

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 1501/2004

New Delhi, this the 3rd day of March, 2005

**HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)**

1. Mrs. Usha Anand,
W/o Shri S.C. Anand,
Aged about 57 years,
Resident of : 48, Sharda Apartments,
3, West Enclave,
Pitampura,
Delhi – 110 054
And employed as:
Lecturer (Senior Scale) (Electronics) in the
Guru Nanak Dev Polytechnic,
Sector 15, Rohini,
Delhi-110 085
2. D.N.K. Gawri,
S/o Late Shri R.L. Gawri,
Aged about 54 years,
R/o B-2/226, Paschim Vihar,
New Delhi – 110 063
And Employed as:
Lecturer (Senior Scale) (Electronics),
Pusa Polytechnic,
Pusa, New Delhi-110 012
3. S.B. Mathur,
S/o Late Shri K.B. Mathur,
Aged about 59 years,
Resident of : E-3, Pant Polytechnic Campus,
Delhi – 110 020
And Employed as:
Lecturer (Senior Scale) (Mechanical Engineering),
G.B. Pant Polytechnic,
Delhi – 110 020
4. H.S. Bawa,
S/o Shri Harbabans Singh Bawa,
Aged about 61 years, R/o WZ 67-A, Mukherjee Park,
Near Tilak Nagar,
New Delhi
And Employed as:
Lecturer (Mechanical Engineering) (Retd.)
Pusa Polytechnic, Pusa, New Delhi,
5. Virender Anand,
S/o Shri Shanti Prakash Anand,
Aged about: 58 years,
Resident of: C-2/35-C, Lawrence Road,
New Delhi – 110 035

And Employed as:

Lecturer (Senior Scale) (Mechanical Engineering),
 Pusa Polytechnic, Pusa,
 New Delhi – 110 012

Applicants

(By Advocate : Shri B.B. Raval)

Versus

1. Government of National Capital Territory of Delhi,
 Through the Chief Secretary,
 Delhi Sachivalaya,
 I.P. Estates, New Delhi – 110 002
2. The Principal Secretary-cum-Director,
 Directorate of Training & Technical Education,
 Muni Maya Ram Marg,
 Pitam Pura, New Delhi
3. The Chairman,
 Union Public Service Commission (UPSC)
 Dholpur House,
 Shahjahan Road,
 New Delhi – 110 011

Respondents

(By Advocate : Shri George Paracken)

ORDER**BY S.K. MALHOTRA, MEMBER(A) :**

This Original Application has been filed by the applicants praying for the following reliefs:-

- (i) to issue a Writ of Certiorari or a Writ in the form of Certiorari quashing the impugned Annexures A and B as being contrary to the directions contained in the order and judgement delivered by the Hon'ble Tribunal in OA 1263 of 1991 on 3.1.1992 and dated 3.10.2003 in OA 3065/2002,
- (ii) Consequent to relief No.1 being granted, direct the respondents to update the "seniority" by interpolating names of the applicants at appropriate slots after allowing them appropriate seniority from 12.12.1988, or from September, 1987 along with arrears of dues of pay and allowances along with other benefits accruable to the applicants, allow career Advancement from due date by counting their seniority as lecturers from day one of their appointment viz.12.12.1988.

2. The facts of the case in brief are that the applicants had joined the respondents department during the period 1964-70 as Instructors and Demonstrators and were subsequently promoted to the post of Junior Lecturers during 1977-79. Government of India had appointed an Expert Committee in 1972 (known as Madan Committee) to revise the staff structure of Engineering/Polytechnic institutions throughout the country. This Committee recommended that the lowest formation of the teaching faculty should be

Lecturer. These recommendations were accepted by the Government in 1987 and conveyed to the Lt. Governor in July, 1988. Based on these recommendations the applicants were promoted as Lecturers(adhoc) in the pre-revised scale of Rs.2200-4000/- vide order dated 12.12.1988 (Annexure A-1). It was mentioned in this letter that the formal appointment order of regularization would be issued only after the approval of UPSC. However, despite repeated representations made to the respondents, the services of the applicants were not regularized. An OA no. 1263/1991 was filed by the Association of Gazetted Officers, Technical Education in the Tribunal praying for regularization of their services from the day they were appointed on adhoc basis. The Tribunal, in its order dated 3.1.1992 (Annexure A-2), observed that although UPSC had recommended the regularization in May, 1990, the applicants have not been regularized. An order was, therefore, passed directing the respondents to take necessary steps to implement the recommendations made by UPSC and pass formal order regarding the regular appointment of the applicants. It was also stated in this order that the applicants would be entitled to reckon their seniority from the date of their adhoc appointment and the said period will also count as qualifying service for the purpose of pension and other retirement benefits. The respondents thereafter issued a letter on 10.4.1992 regularizing the adhoc appointment of the applicants and other similarly situated officials as per recommendations of UPSC w.e.f. 28.5.1990, the date on which the recommendations were made by UPSC. As the regularization was from the date later than the date of their adhoc appointment i.e. 12.12.1998, a number of representations were made by the applicants to grant them regularization w.e.f. 12.12.1998 but to no avail. The respondents vide their letter dated 17.12.1998 circulated a scheme called Career Advancement Scheme. The benefit of this scheme was also not extended to them, as their adhoc service was not being taken into consideration. The applicants and their Association had been sending their representations from time to time. Ultimately another OA no. 3065/2002 was filed by the applicants, in which a request was also made to accord seniority to the applicants w.e.f. 12.12.1998 instead of 28.5.1990 and to issue an updated seniority list. This OA was disposed of vide order dated 3.10.2003 with the directions to the respondents to treat the present OA as a supplementary representation

apart from the original representations preferred by the applicants and consider the claim of the applicants through a detailed and speaking order in the light of the decision in OA no. 1263/1991. In the meantime a tentative seniority list was issued by the respondents on 21.10.2003, in which the date of regularization was shown as 28.5.1990 instead of 12.12.1998, without counting the period of their adhoc service as was ordered in OA no. 1263/1991. When the order of the Tribunal was not implemented in the letter and spirit, the applicants filed a contempt petition no. 116/2004 and a show cause notice was issued to the respondents. In the meantime, the respondents issued an impugned order dated 29.4.2004 in compliance with the directions contained in the order and judgement dated 3.10.2003 in OA 3065/2002 (Annexure-A) to get away from the effect of the contempt. By this order, the request of the applicants for counting the adhoc service for the purpose of seniority and promotion was rejected. Hence the present OA.

3. The main ground taken by the applicants is that they were appointed as Lecturers on adhoc basis w.e.f. 12.12.1998 based on the recommendations of the Madan Committee and they have been continuously working on this post without any break. They are qualified to hold this post as per Recruitment Rules much earlier than 1987 and according to the order passed by the Tribunal in OA 1263/1991, their adhoc service from 1998 onwards was required to be considered for the purpose of seniority, promotion and other consequential benefits. They have, however, been regularized from 28.5.1990, the date on which the UPSC gave its recommendations.

4. The respondents have filed their counter reply in which they have taken the stand that the applicants were posted as Lecturers on adhoc basis vide letter dated 12.12.1998. UPSC conveyed its approval for their regularization vide letter dated 28.5.1992 in which it was stated that the officers may be appointed to the upgraded post of lecturers on regular basis not earlier than the date of the recommendations of the Commission i.e. 18.5.1990. It is contended that the applicants were earlier holding Group-C posts before their adhoc appointment as Lecturers, which is a Group-A post. The recommendations of UPSC were necessary before regularizing them against the above post. They could not have been regularized from the date prior to the recommendations of UPSC i.e. 18.5.1990. Accordingly orders were issued for their regularization w.e.f 28.5.1990. The

seniority list was finalized in 2000 in which the benefit of adhoc service was not given to the applicants. According to them regularization orders were issued on 10.4.1992. The applicants did not raise any objection at that time but have raked up the issue of seniority after 12 years.

5. We have heard both the learned counsel and have also gone through the pleadings on record.

6. The main point brought by the learned counsel for the applicant was that the order dated 3.1.1992 given by the Tribunal in OA No.126/1991 has not been implemented. The Tribunal had very clearly directed that the adhoc service rendered by the applicant should be taken into consideration at the time of regularization for seniority. The respondents were again directed by the Tribunal in its order dated 3.10.2003 in OA No. 3065/2002 that the representation made by the applicants should be considered keeping in view the directions given by the Tribunal in its order dated 3.1.1992. Despite these clear directions, the respondents department has been evading the implementation of these directions. They have regularized their service from 28.5.1990 without giving them the benefit of adhoc service w.e.f. 12.12.1988. This is in violation of the directions given by the Tribunal and is in fact a case of contempt of court. On the other hand, the learned counsel for the respondents vehemently argued that the applicants could not have been regularized without the clearance of UPSC.

7. The learned counsel for the applicants in support of his contention cited the judgement of this Tribunal in OA No. T-1250/85 dated 6.3.1987 in which directions were issued to revise the seniority of the applicants by taking into account their entire period of continuous adhoc officiation period preceding their regular appointment to that grade for the purpose of seniority and other consequential benefits, including promotion. He also cited the judgement of the Hon'ble Supreme Court in the case of Ajit Kumar Rath vs. State of Orissa and Others (AIR 2000 SC 85), in which it was held that adhoc service of the employees is required to be counted for the purpose of seniority. In that case also, the applicant was promoted on provisional basis pending concurrence from the Orissa Public Service Commission. It was held in that case that the promotion having been made in accordance with the Rules, the entire period of adhoc service, when the applicant was

appointed on a regular basis on the concurrence of the Commission, would have to be counted towards seniority of the appellant. According to him, the present case is fully covered by the above judgements.

8. The learned counsel for the respondents, however, drew our attention to an OM dated 23.7.2001 issued by DOP&T (Annexure A-22), in which instructions have been issued that service rendered on adhoc basis would not count for the purpose of seniority and for eligibility for promotion to the next grade. He also pointed out that the relief granted to the applicants in OA No. 1263/1991 vide order dated 3.1.1992 was not asked for by the applicants. Their only grievance in the OA was that despite UPSC's recommendations, they have not been regularized, as would be evident from para 1 of the order itself. However, the Tribunal allowed them relief to reckon their seniority from the date of their adhoc appointment, which relief was not even asked for by the applicants.

9. After hearing the rival contentions of both the parties, we are convinced that the respondents have not really implemented the order dated 3.1.1992 passed by the Tribunal in OA No.1263/1991 in the letter and spirit. In this order clear directions were issued to the respondents to reckon their seniority from the date of their adhoc appointment, i.e. 12.12.1988. The plea now taken by the respondents that this relief was not asked for by the applicants cannot be accepted. The Tribunal after considering all the relevant aspects of the case deemed it fit to issue the above directions. In case the respondents were not satisfied by the above directions, the remedy was in filing a review petition or to challenge the order in the Hon'ble High Court but neither of these options was exercised by them. The order thus had achieved finality and cannot be challenged at this stage. The same directions were reiterated by the Tribunal in its order dated 3.10.2003 in OA No.3065/2002 in which it was stated that the representations made by the applicants be considered and a speaking order passed, in the light of the decision in OA No.1263/1991. The only reason advanced by the respondents for not giving the applicants the benefit of their adhoc service in counting seniority, is that the UPSC gave its recommendations on 18.5.1992 and as such their regularization was made w.e.f. 28.5.1992. While we agree that the recommendations of UPSC were necessary for granting them regularization, but we are not convinced that its benefit could not have been given from the date of their

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adhoc appointment. It must be appreciated that this case of adhoc appointment is not the normal case when an employee is promoted on adhoc basis for want of regular vacancy. In this case adhoc upgradation was given, as a result of Madan Committee report, pending clearance for regularization by UPSC. Once UPSC had given clearance for regularization, it should have been made effective from the date of issue of the initial order, rather than from the date UPSC gave clearance. The learned counsel for the applicant during the course of arguments raised a very valid point. He argued that if UPSC had taken say 5 years to give their recommendations for regularization, does it mean that the regularization would have been effective from a date 5 years later? The obvious answer is No. We are inclined to accept the reasoning advanced by the learned counsel.

10. The issue raised by the learned counsel for the respondents of the instructions issued by DOP&T vide OM dated 23.7.2001 (Annexure A-22) is also not relevant in the instant case. These instructions are applicable only in those cases where persons appointed on adhoc basis to a grade are to be replaced by persons approved for regular appointment by direct recruitment, promotion or transfer (absorption). This has been made clear in these instructions in the preamble itself. It would, therefore, be wrong to make these instructions applicable in the present case, where the applicants were not intended to be replaced by direct recruits. They were given adhoc upgradation based on Madan Committee Report pending clearance of regularization by UPSC. In this connection, the law laid down by the Hon'ble Supreme Court in the case of Ajit Kumar Rath (supra) would be squarely applicable. The relevant portion of this judgement is reproduced below:

“25. It is thus clear that the appellant was promoted on a regular, though provisional, basis pending concurrence from the Orissa Public Service Commission. The promotion having been made in accordance with the Rules, the entire period of adhoc service beginning from 1972 to 1976, when the appellant was appointed on a regular basis on the concurrence of the Commission, would have to be counted towards the seniority of the appellant vis-à-vis the contesting respondents. The Tribunal, in these circumstances, had rightly invoked the principles laid down by this Court in Direct Recruit Class-II Engg. Officers Association's case (AIR 1990 SC 1607 : 1990 Lab IC 1304) (supra). There was no scope to deviate from this Rule as it has been clearly laid down by this Court in principles (A) and (B) set out therein as under:

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“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.”

On these principles, the Tribunal had held, and in our opinion rightly, that appellant and respondent No.12 were senior to the respondents.”

11. In this connection, reliance is also placed on the judgements in the cases of Rudra Kumar Jain vs. UOI {2000 SCC (L&S) 1055} and I.K. Sukhija vs. UOI {1999 (1) SLJ 88 (SC)} wherein the above principle has been enunciated. We are, therefore, not agreeable with the stand taken by the respondents. In any case, the order dated 3.1.1992 in OA No.1263/1991 has also attained finality, as explained above. The respondents are, therefore, legally bound to implement that order in the letter and spirit. The applicants have been agitating their case by way of representations all these years. The fixation of seniority, as ordered by the Tribunal is also a continuing cause of action. The point of limitation raised by the respondents is, therefore, totally misconceived and cannot be accepted.

12. Taking into consideration the above factors, the OA succeeds and is allowed. The order dated 29.4.2004 (Annexure ‘A’) as well as the seniority list (Annexure ‘B’) issued by the respondents are quashed and set aside. The respondents are directed to grant regularization to the applicants from the date of their adhoc appointment, i.e. 12.12.1988 and also reckon their seniority from this date for all purposes, including promotion, pension and other retirement benefits. In case the applicants are eligible for grant of any benefit under the Career Advancement Scheme, the same would also be allowed, as per rules. These instructions shall be complied with by the respondents within 4 months from the date a copy of this order is received by them.

No costs.

Malhotra
(S.K. Malhotra)
Member (A)

M.A. Khan
(M.A. Khan)
Vice Chairman (J)