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**Central Administrative Tribunal
Principal Bench: New Delhi**

OA No. 2771.2003

New Delhi, this the 9th day of November, 2004

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

1. Shri Narender s/o Shri Uday Singh,
R/o 239, Pratap Khand,
Vishwakarma Nagar,
Delhi - 110 095.
2. Mr. Himmat Singh Negi,
s/o Shri K.S. Negi,
R/o 21/1, East Guru Angad Nagar,
Road No. 4,
Delhi - 110 092.
3. Mrs. Jaya Jetley,
W/o Shri Kamal Jetley,
R/o 77/266, Sec.1,
Gole Market,
New Delhi.
4. Mr. Yogesh Kumar s/o Sh. Devendra Kumar,
R/o 404, Saraswaari Apartment,
Sector 4 Vaishali,
Ghaziabad.
5. Mr. Rakesh Rawat s/o Sh. Trilok Singh Rawat,
R/o 98, I.T. Colony,
Pitampura, Delhi - 110 088.
6. Mr. Manchan Bala d/o Sh. Wazir Chand,
R/o N-58, Chanakya Place II,
New Delhi - 110- 058
7. Mr. Mohd. Yasin s/o Shri Saghir Ahmad,
R/o 403, Sharda Apartment,
Sector - 4, Vaishali,
Ghaziabad.
8. Mr. Harish Kumar s/o Sh. Dharam Pal,
R/o M-95 G.S. Apartment,
Sector 13, Delhi-11 085.

9. Mrs. Meena Bhardwaj w/o Sh. Sanjay Bhardwaj,
R/o 33-G, Pocket 4, Phase-I,
Mayur Vihar, Delhi – 92.
 10. Mr. N. Radhakrishna s/o Sh. N. Sriramamurthy,
R/o 67-A, Room No. 13,
GF, Prahlad Singh Tokas,
Opp. Canara Bank, Munirka,
New Delhi – 110 067.
 11. Mr. Mahesh Chand s/o Shri Kushi Ram,
R/o C-545, New Ashok Nagar,
Delhi – 110 096.
 12. Prvender Kumar s/o Sh. Nahar Singh,
r/o RZ 1050, Gali No. 5/8,
Main Sagarpur,
New Delhi – 110 046.
-Applicants

(By Advocate: Shri K. Venkatraman)

-versus-

1. Union of India
Through the Secretary,
Department of Revenue
Ministry of Finance,
Government of India,
North Block,
New Delhi.
 2. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Government of India,
North Block,
New Delhi.
 3. The Director,
Directorate Services (DOMS)
Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
Behind Hyat Regency,
R.K. Puram, New Delhi.
 4. The Chief Commissioner of Income Tax,
O/o The Chief Commissioner of Income Tax,
Central Revenue Building,
Indra Prastha Estate,
New Delhi.
-Respondents

(By Advocate: Shri V.P. Uppal)

ORDER (ORAL)**Mr. Shanker Raju, Hon'ble Member (J):**

Applicants through this amended OA challenge respondents' order dated 17.10.2003 as well as order dated 24.10.2003 annulling their promotion to the grade of Senior Tax Assistant (STA) and also the action of the respondents whereby they have been put on ad hoc and their pay scale had been reduced in the old scale for a period of three days, i.e., 21.10.2003 to 23.10.2003 and consequent recovery has been ordered vide order dated 9.2.2004. Applicants seek restoration of promotion and also the basic pay with all consequential benefits. Applicants who were appointed as DEO Grade-I during the period from 1995 to 1997 on qualifying the ministerial staff examination and on notification of the revised sanctioned strength vide department letter dated 19.7.2001 were promoted on regular basis as STAs w.e.f. 29.6.2001.

2. OA-1623/2002 filed by LDCs on introduction of detailed instructions dated 19.7.2001 and on its application retrospectively by virtue of which applicants therein vide order dated 1.2.2002 had been shown as STA on ad hoc basis, this Tribunal by an order dated 1.1.2003 quashed orders and directed respondents to regularly promote them as STAs in terms of order dated 29.6.2001.

3. As a result thereof show cause notices for annulment of promotion to applicants who were juniors to applicants in OA-1623/2002 were issued and on reply their promotion has been annulled and they had been continued on ad hoc basis.

4. Learned counsel of applicants states that having duly promoted on regular basis after the DPC, the review DPC has not acted within its scope and annulled promotion without reasonable opportunity, as there is no whisper to their contention raised in the representations, orders suffer from the vice of non-application of mind. It is further stated that vide order dated 9.2.2004 for three days applicants had been reduced to the post of DEO before restructuring and their pay scale and allowances had been reduced with resultant recovery cannot be countenanced as during the aforesaid period applicants had continued to perform duties of STAs.

5. Respondents' counsel Shri V.P. Uppal vehemently opposed the contentions and stated that in compliance of the directions in OA-1623/2002 on restoration of regular promotion of applicants therein who are admittedly senior to applicants they were adjusted on regular promotion whereas for want of posts applicants had been kept on ad hoc and their cases would be considered as per availability of vacancies and in accordance with rules. However, it is stated that the pay of applicants were fixed wrongly. Accordingly, before promotion and putting them on ad hoc for three days interregnum the pay scale has been reduced and recoveries had been effected, which does not suffer from any legal infirmity.

6. We have carefully considered the rival contentions of the parties and perused the material on record.

7. As regards restoration of promotion is concerned, it is trite law that if one has been promoted de hors the rules he has no right to seek indefeasible right of continued promotion. In view of the decision of the Tribunal in OA-1623/2002 seniors of applicants had succeeded and were restored promotion. Accordingly they had been adjusted on restructured posts whereas applicants who were juniors for want of vacancies could not be regularly promoted. However, to safeguard their interest as they were eligible they had been put to officiate on ad hoc basis as STAs. We do not find any legal infirmity in the action of the respondents. The applicants have a right to be considered as per the available vacancies and as per their eligibility under the rules. However, we do not advert to the respondents' action of reducing the pay scale of applicants for three days and bringing them to the post of DEO as per the pay scale and allowances it is not disputed that applicants remained discharging duties and functions attached to the posts of STAs even during this period of three days. However, notionally they had been shown in the pay scale of DEO. Having discharged the functions of STAs they cannot be deprived of the pay attached to this post.

8. In this view of the matter, we partly allow this OA, upholding de-panelment of applicants and direct respondents to restore back applicants their pay and allowances attached to the post of STA, if recoveries are effected and in the event no recoveries are effected respondents are restrained from effecting the same.

9. As regards promotion of applicants as they are eligible as already tested by DPC in case of availability of vacancies in the

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quota they shall be considered as per rules and instructions on the subject. The OA stands allowed in the aforesaid terms. No costs.

S. Raju
(Shanker Raju)
Member (J)

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

9.11.04

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