

(29)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

MA NO. 862/2004 &
O.A. NO. 1037/2004

New Delhi, this the 31st day of August, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

1. Shri Sushil Kumar,
S/o Late Sh. V.P. Gupta,
Aged about 56 years,
R/o N-6-1, M.S. Flats, Sector 13,
R.K. Puram, New Delhi
And working as Industrial Adviser under
Respondent No.1
 2. Shri C.M.P. Sinha,
S/o Late Shri D.P. Sinha,
Aged about 59 years,
R/o R-9, Andrewsganj Extn.,
New Delhi-49, and working as
Industrial Adviser under Respondent No.1
 3. Shri V.K. Jain,
S/o Late Shri Deep Chand Jain,
Aged about 58 years,
R/o B-1/118, Second Floor,
Paschim Vihar, New Delhi
and working as Additional Industrial Adviser
under Respondent No.1
 4. Shri Shiv Kumar Bharij,
S/o Shri J.N. Bharij,
Aged about 58 years,
R/o 85, Munirka Enclave, New Delhi-67
and working as Additional Industrial
Adviser under Respondent No.1
- ... APPLICANTS
- (By Advocate : Shri S.S. Tiwari)

VERSUS

1. Union of India, Through
Secretary,
Department of Industrial Policy & Promotion,
Ministry of Commerce & Industry,
Udyog Bhawan, Maulana Azad Road, New Delhi
 2. Chairman,
Union Public Service Commission,
Dholpur House,
Shahjahan Road, New Delhi
- ... RESPONDENTS
- (By Advocate : Shri H.K. Gangwani)
- b

ORDER

By Mukesh Kumar Gupta, Member (J):

M.A. No. 862/2004 for joining together is allowed.

OA NO. 1037/04:

4 applicants in this OA presently working as Industrial Adviser/Additional Industrial Adviser seek following relief:-

- "(a) Direct the respondents to treat the promotions of the applicants as regular from the dates their juniors were adjusted on a regular basis, even though they were not promoted by Review DPCs.*
- (b) Direct the respondents to give all consequential benefits including arrears of pay accruing out of relief (a).*
- (c) To pass any other order/s as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case."*

2. The facts as stated are that they are working under Respondents since 1994 after their department, namely Directorate General of Technical Development (DGTD) was disbanded on 31.03.1994. Prior to said date, Respondent No. 1 was their cadre controlling authority. Applicant No.1 joined as Assistant Development Officer (Engg.) on 20.02.1970, promoted as Development Officer (Engg.) on 01.02.1975 and Industrial Adviser (Engg.) on ad-hoc basis w.e.f. 30.11.2000. Applicant No.2 joined as Assistant Development Officer (Engg.) on 12.12.1969, promoted as Development Officer (Engg) on 06.12.1976 and Additional Industrial Adviser on ad-hoc basis and later as Industrial Adviser (Engg) on ad-hoc basis vide order dated 09.07.2002. Applicant No.3 joined as ADO (Engg) on 10.10.1969, promoted as Development Officer (Engg) on 2.1.1978 and promoted as Additional Industrial Adviser on ad-hoc basis vide order dated 26.02.2001. Applicant No.4 joined as Assistant Development Officer (Engg) on 20.12.1969, promoted as Development Officer (Engg) on 15.5.1978 and Additional Industrial Adviser (Engg) on ad-hoc basis vide order dated 09.07.2002.

3. In compliance of judgment of Hon'ble Supreme Court in **B.S. Narula & Ors v. Union of India & Ors.**, Writ Petitions Nos. 13692 to 13698 of 1984 decided on 09.12.1988, a final seniority list of Development Officers (Engg.) was prepared and issued on 9.7.1991 whereby they were shown at serial Nos. 38, 45, 48 and 49 respectively. Many juniors to them, for example, Dr. D.R. Chawla, Shri M.E. Madhusudan, Shri H.S. Dubey, Shri S. Nag and Shri S.K. Jain-I, who were shown at serial Nos. 41, 43, 46, 47 and 51 respectively therein had been promoted to senior posts as per old seniority list, ignoring their claim. After revision of seniority list and though review DPCs for post of Industrial Adviser (Engg.) and Additional Industrial Adviser (Engg.) were held, but they were not promoted. On the other hand certain officials were permitted to continue on said post in terms of stay granted by Hon'ble Supreme Court vide order dated 08.03.1991 in SLP (C) No.2623 of 1991, filed against Tribunal's judgment dated 31.10.1990.

4. Respondents' action in adjusting junior officers against regular vacancies was contrary to rules and well established procedure. They were not promoted despite their seniority and eligibility, as no DPC was convened by Respondents without any just reasons. As per procedure, DPCs should have met on regular intervals to draw panels to be utilized for promotion over a year. The law in this respect is also well settled as held by Hon'ble Supreme Court in **Union of India vs. Shri N.R. Banerjee & Ors** where the tendency of holding belated DPC was deprecated and it was emphasized that DPC should be convened well in advance of relevant vacancy year. After abolition of DGTD, one post of IA (Engg) was filled up through DPC based on existing recruitment rules by promoting Shri V.C. Mathur in the year 1997. Thereafter no such DPC had been convened. Holding of DPC for one Officer and denying the same to others is not only discriminatory but

also contrary to rules. Shri H.S. Dubey, junior to applicant No.2, was promoted as IA (Engg.) in the review DPC held on 11.1.1994, was not reverted. Instead, he was adjusted against regular vacancy of IA (Engg) and transferred to Department of Telecommunications along with regular post of IA (Engg.) on 31.03.1994. Despite representations made on 16.09.2002, followed by reminder dated 26.09.2002, requesting to promote them retrospectively, no action had been taken by Respondents.

5. Shri S.S. Tiwari, learned counsel appearing for applicants contended that they have a legal right to the benefits of revised seniority of ADO (Engg) and DO(Engg) issued in compliance of order of Hon'ble Supreme Court in **Narula's** case. Respondents have illegally denied them consequential benefits of said revised seniority list. Under the law, Respondents were duty bound to consider them for regular promotion from the date their juniors were promoted and they should have been adjusted against regular vacancies, which has not been done.

6. Respondents resisted the claim laid stating that consequent upon winding up of DGTD in year 1994, various officers of DGTD were transferred to other user Ministries including Department of Industrial Policy and Promotion. In year 1995, Government mooted a proposal for amendment of Recruitment Rules in respect of posts in technical cadre of erstwhile Department of Industrial Development (now Department of Industrial Policy & Promotion). After inter-Ministerial consultations with DOP&T, it was decided to undertake a review of technical cadre, keeping in view the policy and structural changes, which had been taken place. Accordingly, a review of the cadre was taken up and it recommended for continuation of technical cadre. By the time review was completed, a temporary ban was imposed on framing/amending Recruitment Rules in 1997, which was subsequently

lifted vide DOP&T's OM dated 25.05.1998. In the meantime, the Department was in need of filling up vacancies and, therefore, approached UPSC, which proposal was turned down. In year 2000, the department had undertaken an exercise for rightsizing the department with approval of Committee of Secretaries. Before such recommendation could be implemented, Expenditure Reforms Commission (ERC) had undertaken restructuring of Government including this department, which report was issued in the year 2001. ERC inter-alia, recommended abolition of technical cadre except two posts of Industrial Adviser (one each in Engineering & Chemical sides). Since promotion in technical cadre of the department continued to be on ad-hoc basis, Respondents again tried to resolve the issue and determine mode of filling up of posts on regular basis in consultation with UPSC. Therefore, various posts in Technical cadre continued to be filled up on ad-hoc basis.

7. Respondents also raised the plea of limitation stating that the basis of grievance was winding up of DGTD, which took place in the year 1994. On vacation of stay, the officials, namely, Dr. D.R. Chawla and Shri S.K. Jain, who figured at serial Nos. 41 and 51 respectively in the revised seniority list, were reverted and remaining officers were either transferred to other Departments or retired/superannuated in the meantime. The officers junior to them continued to hold the post due to stay order granted by the Hon'ble Supreme Court, which was vacated only on 06.07.2000. Due to winding up of DGTD, posts of Secretary (Technical Development) & Director General (Technical Development) stood abolished and, therefore, DPC could not have been held as per extant rules. Respondents also filed two additional affidavits virtually reiterating what has been said earlier except to add that on preparation of fresh eligibility list, name of first applicant had been duly considered by review DPC of AIA, but as the post was to be

filled on selection basis, his junior was selected for appointment. Name of other 3 applicants did not figure in eligibility list, being not senior enough to be eligible for consideration for promotion. After these two review DPCs, junior Direct Recruit Development Officers though reverted but continued to hold posts due to stay order, as noticed hereinabove. Subsequent vacancies in any grade except one in Industrial Adviser (Engg.) have not been filled on regular basis. It was emphatically stated that "no officer in this Department junior to the applicants is holding any post in higher grade on regular basis". Further there is no basis for claiming promotion from date on which juniors had been earlier promoted and now reverted, particularly for the reason that it was because of stay granted by the Hon'ble Supreme Court, said juniors continued to occupy the posts in question. The department decided that no regular promotion can be made till a decision is taken on status of technical cadre vis-à-vis recommendations of ERC.

8. We heard learned counsel for parties at length and perused the pleadings carefully.

9. We have given our thoughtful consideration to entire aspect of the case. We may note that four applicants herein basically claimed consequential benefits of revised seniority list of ADO and DO in terms of Judgment of Hon'ble Supreme Court in **B.S. Narula** (supra). Perusal of judgment dated 17.10.2000 in OA No.1363/2000 - **Shri S.K. Jain & Anr vs. Union of India & Ors.**, wherein all applicants herein were Respondents 3 to 6, indicates that a Contempt Petition was disposed of by the Hon'ble Supreme Court vide order dated 19.03.1991. The challenge made to seniority list of Development Officers (Engg) issued on 17.05.1991 and to restore seniority list of officers as in the year 1984 had been negatived vide aforesaid order dated 17.10.2000. Similarly, we find that applicants herein were also

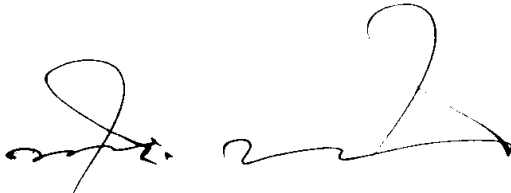
applicants 9, 8, 11 & 12 respectively in OA No.818/1987, which was initially decided on 31.01.1990 and which order had been quashed and set aside by Hon'ble Supreme Court on 16.09.1999 and matter was remanded to the Tribunal. It was also observed that stay order dated 08.03.1991 would continue until disposal of OA by the Tribunal. Said OA had not been pursued by them as they made specific application seeking deletion of their names from the OA. Similarly, other officials had retired from service in the meantime, therefore, vide order dated 06.07.2000, OA was dismissed as withdrawn in respect of those who had prayed for withdrawal and for others it was dismissed in default. The stay order dated 08.03.1991, as such, came to an end on 06.07.2000. We may note that in the aforesaid OA No. 818/1987, **R.M. Balani & Ors v. UOI**, claim had been that their continuous period of ad-hoc service as Development Officer be treated as regular service and counted towards seniority. The post of Development Officer was a feeder post to Additional Industrial Adviser.

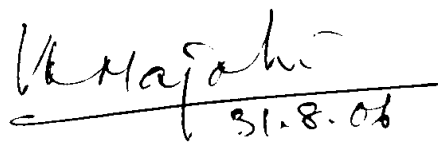
10. In present proceedings, their basic claim is that they should be promoted from the dates when Dr. D.R. Chawla and Shri S.K. Jain were promoted to said post. It is not disputed that order dated 31.10.1990 vide which initially OA No.818/1987 along with OA No. 1047/1987 (**N.G. Basak & Ors vs. UOI**) had been disposed of, had been challenged before Hon'ble Supreme Court in SLP No.2623 of 1991 and vide order dated 08.03.1991 their reversion was stayed, which order was ultimately vacated only on 06.07.2000. It is only in these circumstances, said two officials continued to occupy the posts in questions.

11. In these circumstances, we find justification in the contention raised by Respondents that it was not a deliberate act on their part, which allowed them to continue to remain in position, but because of stay they remained in said position. If applicants herein were

aggrieved by non-grant of consequential benefits in terms of **B.S. Narula's** judgment, they were required to rake up such issue at an appropriate time and should not have waited till disposal of OA or the date when they were actually promoted in the year 2000 vide order dated 06.12.2000. We may also note that the grievance raised in the year 1987 vide OA No.818/1987 had ultimately settled only on 06.07.2000 when the said OAS was dismissed as withdrawn in respect of applicants herein and dismissed in respect of other applicants. We also find justification in the plea raised by Respondents that OA suffers on account of limitation, as the cause of action had been of a much earlier period. In any case, applicants have been promoted vide order dated 06.12.2000 & continued to hold the said post till all of them retired on attaining the age of retirement in the year 2005. Keeping in view the peculiar facts of the case that DGTD had been wound up and it is because of such reason that no regular promotion could be effected, we find no justification in their claim for grant of retrospective promotion.

12. In view of the discussion made hereinabove, we find no justification in the claim made and accordingly OA is dismissed. No costs.


(Mukesh Kumar Gupta)
Member (J)


(V.K. Majotra)
Vice Chairman (A)

/PKR/