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Central Administrative Tribunal  
Principal Bench, New Delhi.

O.A.No.2075/94

New Delhi this the 9th Day of March, 1995.

Hon'ble Mr. J.P. Sharma, Member(J)  
Hon'ble Mr. B.K. Singh, Member(A)

1. Shri C.M.P. Sinha,  
S/o late Shri D.P. Sinha,  
R/o R-9, Andrewsganj Extension,  
New Delhi-49.
2. Sh. V.K. Jain,  
S/o late Shri Deep Chand Jain,  
R/o A-3/27-A, DDA Flats,  
Paschim Vihar, New Delhi-63. Applicants

(through Sh. D.K. Sinha with Sh. S.S. Tiwari,  
counsel)

versus

Union of India,  
through Secretary,  
Ministry of Industry,  
Department of Industrial,  
Development, Udyog Bhavan,  
New Delhi. Respondent

(through Sh. V.S.R. Krishna, counsel)

ORDER(ORAL)

delivered by Hon'ble Mr. J.P. Sharma, Member(J)

The applicants are Development Officers (Engg.) in the Department of Industrial Development, Ministry of Industry. Some of the Development Officers were aggrieved by the seniority list and they separately filed a number of original applications before the Principal Bench which were decided jointly on 31.10.90 and O.A.No. 818/87 filed by Shri R.M. Balani & 12 Ors. was taken as a leading case. Certain directions were issued to the respondents in the aforesaid judgement and it was directed that the seniority be computed a fresh from the date of their initial appointments on being regularised. The consequential benefits were also awarded with respect to the revised computation of seniority. The review application No. 95/91 against the aforesaid judgement which was decided on 1.10.1991 and

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certain clarifications were also given supplementing the earlier directions given in O.A.No.818/87. It appears that Shri Laxman Mishra & Ors. filed S.L.P. against the aforesaid judgement dt. 31.10.1990 before the Hon'ble Supreme Court and Hon'ble Supreme Court while admitting that S.L.P. granted an interim stay by the order dt. 8.3.91 limiting the stay that there will be no reversion to those who had already been promoted.

In the above context, the present applicants have filed this application in October, 1994 and they have taken the stand that the respondents are not implementing the decision of the Tribunal given by its judgement dated 31.10.1990 and not considering the applicants to the next higher post of AIA and are, therefore, inspite of the revised seniority list not getting the benefit which has been granted to now juniors who were erstwhile seniors in the unrevised seniority list.

The reliefs prayed for by the applicants are that a direction be issued to consider the applicant for promotion to the post of Addl. Industrial Adviser and that they should be given parity with Shri S. Nag and Shri S.K. Jain who have now been admittedly placed junior to the applicants in the revised seniority list. They have also prayed for consequential reliefs.

On notice the respondents contested this application making averments and also stating that two vacancies have occurred in July, 1994 of Addl. Industrial Adviser and that the applicants were eligible to be

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considered on those posts but in view of a direction issued by the Hon'ble Supreme Court in S.L.P. referred to above, the reversion of Sh. S. Nag and Sh. S.K. Jain could not be affected irrespective of the fact that they have been down graded in the revised seniority list viz.-a-viz. the present applicants. It is also stated that because of certain reductions, two supernumerary posts were created for those promotees and these promotees were sent to surplus cell earlier to the vacancy of July, 1994. However, in the meantime since these vacancies have occurred with those repatriated surplus employees who have been deployed in these vacancies in consultation with Department of Personnel & Training and as such there is no vacancy available at the relevant point of time to consider the applicants for promotion to the posts of A.I.A. However, during the course of arguments it is transpired that one of the incumbents who was repatriated & Sh. Nag has since retired and one vacancy shall be available in the promotion quota for consideration of the applicants alongwith others eligible as per zone of consideration.

The respondents have also referred to the instructions of deployment of surplus employees and placed before us a copy of CCS(Redeployment of Surplus Staff) Rules, 1990

The applicants have also filed rejoinder highlighting the facts stated in the original application that even there was a reduction in the post of A.I.A.(Engg.), the respondents had transferred two juniors of the applicants to the surplus cell alongwith

the said juniors with Sh. S. Nag and Sh. S.K. Jain who were holding only supernumerary posts and as per law, only holders of regular posts are transferred to surplus cell and not of the supernumerary post as can be seen from the Rules, referred to above. It is stated that two vacancies of A.I.A. which had occurred in the department of Industrial Development in July, 1994 could not have been filled up by adjusting Sh. S. Nag and Sh. S.K. Jain who are holders of the supernumerary post and as such action of the respondents is arbitrary and illegal. Other averments made in the rejoinder are only reiterating the facts stated in the original application.

We have heard the learned counsel for the parties.

The learned counsel for the respondents has not disputed the rights of the applicants to be considered in the promotional post. It is stated that the applicants shall be considered as soon as the vacancy is available as per the strength of the cadre. So the relief (a) prayed in the original application stands allowed by the statement given by the learned counsel for the respondents on the basis of the counter filed. However, the question arises whether there are at present vacancies of July, 1994 available for consideration of the applicants for promotion to these posts. It is undisputed that Shri S.Nag and Shri S.K. Jain were declared surplus because of reduction of the cadre by two posts. They were sent to the surplus cell but in the meantime two vacancies in July, 1994 occurred. There is also protection order by the Hon'ble Supreme Court that

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these two applicants should not be reverted from the posts they were holding i.e. A.I.A.(Engg.). The respondents have taken shelter of the Rule 4(6) at page 506 of Establishment and Administration of Swamy's Manual 1993 edition. The said rule is quoted below:-

"Absorption of surplus staff within the Ministry or Department -

Notwithstanding anything contained in sub-rules (2),(3),(4) and (5) and subject to the provisions of Rule 12, the Ministry or Head of Department may, under intimation to the concerned Cell, adjust an employee declared surplus by it against a vacancy (if any available at the time he is declared surplus or before he is redeployed through the Cell) in any post located in any office under its control and carrying equivalent pay scale for appointment to which he is considered by the appointing authority to be suitable."

The above provision goes to show that this rule will be read as proviso to sub-rules (2),(3),(4) and (5) and subject to the provisions to Rule 12. The contention of the learned counsel for the applicants is that a post which falls in the promotion quota by virtue of Rule 3(2)(clause iii)(c) with the vacancies of the promotion quota where eligible candidates having specific qualifications for promotions are available in the feeder grade shall not be reverted to the surplus cell and this argument is in question to Rule 4 which speaks of redeployment of surplus cell <sup>staff</sup> against vacancies in Groups 'A' and 'B' services or posts. The said Rule 4 does not speak filling up of vacancies from promotion quota. This only speaks of vacancies available to the direct recruit or by transfer. We also find provision that a person who has been declared surplus has a right to aspire to be redeployed in the same unit/department from where he has been declared surplus. The learned counsel for the

applicants, however, put the respondents to proof as to whether Sh. S.Nag and Sh. S.K. Jain had at any point of time made any representation that they should be reverted back to their own cadre

We have considered the matter carefully and heard the learned counsel for the parties. Rule 6 is a proviso to all the Rules (2), (3), (4) and (5) which have been relied upon by the learned counsel for the parties gives the right to the authorities to deploy a person declared surplus in a vacancy which occurs subsequently after declaration of such an incumbent to the surplus cell. In view of this, the applicants cannot aspire for those vacancies which have fallen vacant due to being declared surplus vice Sh. S.Nag and Sh. S.K. Jain, given to them by considering them for promotion. However, the fact remains that one of such vacancy is still available now.

In view of the above facts and circumstances, the application is disposed of as follows:-


(i) The applicants shall have a right to be considered in their own turn as and when vacancy occurs in the promotion quota for the post of A.I.A. (Engg.).


(ii) The respondents shall also fill up the post which has fallen vacant on retirement of Sh. Nag, and the applicants alongwith others be

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considered for filling up the vacancies as per recruitment rules for the selection post.

(iii) There will be no order as to costs.

  
(B.K. Singh)  
Member(A)

  
(J.P. Sharma)  
Member(J)

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