CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.422/2000

WITH

OA No.423/2000
OA No.437/2000
OA No.438/2000

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New Delhi, this the 21st day of the March, 2001

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

OA No.422/2000

Shri Anil Kumar Gupta
S/o Late Sh. C.B. Gupta
R/o Vikas Lok, Lane 6
Sahastradhara Road,
Dehradun

... Applicant

(By Advocate Mrs. Meera Chhibber)

V E R S U S

1. Union of India
through Secretary,
Ministry of Defence,
South Block, New Delhi

2. Scientific advisor to Raksha Mantri
Deptt. of Research & Development
Organisation,
Sena Bhawan, Govt. of India,
New Delhi.

3. The Director
Instrument Research & Development
Establishment Raipur,
Dehradun.

.....Respondents

(By Advocates Sh. N.S. Mehta and Rajinder Nischal)

OA No.423/2000

1. Shri R.S. Bohra
S/o Late Sh. L.S. Bohra
R/o A-32, Shiv Lok Colony,
Ladpur, PO Raipur,
Dehradun.

2. Sh. Jeet Singh
S/o Late Sh. Munna Lal
R/o 31/3 Vijay Colony,
New Cantt. Road,
Dehradun.

3. Sh. Shyam Singh
S/o Late Sh. Amar Singh
R/o 10/2 Vigyan Vihar,
PO Raipur, Dehradun.

4. Sh. Nirmal Singh Negi,
S/o Late Sh. Pratap Singh Negi
R/o Village Sunderwala
PO Raipur, Dehradun

5. Sh. M.P. Nautiyal
S/o Sh. S.R. Nautiyal
Ladpur Barthwal Marg,
PO Raipur, Dehradun.

6. Sh. Hari Prasad
S/o Late Sh. Vidya Dutt
R/o Bhagwat Singh Colony,
Adhoiwala, Dehradun.

7. Sh. S.P. Roy
S/o Late Sh. G.P. Roy
R/o Satiwala Bagh,
PO Ranjhawala, Raipur, Dehradun.

8. Sh. Bishamber Singh,
S/o Late Sh. Daviya
R/o Village & PO Nehrn Gram (Dandi)
Deharadun-248008.

... Applicants

(By Advocates Mrs. Meera Chhhibber)

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Dehradun.

... Respondents

(By Advocates Shri N.S. Mehta and Shri Rajinder Nischal)

OA No.437/2000

Shri J.K. Jain
S/o Shri Jyoti Pershad Jain
R/o Ladpur, Raipur Road,
Dehradun

... Applicant

(By Advocate Mrs. Meera Chhibber)

V E R S U S

1. Union of India
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Dehradun.

... Respondents

(By Advocate: Shri N.S. Mehta and Sh. Rajinder Nischal)

OA No.438/2000

Bhupal Singh
s/o Late Sh. Laloo Singh
R/o 60, R.A. Nagar, Block-II,
Dahradun.

... Applicant

(By Advocate Mrs. Meera Chhibber)

V E R S U S

1. Union of India
through Secretary,
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... Respondents

(By Advocates Shri N.S. Mehta and Sh. Rajinder Nischal)

O R D E R

By Mr. Shanker Raju, Member (J):

As these OAs involve a common question of law the same are disposed of in this common order.

2. MA-573/2000 in OA-423/2000 for joining together is allowed.

OA No.423/2000

3. The applicants who were Precision Mechanics (PMs) being appointed from 1978 to 1981 were promoted as Chargemen II and applicants 1-4 and 8 were on the basis of DPC promoted as Chargemen-I being a selection post. By an order passed by the Government higher pay scale of Rs.425-700 was accorded to PMs who were appointed upto 31.12.72. A number of other PMs also filed cases before the Tribunal and in one of the cases Hyderabad Bench of the Tribunal decided that all PMs appointed upto 31.12.72 should be gave the pay scale of Rs.425-700. In OA-793/89, OA-810/89 and OA-223/90 Bangalore Bench allowed the relief to PMs appointed prior to 1.3.77 and given the actual financial benefits from 1.12.80. The PMs appointed after 1.12.80 were allowed the pay of Rs.425-700 from the date of their initial appointment and given financial benefits from that date. The applicants were accordingly fixed in the pay scale of Rs.425-700 vide an order dated 24.6.92 along with arrears. The scale of Rs.425-700 was equivalent to Chargeman-II which was the feeder grade for promotion to Chargeman-I, OA-600/91 was filed as SRO-246/81 was amended by which the PMs in the pay scale of Rs.425-700 were brought at par with Chargeman-II as such they sought promotion to Chargeman-I. The OA was accordingly allowed and accordingly the promotions were given. In 1994 the Government decided to implement the judgement to all similarly situated and the President made a decision regarding consideration of PMs as Chargemen Grade I who were in the pay scale of Rs.425-700 as on 12.9.81 and accordingly their seniority is to be reckoned on proforma

basis between 12.9.81 and 28.1.92 as per SRO 246/81. Vide an order dated 28.2.2000 passed on the basis of the review DPC the applicants were promoted as Chargemen-I w.e.f. 15.9.84 Assistant Foremen w.e.f. 17.3.86 and Foremen w.e.f. 15.9.89 and since then they have been working as Foreman. On issuance of new rules known as Defence Research Development Organisation (Technical Cadre) Recruitment rules, 1995 by the Government the posts were re-designated and on 26.10.95 post of Foreman was redesignated as Technical Officer 'A' Group 'B' gazetted non-ministerial post. According to these rules a Flexible Complementing Scheme (FCS) was introduced for further promotion and an eligibility of five years servicein the lower grade was laid down but incumbent was entitled for further promotion on clearance by Central Assessment Board. On 10.6.97 certain officers were found eligible for assessment to the posts of Technical Officer Grade 'B' for the assessment year 1995-96. Applicant No.1 was promoted as Technical Officer 'B' w.e.f. 1.9.95 which is a gazetted class I post superseding 1400 Technical Officers on the basis of merit-cum-seniority. Later on applicants No.2 and 3 were also promoted as Technical Officer 'B' w.e.f. 2.9.96. Accordingly their names figured in the seniority list of All India Technical Officers Grade 'B' issued on 18.1.2000. The applicants were shocked to learn about the order passed in December, 1990 regarding postponment of their promotion as Chargemen-I and Assistant Foremen and cancellation of promotion as Formen without affording them an opportunity and in supersession of an order passed on 25.12.94. The applicants made representations for supplying them copy of the judgement in Harnam Singh's

(Annexure P-X) case and other documents and requesting for withdrawal of order dated 1.12.99. On 20.1.2000 the documents were denied to the applicants.

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4. The applicant was appointed as Chargeman-II in December, 1984 and later on as Chargeman-I in his own line as per the recruitment rules on 15.3.88 by way of selection through DPC. The applicant was also given promotion as Assistant Foreman w.e.f. 16.9.91 in his own line. IN the year 1995 the applicant was re-designated as Technical Officer 'A' w.e.f. 1.9.95. The applicant's promotion to the post of Chargeman-I is now being cancelled. According to him he earned his promotion in his own line through a valid DPC. The representation made by him was also rejected and the representation made by him for supply of certain documents is still to be replied.

OA No.437/2000

5. The applicant herein was promoted as Chargeman-I on 15.9.92 and re-designated as Senior Technical Assistant w.e.f. August, 1995 and given promotion as Technical Officer w.e.f.1.9.98. The applicant's promotion as Chargeman-I is being cancelled though despite making a representation no reply has been given by the respondents.

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6. The applicant was promoted as Chargeman-I from 1.2.95 and further re-designated as Senior Technical Assistant. His promotion is cancelled by the respondents.

7. We have heard the rival contentions of the parties and perused the material on record.

8. The applicants have assailed the order issued by the respondents on 1.12.99 by contending that the above stated order though referred to as 'restricted' yet the same has been validly published as daily order in Part-II bearing No.266 dated 1.12.99 and communicated to the applicants. As such it cannot be said that the same is not issued to the applicants. Drawing our attention to a similar order passed on 25.12.94 it has been shown that the same was also in the category of 'restricted' order and yet communicated to the applicants and drawing attention to an order passed by the respondents on 20.1.2000 wherein it is stated that the documents at serial No.5 pertaining to an order passed on 25.12.94 had already been circulated to all Divisions and the same is obtained from there. In this background it is stated as all these orders issued by the respondents are having a title of restricted communication which is a usual practice adopted by the respondents to pass order and in fact once it is issued as a daily order the same is circulated among the divisions. In this background it is stated that the said order is to be treated as the impugned order issued to the applicants by the respondents.

9. On the other hand the respondents took exception to the contention of the applicant and stated that the order is yet to be issued to the applicants and has been issued under the category of restricted communication and as such the same cannot be treated as an order passed and communicated to the applicant. According to them still it is an inter departmental internal communication.

10. We have carefully considered the contentions of the applicants and are of the considered view that the word 'restricted' figuring in the order dated 1.12.99 is only a usual form of the respondents for issuing orders and in fact by publication of this order as daily order the same is circulated among the Divisions and as such it cannot be treated as an inter-departmental internal communication and it is deemed to have been circulated and received in respective divisions and the same can be validly challenged before this Tribunal.

11. It has been next contended that the respondents had already pre-determined the action to be taken against the applicants through a review DPC held on 25.11.99 and thereafter decided to postdate some of the promotion and to cancel the promotions given to the applicants. In this background it is stated that without affording a reasonable opportunity to show cause the action will not be legally sustainable as before a Government servant is to visit with the civil consequences it is incumbent upon the Government to issue a show cause notice and to afford a reasonable opportunity to defend. According to the learned counsel of the applicants Mrs.

Meera Chhibber the decision had already been taken and subsequent show cause notice will not cure the defects. To substantiate her contention she has relied upon the ratio laid down by the Hon'ble Apex Court in H.L. Trehan v. Union of India, AIR 1989 SC 568 that the post decisional hearing will not cure the defect. It is also contended that the issuance of orders during the period of notice shows pre-determination of mind and empty formality discharged by the respondents. The learned counsel of the applicants while advancing her arguments with regard to reasonable opportunity also relied upon the ratio of Ram Ujarey v. Union of India, SLJ 1999 (2) 43 to contend that once the promotions are accorded and later on the reversion order issued on alleged mistake an opportunity to show cause is mandatory. On the other hand, the respondents contended that in compliance of an order passed by the Bangalore Bench of the Tribunal in R. Anbalagan & Others v. Director, Aeronautical Development Establishment C.V. Raman Nagar, Bangalore & Others, OA No.600/91 decided on 6.4.93 and also the orders passed by the Principal Bench of this Tribunal in OA-835/96 which was further confirmed by the High Court and Hon'ble Apex Court a DPC was held on 25.11.99 to rectify the error where it was found that the vacancy position has not been considered correctly. The promotions of individuals who had been earlier promoted were either post dated or they were reverted to the lower post just to avoid excess in the number of vacancies allotted to each grade. According to the respondents in pursuance of the findings of the review DPC keeping in view the interest of natural justice show cause notice had been issued to all the applicants proposing as to why their promotions made earlier may not be postdated or they may

not be reverted to the lower posts by letter dated 1.12.99. According to them applicants No.1, 4, 5 and 7 had received the notice and sent the reply on 10.4.2000 and in case of other applicants they have not accepted the show cause notice and had not filed any reply. The respondents further contended that the order passed on 1.12.99 is not a final order and the respondents will pass a final order only after considering the representations to be filed by the applicants in response to the show cause notices. Drawing our attention to Annexure to the impugned letter dated 1.12.99 it is shown that what has been recorded in individual cases of the applicant is the decision taken by the DPC in compliance of the order of the Tribunal. The learned counsel of the respondents Shri N.S. Mehta drawing our attention to an order passed by the Mumbai Bench of the Tribunal in Mrs. Sobha A. v. Union of India contended that in pursuance of an order passed by the respondents the applicants therein were reverted and the Tribunal vide an order dated 4.3.97 set aside the reversion order with liberty to the respondents to give a show cause notice to the applicants and on receipt of the representations pass speaking order. The learned counsel has also drawn our attention to an order passed by Bombay Bench of the Tribunal in OAs-675/99 and connected OAs on 28.1.98 wherein the reversion orders passed have been upheld by the Tribunal. In this background it is stated that the OAs of the applicants are pre-mature without exhausting the departmental remedies. They seek quashing of an inter-locutory order which is yet to attain finality. The proper cause of action open for the applicants was to file

reply to the show cause notices and on receipt of the orders to be issued by the respondents and after exhausting the remedies they could have approached the Tribunal.

12. We have carefully applied our mind to the rival contentions. It is true that the applicants have been issued a show cause notice by the respondents whereby on the basis of the finding of the review DPC held on 25.11.99 a decision had been communicated to the applicants indicating their postponing of promotions to different grades and also reversion from certain posts. It appears that the respondents are acting on the recommendations of the review DPC approved by the competent authority and had already taken a decision to post date the promotions of the applicants and also cancel their promotions to different posts. In our considered view once a definite decision is taken on the basis of review DPC which has been admittedly approved by the competent authority issuance of show cause notice to the applicants will amount to according them a post decisional hearing to cure the defects cropped in their actions. In this view of ours we are fortified by the ratio laid down by the Hon'ble Apex Court in H.L. Trehan's case (supra). Thus, we are constrained to hold that the decision taken by the review DPC and approved by the authorities amounts to a final decision and by issuing a show cause notice to the applicants seeking their reply and proposing their reversion and postponement of promotion is an empty formality. Before a Government servant is visited with civil consequences he has to be afforded a reasonable opportunity. The promotion given should not be withdrawn without affording an opportunity to show cause. In this regard we are fortified by the ratio laid down by

the Hon'ble Apex Court in D.K. Yadav v. J.M.A. Industries Ltd., 1993 SCC (L&S) 723 as well as Bhagwan Shukla v. Union of India & Others, 1995 (2) SLJ 30.

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13. It is next contended that the applicants had asked for certain material documents in pursuance of orders passed on 8.12.99 which included the copy of the judgement of the Tribunal and Govt. of India's letter dated 28.5.99. The respondents had rejected the request of the applicants by stating that the same are meant for administrative action and cannot be supplied to the applicants. In our view these documents were very much relevant for the applicants to contest the proposed action of the respondents. Due to non-supply of these documents which are in possession of the respondents the applicants were prejudiced. Now we find from the record of the OAs and particularly the reply filed by the respondents that all these documents are annexed. As such the applicants are now furnished and are in possession of these documents to enable them to effectively defend the decision taken by the respondents. As such issuing a direction to the respondents to furnish all these documents would be a mere formality.

14. It is next stated that in some of the cases the applicants were not served the copy of the show cause notice and as the important documents were not furnished to them they could not effectively represent to the respondents against the show cause notice. In view of the fact that the respondents have denied those documents and also the fact that by way of filing the reply these documents were provided to the applicants and also the fact

that the entire background leading to a review DPC which ultimately adversely affected the rights of the applicants they are legally entitled to raise their objections afresh as such. We hold that the applicants should be accorded an opportunity to re-represent to the respondents against their decision.

15. Another contention of the applicants is that the show cause notices issued to them are absolutely mechanical without giving details as to what led to the decision taken against the applicants in the review DPC held on 25.11.99. According to them in the absence of any detailed reasons it is difficult for the applicants to represent their case effectively. On the other hand the respondents contended that sufficient reasons have been recorded in the show cause notice and the same have been communicated to the applicants. We do not agree with the contentions of the respondents and are of the considered view that the show cause notices issued to the applicants do not reflect the detailed reasons as regards to resorting to the conclusion to an action by the respondents which had adversely affected the rights of the applicants. In the absence of sufficient reasons recorded in the show cause notice it will be very difficult for the applicants to file their replies to the same.

16. As we have already held that the order passed by the respondents on 1.12.99 where they had already taken a decision to postpone the promotions of the applicants as well as reverting them to the lower posts,

the issuance of show cause notices later is only an empty formality in the form of a post decisional hearing, which is not legally sustainable.

17. Having regard to the above reasons and discussions the OAs are disposed of with the following directions:

i) The order dated 1.12.99 is quashed and set aside.

ii) The respondents are directed to afford a reasonable opportunity to the applicants to show cause before taking a decision while postponing their promotions or reverting them to the lower posts.

iii) The respondents are further directed to issue fresh show cause notices to the applicants disclosing all the material and reasons which lead to the proposed action.

iv) The applicants shall also be accorded a reasonable opportunity to represent against the proposed action by way of filing fresh representations in reply to the show cause notice.

18. It is made clear that we have not disposed of these OAs on merits and also not expressed any opinion on the merits of the present OAs regarding the legality of the action taken by the respondents.

19. In the event any final order is passed the applicants are at liberty to assail the same before the appropriate forum in accordance with law. The respondents are directed to comply with these directions within a period of three months from the date of receipt of this order. No costs.

20. Let a copy of this order be placed in the file of each case.

(Shanker Raju)
Member (J)

(V.K. Majotra)
Member (A)

'San.'

Attested

22/3/2001

C.O.

C.IV