

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1660/2012

M.A.No.2785/2014

Order Reserved on: 15.07.2016

Order pronounced on 09.08.2016

Hon'ble Shri V. Ajay Kumar, Member (J)

Hon'ble Shri V. N. Gaur, Member (A)

1. Smt. Suman Shukla,
w/o Shri A.K.Shukla,
R/o 5, M-3, Street, IIT, Hauz Khas,
New Delhi.
2. Smt. Anshu Garg,
w/o Dr. Onkar Mittal,
R/o 184, Pocket-B,
Sukhdev Vihar, New Delhi.
3. Shri Arun Tandon,
S/o Shri M.D.Tandon,
R/o 2845, Gali No 5, R P II,
Gandhi Nagar, Delhi.
4. Smt. Sneha Dutt,
S/o Shri M.S.Dutt,
R/o C-550, Sarita Vihar, New Delhi.
5. Smt. Saroj Gupta,
w/o Late Shri Mahesh Kumar,
R/o K-1/40, Model Town, Delhi-110009
6. Ms. Anita Rani Sharma,
W/o Shri Anand Sharma,
R/o N-575, Sector-25, Noida,
Gautam Budh Nagar, U.P.

7. Shri Harish Kumar Sharma,
S/o Shri B N Sharma,
R/o WZ-1598, G/IF, Nangal Raya,
New Delhi-110046
 8. Smt. Anjali Tyagi,
D/o Shri U.Tyagi,
R/o 1466, Sector-A, Pocket B,
Vasant Kunj, New Delhi-110070
 9. Smt Archana,
W/o Shri Nathuram,
R/o 150, Dayanand Vihar, Delhi-110091
 10. Ms Meera,
W/o Shri Kehari Singh,
R/o Oucket-13, House No.25,
Sector 20, Rohini, Delhi-86
 11. Smt. Amarjeet Kaur,
W/o Shri I P S Bhatia,
R/o R-300, Ground Floor,
Greater Kailash, Part-1,
New Delhi-48
 12. Smt. Priya Chaudhary
W/o Shri S.K.Chaudhary,
R/o G-3995, Shiv Mandir Road,
Swaroop Nagar, New Delhi.
 13. Shri Narender Kumar,
S/o Late Shri Kishori Lal Verma,
R/o R-9/137, Raj Nagar,
Ghaziabad (U.P).
 14. Sh. Sylvesster Kujur,
S/o Shri Simon Kujur,
R/o RZ-31, F Block, Sitapur Part-II,
New Delhi-110045
 15. Smt Bimla Devi
W/o Ashok Kumar
R/o A-52, First Floor,
Shankar Garden,
Vikaspuri, New Delhi-18
- ... Applicants

(By Advocate Mr. Ashok Aggarwal)

Vs.

1. Govt. of NCT of Delhi
Through the Chief Secretary,
5th Floor, Delhi Sachivalaya, New Delhi.
2. The Secretary (Services),
GNCT of Delhi
`B' Wing, 7th Level, Delhi Secretariat,
I.P.Estate, New Delhi.
3. The Secretary,
Urban Development Department,
GNCT of Delhi, `C' Wing, 8th Level,
Delhi Sachivalaya, New Delhi.
4. The Secretary,
Social Welfare Department,
GNCT of Delhi, GLNS, New Delhi
Complex Delhi Gate, New Delhi-110001
5. Shri I A Khan,
Inspector VAT,
(Through VATO, Admn.),
Department of Trade and Taxes,
Vyapaar Bhawan, I.P.Estate,
Delhi-110002
6. Shri Ganesh Chand Bhatt
Grade-II/DASS,
Department of Drug Control,
F-17, Karkardooma, Delhi-92
7. Shri Lachman,
Inspector, Food and Civil Supplies,
Office of the Asstt. Commissioner (Admn.),
Department of Food and Civil Supplies,
K-Block, Vikas Bhawan, IP Estate,
Delhi-110002
8. Shri Vinod Tyagi,
Inspector/Grade-II,

Department of Industries,
419, F.I.E. Udyog Sadan,
Patparganj Industrial Area, Delhi-110092

9. Shri Janardhan Prasad,
Grade-II, DASS,
Department of Urban Development,
9th Level, Delhi Sectt., IP Estate,
Delhi-110002. Respondents

(By Advocate: Ms. Jyoti Singh, Sr. Advocate for private respondents
and Shri N.k.Singh for Mrs. Avnish Ahlawat for official respondents)

ORDER

By V. Ajay Kumar, Member (J):

This OA had been heard by a Bench consisting of Hon'ble Shri A.K.Bhardwaj, Member (J) and Hon'ble Shri Shekhar Aggrawal, Member (A) and in view of expressing dissenting views by the said Members, vide the order dated 31.05.2013, the OA has been referred to a 3rd Member, i.e., Hon'ble Shri George Paracken, Member (J). The Hon'ble Member (J), having noticed that the Members of the Division Bench expressed difference of opinion even on the points of difference, vide his order dated 30.08.2013, resubmitted the case file to the Hon'ble Chairman for appropriate orders. Thereafter, the OA has been referred to this Division Bench to act as 3rd member.

2. Though the facts of the case are minutely referred in the reference Order dated 31.05.2013, but for the purpose of expressing our view, the facts of the OA are mentioned in brief, as under:

3. Originally, the applicants, who are 15 in number, and the private respondents, who are 5 in number, along with certain others, on their selection by the Urban Basic Services Selection Board, were appointed as Assistant Project Officers on contract/ad hoc/temporary basis in the Office of the Urban Basic Services Programme (in short, UPSP) in the pay scale of Rs.1400-2600. On the recommendations of the Departmental Promotion Committee (in short, DPC), their services were regularized as Assistant Project Officers in the pay scale of Rs.5000-8000 (Revised) vide Annexure A5, dated 06.02.2004. The respondents vide Annexure A4-Circular dated 15.04.2004, circulated the seniority of the Assistant Project Officers appointed in the Urban Basic Services, Department of Urban Development, wherein the private respondents No.8 and 9 were shown as juniors to all the applicants and whereas private respondents No.5 to 7 were shown as juniors to some of the applicants.

4. During the year 2005, keeping in view of the fact that no other activity of the Urban Basic Service Programme except, Creches was being implemented by the UD Department as on the said date and the staff sanctioned are filled up were being utilized for the routine work of the UD Department, meetings were conducted under the Chairmanship of the Chief Secretary and in pursuance of the decisions taken therein, out of the total Assistant Project Officers, who were appointed in the above identical circumstances, the respondents transferred the applicants to Social Welfare Department vide Annexure A9 Order dated

31.05.2005. Since the private respondents and some others who were also working as Assistant Project Officer in the Urban Development along with the applicants, were not transferred to Social Welfare Department, continued in the Urban Development Department only.

5. While things stood thus, vide Annexure A10 Notification dated 16.04.2007, 17 posts of Assistant Project Officers of Urban Development Department were declared as duty posts in Schedule-I (encadred) in the Delhi Administration Subordinate Service Rules, 1967 (in short, DASS Gr.II). As a result, the private respondents who were continuing in Urban Development and working in the said 17 posts which were encadred into DASS Gr.II, become part of DASS Gr.II. Thereafter, considering the request of the applicants, who are working in Social Welfare Department, on their transfer from Urban Development, the respondents vide Annexure R3-Notification dated 12.12.2008 declared 16 more permanent posts of Assistant Project Officer in Urban Development Department as duty posts of DASS Gr.II. Accordingly, the applicants, who are working in those said posts, also become part of DASS Gr.II.

6. Aggrieved by the inaction on the part of the official respondents in not determining their inter-se seniority and that of all such Assistant Project Officers, who were initially appointed in Urban Development Department of GNCTD and later got merged in DASS Gr.II cadre, some of the applicants filed OA No.3101/2010. The said OA was

disposed of by this Tribunal vide its Order dated 18.11.2011 (Annexure A21) by directing the respondents to consider the requests of the applicants and to take suitable decision in the matter by passing a reasoned and speaking order in accordance with law. In pursuance of the said directions, the respondents passed the impugned speaking order vide Annexure A1 dated 31.01.2012, and the operative portion of the same reads as under:

"8. The applicants, who have filed the present OA would be assigned seniority in Grade-II (DASS) in terms of **"Option for joining the Delhi Administration Subordinate Service"** which is reproduced in blank form:

I (applicant's name) S/oW/oD/o_____ (DOB) _____ presently working on the post of Assistant Project Officer in the Urban Development Department, Government of NCT of Delhi opt to join corresponding grade as per the scale of pay. Consequential benefits would accrue to me with effect from the date of the order of Induction and seniority in the DASS Cadre will be assigned to me below all the officials who are appointed in respective grades on regular basis prior to the date of order of Induction.

**(NAME OF THE OFFICIAL)
DESIGNATION
DATE:**

given by the applicants. It is pertinent to mention here that from the option given by all the applicants in the said O.A. it is evident that they were fully aware of the contents & conditions in the option form and the present applicants had willingly accepted the fact that seniority in Grade-II of DASS Cadre would be assigned only from their date of induction in the DASS Cadre which in any case cannot precede the date of Notification of encadrement of the posts of APO held by the Present applicants. However, interse Seniority as APOs amongst the present applicants before Hon'ble Tribunal may be sought from Urban Development/Social Welfare department while determining seniority in Grade-II DASS."

7. In the above factual scenario, the Hon'ble Member (J) in his order dated 31.05.2013 framed the following propositions for determination:

- (i) Whether on encadrement/merger in a different service or cadre on his own request, an incumbent can claim fixation

of his seniority from a date prior to his encadrement/merger.

- (ii) Whether after having given an option for joining/induction with an undertaking to accept the seniority below all officials who are appointed in the respective grade on regular basis prior to the date of their induction, the applicants could claim seniority of an earlier date on the ground that those encadred earlier came from a common seniority list and were junior to them.

and answered the same as under:

"Thus, in view of the settled legal position if it is accepted that their existence in DASS Grade II is encadrement/merger, the applicants would be entitled to their seniority only from the date of Notification dated 12.12.2008 i.e. in view of the language of the Notification dated 23.04.2007 and 12.12.2008. The inclusion of the applicants in DASS Grade II is not an encadrement but is declaration of the post held by them, i.e. APOs as duty post of Grade II in Schedule I of DASS Rules, 1967. In such situation one may be considered as Member or incumbent of a service from the date of holding the post which is declared as duty post of such service. However, there is not even a penumbra or dim fringe of such argument by either of parties before us. Besides, we are also conscious of the fact that pay scale of APO was Rs.5000-8000 and only on their posts being declared as duty post DASS Grade II, they are granted the pay scale of Rs.5500-9000. The date of grant of such pay scale is a vital factor, as it may have a ramification that the post of APO would acquire the status of duty post of Grade II in Schedule I of DASS Rules, 1967 only from the date of granting the said scale. Such issue may be taken up by the applicants with the Department or may be addressed to by the Respondent Nos. 1 to 4 on their own and decided. Under no circumstances, the employee who seek their encadrement/induction in different service on their own request giving an undertaking to accept the seniority in the new service from the date of their induction, can seek fixation of seniority from a date prior to the date of their encadrement/induction even if some of their juniors in earlier service could be inducted in the new service from an earlier date. Thus, the relief prayed in the OA is declined."

8. Whereas, the Hon'ble Member(A) while observing that encadrement of posts and induction of officers in a particular service are two separate activities and separate orders should have been issued for both, and however, the respondents have treated the Notification encadring the posts in DASS cadre as also sufficient for induction of the APOs holding these posts in DASS, and also by observing that no consent was taken from the applicants while

transferring them from UD Department to Social Welfare Department, declared the undertaking obtained from the applicants at the time of their encadrement that they will be given seniority below the persons who had already been inducted in the DASS Cadre as unsustainable, quashed the impugned order dated 31.01.2012 and accordingly allowed the OA. Further, the Hon'ble Member (A) while opining that the Notifications dated 16.04.2007 and 12.12.2008 were not required to be quashed as by virtue of those Notifications only the posts were encadred and the names of APOs who were inducted in DASS were not specified, directed the respondents to consider induction of the applicants in DASS Cadre in order of their seniority of APO Cadre in the UD Department by passing a separate order.

9. Though the Hon'ble Members, who passed the dissenting Judgements on 31.05.2013, also differed in framing the issues for reference, however, in these peculiar facts, and keeping in view the respective issues framed by both the Hon'ble Members, the following comprehensive issue is framed for answering by us:

“Whether the applicants, who were originally appointed and regularized as Assistant Project Officers, along with the private respondents 5 to 9 in the Urban Development Department of Govt. of NCTD are entitled to be inducted in DASS Gr.II as per their seniority of APO Cadre in the Urban Development Department and consequently entitled to

maintain the same seniority in DASS Gr.II, among themselves.”

10. Shri Ashok Agarwal, the learned counsel appearing for the applicants submitted that all his submissions were already considered while passing the dissenting Judgement on 31.05.2013 by this Tribunal and there is nothing to submit further. Accordingly, he prayed to consider the same submissions on his behalf.

11. Heard Shri N.K.Singh for Mrs. Avnish Ahlawat, the learned counsel for the official respondents, and Mrs. Jyoti Singh, the learned senior counsel for private respondent, and perused the pleadings on record, including the relevant original records/files and the copies of the recruitment rules of DASS, produced as per our directions dated 15.07.2016 and dated 27.07.2016.

12. M.A.No.2785/2014, for taking on record a copy of the final seniority list of the APOs of Urban Development Department, issued vide letter dated 12.08.2014, is allowed, in the interest of justice.

13. The contention of the applicants, in brief, is that they are seniors as Assistant Project Officers in the Department of Urban Development to the private respondents, and hence, they are entitled to be inducted into DASS Gr.II as per the seniority of APOs and accordingly they are also entitled to maintain the same seniority in DASS Gr.II also. It is their further contention that since at the time of transferring them to Social Welfare Department, no consent or option was obtained from

them and that the respondents also did not follow any principle for the said transfer from the APOs, they cannot be denied the induction to DASS Gr.II as per their seniority as APOs. They have also contended that the Annexure A10-Notification dated 16.04.2007 and Annexure R3-Notification dated 12.12.2008, whereunder 17 and 16 posts respectively of APOs in Urban Development Department were declared as duty posts of DASS Gr.II, and no separate orders were passed inducting any individual APO against the said posts and hence, there is no necessity for them to question the said Notifications.

14. It is submitted on behalf of the official respondents that the applicants have not objected for their transfer to Social Welfare Department and that they have specifically given option at the time of their induction to DASS Gr.II, to the effect that their seniority in the DASS cadre will be below all the officials who are appointed in respective grades on regular basis prior to their date of order of induction. Hence, they cannot contend that the seniority in APO cadre is to be maintained in Gr.II DASS.

15. The learned senior counsel appearing for the private respondents, while reiterating the submissions made and considered by the earlier Division Bench, and by supporting the contentions of the official respondents, further submitted that all the affected parties were not made as party respondents to the OA and hence, the same is liable to be dismissed for non-joinder of necessary and affected parties. The learned senior counsel also submits that as on the date of

declaration of 17 posts of APOs of Urban Development Department, i.e., on 16.04.2007, the private respondents were working as APOs in the Urban Development Department and hence rightly the private respondents were inducted against the said 17 encadred posts of DASS Gr.II. On the other hand, as on the said date, the applicants were working in Social Welfare Department and drawing salaries from the said Department, and hence, they cannot have any right of induction against the APO posts of UD Department which were declared as duty posts of DASS Gr.II. The seniority in DASS Gr.II shall have to be determined as per the date of induction into the grade but not as per the seniority of the APOs of Urban Development Department.

16. A perusal of Annexure A4 Circular dated 15.01.2004, i.e., the seniority list of APOs of Urban Development Department and of the Annexure A9-Order dated 31.05.2005, i.e., the Order whereunder 15 APOs of Urban Development Department were transferred to Social Welfare Department, and also the original record relating to the said transfer, reveals that the respondents have transferred 15 APOs just by way of pick and choose, i.e., without following the seniority. Out of the 22 APOs shown in the said seniority list dated 15.01.2004, the persons at seniority No.1, 7, 15, 16, 18, 21 and 22 (7, 16, 18, 21 and 22 are private respondents No.5 to 9) were retained in Urban Development Department and whereas though the applicants were juniors to some of the private respondents - transferred to Social Welfare Department.

17. No reasons are forth coming on what basis the respondents picked up the applicants from the available APOs for transfer to Social Welfare Department. The minutes of the meeting held on 11.05.2005 under the Chairmanship of Chief Secretary for considering the issue of utilization of UBS Staff (Record furnished by the respondents as per the directions of this Tribunal), also does not indicate any specific reasons. The relevant paragraph of the said minutes reads as under:

"4. Director (Social Welfare) informed that he has examined the possibilities of utilization of UBS staff and found that in view of their qualification and experience most of the UBS staff may be suitable for functions and work of the Social Welfare Department. He further clarified that out of 22 Assistant Project Officers at present working in the UD Department, 13 possess the requisite qualification. Similarly, out of 05 Project Officers, 03 possess the requisite qualification required by the functionaries of the Social Welfare Department."

18. The consequential order dated 31.05.2005 under which the applicants were transferred to Social Welfare Department is also equally silent on the method of selection of the applicants for the said transfer.

19. As rightly pointed out by the learned counsel for the applicants, no options from the applicants were obtained before their transfer to Social Welfare Department. Therefore, no differentiation can be shown between the applicants who were transferred to Social Welfare Department and the private respondents who were retained in Urban Development Department before the issuance of the Notifications for encadrement of 33 posts of APOs in Urban Development Department as duty posts of DASS Gr.II. The Annexure A10 and Annexure R3 – Notifications whereunder the 17 and 16 posts respectively of APOs

were declared as duty posts of DASS Gr.II cannot be equated to the orders of induction of any individual APO, i.e., either the applicants or the private respondents. The respondents failed to show any separate orders of induction of the private respondents or the applicants in pursuance of the encadrement notifications. Therefore, the option and the undertaking of seniority that they will be assigned below all the persons who are appointed in respect to grades on regular basis prior to the date of order of induction cannot be put against the applicants qua the private respondents.

20. It is relevant to state that though the applicants as well as the private respondents were encadred into DASS Gr.II during the years 2007 and 2008, and that though there is no APO Cadre as on today in the Urban Development Department, the respondents issued a final seniority list of the APOs of Urban Development Department vide letter dated 12.08.2014, which also reveals that the applicants are seniors to some of the private respondents as APOs.

21. As on today, the official respondents have not determined the seniority of the applicants vis-à-vis the private respondents in DASS Gr.II. The OA was filed seeking quashing of the order dated 31.01.2012 (Annexure A1) which was passed in pursuance of the orders of this Tribunal in OA No.3101/2010. Even the Notifications under which the APO posts were declared as duty posts of DASS Gr.II were also not questioned in the OA. Hence, the question of any affected or necessary party does not arise at this stage. Therefore,

the contention of the learned senior counsel appearing for the private respondents that the OA is liable to be dismissed on the ground of non-joinder of necessary and affected parties, is unsustainable. Even otherwise, the interest of the persons who were continued in Urban Development Department and who were encadred into DASS Gr.II prior to the applicants and were not parties to the OA, was sufficiently represented by the private respondents who are identically placed like them.

22. In the circumstances and for the aforesaid reasons, we agree with the view expressed by the Hon'ble Administrative Member vide Order dated 31.05.2013. Accordingly, the OA is allowed and the impugned order dated 31.01.2012 (Annexure A1) is quashed. The respondents are directed to consider the induction of the applicants in DASS Cadre as per their seniority in APO Cadre in the Urban Development Department by passing separate orders. This exercise shall be completed within a period of 8 weeks from the date of receipt of a certified copy of this order. No order as to costs.

Registry is directed to return the original records (containing 3 files) immediately to the concerned respondents.

(V. N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/