

**Central Administrative Tribunal
Calcutta Bench**

OA No.901/2013



Order reserved on: 30.03.2016

Order pronounced on 30.5.16.

Hon'ble Ms. Bidisha Banerjee, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Pradip Kumar Bhowmick,
Son of late Sudhansu Sekhar Bhowmick,
R/o Village Ariakhali,
Post Office Kukrahati,
District East Midnapore,
Pin-721658.
2. Gobinda Chakraborty,
Son of late Motilal Chakraborty,
R/o 38, Durga Nagar,
Kolkata-700065.

-Applicants

(By Advocates Shri G. Choudhury with Mr. A. Guha)

-Versus-

1. Union of India, service through the Secretary,
Ministry of Commerce and Industries,
Udyog Bhavan, Maulana Azad Road,
New Delhi.
2. Director General of Foreign Trade,
Ministry of Commerce and Industries,
Udyog Bhavan, Maulana Azad Road,
New Delhi.
3. Joint Director General of Foreign Trade,
Ministry of Commerce and Industries,
Udyog Bhavan, Maulana Azad Road,
New Delhi.

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Deputy Director General of Foreign Trade,
Ministry of Commerce and Industries,
Udyog Bhavan, Maulana Azad Road,
New Delhi.

5. Additional Director General of Foreign Trade,
Ministry of Commerce and Industries,
Udyog Bhavan, Maulana Azad Road,
New Delhi.

-Respondents

(By Advocates Shri L.K. Chatterjee with Shri M.K. Ghara)

ORDER

Mr. K.N. Shrivastava, Member (A):

This OA has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for in the OA read as under:

"a) The cause of action and the redressal being the same the applicants pray for leave to file one original application in accordance with provisions of Rule 4 (5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987.

b) An order directing the respondents to quash and set aside the impugned order dated 28.12.2010 purporting to treat the applicants as Assistant Director General of Foreign Trade and further commanding the said respondents to treat the applicants as Deputy Director General of Foreign Trade so long the appointment the applicants by the President of India to the post of Deputy Director General of Foreign Trade on ad-hoc basis is cancelled and revoked."

2. The brief facts of the case are as under.

2.1 The applicants are Assistant Director General of Foreign Trade (ADGFT). They joined this post on 25.06.2003 on promotion from the post of Foreign Trade Development Officer (FTDO) vide Annexure A-1 order dated 01.05.2009 (page-19). It was a Presidential order, (ADGFT is a Grade III

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post of Indian Trade Service). They were further promoted to the post of Deputy Director General of Foreign Trade (DDGFT), on ad hoc basis, vide Annexure A-2 order of the President dated 28.08.2006. They were reverted to the post of ADGFT vide Annexure A-3 order dated 28.12.2010 issued by Shri R.S. Bisht, DDGFT. The applicants have questioned the impugned Annexure A-3 order in this OA.


3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. Thereafter applicants filed their rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 30.03.2016. Shri G. Choudhury with Shri A. Guha, learned counsel for the applicants and Shri L.K. Chatterjee with Shri M.K. Ghara, learned counsel for the respondents argued the case.

4. The learned counsel for the applicants submitted that the applicants were promoted to the post of ADGFT vide Annexure A-1 order dated 01.05.2003 and later as DDGFT vide Annexure A-2 letter dated 28.08.2006. Both these orders are Presidential orders. They have been illegally reverted vide Annexure A-3 order dated 28.12.2010 passed by DDGFT. The learned counsel questioned the impugned Annexure A-3 order on the ground that it has been issued by DDGFT and such

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order cannot override the Annexure A-1 and A-2 orders issued by the President. Concluding his arguments, the learned counsel submitted that the impugned Annexure A-3 order is illegal and the same may be quashed and set aside and the prayers made in the OA may be granted.

5. Per contra, learned counsel for the respondents submitted that undoubtedly, on the basis of the old seniority list of the feeder grade, i.e., FTDO as on 31.12.1999, the applicants were promoted to the post of ADGFT as per the recommendation of the DPC held in the UPSC. They were further promoted, on ad hoc basis, to the post of DDGFT as per the recommendations of a DPC meeting held on 03.08.2006 under the chairmanship of the then Director General of Foreign Trade (DGFT). The learned counsel further submitted that for the post of FTDO there are two feeder grades, i.e., (i) Section Head and (ii) Senior Investigator/Investigator. He said that Smt. Rita Mahna, Shri R.C. Kalra, Shri Rajbir Sharma and Shri D.K. Tomar, holding the post of Senior Investigators had raised the issue of seniority. The issue was resolved and these officials were given retrospective seniority in the grade of Senior Investigator which resulted in revision of seniority in their grade. Based on this development, a review DPC meeting was held on 10.04.2003 whereby they were promoted to the post of FTDO



w.e.f. 19.12.1996, vide Notification no.14/2003 dated 23.06.2003. On assigning retrospective seniority w.e.f. 19.12.1996, they became eligible for consideration to the post of ADGFT and, therefore, the seniority list of FTDO as on 15.07.1997 and 31.12.1999 were revised vide OM dated 26.12.2005. With the revision in the seniority list of FTDO these four officers became seniors to the applicants, which necessitated to have a review-DPC. Accordingly a review-DPC met on 02.04.2003. The review-DPC recommended promotion of Smt. Rita Mahna, Shri R.C. Kalra, Shri Rajbir Sharma and Shri D.K. Tomar to the post of ADGFT against the panel years 2000-01 and 2002-03. Accordingly, these four officials were promoted vide Notification no.10/2007 dated 23.04.2007. Consequently, names of the applicants got eliminated from the list of ADGFT as they were junior to these four officers. They were, however, considered for promotion to the post of ADGFT by a DPC meeting held in UPSC on 20.10.2010 based on which the impugned Annexure A-3 order dated 28.12.2010 was issued, pursuant to which the applicants joined as ADGFT on 29/30.12.2010. The learned counsel vehemently argued that no illegality has been committed by the respondents and that reversion of the applicants from the post of DDGFT was as a consequence of the revision of the seniority list of FTDOs. Concluding his arguments, the

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learned counsel submitted that in view of the factual position described by them and also stated in the reply of the respondents, the OA deserves to be dismissed.

6. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and the documents attached thereto. As is evident from the records, the impugned Annexure A-3 order dated 28.12.2010 was necessitated on account of revision of the seniority list of FTDOs. The applicants were promoted against 2002-03 year vacancy of ADGFT as per the old seniority list of FTDOs as on 31.12.1999 and later promoted as DDGFT, on ad hoc basis. The seniority list of FTDOs was revised later and Smt. Rita Mahna, Shri R.C. Kalra, Shri Rajbir Sharma and Shri D.K. Tomar were placed higher in the revised seniority list vis-a-vis the applicants. As such, we do not find any illegality in the Annexure A-3 order, which basically recognizes the revised seniority list and promotes the applicants to the post of ADGFT w.e.f. 28.12.2010. It is also seen from the records that pursuant to Annexure A-3 order, the applicants indeed joined the post of ADGFT w.e.f. 29/30.12.2010. We also observe that the applicants in the instant OA have not questioned the revised seniority list based on which Smt. Rita Mahna and three other officials have been promoted ahead them as ADGFT, nor have made

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them as a party in the instant OA. Taking cognizance of the fact that the Annexure A-3 order dated 28.12.2010 is based on the recommendations of the properly constituted DPC, which has taken into consideration the revised seniority list of FTDOs, we do not find any infirmity in the Annexure A-3 order.

7. In view of the discussions in the foregoing paras, we are of the opinion that the OA lacks substance and deserves to be dismissed. Accordingly, the OA is dismissed.

8. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Bidisha Banerjee)
Member (J)

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