Nos. 3&6 in person)

(None appeared for Respondents Nos. 2, 4&5)

ORDER

By Reddy, J.-

The applicants in this OA seek retrospective promotion to grade IV of Indian Statistical Service (ISS), w.e.f. 1977, the alleged date on which their juniors have been promoted. The facts leading to the grievance of the applicants are as follows:

2. Not satisfied with the reliefs obtained in two previous sojourns to this forum, the applicants ventured again in the present OA. The applicants while working as Senior Economic Investigators (SEIs) filed OA-356/87 for a declaration that they were regularly appointed as SEIs with effect from their ad hoc appointment. The OA was disposed of with a direction to make a representation in that regard. Accordingly, they made a representation but it was rejected by a letter dated 26.7.91. Thereupon, they filed OA No.1795/91, contending that they are entitled for regular promotion from the date of ad hoc promotion as S.E.Is. They relied

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upon Narender Chadha & Ors. vs. Union of India & Ors., AIR 1986 SC 638. It was accordingly allowed by order dated 18.11.92 and the respondents were directed to grant consequential benefits to the extent of salary and promotion to the next higher grade in accordance with the rules. Complaining that the directions having not been complied with by the respondents, the applicants filed Contempt Petition No.204/93 and the Tribunal in its order dated 19.10.93 while disposing of the CCP directed the respondents to promote the applicants to Grade IV in the ISS expeditiously. Accordingly, the applicants were promoted and their seniority was refixed in the seniority list of Grade IV ISS, dated 10.9.93 and it was circulated to all the employees. It is the grievance of the applicants that they are entitled to promotion as Grade IV from the dates their juniors were promoted, i.e., from 1977/79, whereas in the above seniority list they were shown to have been promoted from 1.10.90. It is, therefore, vehemently contended by the learned counsel for the applicants that the applicants are entitled under law for promotion with effect from the dates of promotion of their juniors and that their juniors having been promoted to the posts of Assistant Director in 1977 the applicants are equally entitled for promotion w.e.f. 1977 and the date of promotion w.e.f. 1.10.90 as given in the impugned order is wholly illegal.

2.1 It is averred in the counter affidavit by respondent No.1 that in Narender Chadha's case (supra) decided on 11.2.86 it was directed that ad hoc appointees should be treated to have been appointed to Grade IV of the ISS as regular promotees and they should be assigned

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seniority from the dates of continuous officiation and those promoted on the basis of the select list of 1982 and 1984 also were to be treated on the same basis. Accordingly, a draft seniority list of 21.3.86 in the department of Statistics was circulated and objections were called for. A final seniority list was also circulated on 8.5.86. In both the lists the applicant's name were not mentioned, as they were not parties before the Supreme Court in Narender Chadha's case (supra). Some of the employees who were not even covered by the judgement in Narender Chadha Chadha's case (supra) filed OAs before the Principal Bench seeking regularisation of their appointment with effect from their initial appointment. The Bench did not accept that contention and dismissed the OAs. When they approached the Supreme Court the Supreme Court directed that the serving employees belonging to the Statistical discipline as also those belonging to the Economic discipline and similarly placed other employees (non-petitioners) should also be appointed to Grade IV of ISS w.e.f. 1.10.90, though they were not entitled for any benefit under the ratio of Narender Chadha's case (supra). It was contended by the learned counsel for R-1 that the applicants cannot claim seniority w.e.f. 1977/79 onwards as such claim would imply the placing of the applicants over 400 persons. It was also contended that the claim of the applicants is barred by limitation, as the seniority list was finalised as early as on 21.3.86.

2.2 Respondents 2,3,4 and 6 also filed counter-affidavits on the same lines. It is contended by Shri Tushar Ranjan Mohanty, R-3 who appeared in person and

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who ably presented his case that the OA is barred by limitation and that it was also liable to be dismissed on the ground of non-joinder of necessary parties. It is also contended that the case suffers from serious laches committed by the applicants and hence they should not be granted any relief in the present case. It is also contended that the promotion of the applicants does not depend upon or reflect upon mere seniority, as the recruitment rules contemplate preparation of seniority list in the feeder cadres from amongst several ministries. The applicants have been promoted w.e.f. 1.10.90 in accordance with the directions given by the Supreme Court in B.S. Kapila & Ors. vs. Cabinet Secretary & Ors. (Civil Appeal Nos. 4612-13 of 1999) and in accordance with the directions given in the contempt case filed by the applicants against the orders passed in OA-1795/91. Hence, the applicants having got the benefit as sought for, the present OA is only an abuse of the process of the Court.

3. We have considered the pleadings in this case and the arguments advanced by the learned counsel for the applicants and the respondents. This case is one of the several off shoots of the judgement of the Supreme Court in Narender Chadha's case (supra), in which the list between the direct recruits and the promotees has been resolved to some extent. The Supreme Court gave directions to the Central Government to treat all employees who are promoted on ad hoc basis to Grade IV of ISS as having been regularly appointed and assign them seniority in the cadre with effect from the date they were

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continuously officiating in the said posts. Those directions were made applicable to only officers who have been promoted and working as on 11.2.86.

4. The only direction that was obtained by the applicants in OA-1795/91 was that the applicant's seniority should be reckoned from the date of their ad hoc appointment in the grade of Senior Economic Investigator and for consequential benefits, including their promotion to the next higher grade in accordance with the rules. Accordingly, the respondents considered the case of the applicants in accordance with the rules and the applicants were promoted as Grade IV ISS w.e.f. 1.10.90. The present OA is filed claiming that they should have been promoted from 1977/79 when their juniors are said to have been promoted. The claim of the applicants appears to be wholly unacceptable.

5. Grade IV is the lowest and the initial entry in the ISS and only 40% of the posts were available for promotion on selection basis on the recommendations of the UPSC. It should be noticed that the officers holding group 'B' statistical function posts which are recognised as holding the feeder posts. The relevant rules are the ISS Rules, 1961. The relevant rule is 8 (1) (a). 8 (1) (a) (ii) speaks of the feeder post for promotion. It says that "40 percent of the vacancies in this Grade shall be filled by Selection from among officers serving in offices under the Government in Statistical posts recognised for this purpose by the Controlling Authority who shall prepare a list of such posts in consultation with the Commission." The applicants seniority in their office of

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work cannot be the sole guiding factor for preparation of the seniority list. All these factors have been considered by the Supreme Court in Narender Chadha's case and B.S. Kapila's case. In B.S. Kapila's case (supra) as stated earlier the Supreme Court has extended all similarly situated officers the benefit of Narender Chadha's case (supra). to the Grade IV of ISS w.e.f. 1.10.90. The applicants were, therefore, given the promotion w.e.f. 1.10.90 as they were covered under the above order of the Supreme Court. The claims of the applicants that they should have been promoted w.e.f. 1977/79 is, therefore, wholly misconceived and untenable.

6. The applicants filed CCP No.203/93, which was disposed of by an order dated 18.10.93. The contention raised in the said CCP was that the applicants should have been promoted to Grade IV of ISS w.e.f. 1.10.90, the date from which their junior in their office Shri R.C. Garg has been promoted. Accordingly, the applicants have now been promoted w.e.f. 1.10.90. Again the OA is filed claiming the benefit of Dina Nath's case OA No.986/86 who was also given the promotion w.e.f. 1.10.90. Hence, the applicants cannot have any grievance against the impugned order. This OA in our opinion is certainly an abuse of the process of the court.

7. The O.A. is also liable to be dismissed on the ground of laches and limitation. It is the case of the applicant that their juniors have been promoted to ISS in 1977. There is no reason why applicants had not questioned the said promotion if they were aggrieved by the said promotion. The draft seniority list of Grade IV

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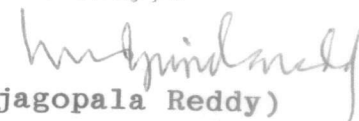
of ISS officers was circulated on 21.3.86 and the final list was circulated on 8.5.86. The applicants have not chosen to question the said seniority list which only goes to show that the applicants had no grievance in the placement of the officers in the said seniority list. R-3 was shown in the said seniority list as having been appointed. In fact the present OA was filed claiming the benefit of Dina Nath's case (OA-986/86) in which the applicants were also promoted w.e.f. 1.10.90.

8. In 1991 when the applicants filed OA-1795/91 they have not chosen to make the persons who have already been promoted and shown in the seniority list, as respondents in the OA.

9. Further, by order dated 4.11.93 shown as Annexure 'C' in the counter-affidavit filed by R-2, R-4 and R-6 that the applicants have been appointed to Grade IV of ISS w.e.f. 1990 on the basis of the Supreme Court order in B.S. Kapila's case (supra). If they were aggrieved by this order they should have questioned this order or made representation against this order. The applicants have kept quiet and filed the OA in 1995. No relief can, therefore, be granted to the applicants in this OA.

10. The O.A. is not only hit by Section 21 of the Administrative Tribunals Act, 1985 but also suffers from laches. The O.A., therefore, fails both on merits as well as on limitation and accordingly it is dismissed with costs of Rs.5,000/- (Rupees five thousand only).

  
(Smt. Shanta Shastri)  
Member (A)

  
(V. Rajagopala Reddy)  
Vice-Chairman (J)