

Central Administrative Tribunal  
Principal Bench

(23)

O.A. 2391/97

and  
O.A. 2043/97

New Delhi this the 4th day of September, 1998.

Hon'ble Smt. Lakshmi Swamianthan, Member(J).

Hon'ble Shri K. Muthukumar, Member(A).

O.A. 2391/97

Dr. (Mrs.) Asha Singh,  
working as Professor  
and Head of Department of Anatomy,  
Maulana Azad Medical College,  
R/o D-II/87, Pandara Road,  
New Delhi. .... Applicant.

By Advocate Shri V.K. Mehta.

Versus

1. Union of India through  
Secretary,  
Department of Health,  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
New Delhi-110 011.
2. The Dean,  
Maulana Azad Medical College,  
New Delhi-110 002.
3. Union Public Service Commission,  
through its Secretary,  
Dholpur House,  
Shahjahan Road,  
New Delhi.
4. Govt. of the NCT of India,  
through Secretary (Health),  
Dept. of Health & Family Welfare,  
5, Sham Nath Marg,  
Delhi.
5. Dr. K.D. Tripathi,  
Professor of Pharmacology,  
Maulana Azad Medical College,  
New Delhi.
6. Dr. Veena Choudhary,  
Professor of Radio-Diagnosis,  
Maulana Azad Medical College,  
New Delhi.
7. Dr. L.D. Sota,  
Professor of Ophthalmology,  
Maulana Azad Medical College,  
New Delhi.

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8. Dr. (Smt.) V. Prema,  
Professor of Pathology,  
Jawahar Lal Institute of  
Post Graduate Medical Education  
and Research,  
Pondicherry.
9. Dr. (Smt.) S. Prabhu,  
Professor of Pharmacology,  
Maulana Azad Medical College,  
New Delhi.
10. Dr. (Smt.) Uma Goel,  
Professor of Obst. & Gynaecology,  
Lady Harding Medical College,  
New Delhi.
11. Dr. (Smt.) Kamla Sharma,  
Professor of Obst. & Gynaecology,  
Maulana Azad Medical College,  
New Delhi.
12. Smt. Dr. Krishna Deswal,  
R/o 303, Som Vihar Apartments,  
R.K. Puram, New Delhi. .... Respondents.

By Advocate S/Shri Madhav Panikar and Vijay Pandita  
for official respondents.

Shri C. Hari Shankar, counsel for the intervener -  
Respondent 12.

Shri D.K. Nag, counsel for Respondents 5, 6, 9 and 11.

None for other respondents.

O.A. 2043/97

Dr. (Mrs.) V. J. Celine,  
Qr. No. D-11/332, Vinay Marg,  
Chanakyapuri,  
New Delhi. .... Applicant.

By Advocate Shri MP. Raju.

Versus

1. Union of India  
represented through the  
Secretary, Ministry of  
Health and Family Welfare  
(Department of Health),  
CHS-III, Government of India,  
Nirman Bhawan,  
New Delhi.
2. Delhi Administration,  
represented through  
the Secretary,  
Delhi Administration,  
5th Shamnath Marg,  
Delhi.

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3. Dean Maulana Azad Medical College,  
New Delhi.
4. Dr. V. Srinivasan,  
Professor of Physiology,  
Department of Physiology,  
Jipmer,  
Pondicherry.
5. Dr. (Mrs.) Krishna Deswal,  
Professor of Physiology,  
Department of Physiology,  
Maulana Azad Medical College,  
New Delhi. .... Respondents.

By Advocates S/Shri Madhav Panikar and Vijay Pandita for  
official respondents.

Shri C. Hari Shankar, counsel for intervener - Respondent  
5.

None for Respondent 4.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

As the aforesaid two applications involve similar facts and issues, they were heard together and are disposed of by a common order. The applicants have impugned the promotion order dated 14.8.1997 passed by the respondents by which 11 other officers of Specialist Grade-I/Professors of the Teaching Specialist Sub-Cadre (hereinafter referred to as 'Specialist Grade-I') of the Central Health Service (CHS) have been promoted to the Super Time Scale (STS) in Rs.5900-6700 plus NPA. In short, they are aggrieved that persons who are junior to them and who were ineligible for consideration for promotion to the higher grade have been promoted by the impugned order in an illegal and arbitrary manner.

2. For the sake of convenience, the facts in Dr. Asha Singh's case (O.A. 2391/97) are being referred to. Shri M.P. Raju, learned counsel for the applicant Dr. (Mrs.) V.J. Celine in O.A. 2043/97 has also adopted

83

the main arguments submitted by Shri V.K. Mehta, learned counsel. Wherever necessary the additional facts and arguments submitted by the learned counsel for the parties have been referred to in the individual cases. The applicant has submitted that she is senior to the officers mentioned in the impugned order at Serial Nos. 3-11 in the grade of Specialist Grade-I. Applicant Dr. V.J. Celine has submitted that her name appeared in the seniority list of Specialist Grade-I officers as on 1.1.1997 senior to some of the officers shown promoted in the impugned order, including Respondents 4 and 5. The applicant Dr. Asha Singh is a direct recruit Professor, Specialist Grade-I officer of CHS and assumed charge on 31.7.1991. Prior to that she had been appointed as Lecturer in the CHS w.e.f. 26.4.1974 and earlier to that she was also working as Demonstrator in Maulana Azad Medical College w.e.f. 1.4.1969. She has submitted that by Notification dated 9.10.1979 she has been substantively appointed as Assistant Professor/Specialist Grade-II w.e.f. 17.7.1979 and promoted later as Associate Professor w.e.f. 1.1.1983 and given benefit of NFSG as Associate Professor w.e.f. 22.5.1989.

3. Shri V.K. Mehta, learned counsel, has submitted that in terms of the Tikku Committee report, the Government of India had taken a decision (1) to create 34 additional posts of Director-Professors in the scale of Rs.5900-6700 in the Teaching Specialists Sub-Cadre of the CHS by upgrading an equivalent number of posts of Professors (Rs.4500-5700) on floating basis; (2) that the distinction between Non-Functional Selection Grade (NFSG) and Functional Grade in Rs.4500-5700 will be eliminated in

827

the CHS and all the Associate Professors in NFSG will be designated as Professors from 1.12.1991; (3) All Professors and Specialist Grade-I officers (Non-teaching) will be eligible for consideration for promotion to SAG level posts (Rs.5900-6700) subject to availability of vacancies, provided they have completed at least three years of regular service in the scale of Rs.4500-5700 irrespective of whether the said service was performed in the Functional Grade or NFSG or Rs.4500-5700. The Associate Professors and Specialists Grade-II officers presently in the NFSG and to be designated as Professors and Specialists Grade-I officers, respectively from 1.12.1991 shall en masse be placed below the existing Professors and Specialist Grade-I officers, respectively for the purpose of preparing eligibility lists for consideration for promotion to SAG level posts. Shri V.K. Mehta, learned counsel, has submitted that in the Government of India O.M. dated 14.11.1991 it has been stated that the amendment to the Central Health Service Rules, 1982 wherever necessary, consequent upon the above decision shall issue in due course.

4. The method of recruitment of Director-Professor in Super Time Grade was by way of 100% promotion. As the CHS Rules, 1982 as amended by the Rules of 1989 have been issued under Article 309 of the Constitution, Shri V.K. Mehta, learned counsel, has submitted that till the amendment of these Rules, as stated by the respondents themselves, they cannot depart from the requirements ~~of~~ of eligibility laid down in the Rules, by relying on executive instructions, and that too, from a retrospective date. Under Rule 4 of these Rules he

submits there are two Specialist Grades i.e. I and II in the same scale of pay. Rule 4(1) provides for 35 newly created floating/common posts in the Super Time Grade of Rs. 5900-6700 and promotion to the post of Director/Professor on the basis of a common eligibility list without regard to any specialities. The appointment against such posts are to be made only if the officer concerned has been duly assessed by a DPC in regard to his suitability for holding the post and has been working in the grade of Professor/Specialist Grade-I on regular basis for not less than 3 years, failing which he has been working as a Professor/Specialist Grade-I with 17 years of regular service in Group 'A' post.

5. The CHS Rules, 1982 and 1989 were further amended by the CHS Rules, 1996. Shri Mehta, learned counsel, has submitted that it is only after the amendment of Schedule-III in the 1996 Rules that for purposes of promotion to Super Time Grade, Specialists Grade-I with three years regular service in the Grade of Rs. 4500-5700, irrespective of whether the said service was performed in the Functional Grade or NFSG in the scale of Rs. 4500-5700, have been considered eligible and these rules do not also apply from a retrospective date. The main contention of the learned counsel, therefore, is that persons at Serial Nos. 5-11 of the impugned order were only Associate Professors and were designated as Professors by the Government of India decision in O.M. dated 14.11.1991 w.e.f. 1.12.1991. His contention is that Respondent 1 cannot place reliance on this O.M. to deem Associate Professors who have been granted NFSG, as Professors from 1.12.1991 for purposes of eligibility from a date even

prior to that date. He has submitted that Associate Professors cannot, therefore, be equated with Professors Specialist Grade-I for promotion to SAG Grade. He has also submitted that the provision of the rules having not been amended even after issuance of the O.M. of 14.11.1991, the Government decisions cannot override or be contrary to the express provisions of the existing statutory Rules. He submits that persons at Serial Nos. 3-4 of the impugned order, i.e. Dr. K. D. Tripathi, and Dr. Veena Choudhary were directly recruited as Professors (Specialist Grade-I) on 20.8.1991 and 1.11.1991, respectively, whereas the applicant was directly recruited as Professor on 31.7.1991. He submits that whereas the applicant became eligible for promotion to the next higher grade of Director/Professor after three years on 31.7.1994, those Associate Professors who were designated as Professors w.e.f. 1.12.1991 were not even eligible for consideration on the cut off date 1.10.1994 by the DPC which considered the vacancies for 1994-95 and were, therefore, wrongly promoted by the impugned order. Applicant has also submitted that no adverse reports have been communicated to her.

6. In the rejoinder filed by the applicant Shri Vijay Mehta, learned counsel, has referred in particular to the case of Dr. (Mrs.) Veena Choudhary, Respondent 6, who was promoted as Director/Professor by the impugned order. He submits that she has been wrongly shown at Serial No. 1 in the Eligibility List-II even though she was directly appointed as Professor on 1.11.1991, but she was also not eligible to be placed in eligibility List-I as she had not completed three years

18

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service as Professor on the cut off date of 1.10.1994 for consideration for the vacancies of 1994-95. He has also reiterated the arguments in the O.A. that O.M. of 14.11.1991 cannot override the statutory CHS Rules of 1982 nor can Associate Professors be equated to Professors/Specialist Grade-I even prior to 1.12.1991. He, therefore, submits that the whole approach of Respondent I in the conduct of the DPC proceedings held on <sup>the</sup> 24.1.1997 and <sup>the</sup> process of promotion was vitiated as they have considered ineligible persons. He has, therefore, submitted that the respondents may be directed to hold a review DPC for the post of Director/Professor and consider only eligible persons strictly in accordance with the Rules. He has relied on **Tarsem Singh & Anr. Vs. State of Punjab and Ors.** (1994 (5) SCC 392) and **Shri M.P. Raju**, learned counsel, has relied on **Syed Khalid Rizvi & Ors. Vs. Union of India and Ors.** (1993 Supp. (III) SCC 575), **J&K Public Service Commission & Ors. Vs. Narendra Mohan & Ors.** (1994 (2) SCC 630) and **Union of India & Ors. Vs. M. Bhaskar & Ors.** (1996 (4) SCC 416).

7. Respondent I i.e. the Ministry of Health and Family Welfare have filed two replies, one on 4.2.1998, and another Additional reply on 19.5.1998 in pursuance of the Tribunal's order dated 12.5.1998. In the first reply, they have submitted that against the 12 vacancies for the posts of Professor - Director for the year 1994-95, which were to be referred to UPSC for holding the DPCs for promotion, according to CHS Rules, 1982, two eligibility lists were prepared, namely, one containing the names of officers having three years regular service in the grade of Professor (Rs. 4500-5700), failing which Professors with

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(31)

17 years regular service in Group 'A' posts ~~were eligible~~<sup>18</sup> for consideration. They have submitted that in the case of applicant, Dr. Asha Singh she was included in List-I and in the case of applicant, Dr. Celine, she was included in List-II. In the Additional reply, however, they have reversed their stand. They have submitted that the sentence "two eligibility lists were prepared, one containing the names of officers being covered under the first condition and the second containing officers being covered under the failing which clause" was written inadvertently and is not in keeping with the facts. They have regretted the mistake. They have submitted that the correct stand which they now take is that two eligibility lists were prepared, one containing the names of regular Professors with three years regular service in the grade and the other containing the names of officers who have been redesignated as Professors w.e.f. 1.12.1991 with three years regular service in the grade of Rs.4500-5700 as Associate Professors (NFSG) service. In support of their additional reply, they have placed the letter written by them on 28.11.1996 to UPSC. Shri Madhav Panikar, learned counsel, has submitted that in Para (V) of this letter, the Ministry had duly informed the UPSC that the requirement of 17 years Group 'A' service in the "failing which clause" <sup>18</sup> which has not been operated, as officers with three years service as Professors/NFSG were available for consideration for promotion. They have submitted that as a result of the Govt. of India decision to accept the recommendations of the Tikku Committee by Notification/O.M. dated 14.11.1991, in particular, paragraphs 5 and 6 thereof, the distinction between NFSG and Functional Grade has been eliminated in the Central

18

Health Service. According to them, all Professors who have completed at least three years regular service in the scale of Rs. 4500-5700, irrespective of whether that service was performed in the Functional Grade or NFSG were eligible to be considered for promotion to SAG level, subject to availability of vacancies. Shri Madhav Panikar, learned counsel, also submitted that the Tikku Committee had gone into the whole question of the service conditions of doctors who had gone on strike, and made a number of recommendations for their betterment which was examined and accepted by Government in the O.M. of 14.11.1991 and, therefore, the issues raised here must be looked at from that perspective as a whole.

8. The official respondents have stated that applicant Dr. Asha Singh has been placed at Serial No. 3 in eligibility List-I showing her as eligible under the three years regular service as Professor w.e.f. 31.7.1994; and applicant Dr. V.J. Celine has been shown at Serial No. 3 in ~~the~~ eligibility List-II which contains the names of redesignated officers. They have submitted that while Dr. Celine was granted the NFSG scale on 15.3.1989, Respondents 4 and 5 in her O.A. have been shown {junior to her in the same list, as they were given the NFSG w.e.f. 20.3.1989 and 22.5.1989, respectively and, therefore, she cannot have any grievance.

9. Shri Madhav Panikar, learned counsel, has submitted that the DPC which was held on 24.1.1997 has duly considered the eligible officers for promotion. The promotion was on selection basis on merit. He has produced the DPC proceedings for our perusal from which it

(53)

is seen that both the applicants in the O.A.s before us have been graded 'Good' whereas all the private respondents who have been included in the impugned promotion order have obtained 'Very Good'. He has submitted that since the post of Director/Professor is a selection post under the CHS Rules, where the bench mark was "Very Good" and the applicants have already been considered by the DPC, they can have no further grievances. They have also submitted a brief note stating that during the relevant period 1994-95 for which DPC was held, there were 74 posts of STS in the Teaching Specialist Sub-Cadre (copy placed on record).

10. Respondents 5 & 6, Dr. Tripathi and Dr. Veena Choudhary, have also filed their reply. They have submitted that they have been promoted as Director-Professor on the basis of a regular selection process. They rely on Note-I of the CHS Rules, 1982 and submit that they have been selected on merit, by DPC where applicants have also been considered and they have not found them fit. Hence they contend that the promotion order is legal and valid.

11. Shri Hari Shankar, learned counsel for intervener, Respondent 12, has submitted written arguments which are placed on record. He has, inter alia, submitted that since the applicant has not raised the question of eligibility of the intervener for appointment to the higher post or to the proceedings of the Selection Committee in the O.A., she cannot do so now without proper pleadings and amendment of the O.A. He has submitted that the posts, in question, are the seniormost posts in the

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sub-cadre. According to him, although Respondent 12, Dr. Krishna Deshwal has been permitted to intervene in the case, another officer Dr. Srinivasan, who is admittedly senior even to her and has now retired from service on superannuation, has not been impleaded. He, therefore, submits that if the O.A. is allowed, it could result in serious civil consequences to these officers and miscarriage of justice. On merits, he has submitted that there is no distinction between persons regularly appointed as Professors and those redesignated as Professors in so far as eligibility for promotion to Director/Professor post is concerned. Learned counsel contends that the O.M. dated 14.11.1991 is not in any way contrary to the provisions of the CHS Rules, 1982 or there is any conflict between them but it merely supplements the CHS Rules. He relies on State of U.P Vs. Dr. Anupam Gupta & Ors/that administrative instructions like the O.M. can be held as filling the "yawning gaps in the Rules and not supplanting them".

12. We have very carefully considered the pleadings and the submissions made by the learned counsel for the parties.

13. From the above facts, it is seen that Respondent 1 prepared two eligibility lists, i.e. List-I and List-II. They have stated that there were 12 vacant posts under the CHS Rules, 1982, during the year 1994-95 for which DPC was held on 24.1.1997 when eligible persons, including the applicants in these two O.As, have been considered. The cut off date for consideration of the officers for promotion was 1.10.1994. The posts of

(23)

Director/Professor, and "Floating Posts" under the CHS Rules are based on selections to be held by a DPC on the basis of a common eligibility list of Specialists Grade-I officers from the teaching and non-teaching specialists sub-cadre. In *Union of India Vs. Dr. P. Rajaram and Ors.* (1993 Supp (2) SCC 326), the Supreme Court has held that promotions under Rule 4(10) of the CHS Rules to the Super Time Grade cannot be made only on seniority but should be on merit.

14. However, the main question for consideration here is whether ineligible officers have been included in the Eligibility Lists which has made the deliberations of the DPC proceedings illegal and arbitrary. Rule 4(10)(iii) of the CHS Rules, 1982 provides as follows:

"The appointment against such posts shall be made only if the officer concerned has been duly assessed by a Departmental Promotion Committee in regard to his suitability for holding the post and has been working in the grade of Professor/Specialist Grade-I on a regular basis for not less than three years, failing which, has been working as a Professor/Specialist Grade-I with 17 years of regular service in Group 'A' post".

(Emphasis added)

28

The above rules were amended by the CHS Rules of 1996 and the latter Rules would not apply to the promotion posts for the vacancies in 1994-95, which is the subject matter in these two O.A.s. By amendment in Schedule-III of the 1996 Rules, for purposes of promotion to the Super Time Grade (STG), Specialist Grade-I officers with three years regular service in the grade of Rs. 4500-5700, irrespective of whether the said service was performed in the Functional grade or NFSG of Rs. 4500-5700 <sup>those with 13 years</sup> were made eligible to be considered, failing which <sup>13</sup> years combined regular service in the grade were to be considered on the basis of a common eligibility list of Teaching specialities. These Rules themselves have not been given effect to from a retrospective date. Therefore, while preparing the eligibility Lists of Professors who are eligible for consideration for promotion in the Super Time Grade/SAG the eligibility of the officers has to be considered as prescribed in Rule 4 (10)(iii) of the CHS Rules of 1982 <sup>as by</sup> amended by the 1989 Rules. In the first reply filed by Respondent 1 on 4.2.1998, they have stated that according to the CHS Rules 1982, they have prepared two eligibility lists, one having officers with three years regular service in the grade of Professors (Rs. 4500-5700), failing which Professors with 17 years regular service in Group 'A' posts. Later on <sup>as</sup> the additional reply filed in May, 1998, they have changed their stand relying on the O.M. of 14.11.1991.

15. On perusal of eligibility List-I, it is seen that the four officers in this list, including applicant Dr. Asha Singh, have been appointed as Professors on various dates in 1991 and were, therefore,

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qualified for consideration for promotion on the cut off date of 1.10.1994. In the eligibility List-II, we find that Dr. (Smt.) Veena Choudhary who is placed at Serial No. 1 has also been appointed as a direct recruit Professor on 1.11.1991 but could not be placed in List-I, as she did not have three years regular service in that grade on the cut off date. We find that she could not also have been placed in List-II at Serial No. 1, as she does not fulfil the "failing which clause" under the aforesaid Rules. In Col. 4 of List-II, it is seen that although Dr. Veena Choudhary is placed at Serial No. 1 in the list of 27 eligible candidates, she is shown to have been appointed as Lecturer in 1982, whereas all the other officers against whom a date has been indicated, are shown to have been appointed as Lecturers much earlier i.e. between 1973 and 1980. Most of these other officers who have been appointed to a Group 'A' post prior to 1.10.1977 would, therefore, be eligible to be considered under the 'failing which clause' in the Rules. In this view of the matter, we find officers placed at Serial Nos 24-27 of List-II also do not have 17 years service in Group 'A' service. Apart from this in the case of Dr. Veena Choudhary, there is another anomaly. Even assuming for a moment that the stand taken by the official respondents in their additional reply is tenable, she could not be placed at Serial No. 1 when other officers who have been placed junior to her from Serial Nos. 2-27, including the applicant Dr. Celine have been shown as placed in NFSG between 1988-1989 whereas she has been shown in that grade, only from 1.1.1991. Therefore, eligibility List-II has not been prepared in accordance with the Rules or any discernible criteria. We, therefore, find merit in the

(26)

contentions of Shri V.K. Mehta, learned counsel that some ineligible officers have been placed in the eligibility lists which are not in accordance with the 1982 Rules. In the circumstances of the case, we find the stand taken by the official respondents in the additional reply dated 19.5.1998 that they have made a mistake while filing their earlier reply regarding preparation of eligibility List-II not only unconvincing but in violation of the CHS Rules, 1982 and devoid of merit.

16. The contention of the official respondents in the additional reply that eligibility List-II has been prepared giving the names of the officers who have been redesignated as Professors w.e.f. 1.12.1991 and have three years regular service in the grade of Rs.4500-5700 as Associate Professors (NFSG) is also not supported by any Rules. Even taking into account the Government of India decision in the O.M. dated 14.11.1991 when the concerned officers in the NFSG were redesignated as Professors w.e.f 1.12.1991, the effect of the action of the respondents would mean that these officers would get the benefit of their service from dates even prior to 1.12.1991 or the date of the Notification of <sup>the</sup> O.M. on 14.11.1991, which they cannot do. Therefore, the reasons given by the official respondents in the additional reply that because the Government of India had accepted the recommendations of the Tikku Committee to obliterate the distinction between NFSG and Functional grade and to designate all Associate Professors as Professors from 1.12.1991, that can be given effect to from a date prior even to the publication of the O.M. on 14.11.1991 is totally irrational and arbitrary. It is also settled law

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that executive instructions cannot be contrary to, supplant statutory Rules. It is also relevant that in Para 3 of the O.M. it has been specifically mentioned that the amendments to the CHS Rules, 1982 will be issued in due course, which was only done by the amendments of the Rules in 1996. Even these Rules do not have any retrospective effect. Therefore, till the CHS Rules were amended in 1996, the requirement of three years regular service in the grade of Professor/Specialist Grade-I cannot be equated with service of a Specialist Grade-II officer.

17. We, therefore, find no rationale in the stand taken by Respondent 1 in the additional reply filed in May, 1998. The letter dated 28.11.1996 addressed to UPSC which they have annexed to the additional reply to show that they have not relied on the "failing which clause" in the Rules was available to them even prior to their reply dated 4.2.1998 and, therefore, there appears to be no reason why they could not have stated the correct position in the first reply itself. The number of corrections referred to in the letter also seems to indicate their rather casual attitude in holding the DPC for selection to such senior level posts in CHS. For the 12 vacancies in 1994-95, as there were only 4 Professors with three years service in that grade for consideration for promotion to the next higher post of Professor-Director, Respondent 1 ought to have prepared the list of eligible officers under the "failing which clause" in accordance with the Rules. The judgements of the Supreme Court in Tarsem Singh and M. Bhaskar's cases (*supra*) relied upon by the applicants are applicable to the facts of these cases. The O.M. of 14.11.1991 cannot

18

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confer retrospective benefits on the promoted officers. In the facts of this case, we also find Respondent 1 has used the O.M. of <sup>14.11.91</sup> to supplant the statutory Rules and have gone even further more than what was intended by the Government decision of ~~that date~~. In this view of the matter, the O.M. has been implemented contrary to the Rules. So the decision in **State of U.P. Vs. Dr. Anupam Gupta (supra)** is not applicable.

18. For the reasons given above, we find that the official respondents have not acted in accordance with the applicable Rules in preparation of the eligibility lists. What the official respondents seem to have done is to add the proverbial pinch of salt in the vessel of milk as far as the DPC is concerned. It cannot, therefore, be held that the DPC proceedings of 24.1.1997 for consideration of officers for the vacancies of Professor-Director for the year 1994-95 is valid. In this view of the matter, the impugned promotion order dated 14.8.1997 is liable to be quashed. Although the grading of the officers for purposes of selection is relevant, we cannot allow the official respondents to adopt unwarranted and arbitrary actions in the preparation of eligibility list of officers, contrary to the statutory Rules. Just as their actions have included certain ineligible persons, it is also possible that they may have excluded other eligible officers from consideration by the DPC.

19. In O.A. 2391/97, it has been pointed out by Shri C. Hari Shankar, learned counsel for Respondent 12, that Dr. V. Srinivasan whose name is at Serial No. 7 of the impugned promotion order, above Respondent 12, has

not been impleaded. He has submitted that Dr. Srinivasan has already retired from service. Learned counsel has made a general submission that the promotion order cannot be quashed because all the persons who are likely to be affected have not been impleaded in this O.A. However, we find that in O.A. 2043/97, Dr. V. Srinivasan has been impleaded as Respondent 4, and Dr. Krishna Deshwal, has been impleaded as Respondent 5. As these two O.A.s have been heard together and notice to Respondent 4 in the other O.A has been given, it cannot be stated that Dr. V. Srinivasan is not aware of the present proceedings or he will be prejudiced because he has not been impleaded in the <sup>18</sup> other case.

20. The irregularities mentioned above have been committed by the official respondents by not following the relevant CHS Rules, 1982 in preparing the eligibility lists and the DPC proceedings held on 24.1.1997 are vitiated. However, it is also clear from the facts of the case that the persons who have been promoted by the impugned order dated 14.8.1997 cannot in any way be faulted or personally held responsible for the wrong actions of Respondent 1. In the circumstances of the case, it is also a fact that by applying the "failing <sup>most</sup> which clause" in the Rules, of the officers who have been included in eligibility List-II and promoted will also find a place in the revised eligibility list.

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21. Therefore, in the facts and circumstances of the case, the applications are allowed as follows:

(a) The impugned promotion order dated 14.8.1997 is quashed and set aside;

(b) Respondent 1 shall hold a review DPC for the 12 posts of Professor-Director in question and pass appropriate orders on the basis of <sup>the 12</sup> recommendations of review DPC within two months from the date of receipt of a copy of this order in accordance with the relevant law, Rules and Instructions. However, till such promotions are made on the recommendations of the review DPC, in the interest of administration and justice, the status quo in regard to persons holding the posts of Professor-Director consequent on the order dated 14.8.1997 shall be maintained.

(c) Further, the officers promoted by the aforesaid order dated 14.8.1997 shall not be made to suffer any civil consequences. It is made clear that no recoveries of salary and allowances shall be made from any of these persons who have been so promoted for the period they have worked in the higher post, whether they are still in service or retired on superannuation;

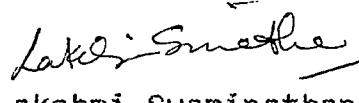
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-21-

(d) Respondent 1 shall pay costs of Rs.2000/- each to the applicants in OA 2391/97 and OA 2043/97.

(e) Let a copy of this order be placed in OA 2043/97.

  
(K. Muthukumar)  
Member (A)

  
(Smt. Lakshmi Swaminathan)  
Member (J)

"SRD"