

v<sup>5</sup>

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

RA 99/2005  
MA 846/2005  
OA 3169/2003

New Delhi, this the 23<sup>rd</sup> day of May, 2006

Hon'ble Shri Shanker Raju, Member (J)  
Hon'ble Shri N.D. Dayal, Member (A)

Union of India & Ors.

...Review applicants

(By Advocate Shri V.K. Rao)

V E R S U S

Mahinder Singh

...Respondents

(By Advocate Shri B.S. Mainee)

**O R D E R (ORAL)**

**Hon'ble Shri Shanker Raju, Member (J)**

In the interest of justice, though we do not find any justifiable grounds for condonation of delay, MA 846/2005 is allowed. Delay is condoned.

2. The Tribunal, vide its order dated 10.12.2004 disposed of OA 3169/2003 with directions to the respondents to consider the applicant for promotion w.e.f. 20.8.86 whereas he was promoted from 26.4.2000, with all consequential benefits. Applicant, whose services were dispensed with in the year 1979, was re-employed in 1983 and was accorded all consequential benefits besides condoning the interruption of service between two appointments i.e. 22.6.1979 and 2.4.1983 and treated the said period as continuity in service.


3. In the above premise and the fact that the applicant had qualified an examination pre-requisite for promotion and subsequently observing that the non-qualifying the examination was attributed to the respondents, Tribunal in its own wisdom directed consideration of promotion on the ground that the respondents having treated the interregnum period as continuity in service, the eligibility would be reckoned per se.

4. Learned counsel of the review applicants states that in para 4 where an observation made reflects an admission on the part of the respondents as to the eligibility of the applicant having been qualified the examination to be promoted prospectively has not been made by the learned counsel of the respondents in OA. On second ground, it is stated that in so far as promotion is concerned, on acquirement of eligibility, a person is to be promoted prospectively. If the examination was qualified in the year 2000, one cannot be promoted retrospectively.

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5. On careful consideration of the rival contentions of the parties, in so far as para 4 of the RA is concerned, though the respondents' counsel's contention, which has been made as to completion of 5 years of service and passing of examination by the applicant, we clarify that this has to be a post 2000 fact. This would not be construed, in any manner, as to consent of the respondents or in any manner concede with the fact that applicant prior to 2000 had acquired eligibility for promotion. In so far as second ground is concerned as the Tribunal has on merit directed in the light of the continuity of service, acquirement of eligibility by the applicant and passing of examination though in the year 2000 to relate back to 1986 when the applicant was prevented from qualifying the examination by the illegal action of the respondents, applicant has been made to re-agitate the matter as if an appeal, which is not permissible in the light of decision of the Hon'ble Supreme Court in **Union of India v. Tarit Ranjan Das** (2004 SCC (L&S) 160).

6. In the light of above, with the above clarification, this RA stands disposed of.



(N.D. Dayal)  
Member (A)



(Shanker Raju)  
Member (J)

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