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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 1066/2003  
MA 69/2005

WITH

OA 871/2003  
MA 68/2005  
&  
OA 957/2003

New Delhi, this the 15<sup>th</sup> day of September, 2006

**HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**  
**HON'BLE MR. N.D. DAYAL, MEMBER (A)**

OA 1066/2003

1. Smt. Suman Lata, W/o Shri K.K. Sharma,  
Presently working as Statistical Assistant,  
P&E Cell, Department of ISM & Homeopathy,  
Ministry of Health and Family Welfare,  
204, Indian Red Cross Society Annexe Building,  
New Delhi-110001.
2. M.S. Chahar, S/o Late Shri Shiv Singh,  
Presently working as Statistical Assistant,  
N.M. Section, Department of Family Welfare,  
Ministry of Health and Family Welfare,  
512-A, Nirman Bhawan, Maulana Azad Road,  
New Delhi-110011.
3. Rajeswar Kumar, S/o Shri K.L. Bassi,  
Presently working as Statistical Assistant,  
CBHI, Director General of Health Service,  
Ministry of Health and Family Welfare,  
Nirman Bhawan, Maulana Azad Road, New Delhi-110011.
4. Chakochoan Y., S/o Shri C. Yohannan Kutty,  
Presently working as Statistical Assistant,  
Statistics Division, Department of Family Welfare,  
Ministry of Health and Family Welfare,  
Nirman Bhawan, Maulana Azad Road, New Delhi-110011.
5. Sadhu Ram, S/o Shri Nand Lal,  
Presently working as Statistical Assistant,  
S.S. Section, Department of Family Welfare,  
Ministry of Health and Family Welfare,  
Nirman Bhawan, Maulana Azad Road, New Delhi-110011.
6. K.G. Verma, S/o Late Ram Kishan,  
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Department of Family Welfare,  
Ministry of Health and Family Welfare,

509-A, Nirman Bhawan, Maulana Azad Road, New Delhi-110011.

7. Smt. Radha Vasudevan, W/o Shri M.V. Vasudevan,  
Presently working as Statistical Assistant,  
NCD Section, DGHS, Department of Health,  
Ministry of Health and Family Welfare,  
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8. Rajendra Prasad, S/o Shri Gur Dayal  
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Department of Family Welfare,  
Ministry of Health and Family Welfare,  
551-A, Nirman Bhawan, Maulana Azad Road, New Delhi-110011.
9. Smt. V.V. Snehlata, W/o Shri T.R. Neelakandhan,  
Presently working as Statistical Assistant,  
Department of Family Welfare,  
Ministry of Health and Family Welfare,  
508-A, Nirman Bhawan, Maulana Azad Road, New Delhi-110011.
10. K.K. Sharma, S/o Late R.L. Sharma,  
Presently working as Statistical Assistant,  
NACO, Department of Health, Ministry of Health and Family Welfare,  
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11. Raj Kanwal Manku, S/o Late Shri N.K. Manku,  
Presently working as Statistical Assistant,  
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12. S.K. Mehta, S/o Late V.D. Mehta,  
Presently working as Statistical Assistant,  
P & E Cell, Department of ISM & Homeopathy,  
Ministry of Health and Family Welfare,  
Indian Red Cross Society Annexe Building, New Delhi-110001.
13. Gulshan Manocha, S/o Late Shri S.L. Manocha,  
Presently working as Statistical Assistant,,  
C.C. & N.D.S. Section, Department of Family Welfare,  
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14. Avinash Kumar, S/o Shri R.P. Tandon,  
Presently working as Statistical Assistant,  
AP Section, Department of Family Welfare,  
Ministry of Health and Family Welfare,  
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15. R.C. Kakkar, S/o Late Ganpat Rai Kakkar,  
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C.C. & N.D.S. Section, Department of Family Welfare,  
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16. Shyam Lal, S/o Late Shri R.R. Taneja,  
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17. Prem Prakash, S/o Shri M.M. Sharma,  
Presently working as Statistical Assistant,  
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18. V.K. Sharma, S/o Shri P.K. Sharma,  
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Leprosy Section, DGHS,  
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19. Sushil Kumar Kapoor, S/o Shri K.N. Kapoor,  
Presently working as Statistical Assistant,  
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Ministry of Health and Family Welfare,  
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... Applicants

(By Advocate Shri S.K. Das)

### VERSUS

1. Union of India  
through the Secretary,  
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Nirman Bhawan, Maulana Azad Road,  
New Delhi-110011.
2. Director General Health Services,  
Department of Health,  
Ministry of Health and Family Welfare,  
Nirman Bhawan, Maulana Azad Road,  
New Delhi-110011.
3. Secretary,  
Ministry of Statistics and Programme Implementation,  
Sardar Patel Bhawan, Sansad Marg,  
New Delhi-110001.
4. D.K. Govil, Statistical Assistant,  
Department of Economics & Statistics  
Ministry of Agriculture, F-Wing,  
Shastri Bhawan, New Delhi-110001.
5. Rajbir Singh, Statistical Assistant,  
Department of Economics & Statistics  
Ministry of Agriculture, F-Wing,  
Shastri Bhawan, New Delhi-110001.
6. V.R. Shukla, Statistical Assistant  
National Sample Survey Organization,

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Field Operation Division,  
Ministry of Statistics & Programme Implementation,  
Shri Ganganagar, Rajasthan

7. Ms. Laxmi Kant Sirdesh Pandey,  
Statistical Assistant,  
National Sample Survey Organization,  
Field Operation Division,  
Ministry of Statistics & Programme Implementation,  
Aurangabad, Maharashtra.
8. V.K. Salotkar, Statistical Assistant,  
Indian Bureau of Mines,  
Ministry of Mines, Shastri Bhawan,  
New Delhi-110001.
9. S. Mukharjee, Statistical Assistant,  
Indian Bureau of Mines,  
Ministry of Mines, Shastri Bhawan,  
New Delhi-110001.
10. Radheshyam, Statistical Assistant,  
Department of Secondary Education,  
Ministry of HRD, Shastri Bhawan,  
New Delhi - 110 001.
11. Satpal, Statistical Assistant,  
Department of Secondary Education,  
Ministry of HRD, Shastri Bhawan,  
New Delhi - 110 001.
12. M.L. Kohli, Statistical Assistant,  
DGS & D, Department of Supply,  
Ministry of Commerce, Jeevan Tara Building,  
New Delhi - 110 001.
13. A.P. Sharma, Statistical Assistant,  
Ministry of Rural Development,  
Shastri Bhawan, New Delhi-110001.
14. K. Suryanarayana, Statistical Assistant,  
NICD, Directorate General of Health  
Services, Jagdalpur, Chhatisgarh.
15. Anup Chopra, Statistical Assistant,  
Ministry of Road Transport & Family Highways,  
Transport Bhawan, New Delhi-110001.
16. C. Harinarayana, Statistical Assistant,  
Ministry of Road Transport & Family Highways,  
Transport Bhawan, New Delhi-110001.
17. Sahbi Rehman, Statistical Assistant,  
Director General of Health Services,  
Ministry of Health & Family Welfare,  
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18. Adarsh Sudan, Statistical Assistant,  
Director General of Civil Aviation,  
Opposite Safdarjung Hospital Road,  
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19. Melaram, Statistical Assistant,  
DGE & T, Ministry of Labour,  
Shram Shaktri Bhawan,  
New Delhi - 110001.

... Respondents.

(By Advocate Shri D.S. Mehandru)

OA 871/2003

1. Smt. P. Padmavati,  
W/o Shri P. Ravi Babu  
Investigator (Statistics), PA Section,  
Department of Family Welfare,  
Ministry of Health & Family Welfare,  
424-C, Nirman Bhawan, Maulana Azad Road,  
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2. V.K. Khanna, S/o Late R.C. Khanna,  
Investigator (Statistics),  
Department of Family Welfare,  
Ministry of Health & Family Welfare,  
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3. U.S. Virmani, S/o Late Ishar Singh,  
Investigator (Statistics), TO Section,  
Department of Family Welfare,  
Ministry of Health & Family Welfare,  
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4. Pishori Lal, S/o Shri Dewan Chand,  
Investigator (Statistics), AP Section,  
Department of Family Welfare,  
Ministry of Health & Family Welfare,  
Nirman Bhawan, Maulana Azad Road,  
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5. S.P. Sood, S/o Late Pyare Lal Sood  
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Ministry of Health & Family Welfare,  
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6. Shashi Kant, Shri M.N. Sharma,  
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Director General of Health Service,  
Ministry of Health & Family Welfare,  
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7. O.P. Wadhwa, S/o Shri Dayanand Wadhwa,  
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Department of Family Welfare,  
Ministry of Health & Family Welfare,  
Nirman Bhawan, Maulana Azad Road,  
New Delhi-110011.
8. Surendra Kumar, S/o Shri D.P.Jain,  
Investigator (Statistics), CC&V Section,  
Department of Family Welfare,  
Ministry of Health & Family Welfare,  
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9. Dharam Pal, S/o Late Chandu Lal,  
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DGHS, Department of Health,  
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542-A, Nirman Bhawan, Maulana Azad Road,  
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10. V.K.Khanna-II, S/o Late R.L. Khanna,  
Investigator (Statistics), PA Section,  
Department of Family Welfare,  
Ministry of Health & Family Welfare,  
Nirman Bhawan, Maulana Azad Road,  
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11. S.S.Tony, S/o Shri S.S.Tony,  
Investigator (Statistics), S S Section,  
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Ministry of Health & Family Welfare,  
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.....Applicants

(By Advocate Shri S.K. Das)

VERSUS

1. Union of India, Through Secretary,  
Department of Health,  
Ministry of Health & Family Welfare,  
Nirman Bhawan, Maulana Azad Road,  
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2. Director General of Health Service  
Department of Health,  
Ministry of Health & Family Welfare,  
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New Delhi-110011.
3. Secretary, Ministry of Statistics &  
Programme Implementation,  
Sardar Patel Bhawan, Sansad Marg,  
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4. C.B. Gupta, Investigator  
Indian Bureau of Mines,  
Ministry of Mines, Indira Bhawan,  
Civil Lines, Nagpur-1 (On Deputation to Delhi)  
C/o Director, Subordinate Statistical Service,  
Ministry of Statistics & Programme Implementation,  
Sardar Patel Bhawan, Sansad Marg, New Delhi-1.
5. S. Balkrishan, Investigator,  
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6. Surendra Kumar, Investigator  
National Accounts Division, 4<sup>th</sup> Floor,  
C.S.O., Ministry of Statistics & Programme  
Implementation, Sardar Patel Bhawan,  
New Delhi-110 001.
7. Surendra Pal, Investigator  
Directorate of Economics & Statistics,  
Department of Agriculture & Co-operation.  
Shastri Bhawan, New Delhi-110001.
8. B.S. Rathore, Investigator  
Planning Commission, Yojana Bhawan,  
Sansad Bhawan, New Delhi-110001.
9. Dinesh Garg, Investigator,  
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10. Shiv Charan Arora, Investigator,  
DGS&D, Department of Supply,  
Ministry of Commerce,  
Jeevan Tara Building, New Delhi.
11. Rakesh Agarwal, Investigator,  
Ministry of Road Transport & Highways,  
Establishment Section, Transport Bhawan,  
Parliament Street, New Delhi-110001.
12. Pushpa Gurnani, Investigator  
Director General of Civil Aviation,  
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New Delhi.
13. Govind Prasad Kori, Investigator  
D/o Development Comm. (SSI)  
D/o SSI & ARI, Nirman Bhawan,  
New Delhi-110 011.
14. Premlata Bhatia, Investigator,  
Director General of Health Service,  
Ministry of Health & Family Welfare,  
Nirman Bhawan, New Delhi-110011.

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15. Sukhbir Singh, Investigator  
Director General of Health Service,  
Ministry of Health & Family Welfare,  
Nirman Bhawan, New Delhi-110011.
16. Bansi Lal Bapur Khandekar, Investigator,  
Central Water Commission,  
Ministry of Water Resources,  
R.K. Puram, New Delhi.
17. R. S. Rawat, Investigator  
Commission for Agricultural Costs & Prices,  
Ministry of Agriculture, Shastri Bhawan,  
New Delhi-110001.
18. Rajkumar, Investigator  
Directorate of Marketing Inspection,  
Department of Agriculture & Co-operation,  
Ministry of Agriculture, N.H-IV,  
Faridabad, Haryana-121001.
19. K.C. Meena, Investigator  
NICD, DGHS,  
Ministry of Health & Family Welfare,  
22, Sharnath Marg, Delhi-54.

... Respondents.

(By Advocate Shri D.S. Mahendru)

OA 957/2003

1. M.L. Kohli son of Shri M.R. Kohli  
Aged about 56 years,  
R/o D-44 Prashant Vihar  
New Delhi 110085
2. Monojit Banerjee son of Late M.S. Banerjee  
Aged about 56 years,  
R/o T-348 Sarojnagar,  
New Delhi 110023.
3. S.K. Nayyar son of Shri H.L. Nayyar  
Aged about 53 years  
R/o S-15 Green Park,  
New Delhi 110016.
4. Pritpal Singh son of Late Prem Singh  
Aged about 56 years,  
R/o 39 C Evershine Apartments  
D Block, Vikaspuri  
New Delhi 110018
5. H.R. Malhotra son of Shri Pari Ram  
Aged about 54 years  
R/o G-281 Nanakpura, Delhi
6. Mahendra Nath Bakshi son of Late Ram Narain Bakshi  
Aged about 51 years  
R/o DG-III/140, Vikaspuri  
New Delhi 110018





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7. Avtar Singh son of Shri Sujan Singh  
Aged about 52 years  
R/o 48 Jangpura Road, Bhogal  
New Delhi 110014.
8. Mrs. Mary Chacko w/o Shri N.V. Chacko  
Aged about 51 years  
R/o 115R Sector IV; Pushp Vihar,  
New Delhi
9. Pradeep Kumar son of Late B.N. Bhargava  
Aged about 48 years  
R/o C-604, Sarojnagar  
New Delhi 110023.
10. R.S. Vashist son of Shri S.C. Vsahist  
Aged about 54 years  
R/o R2/1, Sector I; MB Road; Pushp Vihar  
New Delhi.

... Applicants.

(By Advocate Shri R. Doraiswami)

### VERSUS

1. Union of India through  
Secretary,  
Ministry of Commerce,  
Department of Commerce,  
Nirman Bhawan, New Delhi.
2. Director General of Supplied & Disposals  
Jeewan Tara Building,  
Sansad Marg, New Delhi.
3. Secretary,  
Ministry of Statistics and Programme Implementation  
Sardar Patel Bhawan, New Delhi.
4. Shri D.S. Mishra,  
Senior Investigator  
Ministry of Planning  
Department of Statistics  
Sardar Patel Bhawan, Sansad Marg, New Delhi.
5. Shri Ram Niwas Rathee  
Senior Investigator  
Ministry of Planning  
Department of Statistics,  
Sardar Patel Bhawan, Sansad Marg, New Delhi.

... Respondents.

(By Advocate Shri S. M. Arif)

### ORDER

**By Hon'ble Mr. Mukesh Kumar Gupta, Member (J):-**

The facts and issues in these OAs being identical, the same are being disposed of by this common order. For convenience, facts have been taken and

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stated here from OA No.1066/2003. MAs No 69/2005 & 68 Of 2005 were filed for service of notices on the private respondents.

2. 19 applicants in this OA challenge DGHS order dated 6<sup>th</sup> March, 2003 rejecting their representation for regularization in the post of Investigator (Statistics) from initial date of their ad-hoc appointment and accordingly seek direction to respondents to take said period into consideration for determining their seniority with all consequential benefits.
3. Admitted facts are that applicants are subordinate Statistical personnel in various departments/organizations/divisions/Section/Units of the Ministry of Health & Family Welfare. The said Statistical personnel are divided into three grades i.e. Computers, Statistical Assistants and Investigators (Statistics). As per notified RRs, the grade of Investigators (Statistics), which has sanctioned strength of 33, is filled 75% by promotion, failing which by transfer on deputation, failing both by direct recruitment, and 25% by direct recruitment. Statistical Assistant with 5 years of regular service becomes eligible for consideration for promotion. The post of Statistical Assistant is filled by 50% promotion and 50% direct recruitment. Computers, with three years of regular service is eligible for promotion to the said grade. Lowest level is Computer, which is filled by 100% direct recruitment.
4. At present, all of them are regular Statistical Assistant. Before their regularization in the said post, they were made to work continuously on ad-hoc basis for several years without any break or interruption, which vary from individual to individual, like 3 years to 11 years. Their grievance is that though they fulfilled eligibility criteria prescribed under the statutory RRs for such promotion, and appointed against regular vacancies were not promoted in the first instance on regular basis due to slackness of Respondents in not holding regular & timely DPCs. Even though they had a grievance, but were not materially affected in their seniority due to non-regularization as their inter-

seniority within the Ministry was being maintained. However, some recent developments namely constitution of Subordinate Statistical Service (hereinafter referred as **SSS** , as recommended by 5<sup>th</sup> CPC, by amalgamating all junior level statistical post of the Central Govt, which had been notified Vide Gazette dated 12.2.2002, has compelled them to approach this Tribunal for redressal of their grievances. As their name would be included in the combined seniority List of SSS, which is based on date of regular appointment to a post, they would suffer adversely and would suffer their due placement. Respondent No 2 issued seniority list of Statistical Assistant on 10.6.2002, against which they made representation & requested to regularize them from the date of their initial appointment. Even though their representations had not been dealt with, but similar representations made by Investigators (Statistics) for ante-date regularization, a higher post, were rejected on the ground that as per para 6.4.4. of DPoT OM 10.4.1989 only prospective promotion is permissible even in cases the vacancies relate to earlier years. In the above backdrop, they filed OA No 2004 of 2002 P. Padmavati and others vs. UOI & ors seeking seniority for the period of continuous officiation, which was disposed of vide Order dated 1.8.2002 in limine directing the respondents to "treat the present O.A. as representation mad on behalf of the applicants and to consider the same and to pass a speaking & reasoned order", within a time limit prescribed. Since directions were not complied with, CP No 492 of 2002 was preferred. Ultimately vide communication dated 6.3.2003 issued. Instead of granting the relief as prayed for, it rejected their representations & seven applicants were reverted from the post of Investigator (Statistics) to the grade of Statistical Assistant. Their reversion had been challenged by separate proceedings, an issue to which we are concerned with.

5. The applicants' grievance is that their non-regularization from the date they were continuously officiating as Statistical Assistant on ad hoc basis is

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illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. The respondents did not convene regular DPCs leading to present plight. Similarly situated officials, which have become part and parcel of SSS, were appointed on ad hoc basis, had been allowed to count their seniority from the date of their initial appointment and, therefore, the applicants have been treated differently and in violation of equality clause enshrined in the Constitution of India. The applicants have worked in the said post on continuous basis without any interruption or break of service. Strong reliance has been placed on order dated 22.7.1999 issued by the National Sample Survey Organization, Field Operations Division, whereby their equivalent grade known as Superintendent, were allowed retrospective regularization. Similarly, Senior Investigator of Central Statistical Organization were also allowed regularization retrospectively, & some dates being even as far as back five years. Reliance was placed on catena of judgments, namely, S.B. Patwardhan vs. State of Maharashtra, 1977 (3) SCC 399, Baleshwar Das vs. State of Uttar Pradesh, (1980) 4 SCC 226, G.P. Doval and others vs. Chief Secretary, Government of Uttar Pradesh, 1984(4) SCC 329, G.S. Lamba vs. Union of India, 1985 (2) SCC 604, Narendra Chadha vs. Union of India, 1986 (2) SCC 157, Delhi Water Supply and Sewage Disposal Committee vs. R.K. Kashyap, (1989) Supp (1) SCC 194, Keshav Chandra Joshi vs. Union of India, 1992 Supp (1) SCC 272, N.S.K. Nayar vs. Union of India, 1992 Supp (2) SCC 508, Gaya Baksh Yadav vs. Union of India, (1996) 4 SCC 23, Qamar Jahan vs. Uttar Pradesh Public Services Tribunal, 1998 (9) SCC 450, M.H. Patel vs. State of Maharashtra, (1999) 1 SCC 249, L. Chandra Kishore Singh vs. State of Manipur, (1999) 8 SCC 287, State of Haryana vs. Paira Singh, (1992) 4 SCC 118, Syed Khalid Rizvi vs. Union of India, (1993) Supp (3) SCC 575, Uttar Pradesh Secretariat U.D.A. Association vs. State of Uttar Pradesh, (1999) 1 SCC 278, **Union of India vs. N.R. Banerjee**, 1999 (1) SLR 751 (SC), **Direct Recruit Class II Engineering Officer Association vs. State of Maharashtra**, 1990 (2) SCC 715, **Rudra Kumar Sain and others vs. Union of**

India and others, 2000 (8) SCC 25 and orders passed by this Tribunal dated 27.11.2001 in OA No.999/1999 Lalit Kumar and others vs. UOI and others, 22.1.2001 in OA No.2766/1998 and OA No.2153/2000 Anil Kumar Gupta vs. UOI and others. Learned counsel further contended that the impugned communication dated 6.3.2003 rejected their representations stating that there was "no policy of the Government to counting ad hoc service towards seniority in the event of subsequent regularization." Reliance placed by the respondents on judgements, namely, **Masood Akhtar Khan vs. State of MP**, 1993 (4) SC 24, **UOI vs. S.K. Sharma**, JT 1992 (2) 491, **Dr. M.A. Haque vs. UOI**, JT 1993 (2) SC 265, **State of West Bengal vs. Aghore Nath Dey**, JT 1993 (2) SC 598 and **S.K. Saha vs. P.P. Agarwal**, JT 1993 (6) SC 441 did not apply in the facts and circumstances of the present case as the issue raised therein are not similar to those raised in present OAs. Shri S.K. Dass, learned counsel further pointed out that the preliminary objection raised by the respondents, namely, non-joinder of parties and limitation, has no force inasmuch as the officials likely to be effected by the grant of any relief in the present OA have already been impleaded as respondents no.4 – 19. Similarly, the applicants have impugned communication dated 6.3.2003 rejecting their representation as on earlier occasion they had filed OA No.2004/2002 which was disposed of vide order dated 1.8.2002.

6. As far as OA No.871/2003 is concerned, it was pointed out that the legal issue raised therein are same as of OA No.1066/2003 except the fact that the applicants in the said case are holding the posts of Investigator (Statistic).

7. So far as OA No.957/2003 is concerned, they are similarly placed as to the applicants of OA No.1066/2003.

8. The respondents resisted the applicants' claim filing detailed reply and raising the objection of non-joinder of parties and limitation. On merits, it was stated that DOP&T instructions dated 29.10.1975 and 30.3.1988 provided that ad

hoc appointment will not bestow a person a claim of regular appointment and services rendered on ad hoc basis would not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade. The said instructions have been reiterated vide DOP&T OM dated 23.7.2001. The applicants were promoted to the post of Statistical Assistant on ad hoc basis as there was no regular vacancy in the said higher grade in promotion quota. They were given regular promotion on availability of regular vacancy in promotion quota. The last date of their regular promotion had been 22.1.1996. The claim laid vide OA No.2004/2002 seeking retrospective promotion was not tenable and mere disposal of it directing the respondents to pass speaking order would not furnish any fresh cause of action. In any case, pursuant to directions issued by this Tribunal the matter had been examined in the light of relevant DOP&T instructions, rules and various judicial pronouncements and reasoned and speaking order was passed on 6.3.2003. The allegation of slackness in holding regular DPC on yearly basis was denied. Applicants did not question their date of promotion. The respondents reiterated their contention that the aforesaid impugned communication was just and legal. Regarding the averment that similarly situated persons were regularized retrospectively, it was stated that regularization of ad hoc Superintendent in FOD was done vide order dated 22.7.1999 against the vacancies pertaining to the recruitment year 1997-1998 and similar was the case of Senior Investigator in CSO. Such are not the facts in the present cases. Moreover, the orders were passed therein prior to constitution of SSS.

9. The applicants by filing the detailed rejoinder controverted the plea raised by respondents, while reiterating submission made vide their OA.

10. We heard learned counsel Shri S.K. Das and Shri R. Doraiswamy for applicants and Shri S.M. Arif and Shri D.S. Mahendru for respondents at length and perused the pleadings and material placed on record.

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11. At the outset, we may note that none appeared for the private respondents 4 – 19 in OA No.1066/2003.

12. The sole question, which needs consideration in these OAs, is whether the applicants are entitled to seniority based on continuous officiation? For this purpose we may once again note the admitted facts. The dates of ad-hoc promotion as Statistical Assistant had been in between 27.11.1972 to 27.2.1987 and date of regularization varied from 2.7.1980 to 22.1.1996. As per RRs 50% vacancies were to be filled up by promotion. They approached this Tribunal for the first time vide OA No 2004 of 2002. The respondents' contention had been that they were promoted to the said post on adhoc basis as "there was no regular vacancy in the said higher grade in promotion quota. They were given regular promotion on availability of regular vacancies in the promotion quota". This contention has not been specifically controverted by the applicants. Rather it was emphasized that they were "regularized without any break" and in terms of law laid down in **Narender Chadha & Direct Recruit Engineering** cases, the entire ad-hoc period is liable to be counted towards seniority. It was emphasized that they are not asking for retrospective promotion & are "claiming seniority from the date of their initial ad-hoc promotion." Similarly no yearly DPCs were held & therefore, they cannot be made to suffer.

13. Shri Doraiswamy, learned counsel persuasively contended that conclusions (A) & (B) of **Direct Recruits Class-II Engineering** judgment read with the law laid down in **Narender Chadha** aptly applies to the facts of the present case. Conclusion A & B reads as under:

*"(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 ad hoc and not according to rules and made ass as stopgap*

*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."*

14. On bestowing our careful consideration to all aspects of the case we observe that it is not the applicants case that no seniority list has been issued after they were regularized in the said post, which varied from the year 1980 to 1996. Similarly, it is neither their contention nor the case made out that they had approached this Tribunal prior to filing of OA No.2004/2002. The order passed by the Tribunal in the aforesaid OA on 1<sup>st</sup> August 2002 to consider their claim and pass reasoned and speaking order in our considered view cannot re-open the settled service position & confer fresh cause of action. As noticed vide para-2 of the said order the grievance arose only when the Subordinate Statistical Service had been constituted in the year 2002. Till then as noticed vide para-3 of the Order dt 1.8.2002, "no formal representation" has even been preferred.

15. In our considered view, the judgments of Hon'be Supreme Court in Narender Chadha related to inter-se seniority of direct recruits and promotees, the two channels for appointment to the posts, where there was a quota prescribed for the two channels leading to rota for confirmation, and the seniority was based on the date of confirmation, according to rules. The dispute arose as a result of promotions being made in excess of the promotees quota, in the case of surplus promotes. It was in that context, that the question of taking into account longer period of officiation for the purpose of fixing inter se seniority of direct recruits and promotees, came up for consideration. The said case is clearly distinguishable. In the present cases, there is no dispute between promotees and direct recruits. The present is, therefore, a case of surplus promotees who were given promotion in excess of quota fixed for them under the



(60)

rules. The Constitution Bench in **Maharashtra Engineering** case, while dealing with **Narender Chadha** emphasized the unusual fact that the promotees in question had worked continuously for long periods of nearly **15 to 20 years** on the post without being reverted and, therefore, the principle of counting seniority based on continuous officiation was confirmed. Conclusions (A) & (B) of **Maharashtra Engineering** case were clarified and explained in **State of West Bengal vs. Aghore Nath Dey, 1993 (3) SCC 371** and it was held that the aforesaid two conclusions have to be read harmoniously, and conclusion (B) cannot cover cases, which are expressly excluded by conclusion (A). Conclusion (B) cannot include within its ambit those cases, which are expressly covered by the corollary in conclusion (A). Conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules, and such deficiency in the procedural requirements has to be cured at the first available opportunity.

16. The admitted facts, which are foundation of the claim of the applicants, are sufficient to negative their claim. In our considered view, neither **Narender Chadha** nor **Maharashtra Engineering** case is applicable in the peculiar facts and circumstances of the present cases.

We may also note that in **1982 (2) SCC 7, V.T. Khazode & Ors vs. RBI & Ors**, it was held that :

"No scheme governing service matters can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled."

17. The ad-hoc officiation of the applicants as disclosed by them vide para-4.9 of the OA varies from about three years to twelve years. The emphasis laid on direct recruits judgment and various orders passed by this Tribunal following the aforesaid two judgments namely **Narender Chadha** and **Direct Recruits**

**Engineering**, is thus not applicable in the peculiar facts of the present case. We are conscious of the fact that it is well settled that a settled service position cannot be unsettled after a reasonable period of time. Similarly, the reliance placed on **Rudra Kumar Sain** (supra) will not be justified in as much as appointment of the officials therein to the promotional post had been made "after due consideration" which is not the claim laid. On the other hand, we are of the considered view that the applicants' promotion in the grade of Statistical Assistant was made in excess of the post available to promotion quota, which cannot be termed "in accordance with the rules." Therefore, such adhoc promotion, which no doubt some time may be for a fairly long period cannot be treated as a regular or permanent promotion and has to be treated as fortuitous or stop-gap arrangement. It is not the applicants' case that quota rota rule had broken down and they had taken recourse to judicial proceedings seeking such declaration. We do not find any illegality, arbitrariness etc in the impugned communication dated 6<sup>th</sup> March. 2003.

18. The further contention raised by the applicants that similarly situated officials in the field operations division of the National Sample Survey Organization were allowed retrospective regularization and therefore they cannot be treated differently, has also no justification and substance as the respondents have clarified that the order dated 22.7.1999 was issued promoting certain officials against the vacancy pertaining to the recruitment years 1997-98, which is prior to the constitution of SSS. Similarly, the identical contention raised by the applicants in OA No.957/2003 that various officials in the Ministry of Health & Family Welfare were allowed retrospective regularization did not hold field as no material has been produced to substantiate such contention. On the other hand, we may note that the OA No.1066/2003 relates to officials belonging to Ministry of Health & Family Welfare. Thus the allegations of discrimination and arbitrariness are not well founded. We may also note the contention raised by

Shri R. Doraiswamy, learned counsel for applicants that the applicants are entitled to relief based on equitable jurisdiction, cannot be countenance for more than one reason. We may note the fact that the applicants in OA No.957/2003 had earlier approached this Tribunal vide OA No.1674/1994 and 1611/1994 seeking regularization from the date of their adhoc promotion, which had been disposed of vide order dated 16.5.1997 directing the respondents: "to consider (i) regularization of applicants against post of Economic Investigator/Computer from relevant dates by holding DPC in accordance with rules, instructions and judicial pronouncements and (ii) extension of such consequential benefits as has been given to their counterparts as admissible under law." Consequent to the said directions, respondents issued office memorandum dated 20.11.1997 and observed that implementation of the above judgments is not going to affect inter se seniority in the cadres of Computers and Economic Investigators. Accordingly, a seniority list was drawn and corrected upto 01.10.1997. Thereafter the respondents held review DPC and office order dated 23.10.1998 had been issued, which amongst other stated that as a result of ante-dating of promotion orders of five seniors Economic Investigators from 1986 to 1972-73, eight vacancies became available to the departmental promotees in the grade of Economic Investigators and one vacancy become available to the promotees in the grade of Computer as per Recruitment Rules providing for 50% promotion in the grades. Said vacancies were duly taken into account by the review DPC. Similarly unfilled direct recruitment vacancies were diverted to the promotees after obtaining approval from the Department of Supply, subject to the condition that an equal number of vacancies should be filled up by direct recruitment, which are otherwise earmarked for promotees. Accordingly, competent authority issued revised order of regular promotion. We may note that the said order dated 23.10.1998 has not been challenged by the applicants either in the present proceedings or by instituting some other proceedings. The excessive reliance placed by learned counsel on Tribunal's direction dated 16.5.1997, as noted

hereinabove, is unjustified. Similarly, the OA 871/2003, which has been filed by Investigators (Statistics) seeking identical relief is of no consequence.

19. In view of the discussion made hereinabove, we do not find any justification in the claim laid and relief sought. OAs lack merits and accordingly dismissed. No costs.

(N.D. Dayal)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

/ravi & gkk/