

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO. 1731/2004

New Delhi, this the ^{28th} day of July, 2005

**Hon'ble Shri V.K.Majotra, Vice Chairman (A)
Hon'ble Mr. Shanker Raju, Member (J)**

Shri N.K. Asthana,
S/o Late R.N. Asthana,
R/o B-118, Pragati Vihar Hostel,
Opposite C.G.O. Complex,
New Delhi – 110 003. ...Applicant

(By Advocate: Shri N. Safaya)

-versus-

Union of India through

1. Secretary,
Ministry of Textiles,
Udyog Bhawan,
New Delhi.
2. Development Commissioner (Handicrafts),
West Block No. VII, R.K. Puram,
New Delhi – 110 066.
3. Additional Development Commissioner (Handicrafts)
West Block No. VII, R.K. Puram,
New Delhi – 110 066.
4. Dy. Director (Admn.I)
Office of Development Commissioner (Handicrafts),
West Block No. VII, R.K. Puram,
New Delhi – 110 066.
5. Shri A.T. Meshram,
Presently Posted as Dy. Director (Handicrafts)
Office of Development Commissioner (Handicrafts),
West Block No. VII, R.K. Puram,
New Delhi – 110 066.
6. Shri V.V. S. Surya Narayana,
Presently posted as
Dy. Director (Handicrafts)
Office of Development Commissioner (Handicrafts),
West Block No. VII, R.K. Puram,
New Delhi – 110 066.

7. Shri S. Dkhar,
 Presently posted as Dy. Director (H),
 North Eastern Regional Office,
 O/o Development Commissioner (Handicrafts),
 Central Block, Second Floor,
 House Fed Complex, Beltola Basistha Road,
 Gauhati, Assam – 781 006.Respondents

(By Advocate: Rao Vijay Pal)

O R D E R

By Hon'ble Mr. Shanker Raju, Member (J):

Applicant, by virtue of this application, has sought to challenge the orders dated 27.5.2004 whereby respondent nos. 5 and 7 had been promoted as Assistant Director (Handicraft). Quashing of the said order is sought with a direction to promote applicant as Assistant Director.

2. Brief factual matrix relevant for adjudication is that the applicant has been appointed to the post of Junior Field Officer (JFO) group 'B' non-gazetted post in the pay scale of Rs. 500-900/-. Applicant was appointed in the Carpet Scheme and also various Marketing Service Centres of the Department. As the post under the JFO Recruitment Rules, 1972 for appointment was under the purview of the UPSC, applicant was appointed on ad hoc basis. At the relevant time, there was a common All India Seniority with inter-transferable liability. Earlier the post of JFO was a feeder post to the post of Assistant Director.

3. As per Assistant Director Recruitment Rules, 1978, JFOs with three years' regular service were eligible for promotion and the mode was 100% from feeder post.

4. Vide order dated 15.2.78 issued by the Ministry of Commerce w.e.f. 1.3.1978 JFOs in the then existing Carpet Weaving Training

Centres were re-designated as Carpet Training Officer (CTO), Group 'C' non-gazetted post in the pay scale of Rs.550-800. An option has been sought in view of discontinuance of the post of JFO in Carpet Centres either to opt for the re-designation as CTO or else to resign. Admittedly, applicants opted for CTOs. Later on, vide order dated 16.5.97 in modification of letter dated 15.2.97 President has accorded sanction to restoration of scale of pay of Rs.550-900 in Group 'B' to the then JFO in the Carpet Scheme purely on personal basis whereas rest of the conditions would have to remain as per Board's letter dated 15.2.1978.

As a consequence thereof applicant's ad hoc status was regularized from the date of appointment in the pay scale of Rs.550-900.

5. The grievance of applicant is that whereas respondents 5-7 who had been working in the Handicraft Board were re-designated as Handicraft Promotion Officer (HPO) with avenues of promotion and being juniors have stolen a march over him and had been promoted as Assistant Directors (Handicraft) whereas applicant has been stagnating for several years.

6. Learned counsel of applicant relying upon a Constitution Bench decision of the Apex Court in **Rudra Kumar Sain v. Union of India & Ors.**, 2000 (6) SCALE 54 would contend that cadre is a larger concept than service and whether cadre would govern the Scheme, as on accord of status of Group 'C' from inception non-accord of an option to be re-designated as HPO fundamental right of applicant has been violated and his service conditions are altered without affording a prior opportunity.

7. Learned counsel further states that the earlier option was unconscionable as either applicant would have to resign or to accept

CTO, having no choice he has opted for continuance, which resulted in deprivation of right of promotion.

8. As applicant had been regularized late he cannot be deprived of his right for consideration to promotion as identically situated with HPOs and does not belong to CTO, Group 'C' cadre and as now CTO Group 'B' and HPO constitute one cadre and both the incumbents were appointed under the same rules applicant cannot be meted out differential treatment. Relying upon the decision of the Chandigarh Bench of the Tribunal in OA-698/PB/98 in **Sushil Kumar v. Union of India** decided on 14.1.2003 it is stated that once the earlier promotion of applicant therein is set aside he cannot be promoted again.

9. On the other hand, respondents' counsel vehemently opposed the contentions and stated that after 15.2.78 as agreed to by applicant by opting for CTO the post of JFO had not been in existence from 1.3.78 and having opted for CTO, which is a different cadre and is not a feeder cadre for promotion as Assistant Director (Handicraft) claim of applicant cannot be countenanced.

10. Learned counsel states that a similar controversy has been laid at rest by the Allahabad Bench of the Tribunal in OA-756/98 on 16.4.2002 in **R.P. Mishra v. Union of India**, which has been followed by the Principal Bench in which applicant was one of the parties in OA-173/99 **G.S. Tiwari v. Union of India**, decided on 4.2.2002. It is stated that claim of applicant is not maintainable and hit by the principle of res judicata.

11. We have carefully considered the rival contentions of the parties and perused the material on record. The Apex Court in **Krishna**

Bahadur v. M/s Purna Theatre & Ors., 2005 (1) SLJ 209, while

dealing with the concept of waiver and estoppel observed as under:

“9. The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.”

10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct.

11. In *Bank of India and Others vs. O.P. swarnakar and Others etc.* (2003) 2 SCC 72=2003(1)SLJ253(SC), it was noticed:

“115. The Scheme is contractual in nature. The contractual right derived by the employees concerned, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand.”

12. It is neither in doubt nor in dispute that the provision of Section 25-F(b) is imperative in character. The provision postulates the fulfillment of the following three conditions:

- (i) One month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice;
- (ii) Payment of compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (iii) Notice to the appropriate Government in the prescribed manner.

12. If one has regard to the above, a right can be waived on an agreement between the parties and the party fully knowing its rights has agreed not to assert a right for a consideration the same would constitute a waiver. In the above view of the matter order dated 15.2.78 has done away with the post of JFO in Carpet Weaving Centre and the post was re-designated as CTO Group 'C', although earlier JFOs were posted either in the Carpet Weaving Centre or Handicraft Division. There was no distinction between the two nomenclature and a common All India Seniority and transferability was maintained. However, an option sought by the respondents from applicant either to accept re-designated post of CTO or else to resign, applicant opted for the first option of accepting the post of CTO. The statutory rules called All India Handicraft Board Carpet Training Officers Recruitment Rules, 1979 came into being on 1.9.79, whereas the rules for Handicraft Promotion Officer have been framed on 7.4.79. The Allahabad Bench of the Tribunal in **R.P. Mishra's** case where equal treatment has been sought by CTOs made the following observations:

“11. We have considered the submissions of the learned counsel for the parties and perused records. Principal Bench of this Tribunal has already resolved the controversy by its order dated 4.2.2002 in OA No. 173 of 11993. The Principal Bench of this Tribunal in para 5 of the order dated 4.2.2002 has observed as under:-

“In so far as the extension to applicants of the benefits granted to S./Shri Sehgal Suryanarayana and Jana are concerned, they were appointed as JFOs under Marketing Scheme and were later re-designated as Handicrafts Promotion Officers. Respondents in their reply have stated that the JFOs in Marketing Scheme later re-designated as Handicrafts Promotion Officer form a separate cadre from JFOs in Carpet Training Scheme, later designated as Carpet Training Officer. It is also stated by respondents that there is no

common seniority list among the two sets of Officers, and the seniority list in respect of CTOs have been held valid by CAT Principal Bench in OA No. 275/85 and judgment dated 11.4.1997 in which names of present applicants occupy various places. No cogent materials have been furnished by applicants to rebut the aforesaid averments. Under the circumstances, the applicants cannot claim to be identically placed as S/Shri Sehgal Suryanarayana and Jana and are therefore not entitled to the relief granted to them."

12. We are in respect agreement with the decision dated 4.2.2002 in OA No. 173 of 1999 of Principal Bench of this Tribunal which is squarely applicable in this case."

13. When the aforesaid decision was taken before the High Court of Judicature at Allahabad in CMWP No.22944/2002 on 8.11.2002 affirming the decision of the Tribunal, made the following observations:

"1. Petitioner and some other were engaged as Junior Field Officer in the year 1973-74. Subsequently this cadre was divided into two separate cadres i.e. Carpet Training Officer (CTO) and Handicraft Promotion Officer (HPO). The promotion in cadre HPO was swifter than the CTO cadre. The petitioner filed an application before the Central Administrative Tribunal claiming parity with them. This application was disposed of on 9.2.1993 with the observation that the respondents may consider the upgradation of the posts. Some adjustments were made however, the cadre of CTO is not similar to that of HPO. The petitioners again filed original application before the Tribunal. This has been dismissed on 16th April, 2002. Hence the present writ petition.

2. We have heard counsel for the petitioner and Sri Shashank Sekhar Singh, counsels for the contesting respondents. Two different cadres have been created in the year 1979 namely CTO and HPO. The person of one cadre cannot claim parity with other. There is no merit in the writ petition. It is dismissed."

14. Furthermore, applicant in OA-173/99 in **G.S. Tiwari** (supra) was a party where the issue deals with regularisation of applicant as JFOs, made the following observations:

“5. In so far as the extension to applicants of the benefits granted to S/Shri Sehgal Suryanarayana and Jana are concerned, they were appointed as JFOs under Marketing Scheme and were later re-designated as Handicrafts Promotion Officers. Respondents in their reply have stated that the JFOs in Marketing Scheme later re-designated as Handicrafts Promotion Officer form a separate cadre from JFOs in Carpet Training Scheme, later re-designated as Carpet Training Officer. It is admitted by the respondents that there is no common seniority that amongst the two sets of officers and the seniority list amongst the two sets of officers and the seniority list in respect of CTOs have been held valid by CAT Principal Bench in OA No. 275/86 and judgment dated 11.4.1997 in which names of present applicants occupy various places. No cogent materials have been furnished by applicants to rebut the aforesaid averments. Under the circumstances, the applicants cannot claim to be identically placed as S/Shri Sehgal, Suryanarayana and Jena and are therefore not entitled to the relief granted to them.”

15. High Court of Jammu & Kashmir in SWP NO.971/98 on 4.10.99 while dealing with the claim of parity of pay scale of JFOs with HPOs made the following observations:

“Here in the present case, the CTOs erstwhile JFOs have agitated the matter before the Central Administrative Tribunal, Allahabad and the aforesaid Tribunal disposed of their application observing that the respondents will consider the stepping up the scale of applicants alongwith similarly placed counter-parts. What the official respondents did is that they partly implemented the observations of the Tribunal. The Tribunal had made it clear that stepping up of the grade of the applicants along with similarly situated counter parts be considered. The petitioners herein were similarly situated, but they were ignored by the respondents for similar benefit which is a clear discrimination meted out to the petitioners.



Petitioners have not sought quashment of the order annexure 'D' but they seek equal treatment as given to the erstwhile Junior Field Officers who are also working as Carpet Training Officer and, therefore, constitute their counterparts.

Now the relief clause. The petitioners seek the benefit of the order No. 15/87/93-Admn.-II dated 11.5.1997 in their favour retrospectively with effect from their respective dates of appointments as Carpet Training Officers as has been given to their counter-parts (erstwhile Junior Field Officers). Their second prayer is that the respondents be restrained from disturbing their seniority and the respondents be further directed to consider the petitioners for promotion to their next higher grade/post strictly in accordance with the rules and seniority position.

As to the first relief, order dated 11.5.1997 has given the higher pay benefit to the Carpet Training Officers who were previously working as Junior Field Officers on ad hoc basis, with effect from 1.3.1978. Petitioners cannot claim such benefit from a date prior to 1.3.1978. Therefore, they are held to be entitled to such grade benefit with effect from the same date it was given to the Carpet Training Officers (erstwhile JFOs) i.e. 1.3.1978. Respondents are, therefore, directed to give the petitioners the same grade benefit as given to the Carpet Training Officers (erstwhile Junior Field Officers) with effect from 1.3.1978. Since it has been found and held that the petitioners and all other Carpet Training Officers, including the beneficiaries of order dated 11.5.1997 belong to one category and class of Carpet Training Officers, their seniority lists shall continue to be maintained jointly as is being presently done. Consequently, the promotions, if any, to be made shall follow the normal Rules keeping in view the seniority positions assigned to the Carpet Training Officers without making any division amongst them."

16. A cumulative reading of the above clearly points out that the earlier claim of applicant having been turned down the present relief claimed only because applicant got the status of non-gazetted Group 'B' from the initial date of appointment as JFO would not alter the

situation. However, we are constrained to observe that unlike HPOs applicants have been discriminated in the matter of promotion, though being separate cadres HPOs and CTOs a joint seniority list would not be legally tenable. The decision in **Rudra Kumar Sain** (surpa) would be distinguishable as therein the two incumbents were ADJs though ad hoc or appointed on substantive basis but in the present case CTOs and HPOs are two different cadres and CTO cannot be a feeder category for promotion to Assistant Director (Handicraft). However, we observe that the respondents shall consider the case of applicant in the light of recommendations of V Central Pay Commission and in view of his stagnation and as he has been left with no promotional avenue, to re-examine the entire matter for consideration to provide promotional avenue to applicant.

17. With the above observations OA stands disposed of. No costs.

S. Raju
 (Shanker Raju)
 Member (J)

'San.'

V.K. Majotra
 (V.K. Majotra) 28.7.02
 Vice-Chairman(A)