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Central Administrative Tribunal
Principal Bench

O.A. 293/2000

New Delhi this the 16th day of Feb, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J).

Hon'ble Shri Govindan, S. Tampi, Member(A).

1. **Tushar Ranjan Mohanty,**
S/o Shri Rabi Narayan Mohanty,
Director (Statistics and Records),
Directorate of Statistics and Records,
Directorate General Resettlement,
Ministry of Defence,
West Block No. 4, Wing No. 5, First Floor,
R.K. Puram, New Delhi - 110 066.
2. **Dr. Ravendra Singh,**
S/o Shri P. Singh,
Joint Director,
Statistical Intelligence Unit,
Miscellaneous Statistics Division,
Central Statistical Organisation,
Ministry of Statistics and Programme Implementation,
Jam Nagar House, New Delhi - 110 011.
3. **Raj Gautam Mitra,**
S/o Late Shri R.S. Mitra,
Deputy Registrar General,
Vital Statistics Division,
Office of the Registrar General, India,
Ministry of Home Affairs,
West Block No. 1, Wing No. 1, Second Floor,
R.K. Puram, New Delhi - 110 066

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4. Ashok Kumar Vishandas,
S/o Shri Vishandas Thakwani,
Deputy Statistical Advisor,
Directorate of Economics and Statistics,
Ministry of Agriculture,
343, Krishi Bhawan,
New Delhi - 110 001.
5. Bimal Kumar Giri,
S/o Late Shri Pitamber Giri,
Senior Deputy Director General,
Directorate General of Commercial Intelligence and Statistics,
Ministry of Commerce,
1, Council House Street,
Calcutta - 700 001.
6. Pratap Kumar Bisi,
S/o Shri Gangadhar Bisi,
Joint Director,
Transport Research Wing,
Ministry of Surface Transport,
IDA Building, Jam Nagar House,
New Delhi - 110 011.
7. Alope Kar,
S/o Shri Nikhil Chandra Kar,
Joint Director,
National Accounts Division,
Central Statistical Organisation,
Ministry of Statistics and Programme Implementation,
Sardar Patel Bhavan, Sansad Marg,
New Delhi - 110 001.....Applicants

(Applicants Nos 1, 2 3 and 6 present in person)
None for Applicants 4, ~~5 and 7~~

Versus

Union of India,
Through the Secretary,
Ministry of Statistics and Programme Implementation,
Sardar Patel Bhavan, Sansad Marg,
New Delhi-110001.....Respondent

(By Advocate Shri K.C.D. Gangwani, Sr. counsel)

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O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicants have challenged Paragraph 3 of the order passed by the respondents dated 10.5.1999, in which 55 officers have been promoted from Grade-III to Grade-II (Junior Administrative Grade (JAG) in the Indian Statistical Service (hereinafter referred to as 'the Service'). Their grievance is that the promotion has been made effective from the date of issue of the order and not from the dates they have been continuously holding the Grade-II (JAG) posts on regular/ad hoc basis (Annexure A-1).

2. The brief relevant facts of the case are that the application has been filed by seven applicants who belong to the Service. They have stated that as per the proposed amendment to Rule 8(1)(c) of the Indian Statistical Service Rules, 1961, (hereinafter referred to as "ISS Rules" which applies to them, five years regular service in Grade-III of the Service is required for being eligible for promotion to the JAG which is based on merit with due regard to seniority. According to them, all the seven applicants have completed five years regular service in Grade-III of the Service and, therefore, they were eligible for promotion to the JAG w.e.f. 1.4.1998. They have submitted that due to certain facts and circumstances, they have been working in regular JAG posts either on regular or ad hoc basis much before 10.5.1999 which is the date of issue of the order, part of which has

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been impugned in this O.A. The applicants have submitted that some of them were promoted to JAG posts regularly vide order dated 14.5.1996 (Annexure A-3), some on ad hoc basis vide orders dated 13.10.1997 and 31.8.1998 (Annexure A-4). Shri T.R. Mohanty, applicant No. 1 has submitted that even if some of the applicants were earlier promoted on ad hoc basis, they have continued to work uninterruptedly in regular JAG posts or later promoted on regular basis. He has submitted that their promotions from the earlier dates on ad hoc basis should be treated as being on regular basis. In paragraph 8(ii) of the prayer clause, the applicants have prayed that a declaration may be given that they have been promoted to Grade-II (JAG) of the Service on regular basis from the day they or their juniors were holding regular Grade-II JAG posts in the Service, whether on ad hoc or regular basis without any change in inter-se seniority of the officers as fixed in Paragraph 2 of the impugned promotion Order dated 10.5.1999. Shri Mohanty, applicant No.1, has submitted that following the judgement of the Supreme Court in The Direct Recruit Class II Eng. Officers' Ass. Vs. State of Maharashtra (JT 1990(2) SC 264), the ad-hoc period of appointment, which has been followed by regularisation without a break should count as regular service. He has also submitted a list of cases on which he relies upon. According to him, the initial appointment itself was in accordance with the Rules in the case of the applicants and the respondents have wrongly effected the promotions only from the date of issue of the order, i.e. 10.5.1999. He has further submitted that the seniority positions will not be disturbed as determined by the

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respondents in the same order as the applicants are not claiming any change in seniority but only that their past services in the grade must be counted.

3. Applicant No.1 has submitted that the above claim is made with regard to the interpretation of the "Next Below Rule" for future exigencies. His contention is that a senior like him, for example, to applicant 3, would become entitled for promotion from the date his junior is promoted. He has referred to the draft Rules proposed for JAG posts which he states are being followed by the respondents which has a proviso that if any junior officer in the Service is eligible and considered for promotion, all officers senior to him in that grade shall also be considered for promotion, notwithstanding the fact that they have not completed five years of Service in that grade. He has submitted that if some others in the seniority list who had been promoted on ad hoc basis are given this benefit, then he being senior to them can also be considered for promotion along with them, even if he has not completed the prescribed eligibility period under the ISS Rules. This applicant has, therefore, very vehemently submitted that in the interests of justice and fair play, the applicants have to be declared as having been promoted to JAG of the Service on regular basis from the dates they or their juniors were holding the regular posts. He has also submitted that the promotions effected by the impugned order were, in fact, for the recruitment year 1998-99 and no regular promotions have been held for the earlier recruitment years. According to him, most of the 55 vacancies filled were available as on 1.4.1998. His submission is, therefore, had the DPC been held earlier, all the seven applicants would have been covered

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for promotion to the JAG much earlier. Applicant No. 1 has also relied on the judgement of the Tribunal dated 2.2.1998 in an earlier application filed by him (OA 317/96). He states that in this case the matter pertained to Grade-III of the same Service and the Tribunal had directed the respondents to recalculate the vacancies in Grade-III of the Service and consider the applicant's case for promotion from an earlier date in the light of the vacancies calculated afresh. For these reasons, applicant No. 1 has submitted that Para 3 of the impugned order is arbitrary and should be quashed and the prayers allowed. The arguments of applicant No. 1 were ~~not~~ adopted by applicants 2,3 and 6 who were present in court when the case was heard. Applicant No. 1 has also submitted written submissions which are also placed on record.

4. The respondents in their reply have controverted the above submissions. Shri K.C.D. Gangwani, learned counsel has taken a number of preliminary objections. He has submitted that the promotions can be given only prospectively, even though vacancies may pertain to more than one preceding year. He has submitted that the grant of regular promotion from the date of the ad hoc promotions to the applicants is not permitted by any law, rules and instructions. He has also submitted that the O.A. is misconceived as the same raises issues which have already been settled by the Tribunal in a number of earlier cases, some of which have also been filed by Applicant No.1. In the reply, the respondents have referred to the Tribunal's order/judgement dated 30.11.1999 in OA 2444/95, the orders dated 23.3.2000 in OA 1094/96 and OA 316/96. They have submitted that while the applicants who are covered by the

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promotion order dated 10.5.1999 have prayed that they should be deemed to have joined the post on regular basis from an earlier date but they have not impugned the earlier ad hoc promotion orders dated 31.8.1998 or 13.10.1997. Shri K.C.D. Gangwani, learned counsel has also submitted that the O.A. suffers from non-joinder of necessary parties as the persons likely to be affected by the prayers made by the applicants, if granted have not been made parties. He has also submitted that applicant No. 1 is in the habit of filing such applications and one such application had been dismissed by Tribunal's order dated 3.3.2000 in OA 1827/96 on the ground of non-joinder of necessary parties (Annexure R-4). Learned counsel for the respondents has submitted written submissions which are placed on record. He has also submitted the relevant records of the DPC proceedings for our perusal.

5. The respondents have also relied on another order of the Tribunal in P.D. Gupta Vs. Union of India & Ors. (OA 2832/99) in which the prayer of the applicant for anti-dating his promotion was not allowed. They have submitted that prior to the impugned order being passed, some of the applicants were promoted to JAG on both regular and ad hoc basis on account of the judgement of the Hon'ble Supreme Court dated 14.7.1994 in CA Nos. 3844/89 and 3845/89 and its clarificatory order dated 27.3.1995 and the Tribunal's orders dated 2.2.1998 in T.R. Mohanty Vs. Union of India in OA 317/96. The respondents have submitted that they were not in a position to make regular promotions from the officers in Grade-III due to non-finalisation of the Recruitment Rules as the issue of association of UPSC in JAG promotions had not been resolved till November, 1998. He has also submitted that

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the promotion orders had also to be passed for implementation of earlier Court orders which have also not been challenged. Shri K.C.D. Gangwani, learned counsel has, therefore, very emphatically submitted that in the circumstances of the case, promotions were made as a stop gap arrangement and cannot be regarded as regular promotions as claimed by the applicants. He has also relied on the judgement of the Supreme Court in Direct Recruit's case (supra) and has submitted that as the applicants have not been promoted on regular basis in accordance with the Rules, they are not entitled to the reliefs as prayed for by him. The respondents have submitted that the concept of consideration zone of eligible officers is applicable in regular selections/promotions, whereas the consideration zone is not applicable to ad hoc promotions. In the circumstances, they have prayed that the O.A. may be dismissed with costs.

6. We have carefully considered the pleadings and the submissions, both written and oral, made by the parties and the cases relied upon.

7. In the order passed by the respondents dated 13.10.1997 (Annexure A-4), certain officers belonging to Grade-III (STS) of the Service were promoted to JAG on ad hoc basis till further orders. Paragraph 2 of this order states that it is being done purely as a temporary measure on a stop-gap arrangement and can be withdrawn/cancelled without assigning any reasons. In the order dated 31.8.1998 (Annexure A-6), it is seen that this has been passed in implementation of the Tribunal's order dated 2.2.1998 in T.R. Mohanty's case (supra) as a result of

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review of certain previous orders. This order was also passed in supersession of the earlier order dated 14.5.1996 with regard to promotion of Grade-III (STS) officers who were promoted to JAG of the Service. In this order, other judgements of the Courts, including that of the Hon'ble Supreme Court in CA 3844/89 have also been referred to. In paragraph 9 of the order, it is also stated that it is subject to the final decision in six other Court cases mentioned therein. The respondents have stated that while reviewing the promotions, they have found that nine officers were to be reverted out of whom the pay of five officers was to be protected as per the directions of the Supreme Court in the orders dated 14.7.1994 and 27.3.1995. Taking into account the past relevant facts and circumstances of the case which has a direct bearing on the impugned order, we find force in the submissions made by the learned counsel for the respondents that the Department was not in a position to make regular promotions to JAG level at the relevant time, which had resulted in giving promotions to the officers on ad hoc basis.

8. From a perusal of the relevant orders issued earlier by the respondents, it is seen that these have been done in pursuance of the directions of the Courts/Tribunal. It is relevant to note that these orders were not challenged then or even now. It is also relevant to note that in the order issued by the respondents dated 31.8.1998, it has been stated in paragraph 6 that certain officers earlier promoted to JAG vide order dated 14.5.1996 are no more found to be covered for promotion and, therefore, their promotion to JAG stands cancelled.

18/ This list includes applicant No.3, Shri R.G. Mitra in the

present O.A. That applicant has submitted that he does not mind if his position in the impugned seniority list continues as it is, that is below Applicant No.1. He claims benefit of the earlier ad hoc service to be treated as regular service, on the basis of which Applicant No.1 would in turn get future prospects by way of promotion under the proviso to the Rules. The applicants have, however, not challenged the earlier ad hoc promotion orders, including Applicant No.1, whose earlier promotion order dated 14.5.1996 was also cancelled. In the ad hoc promotion order dated 31.8.1998 (Annexure A-7), it is further observed that certain promotion orders issued earlier had been cancelled/superseded and have also been referred to as a stop gap arrangement.

9. Taking into account the facts and circumstances of this particular case, the contentions of the applicants that based on the judgement of the Apex Court in Direct Recruit's case (supra), the application should be allowed, cannot be accepted. We are also unable to agree with the contentions of Applicant No.1 that none will be adversely affected by grant of the reliefs as prayed for in the O.A and, therefore, justice demands that the O.A. should be allowed. In service matters, respondents are not precluded from making ad hoc promotions, like in the present case. We also see force in the submissions made by Shri K.C.D. Gangwani, Learned Counsel for the respondents that none of the applicants had filed any representations to the respondents against the impugned order dated 10.5.1999 before filing this application. Several of the judgements in which Applicant No.1 himself has been a party had been referred to by both the parties in the present O.A. and the respondents have

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implemented the various orders previously which have a direct bearing on the issues raised here. In the particular facts and circumstances of the case, therefore, we are of the considered view that allowing the prayers of the applicants would have the effect of unsettling the settled position arrived at in the latest order dated 10.5.1999, which will not be in the interest of the Service or public interest. This order itself states that the promotions are based on the revisions effected in the seniorities of the Grade-III (STS) officers as a consequence of review of the promotions made from 1993 onwards and is further subject to the outcome in the cases mentioned therein. The fact that the respondents have passed a number of orders in the past, reviewed them and then passed consequential orders in implementation of various judgements/orders passed by the Courts, including that of the Hon'ble Supreme Court, has to be kept in view. This has led to the earlier orders of promotion being given on ad hoc basis which cannot, therefore, be ordered to be re-opened and reviewed again or be given a different effect. The criteria adopted by the respondents that the promotions to JAG would be prospective only, even though the vacancies may relate to earlier years, in terms of the Govt. of India Instructions relied upon by them, cannot also be faulted or held to be illegal in the circumstances of the case, justifying any interference in the matter.

10. In the result, for the reasons given above, we do not find ^{any} merit in this application. O.A. accordingly fails and is dismissed. No order as to costs.

(Govindan S. Tampi)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'