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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 1271 OF 1995.

Shri M.G. Patil & 6 Others ... Applicants

Versus

Union Of India & Others ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri N. K. Verma, Member (A).

APPEARANCE :

1. Shri G.S. Walia alongwith Shri M.S. Ramamurthy, Counsel for the applicant.

2. Shri S. C. Dhavan, Counsel for the respondents.

TRIBUNAL'S ORDER : DATED : NOVEMBER 17, 1995.

1. Heard Shri M. S. Ramamurthy alongwith Shri G.S. Walia, Counsel for the applicants and Shri S. C. Dhavan, Counsel for the respondents on the ex-parte interim order. In the facts and circumstances of the case, the O.A. is ADMITTED. The interim order passed on 20.10.1995 will hold good, subject to the availability of All India Seniority list of J.A.G. posts and availability of any person senior to the applicants locally in the zone. So far as the applicants - Shri R.S. Gokhe, Shri A.M. Ellim and Shri P.G. Mangrulkar, they are already working in the J.A.G. post on adhoc basis and they continue to work in that capacity. In so far as Shri M.G. Patil is concerned, since he is to superannuate by 30.11.1995, he may

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be continued in that capacity in which he is working till his retirement. In so far as Shri Abdullah, Shri D.K. Verma and Shri Murath Ram is concerned, since they are working in the senior scale grade, no order need be passed.

2. M.P. No. 777/95 for ammendment to be heard on 01.12.1995. Copy of the order be given to the parties.

sd/-
(N. K. VERMA)
MEMBER (A).

(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CP NO.38/96 in OA No.1271/95 Dated: 26th July 2007

CORAM:Hon'ble Smt.Shanta Shastry, Member(A).
Hon'ble Shri Shankar Raju, Member(J)

Shri M.G.Patil & 6 Ors. ... Contempt Petitioners

V/s.

Union of India & Ors. ... Original Respondents.

(ORDER)

Per Smt.Shanta Shastry, Member(A)

This CP has been filed by the applicants in OA-1271/95 for allegedly violating the Interim Orders dated 20/10/95 and 17/11/95 passed by the Tribunal in aforesaid OA and to order the contemners to cancel the promotion order dated 19/2/96 in respect of Shri B.R.Ramchander, shri D.K.Singh and Shri Virender Singh and to restore the petitioners namely the original applicants in this OA Shri Abdullah and Shri D.K.Verma to the posts which they were occupying at the time of the interim order passed by this Tribunal on 17/11/95 and to follow the seniority list of feeder cadre. The petitioners have further prayed not to promote any juniors to the Junior Administrative Grade posts till the disposal of this OA.

2. This Tribunal while admiting the OA passed the order dated 17/11/95 and modify the order dated 20/10/95. the same is reproduced below:-

> " Heard Shri M.S.Ramamurthy alongwith Shri G.S.Walia Counsel for the applicants and Shri S.C.Dhawan, Counsel for the respondents on the ex-parte interim order. In the facts and circumstances of the case, the OA is Admitted. The interim order passed on 20/10/1995 will hold good, subject to the availability of any person senior to the applicants locally in the zone. So far as the applicants - Shri R.S.Gokhe, Shri A.M.Ellim and Shri P.G.Mangrulkar, they are already

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working in the J.A.G. post on adhoc basis and they continue to work in that capacity. In so far as Shri M.G.Patil is concerned, since he is to superannuate by 30/11/1995, he may be continued in that capacity in which he is working till his retirement. In so far as Shri Abdullah, Shri D.K.Verma and Shri Murath Ram is concerned, since they are working in the senior scale grade, no order need be passed."

3. According to the petitioners the respondents have promoted their juniors to the Junior Administrative Grade vide Office order dated 19/2/96. The names of these juniors as per the seniority list are at Sr.Nos.17, 19 ande 21. They are junior to the three petitioners on All India basis. Thus, however, contempt has been committed. The petitioners have been reverted from the post of Junior Administrative Grade which they were holding when the interim order was passed and they have been ignored for promotion. According to the seniority list of Junior Scale Officers published in 1975, the petitioners names appears at Sr.Nos.14, 15 and 16. This seniority is taken into consideration for the post of Additional Commercial Manager/ Divisional Operating Manager (Senior Scale). The petitioners were cleared by the DPC for the Junior Administrative Grade posts. The Advocate of the petitioners also sent a letter on 20/1/96 to the respondents clarifying the position and forewarning (not to violate the interim orders of the Tribunal). However, the contemners ignored the directive given by the Tribunal and have put the petitioners in a humiliating situation and caused moral and status loss.

4. The respondents vide their reply have denied that they have violated the interim orders issued by the Tribunal. The respondents submits that the interim orders of the Tribunal make

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it abundantly clear that the Tribunal had accepted the fact that S/Shri Abdullah, D.K.Verma and Murath Ram were working in Senior scale posts and not in Junior Administrative Grade posts when the interim order was passed. Although they were holding the post of Dy.CCO/Mumbai and Presenting Officer/NGP respectively ~~and~~ they were drawing the pay in the Senior Scale Grade. They were transfered in the same capacity and posted as SCM (Marketing and Sales). Therefore, it is not correct to say that they were reverted or they were posted in lower post. Those promoted to Junior Administrative Grade on adhoc basis are Officers senior to the applicants. There is no deliberate or wilful violation of the Tribunal's order. Moreover, the substantive appointments of the petitioners were cancelled vide order dated 28/8/95 i.e. much before the interim orders were issued by the Tribunal.

5. On hearing the rival contentions, in our considered view, the respondents have not violated interim orders passed by the Tribunal while promoting the seniors to the applicants. We therefore hold that no contempt has been committed. Accordingly, contempt notice is discharged and the CP is dismissed.

S. Raju

(SHNAKAR RAJU)
MEMBER(J)

Shanta S

(SHANTA SHASTRY)
MEMBER(A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1271/95 & 1158/96

DATE OF DECISION: 26/7/2001

Shri M.G.Patil & 6 Ors. 1271/1995 Applicant
Shri D.K.Verma 1158/1996

Shri G.S.Walia
----------Advocate for Applicant.

Versus

Union of India & Anr. .
----------Respondents.

Shri S.C.Dhawan Advocate for
----------Respondents.

Coram:
Hon'ble Smt. Shanta Shastry, Member(A).
Hon'ble Shri Shankar Raju, Member(J)

1. To be referred to the Reporter or not? No
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library. ✓

Shanta S

(SHANTA SHASTRY)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1271/1995
AND 1158/96
DATED THE 26th DAY OF July 2001

CORAM:HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)
HON'BLE SHRI SHANKAR RAJU, MEMBER(J)

APPLICANTS IN OA-1271/95.

1.M.G.Patil
2.Abdullah
3.D.K.Verma
4.Murath Ram
5.R.S.Gokhe
6.A.M.Ellim
7.P.G.Mangrulkar ... Applicants

All the Applicants are working as Traffic Officers Central Railway

APPLICANT IN OA NO.1158/96.

D.K.Verma,
Divisional Commercial Manager,
D.R.M's Office,
Central Railway,
C.S.T.,
Mumbai - 400 001. ... Applicant

By Advocate Shri G.S.Walia

V/s.

1. Union of India, through
Secretary,
Railway Board,
Rail Bhavan,
New Delhi - 110 001

2. General Manager,
Central Railway,
Head Quarters Office,
Bombay V.T.,
Bombay - 400 001. ... Respondents in OA Nos.1271/95 & 1158/96

By Advocate Shri S.C.Dhawan

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(ORDER)

Per Smt.Shanta Shastry, Member(A)

These two OAs were heard together as the impugned order is the same and the applicant in OA 1158/96 is also applicant No.3 in OA 1271/95. We have proceeded to dispose them off together.

2. The applicants are aggrieved by the impugned notification dated 28/9/95 whereby their substantive appointment in the Junior Scale of Indian Railway Traffic Service notified under notifications dated 12/6/91, 21/8/90 and 1/6/92 has been cancelled and some other officers have been appointed substantively to Group 'A' junior scale of IRTS.

3. The brief facts of the case are given below:-(OA-1271/95)

A notification was issued on 22/2/77 calling for willingness from eligible staff to be considered for Group 'B' selection of ACS/ACO/AOs from the employees working in Commercial Department. It was proposed to form a panel of 23 candidates and 138 candidates including the applicants were called for a written test held on 11/12-7-77 and 9/10-7-77 43 candidates including the five applicants of TA-389/87 viz. Shri M.V.R.Somayajulu, Ved Kumar Sharma, J.C.Agnihotri, C.A.P.Vithal and R.N.Srivastava qualified. The Viva Voce notified to be held on 28/2/78, 1/3/78 and 2/3/78 was postponed as a result of ban imposed by Railway Board. The same was lifted on 31/8/78.

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Thereafter orders for restructuring in the various cadres of Group 'C' and 'D' to be brought into effect from 1/1/79 were received in December, 1978. The selection to Group 'B' was therefore not processed pending the holding of selection and filling up of upgraded posts with retrospective effect from 1/1/79 in Group 'C' categories. This was finalised in March, 1981.

Thereafter in view of the Railway Board's instructions dated 10/8/80 and modifying the zone of consideration to three times the size of the panel a notification was issued on 5/11/81 for forming a panel of 58 candidates. It included the 23 posts of earlier panel of 1977.

At this stage the entire cadres of operating and commercial underwent a lot of changes. As a result of restructuring w.e.f. 1/1/79, the posts in the grade of Rs.700-900 increased to more than in 1977-78. The law cadre to which the applicants in TA 389/87 belonged also benefitted but due to there being a smaller number of posts only two posts were upgraded. As a result, more number of candidates from cadres other than the Law Cadre gained seniority and became eligible for consideration for selection. The Law assistants who were working in Grade of Rs.550-750 in 1978 got promotion during 1980-84 but according to the over all seniority they did not come within the zone of consideration for selection proposed to be held in 1981. A written test was held on 29/30-11-81 and supplementary test held on 29/30-8-1982.

In the meanwhile selection of year 1977 was reopened in respect of 23 posts as per notification dated 22/2/77 and viva

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voce test was held on 13/14-9-82. Out of 43 candidates who had qualified earlier in written test only 28 were in service including five law assistants. A panel of 17 candidates was published on 30/6/83. The five law assistants did not qualify in the viva voce and were not included in the panel.

The selection process was thereafter finalised and a panel of 39 candidates was declared on 16/6/83 by treating the cadidates empanelled in the selection of 1977 as senior to those empanelled in subsequent selection of 1981.

Being aggrieved, the five law assistants who were not empanelled filed a writ petition in the High Court of Bombay challenging the said selection. It was thereafter transferred to this Tribunal and numbered as TA 389/1987. The applicants in the present OA No.1271/95 were party respondents in the writ petition except for Shri D.K.Verma. The T.A.No.389/87 was finally heard and judgement was delivered on 24/4/91. The relevant portion of the judgement reads as follows:-

> "The seniority list of 1981 and 1983 are quashed and the respondents are directed to prepare a fresh seniority list and give promotions to the applicants with retrospective effect i.e. on the basis of selection of 1978 and prior to the year 1979 when subsequently selected candidates were given Notional test. A fresh seniority list will be prepared and placement of the applicants made above other respondents in accordance with the law and observations made in the judgement. Let it be done within three months of the receipt of this order."

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The respondents filed SLP on 12/8/91, against the judgement. Prior to that a review petition was also filed on 5/6/91. Review Petition was dismissed on 3/12/91. The S.L.P. was dismissed on 27/4/92. Thus the order of the Tribunal in OA 389/87 having become final action was taken by promoting the applicants in TA 389/87 to Group 'B' posts and senior scale. Their names were included in the panel dated 20/4/83 read with panel dated 30/6/83 at appropriate places and promotion was given with retrospective effect from 1/3/1983 and 1/3/1986. A proposal was sent to promote them further to the junior scale, Group A on 19/10/92. However those applicants filed a fresh OA No.350/94 against the judgement in OA 389/87. The Tribunal passed interim order dated 24/6/94 as under:-

> "We would direct the respondents not to promote any of the applicant's juniors to the higher posts in JA grade unless the applicants are also considered on their merit according to their seniority subject to the result of this OA."

MP No.903/94 was moved by the present applicants to set aside the interim order but it was dismssed on 18/9/94.

Thereafter, the applicants in TA No.389/87 were promoted to next higher grade i.e. Senior Scale Group 'B' on adhoc basis from 1/3/86 with proforma fixation and were considered for induction into Group 'A'. Thus, the cancellation as well as postponement of appointment to Junior Scale/Group A in respect of applicant nos.5,6, and 7 respectively is a direct consequence of the implementation of the judgement dated 24/4/91 in TA 389/97.

3. It is the contention of the applicants that if the sole reason for reverting the applicants is the judgement of the Hon.

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Tribunal in the TA 389/87 then it was confined to the promotion to the Group 'B' service. The Railway Administration were directed to prepare a fresh seniority list of group 'B' Officers. Whereas the applicants were appointed to Group 'A' service in the Junior scale substantively vide orders dated 21/1/90, ₹12/6/91 and 22/7/92. These orders were not under challenge nor were they the subject matter of the TA. Also the petitioners in the TA No.389/87 did not choose to challenge the appointments of the applicants in the junior scale substantively. It is wrong and erroneous on behalf of the Railway Administration to disturb or otherwise alter the dates of appointments of the applicants to the junior scale merely on the basis of the judgement. Six of the petitioners in the TA 389/87 have already retired from service. They did not therefore work in the substantive senior scale post physically or the substantive junior scale Group 'A' post. They were only entitled to proforma fixation without disturbing the dates of appointments of the applicants in the junior scale. The applicants have been working in the junior scale on regular basis. The applicants further state that in a similar circumstance, one Shri H.S.Kamble who was working as Senior Public Relations Officer, Western Railway and who had at a later stage opted to go to Traffic Department of Railways was inducted in junior scale of IRTS retrospectively without reverting junior scale promotee officers of IRTS or without altering their dates of appointment. The respondents could have taken similar action in stead of cancelling the substantive appointments of and reverting the applicants in the present case. The respondents have also not cancelled the panel in which the applicants were placed after selection to the junior scale

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Group'A'. There were sufficient number of vacancies of Group 'A' posts against the promotion quota in each year of induction from 1985 to 1990 which remained unfilled. The applicants in TA 389/87 if necessary could have been inducted against those unfilled vacancies instead of disturbing the applicants position. It was not necessary to conduct any review DPC on 3/10/94 as majority of the applicants of the TA 389/87 had retired from Railway Service. Further the respondents ought to have created supernumery posts and adjusted the applicants of TA 389/87 in the said post instead of disturbing the applicants appointment in the junior scale. The applicants of TA-389/87 could not be deemed to have been promoted from 1978 in Groyp 'B' as there was no regular selection of posts from 1977 to 1982. A regular selection was done only in 1983. Infact, the applicants of the TA 389/87 had failed in the viva voce test in 1977 completed in 1983. Therefore they can only get proforma seniority of Class-B post above their juniors and should have been asked to undergo written test and viva voce test for finding them suitable for Group B post. The applicants represented against the same on 24/3/95. They have not received any reply. It is further pointed out that the selection and seniority of applicants is not subject to re-opening or in any way contingent upon the interpolation of the names of other persons subsequently. The Principle of seniority in the IRTS is on the basis of date of increment. The same has been upheld by the Hon. Supreme Court in the case of A.K.Nigam & Ors. V/s. Sunil Misra & Ors reported in 1994 SCC L&S 970. The ratio is applicable in the present case also. Even according to the evolved principles of "legitimate

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expection" the applicants are entitled to be protected in respect of their seniority, promotion and date of induction to the Jr. scale and on that basis further promotions are to be granted. The action of the respondents is violative of articles 14 and 16 of Constitution and is therefore liable to be quashed and set aside. Giving retrospective promotion to someone cannot affect promotions given to applicants who were duly promoted.

4. The applicants are relying on certain judgements in support of their contention that they cannot be reverted having been duly promoted to Junior Scale/Group 'A'. They have referred to the judgement of Supreme Court in the case of S.D.Raghunandan Singh Versus State of Karnataka and Ors 1994 SCC (L&S) 1134 the head note of which reads as follows:-

> Promotion-Retrospective promotions against posts already occupied by direct recruits resulting in loss of seniority to direct recruits - Dispute regarding - All the promotees having retired by the time of decision and and their only interest in the case being higher pensionary and other retiral benefits Supreme Court giving directions for giving them notional promotions against existing posts other than those occupied by direct recruits and refixing their pension and other retiral benefits accordingly without disturbing the seniority of the direct recruits - seniority.
>
> The applicants claim they need not have been reverted as their case is similar to the one in the aforesaid judgement.

5. The respondents submit that they are bound by the judgement in TA 389/87 which has become final. The impugned

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order is a direct consequence of implementation of judgement dated 24/3/91 in TA 389/87. This is beyond the administrative control and such reversion due to Courts' orders are not uncommon. The applicants were advised about such repercussions and also were given an opportunity to submit their written representation as well as to make submissions with personal interview to Advisor, Railway Board. It is only thereafter that the impugned orders were issued.

6. The respondents further submit that on the basis of the induction of the applicants into Group 'A' some of them were promoted to JA scale on adhoc basis i.e. Shri M.G.Patil, Shri Gokhe, Shri Ellim, and Shri Mangrulkar were detailed to look after the duties of the JA posts and were entitled to pay of Sr.Scale + Charge Allowance as per Board's letter dated 12/8/87.

7. Shri D.K.Verma and Shri Abdullah were posted as Dy.CCO/PO in Sr.Scale Group 'B', without having been promoted to JA scale even on adhoc basis at any time and in any capacity. Similarly, Shri Murath Ram, Applicant No.4 was considered for promotion to JA scale only on adhoc basis. Even for adhoc promotions to JA scale where the officers are detailed to look after the JA grade post, duly constituted selection committee is formed to assess their suitability before they are considered for such promotion. In the case of Shri D.K.Verma and Shri Abdullah, no such Committee was formed nor their suitability has been assessed nor were they given any adhoc promotion. They cannot claim to continue to work in these posts or compel the administration to allow them to work on these posts. They are liable to be transferred to the post they are entitled to in their respective scale/grade where their services are required in the interest of

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administration. The substantive appointment in Jr.Scale/Group 'A' of IRTS in respect of Applicants at Sr.No.1,2,3 & 4 viz. S/Shri M.G.Patil, Abdullah, D.K.Verma and Murath Verma have been cancelled by Railway Board by Notification dated 28/9/95. Consequently, their status reverts back to Group 'B' Officers in Sr. Scale on adhoc basis. So they are really not entitled to be promoted in the Junior Scale Group 'A' though they had been inducted into junior scale earlier, the same orders have now been cancelled. The respondents have not acted in any arbitrary manner. Infact, they did not cancel the appointment of some of the other applicants who were already promoted to the JA Grade but postponed their dates of promotion. Further except for Shri D.K.Verma other applicants were parties to TA-389/87. They never challenged the judgement in TA-389/87. Not only that they were parties to the MP-903/94 for setting aside the interim stay granted by the Tribunal. Not having challenged the judgement in the Higher Court, they cannot now come up by way of this OA to retain them in the Junior Scale. Shri D.K.Verma was also a party to the MP. They are bound by the judgement in TA-389/87 and therefore no relief can be granted to the applicants in the OA.

8. The respondents are supporting their stand by quoting the judgement in Bal Kishan Versus Delhi Administration and Another 1991 SCC(L&S) 879 wherein it was held that promoting a junior without considering the case of his senior held unpermissible. Reversion from such promotion as a corrective action after affording opportunity upheld. In view of this the respondents cannot be faulted.

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9. The respondents also submit that the judgement cited by the applicants was in respect of direct recruits. There was no direction by the Tribunal in TA 389/87 to create supernumerary posts.

10. We have heard the learned counsel for both sides and have perused the relevant pleadings. We find that the entire action of the respondents in passing the impugned order of 28/9/95 is consequent upon the order of this Tribunal passed in the TA-389/87. It was inevitable that when the seniority list was recast interpolating the names of the petitioners in TA-389/87, the seniority of some others would be disturbed. It is not that the respondents did not give any opportunity to the applicants, the applicants were ~~however~~ aware of the repercussions of the judgement but they chose not to challenge the judgement. It is contended by the applicants that one of them was not a party to the TA-389/87. All the same that one person i.e. Shri D.K.Verma was party to MP-903/94 which also sought setting aside the interim order of 24/6/94. It is not denied that the applicants had been inducted into the junior scale on various dates between 21.8.90 ~~21/6/90~~ to 27/9/92. However, all of them were really not actually promoted except for four of them in whose case the respondents did not cancel the induction into JA Grade but postponed the dates of promotion. In the case of the remaining as they had not been promoted even on adhoc basis, there is no question of their being reverted. Their orders were cancelled. They remained where they were though they were working in the posts of Jr.Scale in Group 'A' they were paid the salary of senior scale Group 'B' only.

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11. In our considered view therefore the respondents are justified in their action and therefore the Impugned orders do not call for interference. In the result, the OA is dismissed. No costs.

OA NO.1158/96.

12. One of the applicants in OA 1271/95 Shri D.K.Verma has filed a separate OA No.1158/96 challenging the same impugned order dated 28/9/95. The applicant has prayed to direct the Railway Administration to modify the impugned order dated 28/9/95 by including the name of the applicant on the original date of induction i.e. 10/4/91 in the junior scale Group 'A' and to give him the benefit of JA scale Group 'A' post from the date the vacancy actually occured and he was actually posted in the JA post (Dy.CCO). The applicant has also claimed arrears of pay and allowances as a difference between JAG post and Senior Scale Post for the period in which he was entitled to work on JA Group 'A' post as per his original seniority in Group 'A'. It is to be noted that the applicants in OA-1271/95 also had prayed to quash and set aside the impugned order dated 28/9/95 and declare their appointments to the junior scale as valid and subsisting with all consequential benefits. Thus the prayer is same in both the OAs, therefore the application is not maintainable at all and deserves to be dismissed. The learned counsel for the applicant however submitted that he would withdraw his name from the OA 1271/95 and would like to proceed with OA 1158/96. Accordingly, the learned counsel argued the case of applicant at length. These arguments are not different than the arguments in OA 1271/95 advanced by the same learned counsel.

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13. In our view, since the applicant was a party in OA 1271/95, which we have heard and decided, the present OA is not maintainable as the relief claimed is the same. Therefore the OA is dismissed. We do not order any costs.

S. Raju

(SHANKAR RAJU)
MEMBER(J)

Shanta S

(SHANTA SHASTRY)
MEMBER(A)

abp