

(b)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2937/2001

WITH

O.A. NO. 1286/2002

New Delhi this the 19th day of September, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI S.K.NAIK MEMBER (A)

O.A. NO. 2937/2001

1. Delhi Administration Employees Federation (Regd)
Through its Vice President
Shri Chander Prakash,
37, Rashid Market,
Delhi-51
2. Inder Singh Yadav
S/o Shri Singh Ram
M-27, Vasant Vihar,
Estate Office Flats,
New Delhi

..... Applicants

(By Shri M.M.Sudan, Advocate)

-versus-

1. Govt. of NCT of Delhi
Through Lt. Governor, Delhi
Raj Niwas, Delhi
2. Secretary (Services)
Govt. of NCT of Delhi
Delhi Secretariat,
New Delhi-2
3. Karamvir, T.A.
4. Shri Ashok Kumar, HA
5. Shri R.C.Rana, HA
6. Shri Harvir Singh, HA
7. Shri Raj Pal Singh, HA
8. Shri Dalip Singh, SI
9. Shri Bajendra Singh, PPA
10. Shri Satya Kumar, HA
11. Shri Yogendra Singh, HA
12. Shri S.C. Sharma, HA
13. Shri Rajendra Singh, HA
14. Shri Mishri Lal Yadav, HA
15. Shri Somvir Arya, BO(A)
16. Shri Rav Avtar Gupta, HA
17. Shri Devender Kumar, PPA
18. Shri Suresh Kumar, HA
19. Shri Amar Singh Kardam, HA(SC)

20. Shri Murali Dhar Sharma, EO(A).
21. Shri Nepal Singh, EO(A)(SC)

(Respondents 3 to 21 may be served through Development Commissioner, Development Department, Govt. of NCT of Delhi) ... Respondents

(By Shri Ajesh Luthra, Advocate for official respondents and Shri R. Venkatramni, Sr. counsel with Shri K.B.S. Rajan, counsel for private respondents)

O.A. NO. 1286/2002

1. Jai Parkash,
E.O. (A), C/o Asstt. Soil Chemist,
Barwala, DelhiApplicant

(By Shri A.K. Bakshi, Advocate)

Versus

1. Govt. of N.C.T. of Delhi
Through Chief Secretary,
5th Floor, Players Building
Delhi Secretariat, New Delhi-2
2. Secretary (Services)
Service Department
Govt. of N.C.T. of Delhi
7th Floor, B Wing, Players Building,
Delhi Secretariat, New Delhi-2
3. The Development Commissioner
Govt. of N.C.T. of Delhi
5, Sham Nath Marg,
Delhi-54
4. Shri Karamvir, T.A.
(Now working as STA in the scale
of 1640-2900 pre-revised)
5. Shri Ashok Kumar, HA
(Now working as in the scale
of 1640-2900 pre-revised)
6. Shri R.C. Rana, HA
7. Shri Harbir Singh, HA
8. Shri Raj Pal Singh, HA
9. Shri Dalip Singh, SI
10. Shri Bijendra Singh, PPA
11. Shri Satya Kumar, HA
12. Shri Yogendra Singh, HA
13. Shri S.C. Sharma, HA
14. Shri Rajendra Singh, HA
15. Shri Mishri Lal Yadav, HA
16. Shri Somvir Arya, BO(A)

17. Shri Rav Avtar Gupta, HA
18. Shri Suresh Kumar, HA
19. Shri Amar Singh Kardam, HA(SC)
(Now working as SCI in the scale
of 1640-2900 pre-revised)
20. Shri Nepal Singh, EO(A)(SC)
(Now working as MFO in the scale
of 1640-2900 pre-revised)

(Respondents No. 4 to 20
All through respondent No. 3,
The Development Commissioner,
Govt. of NCT of Delhi ... Respondents

(By Shri Ajesh Luthra, Advocate for official
respondents and
Shri R. Venkatramni, Sr. counsel with Shri K. B. S.
Rajan, counsel for private
respondents)

O R D E R

Justice V.S. Aggarwal:

By this common order both OA No. 2937/2001 and OA No. 1286/2002 involving a common controversy can conveniently be disposed of together. In exercise of the powers under Article 309 of the Constitution, the Delhi Administration Subordinate Service Rules, 1967 (for short, "the Rules") were notified with effect from 10.2.1967. By the said Rules, two services known as executive and ministerial were constituted. As per Rule 2, the service was to have four grades namely, Grade-I, Grade-II, Grade-III and Grade-IV. Rule 6 provides for the method of recruitment to the various grades. Sub-rule (1) to Rule 6 provides:-

"(1) Recruitment to Grade I : (a) 25% of the vacancies in the grade shall be filled by direct recruitment in consultation with the Commission. The educational qualifications,

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age limit etc. shall be such as may be prescribed by the Ministry of Home Affairs from time to time for Category III Services, viz., Central Services, Class I and Class II in the rules for the Indian Administrative Service etc. Examination.

(b) 75% of the vacancies in the grade shall be filled by promotion of officers of Grade II having at least five years service in the grade on the basis of merit-cum-seniority on the recommendations of the Departmental Promotion Committee.

(c) The vacancies shall be filled in the following manner:

1st Vacancy)	
2nd Vacancy)	By promotion
3rd Vacancy)	
4th Vacancy	By direct recruitment"

In the year 1968-69, amendment to said Rules was effected. Clause (bb) was added whereby Stenographers in the grade of Rs.210-530/- were also included as a feeder grade for the purpose of promotion to Grade-I of Ministerial service. In the year 1972, further amendment was made as a result of which clause (bb) was substituted:-

"(a) in sub-rule (1) for clause (bb), the following clause shall be substituted, namely:-

"(bb) Notwithstanding anything contained in sub-clause (b), (i) the Stenographers in the scale of Rs.210-530 or in the scale of Rs.210-425 who have been appointed in a regular manner in accordance with the recruitment rules, and have five years regular service in either or both the grades, shall also be eligible to be considered for promotion to Grade I of the Ministerial Service; and (ii) Technical Assistant, Horticulture Assistant, Plant Protection-cum-Locust Asstt., Horticulture Research Assistant, Extension Officer (Agriculture), Seed Development Assistant and Supervisor/Demonstrator in the scale of Rs.210-425

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in the Development Commissioner's Office who have been appointed in a regular manner in accordance with the recruitment rules, and have five years regular service in the grade, shall also be eligible to be considered for promotion to Grade-I of the Executive Service."

Provided that the number of posts available for these categories will be in proportion to their respective strength as compared to the number of post in Grade-II(M) to Grade-II (Executive) respectively."

Vide the notification of 4.12.1980, two services known as Ministerial and Executive Services of Delhi Administration Subordinate Service were merged into a single service and hence known as the Subordinate Service of Delhi Administration. By virtue of the amendment effected to the recruitment rules to Grade I now it provided that all vacancies in Grade I should be filled by promotion of officers of Grade II having 5 years regular service in the grade on basis of merit-cum-seniority on the recommendations of the Departmental Promotion Committee.

2. In the year 1992, a policy decision was taken by the Delhi Administration that no post of specialized/technical nature in any department shall be included in the feeder channel for promotion to the organised cadre i.e. Delhi Administration Subordinate Service (DASS)/Delhi Andaman Nicobar Islands Civil Service in future. All the Secretaries and Heads of the Departments were directed to review the recruitment rules of

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all such posts and explore the possibility of deleting the same from the feeder channel of the organized cadre. As a result of the said policy decision, the Rules were again modified and amended vide the notification of 2.11.1992. The same reads:-

"Amendment of rules 6 + In the Delhi Administration Subordinate Service Rules, 1967, in rule 6 under item No. 1 (Recruitment to Grade-I) for existing Clause (b), the followings shall be substituted as under:-

"Notwithstanding anything contained in sub-rules (a)/ Stenographers in the scale of pay of Rs.1400-2300 who have been appointed in a regular manner in accordance with the recruitment rules & have 5 years regular service in the grade shall also be eligible to be considered for promotion to Grade-I of the services on the basis of method of selection prescribed in the Notification F.3 (75)/79-S-II dated the 4th December, 1980."

As a result of it, technical posts of Development Department were deleted from the feeder channel of Grade-I. As a result of this amendment now, only two categories in the feeder channel for promotion of Grade I DASS are Grade II (DASS) and Stenographers.

3. As a consequence of exclusion of technical cadre from the feeder channel for the Grade-I (DASS), the technical officials in the Development Department were granted promotion in their own department to the higher technical post available in the scale of Rs.5500-9000/-. Certain representations were made for inclusion of these

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technical posts once again as a feeder channel for the post of Grade I. As per the applicants in OA No.2937/2001, the representations made by the private respondents had been rejected. However, on 2.6.2000, an order was issued that 19 employees (private respondent) who belonged to the ex-cadre posts were included in the feeder line for promotion to Grade I DASS cadre and were delinked and reverted back to their old positions. They were allowed to be included in the feeder channel of the organised cadre of Grade I DASS. The said order reads:-

"The Hon'ble Lt. Governor is pleased to order that under mentioned 19 employees of Development Department who belong to ex-cadre posts and were included in the feeder line for promotion to Gr.I DASS Cadre Vide notifications dated 22.5.72 and were delinked from the same Vide notification No.2(34)/88-S.II dated 2.11.92, are reverted back to their old position with immediate effect as it existed prior to 2.11.92.

The above is subject to the condition that this order will not be treated as precedent and no other post of specialized and technical nature in any department shall be allowed to be included in the feeder channel of the organized cadre of Gr.I DASS. No further recruitment will be made against the post vacated by these employees.

S.NO. NAME OF THE OFFICIAL & DESIGNATION

1. Sh. Karamvir, T.A.
2. Sh. Ashok Kumar, HA
3. Sh. R.C. Rana, HA
4. Sh. Harbir Singh, HA
5. Shri Rajpal Singh, HA
6. Shri Dilip Singh, SI
7. Shri Bajendra Singh, PPA
8. Shri Satya Kumar, HA
9. Shri Yogendra Singh, HA

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10. Shri S.C. Sharma, HA
11. Shri Rajendra Singh, HA
12. Shri Mishri Lal Yadav, HA
13. Shri Somvir Arya, BO(A)
14. Shri Rav Avtar Gupta, HA
15. Shri Devender Kumar, PPA
16. Shri Suresh Kumar, HA
17. Shri Amar Singh Kardam, HA(SC)
18. Shri Murali Dhar Sharma, EO(A)
19. Shri Nepal Singh, EO(A)(SC)

The above order will cease to be effective after the promotion of above 19 officials as Gr.I(DASS).

Sd/-
(U.R. KAPOOR)
ADDL. SECRETARY (SERVICES)"

Subsequently, on 21.1.2002 in exercise of powers conferred under Article 309 of the Constitution, the abovesaid order dated 2.6.2000 came into being in the form of a notification which is also being challenged and the same reads:-

"No.F.55/52/2001/S.I - In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, read with the Govt. of India, Ministry of Home Affairs Notification No.F.27/59-Him(i) dated the 13th July, 1959 and all other powers enabling him in this behalf, the Lt. Governor of the National Capital Territory of Delhi is pleased to make the following rules further to amend the Delhi Administration Subordinate Services Rules, 1967 framed vide Notification No.F.3(16)/66-Services dated the 10th February, 1967 as amended from time to time, namely:-

Short title : 1. These rules may be called the Delhi Administration Subordinate Service (Amendment) Rules, 2002.

Amendment of rule 6 : In the Delhi Administration Subordinate Services Rules, 1967, in rule 6, in sub-rule (1), to clause (bb), the following proviso shall be inserted namely:-

"Provided that the 19 officials working on certain

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ex-cadre posts of Development Department who were included in the feeder line for promotion to the post of Grade-I (DASS) vide this Government's Notification No. F.10(25)/67-Services-II dated the 19/22 May, 1972 and excluded vide Notification No. F.2(34)/88-S-II dated the 2nd November, 1992, but were otherwise eligible for promotion to Grade-I (DASS) as on 2nd November 1992 and have been brought back in the feeder channel for promotion vide this Govt. order No. F.2(34)/88-S-II/Vol.II/1735-58 dated the 2nd June 2000 shall be promoted to the posts of Grade-I DASS from the date they become eligible for such promotion."

4. The applicants assail the order of 2.6.2000 and the notification of 21.1.2002 asserting it to be mala fide, arbitrary and illegal.

5. In OA No.1286/2002 filed by one Jai Prakash also, the relief claimed is identical, but Jai Prakash asserts that he was working as Extension Officer (Agriculture) in the Development Department. The private respondents were also working against the posts of Horticulture Assistants, Demonstrators, Extension Officers (Agriculture), Technical Assistants etc. in the same cadre and in the same scale. The private respondents 4, 5, 19 and 20 were working in the

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department on promotional posts in a higher scale.

The grievance of the said applicant is that the notification that had been issued on 21.1.2002 is illegal. It has ignored the fact that certain posts could not be considered for promotion to DASS Grade I. The said applicant is being discriminated. The private respondents are favoured for certain extraneous considerations by giving promotion to certain few chosen officers.

6. We have heard the parties' learned counsel and seen the relevant record.

7. While giving resume of the facts, we have already indicated that earlier an order had been issued in the year 2000 whereby it had been directed that certain employees of the Development Department who are private respondents and who belonged to the ex cadre posts were included in the feeder line for promotion to Grade I DASS and were delinked by the same notification of 2.11.1992. They were reverted back to their old positions. Without treating this order as a precedent, it was directed that they should be included in the feeder channel of the organised cadre and that no further recruitment has to be made against the posts occupied by these employees. We have already noted above that these private respondents were holding

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posts which were specifically excluded from the feeder Grade I DASS vide the notification of 2.11.1992. We know from a decision in the case of **Dr. Krushan Chandra Sahu & Ors. v. State of Orissa and Ors.**, JT 1995 (7) SC 137 that rule making function under Article 309 of the Constitution is not executive. The Supreme Court relied upon a decision in the case of **B.S.Yadav & Ors. v. State of Haryana and Ors.**, AIR 1981 SC 561 with aproval. Once it is so and earlier names of certain posts were removed from the feeder grade to Grade I DASS by an administrative order without issuing a notification in terms of Article 309 of the Constitution, their names could not be included in the feeder channel for organised grade of DASS. We have already noted above that there are statutory rules that had been framed. If in any other channel any addition or deletion has to be done, it can only be done in exercise of powers under Article 309 of the Constitution. The order dated 2.6.2000 must be held to be not valid.

8. Great stress was laid with respect to the notification of 21.1.2002 that has thereafter been issued in exercise of the powers conferred under proviso to Article 309. On behalf of the applicants, it was stated that the same is mala fide. For the purpose of the present application,

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We find that this particular contention that it is mala fide necessarily must be rejected. In the case of *K. Nagaraj and Others v. State of Andhra Pradesh and Another*, (1985) 1 SCC 523, an ordinance was issued pertaining to the age of superannuation. The Supreme Court held that an ordinance cannot be invalidated on ground of non-application of mind or mala fides. It held that the power to issue an ordinance is not an executive power but is the power of the executive to legislate. The power is plenary within its field like the power of the State Legislature to pass laws and there are no limitations upon that power except those to which the legislative power of the State Legislature is subject. The ordinance thus can be invalidated, if it contravenes the Constitutional provisions.

9. Similar are findings recorded in the case of *T. Venkata Reddy and Others v. State of Andhra Pradesh*, (1985) 3 SCC 198. Therein also, the Supreme Court in identical terms recorded that it is not open to challenge the ordinance on the ground of non-application of mind or mala fides.

10. We have already noted above that the power to frame rules under Article 309 of the Constitution is also a legislative power with slight difference. It would not be proper,

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therefore, to assail the same on the ground of mala fides. But if the notification so issued is unconstitutional, in that event, it would be permissible for this Tribunal to quash the same.

II. Before proceeding further in the validity of the said notification of 21.1.2002, it would be appropriate to take note of the decision of the Supreme Court as to whether when the matter is singled out, it could be stated that this is pick and choose or not. The learned counsel for the respondents has drawn our attention towards a decision in the case of L.N.Mishra Institute of Economic Development and Social Change, Patna v. State of Bihar and Ors., (1988) 2 SCC 433. In that case, there was legislation for nationalisation of educational institutions by phases. One institution was picked up in the first phase. The Supreme Court held that it cannot be held to be based on pick and choose method when that institution was already being fully run by the Government. It is abundantly clear from the aforesaid that the facts of the case were confined to the particular case therein. But if the power had been exercised arbitrarily, in that event, the ratio deci dendi of the decision in the case of L.N.Mishra Institute of Economic Development and Social Change (supra) will not apply.

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12. The position in law is not disputed and more often than once, it has been observed that equality and arbitrariness are sworn enemies. Whenever there is arbitrariness and equality is denied or it affects the material rules enshrined under Articles 14 and 16 of the Constitution, the person concerned can always seek his constitutional redressal. The law permits classification amongst unequal. If it is arbitrarily exercised and otherwise also the power did not exist, necessarily such an order would be hit by the principles which we have already referred to above. A Bench of 7 Judges of the Supreme Court in the case known as **The Special Courts Bill, 1978**, AIR 1979 SC 478 had provided certain guide-lines and certain officers were given certain propositions pertaining to Article 14 of the Constitution. We take up three such answers which were given and are relevant for the purpose:-

"1. The first part of Article 14, which was adopted from the Irish Constitution is a declaration of equality of the civil rights of all persons within the territories of India."

"4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances."

"7. That the classification must not be arbitrary but must be rational, that is to say,

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it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of legislation."

It, therefore, must be held that when there is classification effected, it has to be rational and not arbitrary though all persons should be treated alike. Same laws cannot be made applicable to all persons if they are unequals.

13. Reverting back to the notification of 21.1.2002 which we have already reproduced above, we in the first instance take the later part of the said notification which recites that the private respondents were otherwise eligible for promotion to Grade I DASS on 2.11.1992. They had been brought back in feeder channel for promotion vide the order of 2.6.2000 and thereupon the notification states that they should be promoted to Grade I DASS from the date they become eligible for such promotion. It refers to automatic induction on promotion to the Grade I DASS. Not only it given them retrospective promotion but no Departmental Promotion Committee Meetings is being held, nor it is being considered if they were in fact eligible or not. In the absence of pre-requisite of the rules being satisfied, it must

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follow that the said notification suffers from the vice of arbitrariness. The rights of the other persons necessarily would be affected.

14. Even the first part of the notification provides that the private respondents who are described as 19 officials working in certain ex-cadre posts in the Development Department and were excluded vide the notification of 2.11.1992 should be eligible to Grade I DASS. We have already referred to above that the Government order of 2.6.2000 was not a notification issued and should not have much legal force. We do not dispute that the Administrator will have power to exclude or include certain cadre posts from the zone of consideration. The posts on which the private respondents were working were excluded to be considered for promotion in Grade I DASS. If the private respondents were excluded, it was in pursuance of the amendment to Rule 6 of the Delhi Administration Subordinate Service Rules, 1967. The notification was issued on 2.6.1992. Certain posts, cadre etc. were excluded. Induction of only

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private respondents, therefore, would not stand scrutiny. Either a cadre or post should have been included in terms of Rule 6 or the same should not be in the zone of consideration. Picking of 19 persons who are private respondents does not appear to be logical conclusion. The decision in the case of L.N.Mishra Institute of Economic Development and Social Change (supra) will have little impact in the present case. The reason given that they were otherwise eligible for promotion to Grade I DASS cannot be justified because eligibility is one thing not co-related with a particular cadre, post or service to be considered for inclusion in the feeder cadre for Grade I DASS. Therefore, we have no hesitation in holding that the impugned order deserves to be quashed.

15. For these reasons, we allow the present applications and quash the impugned order dated 2.6.2000 and 21.2.2002. No costs.

(S.K. Naik)
Member (A)

(V.S. Aggarwal)
Chairman.

/sns/