

**Central Administrative Tribunal
Principal Bench, New Delhi.**



**OA-07/2003
MA-1855/2004**

New Delhi this the 14th day of December, 2006.

**Hon'ble Mr. Justice M.A. Khan, Vice-Chairman(J)
Hon'ble Mrs. Chitra Chopra, Member(A)**

Sh. Girdhari Lal,
S/o late Sh. Chhajju Ram,
R/o C-3A/36B, Janakpuri,
New Delhi-58 presently working as
Director, DGS&D, New Delhi.

.... Applicant

(through Sh. R. Doraiswamy, Advocate)

Versus

1. Union of India through
the Secretary to the Govt. of India,
Ministry of Commerce & Industry,
Department of Commerce (Supply Division)
Nirman Bhawan, New Delhi-11.
2. The Director General,
Directorate General of Supplies & Disposals,
Jeewan Tara Building,
No.5, Sansad Marg,
New Delhi-1.
3. Sh. A.K. Saxena,
S/o Sh. K.P. Saxena,
Dy. Director General (S) Mumbai,
Directorate General of Supplies & Disposals
Jeewan Tara Building,
5, Sansad Marg,
New Delhi-1.
4. Sh. S. Farukh Hamid,
S/o late Sh. A. Sahul Hamid,
Dy. Director General (Supplies),
Office of the Directorate of Supplies and Disposals,
Government of India,
Shastri Bhawan,
26, Haddows Road,
Chennai-600 006.
5. Sh. Chandan Singh,
S/o late Sh. Durga Prasad,
Director (Supplies)
Directorate of Supplies & Disposals,
6, Esplanade East,
Kolkata-700 069.
6. Sh. R.P. Singh,
Dy. Director General (S),
Directorate of Supplies & Disposals,
6, Esplanade East,
Kolkata-700 069.

.... Respondents

(Through Sh. D.S. Mahendru, counsel for respondents No. 1 and 2 and Sh. K.C. Mittal, counsel for respondent No.3)

ORDER

Hon'ble Mrs. Chitra Chopra, Member(A)

This O.A. has been filed by the applicant- Sh. Girdhari Lal impugning the following nine orders vide which his seniority has been pushed down in the grades of Deputy Director and Director:-

- (I) Deptt. Of Commerce (Supply Wing) Office Order No.8/2001 dated 27.08.2001.
- (II) DGS&D Office Memorandum No. 22013/II/2001-A-1 dated 4.9.2001.
- (III) Deptt. Of Commerce (Supply Wing) Office Order No. 13/2001 dated 08.11.2001.
- (IV) DGS&D Office Memorandum No. 18/18(11)96-A-1 dated 4.1.2001.
- (V) DGS&D Office Memorandum No. A-23018/1/97-A-1(iv) dated 7.12.2001.
- (VI) DGS&D Office Memorandum No. A-23021/3/99-A-(ii) dated 28.01.2002.
- (VII) DGS&D Memo No. A-23021/3/99-A-1(i) dated 28.01.2002 addressed to the applicant.
- (VIII) DGS&D Memo No. C-18018/11/2002-a.1 dated 09.08.2002.
- (IX) Deptt. Of Commerce (Supply Wing) Office Order No. 3/2002 dated 12.8.2002."

2. The factual scenario as stated by the applicant in his O.A. is as under:-

Applicant, who belongs to the Scheduled Caste joined the Directorate General of Supplies & Disposals (DGS&D) New Delhi as Assistant Director (Supplies) (Grade-I) on 10.02.1971 on qualifying in the U.P.S.C. Engg. Services Examination held in 1969 and on being appointed by the Government.

Applicant on appointment to the Indian Supply Service (ISS) was to be governed by the Indian Supply Service (Class-I) Rules, 1961(Annexure A-1) and his offer of appointment is dated 22.12.1970 (Annexure A-2).

Department of Personnel & Training (DOP&T) O.M. No. 8/12/71-Estt.(SCT) was issued on 21.09.1971 (Annexure A-3) and it required all Ministries/Government Departments to incorporate a "Saving Clause" in the Statutory Recruitment Rules relating to reservation for SC/ST in the services. DOP&T issued O.M. No. 27/2/71-Estt.(SCT) dated 27.11.1972 (Annexure A-4) which provided reservation for SCs/STs in posts filled by promotion on the basis of seniority subject to fitness based roster system as a part of Government Policy of reservation in promotion.

In terms of Government Policy contained in the DOP&T orders dated 27.11.1972 read with ISS Rules, 1961, applicant was promoted as Deputy Director w.e.f. 20.11.1975. Respondent No.4 Sh. S. Farukh Hamid represented to the department against the promotion of the applicant. He was replied by respondent No.2 (DGS&D) that his promotion as Deputy Director is against reserved quota for SC/ST in accordance with Government orders and there is no question of his supersession by Girdhari Lal (applicant).

In terms of seniority list of Deputy Directors dated 19.03.1976 (Annexure A-7), applicant's name figures at Serial no. 50 and in seniority list dated 16.09.1978 (Annexure A-8) he figures at Serial No. 45. The names of respondents No. 3 to 5 – S/Sh. A.K. Saxena, S. Farukh Hamid and Chandan Singh are not figuring in these lists.

In terms of seniority list of Deputy Directors as on 31.01.1989, applicant's name was placed at Serial No.9 and was senior to Sh. Om Prakash shown at Serial No. 10 and to respondents No. 3 to 5, who were shown at Serial Nos. 33,34 and 35 of the seniority list in the grade of Deputy Directors promoted on 30.09.1981 (Annexure A-9).

Applicant was initially promoted on adhoc basis to the post of Director (Supplies) w.e.f. 12.12.1983 and on regular basis w.e.f. 09.03.1984. In the seniority list of officers holding Grade-I post circulated on 07.07.1984,

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16.06.1987 and 01.01.1991 (Annexures A-10, A-11 and A-12), the name of the applicant shows the date of appointment to the post as on 09.03.1984 while the names of respondents No. 3 to 5 do not figure in these lists.

Respondents No. 3 to 5 (S/Shri A.K. Saxena, S. Farukh Hamid and Chandan Singh) filed OA-690/1997 impleading five private respondents SCs (Directors) including the present applicant Sh. Girdhari Lal. The said O.A. was disposed of by this Tribunal vide its order dated 19.04.2001 (Annexure A-14). In Para-2 of the said judgment, it is stated that the name of present applicant Sh. Girdhari Lal (Respondent No.3 in that OA) did not figure in the annexure and it was stated by the Senior Counsel in the Court that this is due to oversight which would be corrected shortly. The applicant's contention is that as he was promoted on 20.11.1975, he belonged to the panel of the year 1975. Hence the name of the applicant in O.M. dated 04.01.2001 having been left through oversight did not arise.

Respondent No.4 – Sh. S. Farukh Hamid had, in fact, represented to the official respondents on 27.01.1975 against the promotion of the applicant on 20.11.1975 and was replied on 07.01.1976 by respondent No.2 that Sh. Girdhari Lal was promoted against reserved quota. It is contended by the applicant that these documents were withheld and concealed not only by Sh. S. Farukh Hamid – respondent No.4 but also by the official respondents. Had these documents been brought on record, the OA would have been rejected. Thus the order of the Tribunal was made by relying on the wrong statement made by respondent No.2.

The order dated 19.04.2001 in OA-690/1997 relies on and is in agreement with the judgment dated 29.02.2000 (Annexure A-15) in earlier OA-1631/1996 in which the applicant herein had not been impleaded. Also respondent No.3 to 6 were not the applicants and as such no relief could accrue to them in CAT judgment dated 29.02.2000. Thus the directions given by the Tribunal in the order dated 29.02.2000 cannot apply to the applicant as he was not impleaded as a respondent in that OA and further the order dated

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19.04.2001 in OA-690/1997 does not contain anything which affects the promotion/seniority of the applicant.

In view of the above factual position, it was irregular, arbitrary and illegal on the part of official respondents to have issued the impugned orders altering to the applicant's disadvantage his dates of promotion on 20.11.1975 as Deputy Director and on 09.03.1984 as Direction. Hence, it has been submitted by the applicant that the decision dated 29.02.2000 given by this Tribunal cannot be sustained in law as the decision and direction to restore the feeder cadre seniority and thereafter carry out the promotion process of applicants in the general category officers on the basis of their seniority in the feeder grade by ignoring the higher placements of SC/ST in the seniority list of Deputy Directors runs counter to the decision of Hon'ble Supreme Court in various cases and Government directions.

Applicant has further submitted that the Tribunal in the order dated 19.04.2001 in OA-940/1997 directed that respondents shall issue necessary order/corrigendum with regard to the position in the seniority list of respondent No.3 (present applicant) within one month. This has not been done. Instead, the respondents issued Office Order No. 8/2001 dated 27.08.2001 which gives the deemed dates of promotion of six officers to the posts of Deputy Directors and also including that of the applicant as against the earlier actual dates of promotion. As the Tribunal did not quash the promotion granted already to the applicant to the post of Deputy Director, this action of the respondents was illegal and unjust. No order for deemed date of promotion to the post of Deputy Director was ever issued in respect of respondents No. 3 to 5.

For the reasons stated in the foregoing paras, the pushing down of the seniority of the applicant to Serial No.40 in the seniority pattern of officers belonging to Deputy Director (ISS) for promotion to the posts of Director (ISS) as shown in the Annexure to DGS&D O.M. dated 04.09.2001 is also irregular. Applicant has thus sought direction to the respondents to restore his regular

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promotion dates instead of the deemed dates and to restore his seniority in the grades of Deputy Director and Director to the original position and also to hold fresh DPCs to consider him for the next promotional posts of Deputy Director (General) and Additional Deputy Director.

3. In the counter-affidavit filed on behalf of respondents No.1 and 2, the learned counsel has made the following submissions:-

Applicant Sh. Girdhari Lal was appointed to the post of Assistant Director (Supplies) on 10.02.1971. Being an SC officer, he was promoted to the post of Deputy Director on 20.11.1975 superseding a number of officers senior to him, on application of the reservation policy as contained in DOP&T O.M. dated 27.11.1972 and was accordingly assigned seniority in the grade of Deputy Director.

Later on, he was promoted to the post of Director on 09.03.1984. the post of Director was a selection post and according to the guidelines then in force, reservation for SC/ST was not applicable to the said post. Only concession was available to officers belonging to SC/ST to the extent that those SC/ST officers senior enough to fall within the number of vacancies were to be empanelled for promotion provided they were not found unfit.

Shri A.K. Saxena and some other officers, who were senior to the applicant but superseded by him in promotion to the post of Deputy Director on application of reservation policy, filed OA-690/1997 before the Principal Bench of the Tribunal challenging the validity of promotion of applicant to the post of Deputy Director in 1975 in application of reservation policy. In support of their contention, the applicants cited the decision in T.R. Mohanty's case. The plea taken by the applicants in that OA was that the ISS Rules at the relevant time did not have any enabling provision for applying the reservation policy in promotion. They contended that the Government could not have at that time extended the benefit of reservation on the basis of O.M. as the Recruitment Rules did not have any enabling provision.



Even before Shri Saxena and others filed the said O.A., some other officers of ISS (Shri I.S. Garg & Ors.) filed another OA (No.1631/1996) before the Tribunal. All the facts and circumstances in the two cases were identical. The case filed by Shri I.S. Garg & Ors. was disposed of by the Tribunal vide its order dated 29.02.2000 and quashed and set aside the promotion granted to SC/ST officers to the post of Deputy Director and Director on the strength of their belonging to reserved category. It was also held that those promotions could not be sustained as there was no provision in the Recruitment Rules for the same. The respondents were directed to review the promotions after considering the claim of the applicants. The said judgment of the Tribunal was implemented by the Government after completing the process of internal consultation.

Judgment in Shri Saxena's case where the applicant Sh. Girdhari Lal was also made a respondent was delivered on 19.04.2001 i.e. after the judgment in Shri I.S. Garg's case. Citing the judgment of the Coordinate Bench in Shri I.S. Garg's case, the OA filed by Sh. Saxena and other was also allowed by the Tribunal. It was because of these judgments of the Tribunal that all promotions given to the post of Deputy Director from 1975 onwards had to be reviewed and in that process Shri Girdhari Lal, who was initially promoted to the post of Deputy Director on 20.11.1975, was shown to have been promoted on 11.12.1979. Consequently, his seniority position was accordingly changed and Shri Saxena and others became senior to Shri Girdhari Lal. Similarly, following the review of promotion to the grade of Deputy Director, all promotions given to the post of Director from 1981 onwards were reviewed in consultation with the UPSC. Consequent upon such review Shri Girdhari Lal, who was earlier promoted to the post of Director on 09.03.1984 was shown to have been promoted to the post of Director w.e.f. 24.07.1992. Therefore, his seniority in the list of Director has come down.



It has been further submitted that applicant has come down in the seniority list of Deputy Director and Director not because of operation of the provisions contained in DOP&T O.M. dated 31.01.1997 but because of the fact that promotions to the post of Deputy Director on application of reservation policy was quashed and set aside by the Tribunal because when Shri Girdhari Lal was promoted as Deputy Director in 1975, the relevant statutory Recruitment Rules did not have any enabling provision for the same. The ISS Rules were modified in 1985 when for the first time suitable saving clause was incorporated regarding application of reservation policy in the matter of promotion. According to the reservation policy, reservation for officers belonging to SC/ST are applicable only in the cases of promotion, which are made following seniority subject to the rejection of unfit. Where promotions within Group-A Services are made following the method of selection, there is no reservation for SC/ST.

Being aggrieved, Shri Girdhari Lal filed OA-1551/2002 on 04.06.2002 before the Tribunal seeking direction to quash government orders pertaining to change in date of his seniority in the grades of Deputy Director and Director and to restore his seniority and thereafter hold review DPC. The Tribunal disposed of the said OA on 06.06.2002 directing the respondents to consider the representation dated 22.05.2002 submitted by Shri Girdhari Lal and pass a reasoned and speaking order. In compliance of this direction of the Tribunal, the respondents issued Memorandum No. C-18018/11/2002-A.1 dated 09.08.2002. Not satisfied with this order, Shri Girdhari Lal filed an MA-2028/2002 in OA-1551/2002, which was dismissed by the Tribunal vide order dated 01.11.2002.

By way of response in the parawise comments, it has been further submitted that the various orders and seniority lists impugned by the applicant were issued in compliance of the directions contained in the Tribunal's order OA-1631/1996 and OA-690/1997. The change in seniority positions necessitated review of earlier DPCs. It was reiterated that the seniority



position of the applicant (Sh. Girdhari Lal) was reviewed in implementation of Tribunal's judgment dated 19.04.2001 in OA-690/1997, which specifically ordered that the seniority position of Shri Girdhari Lal may be reviewed.

In so far as applicant's contention made in Para 4.17(vi), the respondents have averred that the DOP&T O.M. No.20011/1/2000-Estt.(D) dated 21.01.2002 relating to seniority of SC/ST employees is applicable only to those officers whose seniority was refixed as per instructions contained in DOP&T O.M. dated 30.01.1997. As the seniority of applicant (Shri Girdhari Lal) was changed in accordance with direction of Tribunal and not in terms of DOP&T O.M. dated 30.01.1997, his seniority cannot be restored as per instructions contained in the OM dated 21.01.2002. They have further averred that reservation for SC/ST candidates is not applicable in promotion from the post of Deputy Director to Director and Director to Deputy Director General and as such the claim of applicant is not tenable.

Learned counsel for the respondents highlighted the O.M. dated 09.08.2002 vide which the respondents replied to the applicant's representation. This O.M. explains in complete detail the reasons and background for revision of the seniority of the applicant. It has been finally submitted that the applicant has earlier in 2002 agitated the same issues and impugned the same seniority lists, which he is now again impugning. As the matter stands already decided by the Tribunal, the applicant now has no case to agitate the same issue.

4. Counter-affidavit has also been filed on behalf of respondent No.3 (Shri A.K. Saxena). It has been submitted at the outset that the present O.A. is not maintainable, being barred by the principle of resjudicata, since the applicant herein was one of the respondents in OA-690/1997 (Shri A.K. Saxena Vs. U.O.I.) and therefore cannot file this O.A. seeking relief against the order of that OA. Again, the applicant is trying to re-agitate the entire case as if it was an appeal/writ petition. If at all, he was aggrieved by the order passed in OA-690/1997, he should have taken appropriate steps to

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avail the remedy available to him under the law and should have challenged the order passed in OA-690/1997. It has been further submitted that until and unless there is a specific provision in the Recruitment Rules, a mere saving clause cannot be extrapolated to the extent that the same would provide reservation in promotions in the absence of substantive Recruitment Rules. The DOP&T O.M. dated 27.11.1972 was only applicable to services where direct recruitment did not exceed 50%, whereas the direct recruitment to ISS at that time was 75%, hence the promotion of the applicant as Deputy Director was contrary to Recruitment Rules as has been held by the Tribunal in OA-690/1997. By way of factual submission, respondent No.3 has also submitted that in fact the promotions given to the general category candidates are in accordance with rules and law on the subject and the applicant has not been affected adversely, since he is much junior to the other officers mentioned. In fact, officers like S/Shri A.K. Srivastava, K.K. Ghosh and S. Swarup joined the ISS through Combined Engineering Service Examination held in 1966 as against Shri Girdhari Lal, who joined ISS through the examination held in 1969 i.e. three years later. It has been strongly contended that if an illegality is committed by the Government, the same cannot be continued and the others cannot be put to disadvantage. In the present case, the promotions given to reserved category persons was illegal and arbitrary and that is why the said promotions had been quashed by the Tribunal and revised seniority list issued.

5. We have heard the submissions of learned counsel for both the parties and have carefully perused the pleadings and the judgements cited by the learned counsel for the applicant.

6. At the outset, it would be appropriate to advert to the order of the Tribunal in OA-1631/1996 dated 29.02.2000. The operative portion is reproduced as under:-

"In our judgement, if reservations are to be provided at promotional level, the same have to be provided under the rules. The same cannot be done by issuing executive

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directions especially so when the source of power has not been spelt out in order to fathom whether the same will be enforceable in law. In the circumstances, we are clearly of the view that the promotions granted to respondents No. 2 to 6 to the posts of Deputy Director and Director on the strength of their belonging to the reserved category, namely, Scheduled Caste and Scheduled Tribe cannot be sustained. The same are accordingly quashed and set aside. Respondent No.1 is accordingly directed to carry out the promotion process of applicants and respondents 2 to 6 after considering the claim of applicants on the basis of their placement in the seniority list of Assistant Directors by ignoring the higher placement of respondents 2 to 6 in the seniority list of Deputy Directors based on their belonging to the reserved category."

7. As the facts and circumstances in OA-690/1997, where the applicant Shri Girdhari Lal was respondent No.3, were similar, while agreeing with the order passed by the Tribunal in OA-1631/1996, similar directions were given and the same are reproduced as under:-

"5. In the facts and circumstances of the case we are in respectful agreement with the reasoning and conclusions arrived at by the Co-ordinate Bench of the case (Supra). Noting the submissions made by the learned counsel for the parties, including the prayer of the applicants' counsel as mentioned above, the OA is disposed of with the following directions to the respondents:-

Further to the OM issued by respondents 1-2 dated 4.1.2001, they shall issue necessary order/corrigendum with regard to the position in the seniority list of respondent 3."

8. As the applicant was aggrieved by these orders of the Tribunal, he filed OA-1551/2002, which was disposed of vide order dated 06.06.2002. It would be useful and appropriate to reproduce the concluding para of the Memo dated 09.08.2002, which was issued by the respondents in compliance of the Tribunal order in the said OA:-

"It would, thus, be seen from the foregoing that Shri Girdhari Lal has come down in the seniority list of Dy. Director and Director not because of operation of the provisions contained in DOP&T O.M. dated 31/1/1997. He has come down in the seniority list because of the fact that his promotion to the post of Dy. Director on application of reservation policy was quashed and set aside by the Hon'ble Tribunal because when he was promoted to the post of Dy. Director in 1975, the relevant Statutory Recruitment Rules did not have any enabling provisions for the same. The Indian Supply Service Rules were modified in 1985 when, for the first time, suitable saving clause was incorporated regarding application of reservation policy in

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the matter of promotion. According to the reservation policy, reservation for officers belonging to SC/ST are applicable only in the cases of promotion which are made following seniority subject to rejection of unfit. In other words, where promotion within Group 'A' Services are made following the method of selection, there is no reservation for officers belonging to SC/ST. The DoP&T's O.M. dated 21/1/2002, cited by Shri Girdhari Lal is, therefore, not applicable in his case. According to this O.M. an SC/ST officer when promoted on application of reservation policy would also get his seniority from the date of such promotion. Shri Girdhari Lal's initial promotion in 1975 on application of reservation policy having been quashed and set aside by the Hon'ble Tribunal in a case filed by Shri A.K. Saxena and others, where Shri Lal was also made a party, he has no claim for restoration of his initial seniority. It is further stated that the Government's guidelines contained in DoP&T's O.M. dated 21/1/2002 has granted consequential seniority to those promoted by virtue of rule of reservation, and have not introduced reservation in the cases of promotion which are made following the method of selection. As such, there cannot be any reservation while considering promotion to the posts of Dy. Director General in Indian Supply Service, which is given following the method of selection."

9. During the course of arguments, learned counsel for the applicant Shri R. Doraiswamy very strongly urged and pleaded that the applicant has been treated unfairly and that his seniority position has been changed arbitrarily. His main contention was that the applicant, being a SC officer was given promotion entirely in accordance with the reservation policy of the Government and there are no grounds for reviewing his seniority as it amounts to violation of the orders and instructions pertaining to grant of promotion to reserved candidates.

10. Learned counsel for the applicant has cited the following cases in support of his contentions:-

- (i) **Bishunath Tewari and others Vs. Mst. Mirchi** (AIR 1955 Patna 66 (Vo.42 C.N.6).
- (ii) **Hira Lal Patni Vs. Sri kali Nath** (AIR 1962 SC 199 (v.49 C 37)
- (iii) **Commandant, TSP and Others Vs. Easwaramoorthy** (1999 SCC (L&S) 643)
- (iv) **Secretary to Govt. of Tamil Nadu, Home Deptt. and Others Vs. C. Krishna** (1999 SCC (L&S) 644)
- (v) **Shri Vijay Kumar Nanda Vs. U.O.I. & Ors.** (1992(2)CAT 17)
- (vi) **Dr. A.K. Mitra DG,CSIR & Anr. Vs. d. Appa & Anr.** (1998(2) SLR 210)
- (vii) **Puri Construction Private Ltd. Vs. State of Madhya Pradesh** (1997(2) 392)

(viii) S.P. Chengalvaraya Naidu (dead) by L.Rs., Vs. Jaganath (dead) by L.Rs. and others (AIR 1994 SCC 853)

(ix) Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd. (1996(5)SCC 550)

(x) S.R. Ramaraj Vs. Special Court, Bombay (2003(7)SCC 175)


11. Learned counsel for the respondents vehemently opposed the contentions of the learned counsel put forth by learned counsel for the applicant. They averred that the promotion of the applicant to the post of Deputy Director was in fact in violation of the Recruitment Rules as the Rules at that time did not provide for reservation. It was precisely for this reason that his promotion was struck down by the Tribunal. Further, the O.M. dated 09.08.2002 of DOP&T cannot apply to the applicant's case as has been submitted earlier in the counter-affidavit.

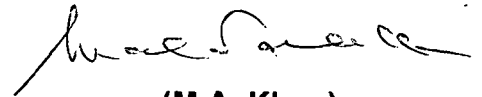
12. After hearing the extensive arguments by the counsel for both sides and carefully perusing the material placed on record and the judgements cited by the learned counsel for the applicant, we find that the judgements cited do not support the applicant's case rather they relate to fraud, jurisdiction, limitation, disciplinary enquiry and seniority/promotion of direct recruits and promotees. In view of the facts and circumstances of the case, we are inclined to accept the contentions of the learned counsel for the respondents. The facts of the case being undisputed and the applicant having already agitated the same issues and impugned the same office orders, is virtually an appeal against the earlier orders of the Tribunal in the two OAs No. being 1631/1996 and 690/1997. Even on merits, the applicant has no case as he was given promotion in violation of the Recruitment Rules as clearly held by the Tribunal in the earlier OAs. It stands to reason that such promotion was bound to be challenged by those who were affected adversely. As far as we can see, the earlier judgements of the Tribunal in both the OAs, having been implemented by the respondents at the relevant time, have become final and cannot now be challenged by the applicant. We also find no infirmity or illegality in the Memorandum dated 09.08.2002 disposing of the

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representation of the applicant in compliance of directions of the Tribunal in OA-1551/2002, which was filed by the applicant himself. Having regard to the totality of the facts and circumstances of the case, we find no merit in the claim of the applicant. The O.A. is accordingly dismissed. No costs.


(Chitra Chopra)
Member(A)


(M.A. Khan)
Vice-Chairman(J)

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