

**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

29

O. A. No. 353 & 2518 of 1996 decided on 21.12.1998.

Name of Applicant : Mrs. Manju Karmeshu

By Advocate : None

Versus

Name of respondent/s Union of India & others

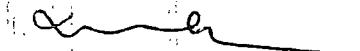
By Advocate : Shri H.B.Mishra & Shri S.K.Gupta

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

Hon'ble Dr. A. Vedavalli, Member(J)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal. - No


(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 353 & 2518 of 1996

New Delhi, this the 21st day of December, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr. A. Vedavalli, Member(J)

(30)

(1) O.A. 353 of 1996

Mrs. Manju Karmeshu, Assistant Director
(V.G./EMI) Directorate of Employment, 2
Battery Lane, Delhi.

-APPLICANT

(By Advocate -None)

Versus

1. Government of N.C.T. of Delhi through its Chief Secretary, 5 Sham Nath Marg, Delhi.
2. The Director, Directorate of Employment, 2 Battery Lane, Delhi.
3. The Joint Director, Directorate of Employment, 15 Rajpur Road, Delhi.
4. U.P.S.C. through its Secretary Dholpur House, Shahjahan Road, New Delhi.

5. Shri K.M. Agrahari, S/o late Shri Badri Prasad, R/o KP-295, Maurya Enclave, Pitampura, Delhi-110034

-RESPONDENTS

(Official respondents by proxy counsel
Shri S. K. Gupta & respondent no.5 by
Advocate Shri H.B. Mishra)

(2) O.A. 2518 of 1996

K.M. Agrahari, Sub-Regional Employment Officer, Compulsory Notification of Vacancy (CNV), Pusa, New Delhi, R/o KP Battery Lane, Delhi. 295, Pitampura, New Delhi.

-APPLICANT

(By Advocate - Shri H.B. Mishra)

Versus

1. Government of National Capital Territory of Delhi, through its Secretary, 5 Sham Nath Marg, Delhi.
2. The Director, Directorate of Employment, Government of National Capital Territory of Delhi, 2 Battery Lane, Delhi.
3. Union Public Service Commission, through its Secretary, Dholpur House, Shahjahan Road, New Delhi.

4. Smt. Manju Karmeshu, Assistant Director (VG/EMI), Pusa, New Delhi. -RESPONDENTS

(Official respondents by proxy counsel Shri S.K.Gupta)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

Both these Original Applications (in short 'OAs') were heard together because the reliefs are based on a common background of facts and both the OAs are interlinked and intertwined with each other. The disposal of one OA has immediate and complete impact on the reliefs claimed in the other OA. In this view of the matter, both the OAs are disposed of together by a common consolidated order.

2. In OA 2518/96 the relief claimed by the applicant is to quash and set aside the order to review the Departmental Promotion Committee (in short 'DPC') proceedings issued by respondent no.1. He also seeks a declaration for further promotion to the post of Assistant Director Employment with effect from 3.9.1982 and to the post of Joint Director Employment with effect from 1.2.1989 with consequential benefits. This direction is sought if the applicant's promotion to the post of Sub Regional Employment Officer (in short 'SREO') with effect from 3.9.1974 granted on 18.3.1994 is eventually sustained.

3. In OA 353/96 the reliefs prayed for are as follows -

(31)

(a)(i) Set aside the order No. Emp. 5 (28)/Admn./ 88/ 11429 dated 2.12.1994 thereby rejecting the applicant's representation No. 373 dated 31.3.1994;

(ii) Set aside the Seniority list of S.R.E.Os. (ex-cadre), Psychologist, Planning Officer (ex-cadre), Welfare Officer (ex-cadre) issued vide Directorate's letter No. Emp. 5 (28)/ 88/Admn. /Pt.file/ 11421-27 dated 2.12.1994; and

(iii) Direct the respondents not to give further promotion to the respondent No.5 pursuant to seniority list dated 2.12.1994;

(b) Directorate's letter No. 5 (33) /87 -Admn/ 2508-35 dated 18.3.1994 thereby promoting respondent no.5 w.e.f. 3.9.1974, is illegal and be declared null and void.

(iv) Direct the respondents not to post any other from DANICS Cadre against the post of Joint Director (ex-cadre).

(v) Direct the respondents to consider the applicant for the purpose of promotion to the post of Joint Director as she fulfills all conditions stipulated in the recruitment rules and is eligible for promotion since 30.6.1991.

(vi) Pass any other order/orders which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the present case.

4. Shri K. M. Agrahari is impleaded as respondent no.6 in OA 353/96 and Smt. Manju Karmeshu is impleaded as respondent no.4 in OA 2518/96. The impugned orders counter the interests of one or the other and the pleadings in both reveal that the interests/claims of Shri K. M. Agrahari seem to be opposed to the reliefs of Smt. Manju Karmeshu.

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5. The undisputed facts are culled out from Annexure-A-7, which is a copy of the note approved by the entire hierarchy of the officers including the Chief Secretary as a result of which the DPC took place, as follows -

(33) "As per the directions of Hon'ble Central Administrative Tribunal the final seniority list of Ex-Cadres Officers in the Grade of A.E.O. in the pay scale of Rs. 1640-2900 (Revised) in the Directorate of Employment as on 1.11.88 has been circulated on 18.2.94.

Shri K.M.Agrahari, A.E.O.(T) has been placed at Serial No.1, whose particulars are as under :-

1. Date of Appointment (Through UPSC) 3.9.69
2. Qualifications B.E. (Mech)

Shri K.M.Agrahari, A.E.O. (T) was not considered for promotion in the previous D.P.C. because the question of his seniority was not decided earlier. Moreover because of his disciplinary cases pending/ contemplated against the officer for which he was fully exonerated on 3.4.82 and 5.8.85. The brief facts of his service career are given below.

1. Date of appointment as A.E.O.(T) 3.9.69.
2. Assigned duties of S.R.E.O.(T) but drew pay in his own scale of pay - 16.12.71
3. Officiating as S.R.E.O.(T) (Pay benefits was given) 1.7.72 to 31.5.73
4. Reversion from S.R.E.O.(T) (When regular incumbent turned back from deputation - 1.6.73
5. Suspension from the post of A.E.O. - 21.5.74
6. Dismissal from A.E.O. (T) - 10.4.75
7. Re-instatement in service because the order of dismissal were set aside by High Court of Delhi - 26.3.80.
8. Exoneration of 35 charges - 3.4.82
9. Exoneration of charges - 5.8.85

As per the 1965 R.Rs. for the post of S.R.E.O. the following essential conditions for promotion has been laid down. The post is Class-II Gazetted.

- Assistant Employment Officer with 5 years in the Grade.

- Qualifications - Degree of a recognised University or equivalent.

Shri Agrahari fulfills the above essential requirement as such he is eligible for promotion to the post of S.R.E.O. (Ex-Cadre)
X w.e.f. 3.9.74. Two posts of S.R.E.O. (Ex-Cadre) were vacant at that time - S.R.E.O. (PH) and S.R.E.O. (VG).

There is no vigilance case pending against the Officer as on today.

Vigilance position as on 3.9.74.

While functioning as S.R.E.O. during the period 17.11.71 to 31.5.73 some anonymous complaints were received and he was reverted. The complaints were investigated. Shri Agrahari challenged the reversion vide CW 256/74/. A charge sheet was served on 14.1.74. He was placed under suspension w.e.f. 21.5.74. An affidavit was filed by Delhi Admn. that the charge sheet forming the basis of suspension would be served later. This was served on 9.4.75 and he was dismissed from service on 10.4.75.

The orders of dismissal were set aside by High Court and he was reinstated back in service on 26.3.80 with stoppage of two increments due on 9/80 and 9/81 taking into consideration the charge-sheet dt. 9.4.75, with cumulative effect.

The charge sheet dated 9.5.75 was again served afresh on 24.1.81 and he was exonerated of all the 35 charges on 3.4.82. The intervening period w.e.f. 21.5.74 to 25.3.80 was treated as period spent on duty for all purposes and he was paid full pay and allowances for this period.

Therefore it implies that there was no Vigilance Case pending against him as on 3.9.74.

Vigilance Position as on 3.9.82

Sh. Agrahari was again placed under suspension on 21.11.82 and a charge sheet was served on 16.5.84. He was exonerated of all the charges on 5.8.85. Thus it is evident that there was no vigilance case pending against him as on 3.9.82.

Shri Agrahari was again served a charge sheet on 17.1.92 and without holding any enquiry a penalty of censure was awarded to him on 9.4.92. He has preferred an appeal against this order which is still pending for

consideration with this Directorate. Therefor this will not come in his way for promotion w.e.f. 3.9.74 and subsequently w.e.f. 3.9.82.

The work and conduct of the officer is satisfactory and his integrity is also certified. There is nothing adverse in his C.Rs. which are placed below.

The work conduct, integrity certificate is added..

Moreover it is a 'Selection Post' and except Sh. Agrahari none of the person in the seniority list were eligible for promotion to the post of S.R.E.O. (Ex-Cadre) as on 3.9.74. Thus he was the only candidate eligible for promotion to the post of S.R.E.O. (Ex-Cadre).

It is further added that the following Junior Officers have already been promoted :

1. Sh. K.K.Sinha was promoted as S.R.E.O. w.e.f. 16.7.80
2. Smt. Neelam Chandna has been promoted as SREO w.e.f. 29.1.91
3. Sh. R.K.Meena has been promoted as S.R.E.O. w.e.f. 29.1.91.

Further it is not out of place to mention that it is a left out case and he had become further eligible for promotion w.e.f. 3.9.82 in the channel to the post of Asstt. Director (E&I) in the pre-revised scale of Rs. 1100-1600 (Revised Rs. 3000-4500), as such by giving promotion to Sh. K.M. Agrahari A.E.O.(T) to the post of S.R.E.O. (Ex-Cadre) will not affect any of the present incumbents holding the post of S.R.E.O. (Ex-Cadre). The post of A.D. (E&I) is still lying vacant and is Class-I post, therefore, further promotion of the officer for which he is eligible w.e.f. 3.9.82 will be taken up separately.

The Constitution of D.P.C. for Class-II Gazetted officer is as under :-

1. Financial Commissioner -Chairman
2. Secretary Services - Member
3. Departmental Secretary, Head of the Department -Member
4. An officer belonging to S/C & S/T Community not below the Rank of Deputy Secretary in Delhi Administration in cases where S/C & S/T candidates are considered.

We may kindly request the members of the D.P.C. to consider/recommend the left out case of Promotion w.e.f. 3.9.74 in respect of Shri K.M.Agrahari AEO(T) to the post of S.R.E.O. (Ex-Cadre) in the pay scale of Rs.650-1200 (Revised Rs.2000-3500) by way of circulation of papers. The matter has to be dealt with on priority basis in view of directions of Hon'ble C.A.T. dated 20.9.93. We may seek approval of the proceedings of D.P.C. from worthy Chief Secretary simultaneously.

Hon'ble Lt. Governor has also desired to see this file at an early date."

		A.O. Sd/- 20/2
		A.D. (EX) Sd/- 1/3
SECRETARY (EMPLOYMENT) (MEMBER)		J.D. (EMP) Sd/- 2/3/94
DIRECTOR, BES (MEMBER S/C S/T)	Sd/- 8/3/94	Sd/- 7/3/94
SECRETARY (SERVICES) MEMBER		Sd/- 9/3
FINANCIAL COMMISSIONER (CHAIRMAN)	I agree in view of X Y at Page 1/n ante and A B C X Y on the prepage. I am afraid the conduct of the Dept in the matter has been rather rehensible and has brought about all this avoidable litigation in the past.	
CHIEF SECRETARY	Sd/- FC/ 9/3/94	

Pl. process the recommendations of the D.P.C. on the concerned file.

Sd/-
10.03.94

Lab.Com.

Sd/- 11.3.94

Jt.Director (in CC)

In view of C.A.T. directions the final seniority list of A.E.O./OIO/ACC in the pay scale of Rs.1640-2900 has been issued on 18.2.94.

The promotion order in respect of Shri K.M. Agrahari A.E.O.(T) to the post of S.R.E.O. were dealt in a different file bearing No. Emp. 5(33)/87/Admn. The relevant order has been issued and is placed at F/A.

Hon'ble L.G. has desired to see the file with reference to references received from the L.G. Office. The references are placed in File No. F. 5(30)/86-Admn/ placed below.

Sd/-
21.3.94
(R.B.S.Tyagi)
Joint Director (emp)

(3X)

D.E.

L.G

P1 discuss.

Sd/- 21.3.94.

6. By a communication dated 18.3.1994 the following order was issued -

"On the recommendation of DPC, the Chief Secretary, Govt. of NCT of Delhi is pleased to promote and appoint Shri K.M.Agrahari, AEO(T) (Rs.1640-2900) to the Ex-Cadre post of Sub. Regional Employment Officer in the pay scale of Rs.650-1200 (Revised Rs.2000-3500) with effect from 3.9.74 and is posted against a vacant post of SREO in the Directorate of Employment (HQ)"

7. On 2.12.1994 he was accorded seniority at serial no.4 in the final seniority list of SREOs (Ex-Cadre), Psychologist, Planning Officer (Ex-Cadre), Welfare Officer (Ex-Cadre) in the pay scale of Rs.2000-3500, as on 1.5.1992 (Annexure-A-8). Shri K.M.Agrahari's seniority was at serial no.4 and Smt. Manju Karmeshu, Planning Officer (Ex-Cadre) is placed at serial no.5. By an order dated 2.12.1994 (Annexure-A-9) the Joint Director, Employment informed that as Smt. Manju Karmeshu was not born on the cadre of SREO on 3.9.1974 on which date Shri K.M.Agrahari was given promotion by the DPC, her name has to be shifted to serial no.5. The Joint Director on behalf of respondent no.2 also informed that this order was passed "in conformity with the provisions

of Rules 4 and 9 of Delhi Administration Seniority Rules, 1965. Para 4 of the said order states as under -

(38)

"You were also an effective party respondent in case OA/234/89 filed by Sh. Agrahari and this Directorate is implementing the directions of Hon'ble CAT in the above case passed on 15.9.93."

8. In OAs 233 & 234 of 1989 Shri K.M.Agrahari has prayed the following reliefs (i) that he be deemed to have been continued as SREO (T) with effect from 1.6.73 with payment of arrears of pay and allowances; (ii) "that the mode of Recruitment Rules to the post of SREO (T) as direct Recruitment notification dated 20.11.1968 may be set aside and hold/declare as by promotion as per 1963 Rules."; (iii) direct the respondents to provide a channel of promotion to the post of SREO (T) for the post of AEO(T) as was provided in 1963 rules with retrospective relief w.e.f. 3.9.1969; (iv) direct the respondents to promote the applicant to the post of SREO(T) with retrospect effect 1.7.1972 including pay and allowances; (v) direct the respondents to further promote him as Assistant Director w.e.f. 1.7.1979 including pay and allowances; and (vi) direct the respondents to further promote the applicant as Joint Director w.e.f. 1.2.1989.

9. The official respondents in the above OAs pointed out that the recruitment rules for the post of SREO (T) were notified on 20.11.1968 i.e. well before the date of Shri K.M.Agrahari's appointment as AEO (T) on 3.6.1969. He cannot claim to be governed

by the earlier rules. This Court allowed the MA No. 59/92 partially to consider the promotional avenues which the applicant claims on the basis of seniority list published on 11.5.93. Thus, before the Division Bench the seniority list assigning Shri K.M.Agrahari as serial no.1 and as his dismissal from service was set aside there was only his case for promotion to be reviewed by the respondents on the basis of the revised seniority as per notification dated 11.5.1993. Both the parties before the Court agreed that Shri K.M.Agrahari's representation be disposed of in a time bound manner. Accordingly, the representation was filed and the above benefit of promotion by a review DPC was allowed. The applicant pressed for his promotion as Joint Director with effect from 1.2.1989 on the basis of direction issued by this Court on 23.8.1996 passed in MA 2249/95 in OA 234/89 (Annexure-A-12).

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10. On 7.12.1995, respondent no.1 passed an order to convene a review DPC to review promotion already granted with effect from 3.9.1974. On 18.12.1995 this Court restrained the respondents and directed them to maintain status quo which was extended from time to time. In February, 1996 Smt. Manju Karmeshu filed OA 353/96 challenging the seniority and promotion of Shri K.M.Agrahari. By an order dated 23.8.96 (Annexure-A-12) disposing of MA 2249/95 in OA 234/89 the Tribunal noted that this MA was filed only to seek implementation of the directions of the Tribunal dated 15.9.93. The Tribunal noted that by an affidavit dated 14.1.1996

(No)

the Chief Secretary stated that one Smt. Manju Karmeshu has filed a representation on 16.3.1995 challenging the seniority and promotion of Shri K.M.Agrahari and after examining the issue the respondents were of the view that a review DPC was required to be held regarding Shri K.M.Agrahari's promotion as SREO because before the DPC held on 9.3.1994 the correct facts were not placed, on the basis of which Shri K.M.Agrahari was promoted and was made senior to Smt. Manju Karmeshu who was already working as Assistant Director against the post to which Shri K.M.Agrahari was not entitled to as he was not in the feeder line of SREO. On 2.12.1996 Shri K.M.Agrahari filed the present OA 2518/96 and on 20.12.1996 the Tribunal directed that the review DPC shall not be held by the respondents.

11. On 6.8.1997 respondent no.1 passed an order disposing of Shri K.M.Agrahari's representation dated 20.9.1993 in O.As 233 & 234/89 in which the applicant staked his claim as SREO w.e.f. 3.9.1974; as Assistant Director w.e.f. 3.9.1982; and as Joint Director w.e.f. 1.2.1989. He observed that instead of processing the representation, the Directorate processed Shri K.M.Agrahari's case for promotion to the post of SREO erroneously by the then Joint Director Shri R.B.S.Tyagi who is under suspension and Shri H.D.Birdi, the then Director of Employment, now retired. It is admitted that Shri K.M.Agrahari's case was put up before a duly constituted DPC of the Directorate of Employment in accordance with the Recruitment Rules for the post of SREO (Ex-Cadre)

dated 6.5.1965. These Rules, however, were not applicable to Shri Agrahari's case as he was appointed to the post of AEO on 3.9.1969 and his case for promotion could be considered only for four posts, namely, Principal, Vice Principal ITI, Assistant Instructor of Training and Industrial Liasion Officer-cum Officer-in-charge in the Directorate of Training in accordance with the Recruitment Rules dated 20.10.1972. Shri Agrahari can be considered and has been considered for promotion to the four posts mentioned above by a duty constituted DPC prior to 1988 and also in the year 1990 but he was not found suitable. Another DPC considered him for these posts in the year 1996 and they kept one post vacant for Shri Agrahari. Paras 5 and 6 of the order dated 6.8.1997 (Annexure-R-1 to MA 1927/97) are extracted herewith -

"05. The complete and correct facts and factual position were not wilfully and deliberately placed for which the action is taken separately before the Departmental Promotion Committee constituted for the Directorate of Employment which recommended in March, 1994 for promotion of Shri Agrahari from the post of Asstt. Employment Officer (Technical) to the post of Sub Regional Employment Officer (Ex-cadre) in as much as Recruitment Rules notified vide Notification No.F.2/5/65-Apptt(ii) dated 6th May, 1965 are not applicable in the case of the officer; that the case of promotion of Shri Agrahari is to be considered for four afore-mentioned posts in the Directorate of Training & Technical Education in accordance with the Recruitment Rules notified vide No.F.2(42)/70.S.II dated 20th October, 1972; that the case of Shri Agrahari for promotion to the said four posts has already been considered from time to time by the duly constituted Departmental Promotion Committee in the Directorate of Training & Technical Education prior to 1988 and in 1990 and the officer was not found suitable; that no post of Sub Regional Employment Officer (Ex-Cadre) existed in the Directorate of Employment when the case of Shri Agrahari was processed and

placed erroneously before the Departmental Promotion Committee in March, 1994 in the Directorate of Employment; that clubbing of the post of Asstt. Employment Officer (Technical), held by Shri Agrahari with the other posts of Asstt. Career Counsellor and Occupational Information Officer in the Directorate of Employment was not in consonance with the advice rendered by the Services Department conveyed by Shri S.P. Prabhakar, the then Joint Secretary (Services) vide Despatch No. 221/F/ S.I dated 31.3.1993 and Shri S.K. Saxena, the then Deputy Secretary (Services) vide U.O. No. F.16(12)/93.S.III/462 dated the 7th May, 1993; that Shri Agrahari has been assigned wrong seniority at S.No.1 w.e.f. 03.09.1969 in the final combined seniority list of the officers in the grade of Asstt. Employment Officers, Occupational Information Officer and Asstt. Career Counsellors (Ex-Cadre) in the scale of Rs. 1640-2900 (Revised) in the Directorate of Employment, Delhi issued by Shri R.B.S. Tyagi, the then Joint Director of Employment (now under suspension) vide letter No. Emp.5 (39)/88/ Admn/ 1554-60 dated 18.2.94 which was made to form basis of impugned promotion of Shri Agrahari as Sub Regional Employment Officer (Ex-cadre) recommended by the Departmental Promotion Committee for the Directorate of Employment in March, 1994 with retrospective effect from 03.09.1974; and that Vigilance Clearance Report mandatory required in the case of promotion of gazetted officer, to which category Shri Agrahari belongs, was not obtained from Directorate of Vigilance, Govt. of NCT of Delhi. It is also borne out from the record that impugned recommendations of Departmental Promotion Committee made in March, 1994 were not approved by the competent authority, i.e. the then Chief Secretary, Govt. of N.C.T. of Delhi.

06. The above facts and circumstances are that Shri K.M. Agrahari has been given promotion to the post of Sub-Regional Employment Officer (Ex-cadre) which is not in accordance with the correct position of the case and Rules. Thus, claims of Shri Agrahari for promotion, made in his representation dated 20.9.1993 in the Directorate of Employment are without any substance and merit and thus not legally tenable. The claim of the officer for promotion lies for four afore-mentioned posts in the Directorate of Training & Technical Education which will be considered by next duly constituted Departmental Promotion Committee for the said Directorate as and when the Court case of Shri Agrahari is over and stay granted by the Hon'ble Tribunal is vacated as observed by the last Departmental Promotion Committee for the said Directorate

in its Minutes dated 28th March, 1996. Indeed a post has been also kept reserved in the Directorate of Training & Technical Education.

(X3)

12. In short the claim of respondent no.1 is that the DPC held in March, 94 was not posted with the correct facts and it recommended the promotion of an ineligible person i.e. Shri K.M.Agrahari from the post of AEO(T) to the post of SREO (Ex-cadre). It is alleged that the DPC was misled by placing incorrect facts and inapplicable rules. It is stated that stern vigilance action has been initiated against the persons responsible for placing incorrect facts before the DPC in March, 1994.

13. Smt. Manju Karmeshu also states that the DPC proceeding held on 9.3.1994 was illegal. Her contention is that Shri K.M.Agrahari is not entitled for promotion to the post of SREO and further promotion to the post of Assistant Director and Joint Director as he does not belong to the feeder cadre and, therefore, the very promotion is void in law.

14. The official respondents held a review DPC on 3.9.1997. This was stated to offend the provisions of Section 19(4) of the Administrative Tribunals Act, 1985. The appropriateness of holding the review DPC which was itself the subject matter of a decision in OA 2518/96 was considered and an order passed on 30.9.1997 by this Bench disposing of MA 2160/97 in OA 2518/96. This review DPC held on 3.9.1997 came to the conclusion that the earlier recommendations of March, 1994 promoting the

applicant to the post of SREO (Ex-cadre) need to be cancelled. There was a show cause notice proposing to revert the applicant to his substantive post of AEO, Directorate of Employment. We have passed the following orders in disposing of the MA on 30.9.1997-

"6. We have carefully considered the rival submissions. The O.A. was filed against the proposal to hold review DPC. The O.A. was admitted on 13.1.1997. The pleadings were complete. The case was almost finally heard. The respondents did not dispose of the representation for a period of 4 1/2 years. They disposed of the representation after the O.A. was heard and held the review DPC. The only relief prayed for by the applicant is against the proposal to hold the review DPC. On 3.8.1996 the Bench directed disposal of the representation but not for holding a review DPC. We are of the view that by holding the review DPC the applicant's O.A. is likely to be rendered infructuous because it was to prevent the holding of the review DPC that the applicant had sought a direction from this Bench. The respondents did not take any permission from the Bench in holding the review DPC. We are satisfied that holding of the review DPC *prima facie* runs counter to the provisions of Section 19(4) *ibid.* That apart as the pleadings are complete and the hearing would be completed possibly today no irreparable loss would be caused to the respondents in not implementing the show-cause notice and the recommendations of the impugned review DPC held by them. It should not be forgotten that for 4 1/2 years they were silent after this Court gave them an opportunity to dispose of the applicant's representation within three months. On the contrary if the recommendations of the review DPC are allowed to be implemented this O.A. is likely to become infructuous and this Court would be prevented from discharging its duties of considering the relief prayed for. As there is a *prima facie* case and as no loss would be caused to the respondents we direct that the show-cause notice dated 17.9.1997 and the recommendations of the review DPC held on 3.9.1997 are stayed till the disposal of this O.A. 2518/96."

15. Smt. Manju Karmeshu challenged the seniority of Shri K.M. Agrahari. The reason for holding the promotion of Shri K.M. Agrahari as illegal

was on account of the following grounds - Shri Agrahari was holding the post of AEO(T) which was not in the feeder line of SREO(Ex-Cadre). This post of AEO(T) was an isolated post and it has its own separate channel of promotion as Vice Principal, Principal, etc. She claims promotion to the post of Joint Director (Ex-cadre) lying vacant since February, 1989 and as per the Recruitment Rules of 1977 a person who is holding the post of Assistant Director is entitled for promotion if he has put in three years service in that grade. She has put in more than 9 years of service and, therefore, states that she is entitled to promotion as Joint Director. She refutes the claim of Shri Agrahari relating to limitation and also with regard to dies non period from 14.8.1981 to 12.9.1982 on the basis of FR 17-A. The most important point made by her was that the post of SREO(T) is required to be filled up by way of direct recruitment and for this purpose she relies on the statutory rules of 1968. She further states that Shri Agrahari appeared as a direct candidate for the post of SREO(T) on 19.11.1982 but he was not selected by the UPSC. As SREO(T) is required to be filled up by direct recruitment the whole exercise of promoting Shri Agrahari from a lower post is illegal. It is next stated that Shri Agrahari appeared in 1989 as a direct candidate for the post of SREO(T) but again he was not selected. Once the notification dated 27.3.1968 came into vogue the rules of 1965 have been rendered otiose. Therefore, the DPC which considered him on 18.3.1994 on the basis of the 1965 rules had considered him only on the basis of nonexistent and

non-enforceable rules. Thus, the promotion of Shri Agrahari was dehors the rules. Finally, it is stated that combining the seniority list of Shri Agrahari with that of Occupational Information Officer and Assistant Career Counsellor was against the advice given by the Joint Secretary, Services. It is stated that even in the Recruitment Rules of 1991 the post of AEO(T) has not been included as a feeder post for the purpose of promotion to SREO.

(Ab)

16. With regard to her case, Smt. Manju Karmeshu stated that she was appointed to the post of Planning Officer as a direct recruit through UPSC on 24.8.1979. She was given adhoc promotion as Assistant Director on 30.6.1988. As she completed 9 years of service she seeks promotion as Joint Director. Her post of Planning Officer was much higher than that of Shri Agrahari and her case is independent of Shri Agrahari.

17. Shri Agrahari relies on the decision of the Hon'ble Supreme Court in the case of Union of India Vs. K.V. Jankiraman, AIR 1991 SC 2010 and states that he is entitled to all the consequential service benefits including promotion his being reinstated in service after his dismissal order had been set aside by the High Court. He was also exonerated of all the charges. He relies on the "consent order" dated 15.9.1993 in OAs 233 & 234/1989. It is pursuant to that order that his promotion with effect from 3.9.1974 had been settled and the promotion to the other two higher grades are yet to be settled. Any

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reopening of this issue by OA 353/96 of Smt. Manju Karmeshu is barred by res judicata. He relied on the following authorities - Satyadhyayan Ghosal and others Vs. Smt. Deorajin Debi and another, AIR 1960 SC 941, Daryao and others Vs. State of U.P. and others, AIR 1961 SC 1457, Union of India Vs. Nanak Singh, AIR 1968 SC 1370 and Munshi Muzbool Raza Vs. Hasan Raza, AIR 1978 SC 1398. He states that the relief sought for by Smt. Manju Karmeshu is barred by limitation because the OA was filed after the limitation period permissible under Section 21 of the Administrative Tribunals Act, 1985. He stated that Smt. Manju Karmeshu's OA tries to unsettle the seniority list published on 2.12.1994. It is urged that she has no locus to challenge Shri Agrahari's promotion. He having joined in the Employment service belongs only to the Department of Employment and not to the Department of Training and Technical Education. He cited for that purpose an order of the Delhi High Court in Ganga Prasad Vs. Delhi High Court and others, CW 384/75. He states that the order of this Tribunal dated 15.9.1993 has achieved finality based on the seniority list published on 11.5.1993. He further states that as he joined Employment service on 3.9.1969 he has been rightly granted promotion to the post of SREO with effect from 3.9.1974 whereas Smt. Manju Karmeshu joined as a Planning Officer on 24.8.1979.

18. We have carefully considered the submissions of the parties in the pleadings as well as the arguments of the counsel at the time of hearing. In

the order dated 15.9.1993 the only direction given was to consider the representation of Shri Agrahari within a period of three months from the date of receipt of a certified copy of the order regarding his claims including promotion. The official respondents were directed to consider the said representation in the light of the rules on the subject within a period of three months and pass a speaking order. We are of the view that the promotion of Shri Agrahari from the post of AEO(T) to the post of SREO(Ex-cadre) on 18.3.1994 with retrospective effect from 3.9.1974 has raised a number of fundamental issues. These issues are (a) he does not belong to a feeder cadre; (b) he was promoted under the 1965 rules which ceased to operate; (c) the seniority list of three different services combined together is not properly done; (d) the DPC was misled into taking this decision by placing wrong facts and inapplicable rules; (e) the competent authority never signed the promotion order; (f) the subsequent seniority list issued on 22.3.1994 was also not legal. The officers who were adversely affected by the seniority list dated 22.3.1994 raised objection. Smt. Manju Karmeshu also made a representation to the Director Employment, on 31.3.1994 against the said seniority list but it was rejected on 2.12.1994 by the Joint Director, who it was claimed, was not empowered to do so. Smt. Karmeshu was left with no alternative but to appeal to the Chief Secretary, Govt. of NCT of Delhi by her representation dated 23.12.1994. Subsequently, the Chief Secretary submitted an affidavit dated 2.1.1996

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in reply to MA 2249/95 in OA 234/89 to the effect that Shri Agrahari who was holding the post of AEO (T) was not in the feeder line of SREO. That was an isolated post having its own separate channel of promotion. After examining these issues, the Services Department by its letter dated 7.12.1995 opined that a review DPC regarding the promotion and seniority of Shri Agrahari as SREO be held. The fact of the matter is that the Recruitment Rules of 1965 contain the appointment of AEOs which was a non-technical posts but the applicant was appointed as AEO (T), which is a technical post with technical qualifications as prescribed in the Recruitment Rules of 1963. The qualifications of AEOs in Recruitment Rules of 1965 is different from the qualification of AEO(T) in the Recruitment Rules of 1963. In the Recruitment Rules of 1963 the post of AEO(T) was slated as the feeder post for promotion to the Deputy Employment Officer(T). This post was redesignated as SREO (T) in 1968 and a new set of Recruitment Rules came into force with effect from 25.11.1968. Under these Recruitment Rules SREO(T) is required to be filled by direct recruitment. It is also stated that all the posts of AEO shown in the Recruitment Rules of 1965 were cancelled by Notification dated 27.3.1968. It is further stated that although the officers of ACC/OIO cadre adversely affected by the irregular seniority list dated 11.5.1993 made representations against it within 30 days but the department ignored them. Without disposing of those representations an erroneous final seniority list was published on 18.2.1994 against the advice of the

Services Department by merging the seniority of Shri Agrahari with another cadre to which he never belonged. Thus, Shri Agrahari as AEO (T) has been rightly assigned seniority in the Directorate of Training and Technical Education and has been considered for promotion to higher posts of Vice Principal and Principal, ITIs. Unfortunately he was not selected. He was erroneously placed in the seniority list of 11.5.1993 clubbing him with other services without considering the representation of affected officers.

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19. We find that respondent no. 1 has considerably delayed in disposing of the representation. If the representation was disposed of within a period of three months on the basis of the order dated 15.9.1993 there would not have been any occasion for all this muddle that had crept in. We are informed that the Chief Secretary never approved the promotion of Shri Agrahari and yet an order of promotion was issued in his name by the then Joint Director Shri R.B.S.Tyagi. We are informed that the DPC has been correctly constituted and yet facts were not put properly and correctly before the said DPC. We have in our orders at the time of hearing categorically required the respondents to place that DPC file to show us the facts and circumstances under which Shri Agrahari was promoted so that we could know the reasons which were placed before the said DPC. We are informed that with the collusion and active involvement of Shri Agrahari the files were missing. As a Court of law we cannot

approve of a promotion which is inconsistent with the Recruitment Rules. We cannot approve of a promotion which is obtained by misrepresentation. If the operative Recruitment Rules were of 1968 and the post of SREO was a post to be filled in by direct recruitment, how was that Shri Agrahari was promoted with retrospective effect from 1974?

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20. In the background of rival contentions summed up above, we shall consider the reliefs prayed for first by Shri K.M. Agrahari in OA 2518/96. He seeks a direction to quash and set aside the order of the review DPC made by respondent no. 1. Normally once a DPC is held and orders are issued promoting a particular person certain rights are created in his favour he can be dislodged from enjoying those rights only by a due process of law. In this case the respondents admit that the DPC itself was duly constituted. But, at the same time they say that the DPC was not properly advised about the correct rule. The contention of the respondents is that the promotion order issued to Shri Agrahari is not legal.

In Indian Council of Agricultural Research and another Vs. T.K. Suryanarayan and others, (1997) 6 SCC 766 the case dealt with by their Lordships related to erroneous promotion given departmentally by misreading of rules. We shall do no better than extract the summary at page 767 of the report as follows -

"The Indian Council of Agricultural Research (ICAR), by misinterpreting the service rules, had promoted several employees but in the case of one set of employees (the respondents in the present case), the ICAR insisted on correct application of rules. The respondents' plea was that they were discriminated vis-a-vis the employees who had been promoted under similar circumstances. Rejecting this contention

Held: Even if in some cases, erroneous promotions had been given contrary to the service rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim in law courts for promotion contrary to the statutory service rules. Incorrect promotion either given erroneously by the department by misreading of the service rules or such promotion given pursuant to judicial orders contrary to service rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory service rules. In a court of law, the respondents cannot be permitted to contend that the service rules should not be adhered to because in some cases erroneous promotions had been given. The statutory service rules must be applied strictly.

The question of unmerited hardships, if any, and need for amendment of rules to remove such hardship are matters for consideration of the rule-making authority. It is reasonably expected that the authority concerned will be sensitive to unmerited hardship to a large number of its employees, if occasion by introduction of service rules so that appropriate remedial measures may be taken."

21. We have already mentioned above that the post of SREO is to be filled by direct recruitment and the post the applicant was holding was not a feeder post for SREO. We have also noticed that the 1965 Rules do not apply and what is applicable is the 1968 Rules. On the question as to whether one feeder post can be transposed by another equivalent post as a feeder post, the Hon'ble Supreme Court has already

pronounced in the negative in H.R. Ramchandraiah and another Vs. State of Karnataka and others, 1997 SCC

(L&S) 849. The decision is as under -

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"One category cannot be transposed by interpretation of rules, and fitted into altogether a different category of service, merely because channel of promotion in that service is not provided. Unless the petitioners get into the channel of promotion under statutory rules, they cannot, by interpretation, be fitted into a category to which they did not belong and cannot claim promotion on that basis."

22. Thus, if the Recruitment Rules of 1968 do not permit promotion from AEO(T) to SREO, no promotion can be given. Secondly, promotion can be given only to Shri Agrahari under the relevant rules and that channel is admittedly of Vice Principal and Principal, ITIs. As the promotion of Shri Agrahari is dehors the rules, we have no hesitation in upholding the decision of the respondents to order a review DPC.

23. In Part-VI under the Chapter "Promotion" in Swamy's Complete Manual on "Establishment and Administration" Sixth Edition, 1997, the conditions stipulated for holding a review DPC are as under -

"18.1. The proceedings of any DPC may be reviewed only if the DPC has not taken all material facts into consideration or if material facts have not been brought to the notice of the DPC or if there have been grave errors in the procedure followed by the DPC. Thus, it may be necessary to convene Review DPC's to rectify certain unintentional mistakes, e.g. -

- (a) where eligible persons were omitted to be considered; or
- (b) where ineligible persons were considered by mistake; or
- (c) where the seniority of a person is revised with retrospective effect resulting in a variance of the seniority list placed before the DPC; or
- (d) where some procedural irregularity was committed by a DPC; or
- (e) where adverse remarks in the CRs were toned down or expunged after the DPC had considered the case of the officer.

These instances are not exhaustive but only illustrative"

As material facts were not brought to the notice of the DPC and as relevant rules were not applied, we have no hesitation to hold that another DPC to review the earlier proceedings would be in order.

24. We are informed that a review DPC has already been held and it had decided to issue a show cause notice to Shri Agrahari proposing to cancel his promotion. As we mentioned above, these review DPC proceedings have been conducted and concluded when the request for quashing the same was under judicial consideration of this Court. Secondly, it looks to us as though that the respondents have decided to undo the promotions accorded to Shri Agrahari under ~~as a one-point programme~~ the aegis of the earlier DPC. The respondents have not taken a total view of the claim of Shri Agrahari. We will not make any comment on the question of involvement of certain officials in showing undue haste and of their suspected collusion to secure the minutes of the DPC by misinforming the members of the

DPC of the rule position. We will leave it to the official respondents to investigate the same and take appropriate action in accordance with law. But suffice it to say that it would be wholly inappropriate only to confine the brief to the review DPC only to review the promotion of Shri Agrahari as SREO with retrospective effect from 1974 onwards. The official respondents should not forget that Shri Agrahari has been honourably exonerated by the High Court of Delhi and the CVC of all the charges. Their Lordships have held in the case of K.V. Jankiraman (supra) cited by Shri Agrahari, as under -

"When an employee is completely exonerated in criminal/disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of "no work no pay" is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases."

25. In the terms of reference to the review DPC, we would direct the respondents to frame the terms of reference to consider Shri Agrahari's claim for promotion from 21.5.1974 onwards, when he was suspended from the post of AEO, as he was appointed on 3.9.1969. The DPC should consider his eligibility under the rules which were applicable at that time or from time to time which are operative to each

promotional post that would come in the way during the period from 21.5.1974 till the date the review DPC meet. We would make this clear though we would not like to go into the details of the rules. By a hypothetical illustration let us say the applicant is eligible to be considered for promotion after putting in 3 years of service as AEO(T) to the post of Vice Principal. The review DPC should not go into only the negative aspect as to whether the existing promotion of SREO(T) is legal or illegal. It should also see and we direct that the said review DPC to examine at each and every stage when Shri Agrahari is due for promotion from the date he was suspended on 21.5.1974 till the date he was reinstated and thereafter till the date of the review DPC. If as the respondents say he is due for promotion as Vice Principal, let us say after putting in 'x' years of service, hypothetically speaking, the respondents should consider his records in accordance with the guidelines laid down for conducting the DPC as on that date and so on and so forth on all subsequent dates. Secondly, the DPC should be apprised the facts and circumstances of the entire case by a self contained note which has to be approved by respondent no. 1. We have already given sufficient material to show that on the pleadings before us a promotion dehors the rules is not legal and a promotion not in accordance with law cannot be sustained but even so it is for the review DPC to consider the whole aspect of the question and record its own conclusion. In

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doing so, it has also to look into the eligibility of Shri Agrahari for promotion at each and every stage during the last 24 years from 1974 to 1998 and record its finding on the eligibility of Shri Agrahari. As the official respondents have conducted the review DPC when the matter was before us in its final stages, we do not want to take judicial notice of that and direct the respondents to constitute a fresh review DPC to give effect to the law laid down by the Hon'ble Supreme Court in the case of K.V. Jankiraman (supra).

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26. The second direction we intend to issue is that in the event the review DPC holds the promotion of Shri Agrahari to the post of SREO as illegal after applying the principles of law laid down by us, the pay and allowances drawn by Shri Agrahari in the promoted post from the date of promotion and till the orders are set aside, shall not be recovered because we have no material to hold that Shri Agrahari is to be blamed for what had happened in conducting and concluding the first DPC in 1994 which had promoted him from 1974 onwards. We also direct that the findings of the DPC in this regard, if it is adverse to Shri Agrahari with regard to his promotion as SREO may be formally made known to him as is proposed by the official respondents, before this order, by way of a show cause notice. If he is unfit or fit for promotion in the intervening period of these two decades to any other promotional post, should also be

made known to him. As we have left the entire matter of promotion to all other grades in the hands of the review DPC, we would not like to comment on the reliefs sought for by Shri Agrahari for the post of Assistant Director Employment with effect from 3.9.1982 and for the post of Joint Director Employment with effect from 1.2.1989. If he does not belong to a feeder cadre for those posts under the rules he will not be entitled to those promotions. The review DPC should be held within a period of three months from the date of receipt of a copy of this order.

27. With regard to the reliefs claimed by Smt. Manju Karmeshu, we do not agree either with the ground of res judicata or with the ground of limitation raised by Shri Agrahari. We have seen the grounds in OA 353/96. What all the Tribunal held by its order dated 15.9.1993 in OAs 233 & 234/89 has to give a direction to consider Shri Agrahari's representation and nothing more. There is no finding or direction on the merits of each ground. Res judicata applies only when there is a finding or a direction or a decision on the points referred to by a Court of law. The whole matter was virtually remanded back to the official respondents and the official respondents instead of disposing of the representation initially tried to issue orders for a review DPC. It was only in the course of hearing

when the official respondents were asked as to why for a period of 4 1/2 years the representation was not disposed of, respondent no.1 issued the order disposing of the representation. There can be no question of res judicata in such a situation. The consent given by the counsel is in respect of consideration of the representation and nothing more. There can be no res judicata when the entire issue is again open before the respondents and there is no decision on the issue by the Court. Smt. Manju Karmeshu has initially filed a representation which was rejected on 2.12.1994 by the Joint Director who, it was urged, was not empowered to do so. She, therefore, filed an appeal to the Chief Secretary by a representation dated 23.12.1994. Thereafter respondent no.1 himself filed an affidavit dated 2.1.1996 stating that Shri Agrahari who was holding the post of AEO(T) was not in the feeder line of SREO and that wrong recruitment rules were applied. Her deprivation from promotion as Joint Director was a cause of action that had been perpetually alive and the official respondents had never conveyed to her as to the reasons for delay in holding a DPC for her. We are unable to see any connection between the case of Shri Agrahari and the case of Smt. Manju Karmeshu. Admittedly, Smt. Karmeshu was recruited as a Planning Officer and her claim for promotion was due for consideration and was not considered. We direct that a DPC in accordance with the rules be constituted to consider Smt. Karmeshu's case along with all other eligible candidates, for the

post of Joint Director within a period of one month from the date of DPC to review the case of Shri Agrahari. This DPC should examine her claim from the date she is eligible for the post of Joint Director if she fulfills all conditions stipulated in the recruitment rules and is eligible for promotion. This is the substantial relief claimed by Smt. Karmeshu and we find considerable merit in this claim. We have no hesitation in holding that the order dated 2.12.1994 rejecting her representation is not a well considered order. We direct that after the DPC considers that the promotion of Shri Agrahari as SREO is not in accordance with law and he has to be promoted in accordance with his channel in the recruitment rules, the official respondents shall revise the seniority list of SREOs in accordance with law. The prayer for directing the respondents not to give further promotion to Shri Agrahari pursuant to the seniority list dated 2.12.1994 does not survive because we have left the entire matter to the review DPC. Similarly, the grievance of Smt. Karmeshu against the promotion order of Shri Agrahari with effect from 3.9.1974 by the impugned order dated 18.3.1994 is also disposed of by our above directions. We do not see any merit in seeking a relief not to post any other from DANIC cadre against the post of Joint Director (Ex-Cadre). We cannot bind the respondents in the present state of the pleadings with any direction in this regard.

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28. We have considered the following pending

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(i) MA 1869/97 in OA 2518/96: Prayer is to set aside order dated 6.8.1997 disposing of the representation of Shri Agravahari. In view of the above discussion, and as respondent no.1 disposed of the representation in accordance with our directions, there is no merit in this prayer. MA 1869/97 is accordingly dismissed.

(ii) MA 1927/97 in OA 2518/96 : Prayer is to take on record the affidavit of the Dy. Secretary Shri Khullar about the missing files. We note that this affidavit is taken on record and considered. MA 1927/97 is accordingly disposed of.

(iii) MA 2282/96 in OA 353/96 filed by Shri Agravahari for initiating criminal proceedings for filing a false counter affidavit. The points made and the plea raised in this MA have been taken note of in disposing of these OA. We do not consider it necessary at this stage to examine the prayers made in this MA. That aspect is not related to the disposal of the grounds raised in the OA and, therefore, this MA is not within the scope of this OA. The MA is accordingly dismissed.

29. With the above directions, both the OAs are disposed of. No costs.

(Dr. A. Vedavalli)
Member(J)

(N. Sahu)
Member(Admnv)

21/12/98

rkv.

Attested

A. Sahu
Co. CIV 21/12/98