

**Central Administrative Tribunal
Principal Bench**



Hon'ble Shri Shailendra Pandey, Member (A)

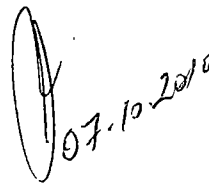
**Pre-delivery ORDER in OA No. 1363/2000 is sent
herewith for consideration please.**

With regards,



**(Mrs. Meera Chhibber)
Member (J)
6.10.2010**

I have signed. Rgds.



**Central Administrative Tribunal
Principal Bench**

O.A. No.1363/2000



New Delhi, this the 1st day of October, 2010

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. Shailendra Pandey, Member (A)


1. Shri S.K. Jain,
Additional Industrial Adviser,
Ministry of Commerce & Industry,
Department of Industrial Policy & Promotion,
R/o A-261, Sarita Vihar,
New Delhi-110076.
2. Dr. D.R. Chawla,
Industrial Advisor,
Ministry of Heavy Industry,
R/o 5A-47, Faridabad N.I.T.-121001.

..Applicants

By Advocate : Shri S.C. Saxena.

Versus

1. Union of India, through
Secretary,
Department of Industrial Policy & Promotion,
Ministry of Commerce & Industry,
Udyog Bhavan, Maulana Azad Road,
New Delhi-110011.
2. Mr. V.C. Mathur,
C-7/170, SDA,
New Delhi-110016.
3. Mr. Sushil Kumar,
D-144, Sector-55,
Noida-201301.]
4. Mr. C.M.P. Sinha,
C-701, Neelanchal Apartments,
Sector-4, Dwarka,
New Delhi-110075.
5. Mr. V.K. Jain,
B-1/118, Second Floor,
Paschim Vihar,
New Delhi-110063.
6. Mr. S.K. Bharij,
85, Munirka Enclave,
New Delhi.
7. Mr. M.M. Ali Khan,



33-B, Vijay Mandal Enclave,
Near IIT Gate,
New Delhi-110016.



... Respondents

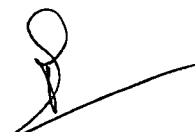
By Advocate : Shri A.K. Bhardwaj for R-1, R-4 and 5 in person.

ORDER

By Hon'ble Mrs. Meera Chhibber, Member (J) :

Applicants have challenged seniority list of Development Officer (hereinafter referred to as DO) dated 17.5.1991 with a further direction to the respondents to restore their seniority as of 1984. The OA was dismissed in view of orders passed by the Hon'ble Supreme Court in the case of B.S. Narula & Others Vs. U.O.I. (WP No. 13692/1984) given vide judgment dated 17.10.2000. The matter was carried to the Hon'ble High Court of Delhi. Their Lordships vide order dated 22.10.2009 were pleased to quash the order dated 17.10.2000 passed by the Tribunal and remitted it back to the Tribunal for consideration on merits. This is how this OA has now been placed before us.

2. To understand the background, it would be necessary to give some facts. Applicants were directly appointed as Development Officer (herein after referred to as DO) through UPSC on 23.4.1979 (applicant No.1) and 1.5.1976 (applicant No.2), respectively, whereas respondents Nos.2 to 7 were promoted on regular basis as DO w.e.f. 16.4.1982. The official respondents had issued seniority list of DO on 17.4.1984 (page 55 at 60) wherein applicant No.1 was shown at Sl.No.26 while private respondents were shown at Sl.No.42, 30, 34, 35, 36 and 38. On the basis of this seniority list, applicants were further promoted as Additional Industrial Advisor vide order dated 18.1.1989. However, in the meantime, the promotee officers had filed OA No. 818/1987 and other connected OAs seeking seniority from the date of their ad hoc promotion. The said OA was allowed on 31.10.1990 (page 70 at 88) with a declaration that the



applicants (promotees) are entitled to the benefit of ad hoc service in view of judgment in the case of Narender Chadha Vs. U.O.I. reported in 1986 (2) SCC 157. It was held that applicants therein were entitled to have their seniority computed afresh from the date of initial ad hoc appointment on being regularized. The respondents were directed to correct the seniority list of 1984 or to draw a fresh seniority list in the light of the judgment. They were also held to be entitled to the consequential benefits.

3. It is stated by the applicants herein, i.e., the Direct Recruits that on the basis of above judgment, respondents issued fresh seniority list dated 9.7.1991 (page 121) wherein seniority of applicant No.1 was depressed as he was placed at Sl. No.51 while private respondents, who were below him earlier, were placed above him at Sl.No.26, 39, 45, 48 and 50. Being aggrieved, the applicants (direct recruits) challenged the judgment of the Tribunal before Hon'ble Supreme Court by filing SLP (C) No. 2345/1992 which was admitted by the Hon'ble Supreme Court and was numbered as Civil Appeal No. 1035 of 1991. In the said appeal, it was contended by the direct recruits that some of the private respondents were promoted against the post reserved for direct recruits quota. The promotees were merely officiating against the direct quota vacancies, as such they are not entitled to get seniority over the direct recruits. Hon'ble Supreme Court remitted the matter back to the Central Administrative Tribunal by observing that the Tribunal has overlooked the law laid down by the Supreme Court and has committed an error, therefore, the impugned order cannot be sustained. Hon'ble Supreme Court directed the Tribunal to consider the decisions mentioned in their order and other relevant decisions on the issue with reference to the rival pleadings of the parties and the relevant rules and regulations. The



order of stay dated 8.3.1991 was directed to continue till the disposal of the matter.

4. It is submitted by the applicants, who were appellants before the Hon'ble Supreme Court that after the matter was remitted back to the Tribunal, the promotees withdrew their OA 818/1987 on 6.7.2000 as a result of which the issues which were raised by the direct recruits before the Hon'ble Supreme Court could not be adjudicated upon in the Tribunal. While dismissing the O.A. as withdrawn, the Tribunal gave liberty to the direct recruits that in case they are aggrieved by any action taken by the respondents pursuant to the Tribunal's order dated 31.10.1990, it would be open to them to challenge the same separately through original proceedings. It is in this background that the applicants, who are direct recruits, have now filed the present OA, challenging the seniority list dated 9.7.1991 whereby promotees seniority was reckoned from the date of their ad hoc promotion and they were placed above the applicants.

5. It is submitted by the counsel for the applicants that once the order passed by the Tribunal had been quashed by the Hon'ble Supreme Court, the consequent seniority list dated 9.7.1991 which was based on the Tribunal's order cannot be sustained in law and it has to be quashed and set aside. They have further sought a direction to the respondents to restore the seniority list of 1984.

6. The official respondents have opposed this OA. They have stated that the applicants have challenged the seniority list dated 9.7.1991 but that was issued in compliance with the orders of the Hon'ble Supreme Court in the case of B.S. Narula and Others (Supra) dated 9.12.1988. They have specifically stated that this seniority list was not issued pursuant to the directions given by the Tribunal. They have explained

that prior to the order dated 31.10.1990 passed by this Tribunal in OA No. 818/1987, Hon'ble Supreme Court had already allowed the case of B.S. Narula and others on 9.12.1988 whereby seniority list of ADOs was quashed and the official respondents were directed to re-do the seniority list in accordance with law in the light of the principles laid down by Supreme Court in number of cases. It was further directed that upon re-doing the seniority list, if the petitioners in Nirula's case are entitled to higher ranking they shall be given the consequential benefits flowing there-from. Accordingly, the seniority list of ADOs was revised and circulated on 21.7.1989. At this stage Shri B.S. Narula filed a Contempt Petition in the Hon'ble Supreme Court as according to them consequential benefits allowed to them were not given to them after the changes were made in the seniority list of ADOs because corresponding changes in the seniority list of DOs had not been carried out. It is explained by the official respondents that it was in these circumstances that the seniority list of DO was also revised. In the process, the judgment dated 31.10.1990 of the Tribunal was also implemented in respect of officers in the Engineering side. They have thus stated that since they had only complied with the directions given by the Hon'ble Supreme Court, this case calls for no interference. The same may accordingly be dismissed.

7. Private respondents have also filed counter-affidavits. Respondents No. 3 has stated that he was originally appointed as Assistant Development Officer w.e.f. 20.2.1970 and promoted on ad hoc basis as Development Officer w.e.f. 1.2.1975. He was regularized as such w.e.f. 16.4.1982. Rest of the facts has been reiterated as stated by the official respondents. The other respondents have also filed the same replies. They have stated that they withdrew the OA because they were



given the benefits by the official respondents by virtue of the directions given by the Hon'ble Supreme Court in the case of B.S. Narula and Others (Supra), therefore, they had not committed any fraud on the court by withdrawing OA No.818/1987. They have also prayed that the OA may be dismissed.

8. We have heard all the parties and perused the pleadings as well.

9. The controversy raised before us is whether promotee officers could have got the seniority from the date of their ad hoc promotion after regularization as DO when admittedly they were promoted in excess of their quota and were regularised as DO after the direct recruits had been selected and appointed.

10. If we were to decide this issue in normal course, it would not have detained us for long as the issue stands settled by the Hon'ble Supreme Court in a catena of judgments. The question of seniority amongst direct recruits and promotees on quota rule was the subject matter of V.B. Badami & Others Vs. State of Mysore and Others reported in 1976 (2) SCC 901. It was held as under:-

" The quota between promotees and direct recruits is to be fixed with reference to the permanent strength in the cadre.

As long as the quota rule remains neither promotees can be allotted to any of the substantive vacancies of the quota of direct recruits nor direct recruits can be allotted to promotional vacancies.

Two more principles are settled: One is that quotas which are fixed are unalterable according to exigencies of situation. Quotas which are fixed can only be altered by fresh determination of quotas under the relevant rule. The other is that one group cannot claim the quota fixed for the other group either on the ground that the quotas are not filled up or on the ground that because there has been a number in excess of quota the same should be absorbed depriving the other group of quota".

(2)

The ratio as laid down in Badami's case was followed by Hon'ble Supreme Court in the case of **Gonal Bhimappa Vs. State of Karnataka and Others** reported in 1987 (Supp) SCC 207.

11. The same issue again came up for consideration before the Hon'ble Supreme Court in **Keshav Chandra Joshi and Others Vs. U.O.I. & Others** reported in 1992 Supp.(1) SCC 272. This case related to fixation of seniority of petitioners therein who were promoted on ad hoc basis during the period 13.3.1974 to 21.11.1981. They had rendered 5 to 12 years of ad hoc service as Assistant Conservator of Forest. In 1976 some direct recruits were appointed on probation against substantive vacancies. When they became due for consideration for promotion as Deputy Conservators of Forest, the promotees claimed seniority over the direct recruits. It was noted by the Hon'ble Supreme Court that normal quota for promotion was initially 25% which was subsequently increased to 33-1/3%. The ad hoc promotions were in excess of quota and had to be resorted to because direct recruitment was stalled due to litigation. The ad hoc promotions were based on seniority subject to rejection of unfit whereas regular promotions were based on merit. The decision of this case depended on whether the petitioners could be called as 'members of service' under Rule 3 (h) of the U.P. Forest Service Rules, 1952 and whether they satisfied the conditions of regular promotion laid down in Rule 5 (b) of Appendix B". After considering the rival contentions, it was held as follows:-

"In order to become a member of the service, the officer must hold the post of Assistant Conservator of Forest in substantive capacity, appointment to this post must be according to rules and within the quota. The membership to the service must be preceded by an order of appointment to the post validly made. Then only an employee can be a member of the service.

It is true that Government had to make promotions in excess of quota but that itself does not give right to the





petitioners to be included in the seniority list of Assistant Conservator of Forests. The prerequisite of the right to be included in the seniority list is that all those claiming right must broadly bear the same characteristics. Fortuitous circumstances of their holding the grade post carrying the same designation or scale of pay or discharging the same duty would not entitle them to be included in the service. Further, the criteria followed in ad hoc promotions was not the same as that for regular promotions. These promotions were therefore de hors Rule 5 (b) read with Appendix B.

Seniority has to be reckoned from the date of initial appointment and not from confirmation but this holds good only if initial appointment is ad hoc or fortuitous. **When promotion it outside the quota, the seniority has to be reckoned from the date of vacancy within the quota, rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy which arose within quota and seniority is to be counted from that date and not from the date of his earlier promotion or subsequent confirmation.** The rule of quota being a statutory one, it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies. **However, where the promotees are appointed in excess, they have to be pushed down so that injustice to direct recruits is avoided**".

12. In **Uttaranchal Forest Rangers Association (Direct Recruit) and Others Vs. State of U.P.** Others reported in 2006 (10) SCC 346 it was reiterated as follows:-

"It is well settled that promotion in excess of quota makes an employee an ad hoc employee and seniority cannot be given to such employees on the basis of ad hoc promotion".

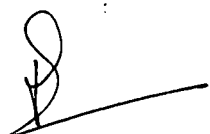
Reference was also made to Keshav Chandra Joshi's case (Supra) wherein it was held as follows:-

"It is notorious that confirmation of an employee in a substantive post would take place long years after the retirement. An employee is entitled to be considered for promotion on regular basis to a higher post if he/she is an approved probationer in the substantive lower post. An officer appointed by promotion in accordance with Rules and within quota and on declaration of probation is entitled to reckon his seniority from the date of promotion and the entire length of service, though initially temporary, shall be counted for seniority. Ad-hoc or fortuitous appointments on a temporary or stop gap basis cannot be taken into account for the purpose of seniority, even if the appointee was subsequently qualified to hold the post on a regular basis. To give benefit of

(42)

such service would be contrary to equality enshrined in Article 14 read with Article 16(1) of the Constitution as unequals would be treated as equals. When promotion is out side the quota, the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or sub-subsequent confirmation. In order to do justice to the promotees it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1). Therefore, the rules must be carefully applied in such a manner as not to violate the rules or equality assured under Article 14 of the Constitution. This Court interpreted that equity is an integral part of Article 14. So every attempt would be made to minimise, as far as possible, inequity, Disparity is inherent in the system of working out integration of the employees drawn from different sources, who have legitimate aspiration to reach higher echelons of service. A feeling of hardship to one, or heart burning to either would be avoided. At the same time equality is accorded to all the employees."

13. From above judgments, it is clear that if a quota is prescribed in the Rules, it must be followed, it being a statutory mandate and if promotees are given ad hoc promotion in excess of their quota, they have to be pushed down and cannot get benefit of seniority from the date of such ad hoc promotion. In the instant case, it is relevant to note that as per the RRs of Development Officers annexed at page 33, mode of recruitment was 50% by way of promotion, 33.1/3% by way of direct recruitment and 16.2/3% by way of transfer, failing which by direct recruitment. Promotions were to be made from amongst Assistant Development Officer with 5 years experience in the grade. This quota was later changed in 1982 as Recruitment Rules were amended. It is relevant to note that when promotees had claimed benefit of their ad hoc promotion by filing O.A. No.818/87, this Tribunal in its judgment dated 31.10.1990 had observed as follows :-





✓ "In the present case, there was a quota for promotees and a quota for direct recruits. If somehow the posts could not be filled up by the direct recruits and consequently these posts were filled up due to the exigencies of situation by promotee officers, there is nothing to indicate that these promotees were screened for promotion. It is nobody's case that these promotees were promoted in hap-hazardous manner. If that was so, other Government servants in the same department would have made representations against such officiating promotions. It will, therefore, be proper to draw an inference that all these applicants were appointed in accordance with the existing rules except following the quota, **undoubtedly they were appointees in excess of the quota for promotees.** But if they were chosen and selected after observing the procedure for making the permanent appointment, that would be in order. Since nothing has been pointed out to us to the contrary, we are inclined to take the view that the applicants are entitled to the benefit of the rule as enunciated in clause 'B' of the summary of the judgment of the Constitution Bench in the case of 'The Direct Recruits' (Supra).

We are conscious of the fact that it is likely to upset the position of a number of direct recruits, but then we are bound by the decision of the Supreme Court as indicated above."

This finding was neither challenged by the promotees nor the official respondents. It had thus been accepted by them that they were promoted in excess of their quota.

14. It is also relevant to note that the direct recruits, who are applicants before us, had challenged the judgment of the Tribunal before the Hon'ble Supreme Court on the ground that some of the private respondents were appointed against the posts reserved for the direct quota. It was purely on officiating basis. When the candidates (appellants) were appointed against the direct quota, the promotees who were working on the posts reserved for the said quota will not be entitled to gain seniority over the direct recruits. They had thus prayed that the judgment of Tribunal may be quashed and set aside. Hon'ble Supreme Court observed as follows:

"The decision of this Court dated 9th December, 1988 in Writ Petition (C) Nos. 13692-98/84 holds the field as regards the principles relating to appointments and fixation of seniority



where the quota-rota rule applies in the cadre of ADOs and DOs. It may also be stated that the principle in this behalf is well settled by this Court in various decisions. To quote the few :-

1. 1985(1) Supp. SCR 818 (D. K. Mitra & Ors. vs. Union of India & Ors.) 2. 1987 (Supp) SCC 763, A. N. Pathak & Ors. Vs. Secretary to the Government, Ministry of Defence & Anr. and 3. 1988 (2) SCALE 1390 Delhi Water Supply and Sewage Disposal Committee & Ors. Vs. R. K. Kashyap & Ors.

The Tribunal has overlooked the law laid down by this Court and thus committed an error and therefore the impugned order cannot be sustained.

We, therefore direct the Central Administrative Tribunal to consider these decisions and other relevant decisions on these issues with reference to the rival pleadings of the parties and the relevant rules and regulations. It is also made clear that if the parties so desire may amend the pleadings within six weeks from today. The Central Administrative Tribunal is directed to dispose of the matter as expeditiously as possible and preferably within six months from the date of receipt of this order. The impugned order is set aside and the appeal to stand disposed of in the above terms.

The appellants and the private respondents informed us that if the concerned department of the Central Government creates three supernumerary posts in the cadre in question that will set at naught the grievance of the parties. Since the Department in question is faded the Central Government will consider the suggestion made on behalf of the parties if it deems fit. We hope the Central Government will consider the suggestion sympathetically but in accordance with law. This exercise may be done at an early date.

SLP (C) No. 2345/92

By consent of the parties the petitioner is added as party respondent to OA No. 818/87. The newly added respondent will file his affidavit in reply within 6 weeks from today and serve a copy thereof on the other parties. Rejoinder, if any, to be filed within two weeks thereafter.

The SLP to stand disposed of in the above terms.

The order of stay dated 8-3-1991 to continue until the disposal of the matter. We hope that none of the parties will take unnecessary adjournments and prolong the matter particularly the parties who have obtained the stay order from this Court".

15. It is thus clear that the relief granted by the Tribunal to the promotees was set aside by the Hon'ble Supreme Court and matter was





remitted back to the Tribunal for reconsideration. Before the Tribunal could decide the matter finally, the O.A. was withdrawn by the promotees meaning thereby that there was no order in favour of promotees to grant them benefit of their ad hoc promotion. In these circumstances, we would have had no hesitation to set aside the seniority list of 09.07.1991 because the issue was not at all adjudicated upon and law was against the promotees as discussed above.

16. However, we are faced with a piquant situation here because though the case of promotees decided by the Tribunal was set aside by the Hon'ble Supreme Court but in another case of ADOs titled as B.S. Narula & Ors., the Writ Petition was allowed by the Hon'ble Supreme Court with direction to give them consequential benefits after redoing the seniority of those promotees who were regularised prior to the appointment of direct recruits. In other words, the promotee ADOs were given benefit of their ad hoc promotion.

17. The official respondents have explained that after the promotees in B.S. Narula were given benefit of their ad hoc service, they filed a contempt petition in the Hon'ble Supreme Court alleging disobedience of the orders on the ground that they have not been given the benefit in the seniority list of Development Officer. Hon'ble Supreme Court passed the following order on 19.3.1991 in the Contempt Petition:-

"Pursuant to our order dated 1st May, 1991 the respondents have made an order on 15th March, 1991, giving promotion to the petitioners on notional basis with retrospective effect. Learned Addl. Solicitor General makes a statement in Court that on the basis of this notional promotion with retrospective effect, the petitioners are entitled to all service benefits excepting the actual pay for the period for which they have really not worked in the promotional posts. In these circumstances, we find that there is no basis for proceeding for contempt. **We only direct that the benefits which follows from the order dated 15th March, 1991 should be worked out and extended to the petitioners within two months from today. This is on the basis of necessary consequence of**



the order and the statement made by Mr. Tulsi in Court.
The contempt petition is dismissed."

18. By order dated 15.3.1991, promotee ADOs were given promotion as DO with retrospective effect, e.g. B.S. Narula was promoted as DO with effect from 1.2.1975 (page 64).

19. Respondents have explained that the seniority list dated 9.7.1991 was issued in terms of the orders passed by the Apex Court on 19.3.1991 and not pursuant to the directions given by the Tribunal, therefore, indirectly the Hon'ble Supreme Court had put their stamp on the actions of the respondents. In these circumstances, judicial propriety demands that we shouldn't interfere in the case, therefore, we have no other option but to dismiss the OA. No order as to costs.


(SHAIENDRA PANDEY)
MEMBER (A)


(MRS. MEERA CHHIBBER)
MEMBER (J)

Rakesh