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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.211/94

New Delhi, this the 15th day of July, 1994.

Hon'ble Shri N.V. Krishnan, Vice Chairman (A)
Hon'ble Shri C.J. Roy, Member (J)

Subash Chandra Malik,
A-210, Prashant Vihar,
Delhi-110035

Tapas Kumar Mazumdar,
40-A, R-Block, Dilshad Garder,
Delhi-110095.

...Applicant

(By Advocate : Shri G.K. Aggarwal)

VERSUS

1. Union of India, through
Secretary,
Ministry of Urban Development,
Nirman Bhavan,
NEW DELHI-1 ...Respondent No.1
2. The Director General (Works
C.P.W.D.
Nirman Bhavan,
New Delhi-11 ...Respondent No.2
3. Shri G.B. Nair, Executive Engineer (Civil)
Bhubaneshwar Construction Divn.I,
C.P.W.D.
Bhubaneshwar (Orissa) ...Respondent No.3
4. Shri Y.P. Suri,
C.E. (I.B.B.) Zone, C.P.W.D.
Siliguri (Assam) ...Respondent No.4

(By Advocate : Shri Vijay Mehta, for Respn No.1&2)

(None for Respondents No.3 & 4)

ORDER

(Hon'ble Shri N.V. Krishnan, Vice Chairman (A))

The two applicants are appointed Assistant Engineers (Civil) from 25.01.79 under the IIInd Respondent, the Director General (Works) Central Public Works Department (CPWD). They have qualified for AMIE, which is equivalent to a degree in Engineering. They are eligible for promotion to the next higher grade of Executive Engineers (Civil) in the C.P.W.D. They are senior to Respondents 3 & 4 as A.Es as evidenced by the Seniority List issued on

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31.03.83 (Annexure A-5). Yet, by the Annexure-I order dated 8.9.1993, 34 Assistant Engineers have been promoted to officiate as Executive Engineers, temporarily on ad hoc basis, until further orders, including respondents 3 and 4, who are the last to be promoted by that order. The applicants are, therefore, aggrieved by the order.

2. The grievance arises out of the fact that the ad hoc promotions violate the guidelines contained in the O.M. dated 30.3.1988 of the Department of Personnel (extracts at Annexure A-2 and full text at Annexure-7) on the subject. It is pointed out that government had indicated the procedure followed in this regard, in an affidavit filed in Contempt Petition 120 of 1992 filed by Shri J.N. Goel and Others, in the Supreme Court (Annexure A-3). It is alleged that the procedure adopted also violates the procedure required to be followed for regular promotion.

3. The grounds need to be set out in some detail to appreciate the challenge to the Annexure A-1, order.

3.1 The cadre of A.Es - a Group B service - consists of degree holders - including those qualified for the AMIE, like the applicants, which is treated as equivalent to a degree in Civil Engineering and diploma holders.

3.2 The relevant recruitment rules are the Central Engineering Service Group A - Recruitment Rules 1954 - Rules for short. The Group A Service consists of five grades. The lowest is Junior Time Scale

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and the posts are called Assistant Executive Engineers. The next grade is the Senior Time Scale. The posts of Executive Engineer (E.E) are on this scale. The other higher grades are not relevant.

3.3 66 $\frac{2}{3}$ % of the posts of E.E. are filled by promotion of Assistant Executive Engineers. - We are not concerned with this. The remaining 33 $\frac{1}{3}$ % posts of E.Es are filled by promotion of A.Es of the group B service, with which we are concerned - or by transfer.

3.4 Such promotion is made by selection in accordance with Rule 21(Part IV - Recruitment by promotion). That rule reads as follows :-

"1. No Assistant Engineer Class II shall be promoted as Assistant Engineer, Group 'A'.

2. Recruitment by promotion to the grade of Executive Engineer Group 'A' shall be made by selection from among permanent Asstt. Engineer in the Central Engineering Service, Class II, after consultation with the Commission. No officer shall have any claim to such promotion as of right.

3. No Assistant Engineer shall be eligible for promotion to the service unless he :-

a) Would, but for age, be qualified for admission to the competitive examination under Part III of these Rules.

b) Has rendered at least three years service in a permanent or temporary capacity as an Asstt. Engineer and subordinate under the Central Government, and

c) Satisfies the Commission that he is in every respect suitable for appointment to the service.

*Provided that Government, in consultation with the Commission may promote an Astt. Engineer of outstanding ability and record to Group 'A' service in relaxation of the educational qualifications provided in clause (a).

*(Ministry of W&H Notification No.22011-A(6)/72-EWI dated 31/10/1972).

It is to be observed that there is no direct reference to educational qualification in this rule. But Clause (a) of sub rule 3 makes eligibility conditional on possessing the qualifications needed for direct recruitment. Presumably, an Engineering degree is an essential qualification for direct recruitment. Hence only A.Es who are degree holders, are eligible for promotion. The exception to this is provided in the proviso to sub rule 3. By this proviso A.Es who have only a diploma are ^{✓ made} /eligible for consideration for promotion subject to the conditions therein.

3.5 Keeping in view this distinction between degree holder A.Es and diploma holder A.E, the benchmark for selection is fixed as 'good' for the former and 'Very good' for the latter.

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3.6 Admittedly, the D.P.C. for selection is to be chaired by the Chairman, U.P.S.C. or a Member, UPSC.

3.7. The Government stated as follows, in Sept., 1992 in their counter-affidavit in C.P.120 of 1992 filed in the Supreme Court. (Annexure A-3)

(i) "Promotion to the grade of EEs in the CPWD are being made on adhoc basis since 1973 as the seniority in that grade had been the subject of litigation both in the High Court and in the Supreme Court. Such adhoc promotions continue to be made

even now, as regular appointments can be made only after the adhoc appointments earlier made are regularised by holding D.P.C. in accordance with the Recruitment Rules.

In view of the fact that adhoc appointments are being made against long term vacancies and in order to avoid large scale reversions when regular appointments are made, the Screening Committee (which consists of the Departmental Members of the DPC) had adopted a benchmark of 'very good' for inclusion of AEs, Graduates as well as non-graduates, in the panel for adhoc promotion to the grade of EEs."

(ii) "The Hon'ble Supreme Court of India in their order dated 25.11.1991 passed in IA No.5/90 filed by the present petitioner have observed that during the pendency of the appeal, the promotions may be made but the same should be done in accordance with the relevant rules. The matter was considered in the light of the judgement and in the context of the guidelines for adhoc appointment issued by the Department of Personnel and it was decided that the diploma holders AEs should have atleast 60% 'very good' or "outstanding" reports out of the total of 10 reports which are being considered for assessing their suitability for adhoc promotion to the next higher grade. In the case of graduate Assistant Engineers, the benchmark of "good" prescribed by the Department of Personnel for promotion to the next higher grade has been adopted. This was decided on 6.4.1992."

3.8. The guidelines have been issued by the Department of Personnel in O.M. dated 30.3.88 (Annexure A.7). Para 4 (iii) thereof states that after screening of the records and satisfying that the eligibility conditions are satisfied, adhoc promotion can be granted on the basis of seniority-cum-fitness.

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3.9 This guideline is violated in the impugned order dated 8.9.93 (Annexure A-1) which grants adhoc promotion to 34 A.Es. The principle of seniority has not been followed because, though the applicants are senior to Respondent No.3 & 4, they have been superceded.

3.10 In 4.02 of the O.A. it is alleged as follows in regard to the promotions allowed by Annexure A-1

"The said promotions were made on the basis of :-

(a) Diploma-holders AEs having 6 'very good' or above Annual Confidential Reports (ACRs) out of the last 10 ACRs, and

(b) Degree-holders AEs having 4 'very good' or above ACRs out of the last 8 ACRs,

in the order of their combined seniority in the seniority rolls in the grade of AEs (Civil). Thus, those who had 'good' ACRs were not promoted while their juniors with 'very good' ACRs were promoted."

It is thus alleged that the affidavit given to the Supreme Court as at (ii) in para 3.7 Supra, was it is alleged in para 4.09 that violated. Likewise, by using ~~as~~bench-mark of 'very-good' for both degree-holders and diploma-holders, respondents-1,2 violated the said Rule 21 by way of dispensing with the eligibility-difference between degree-holders and diploma-holders."

3.11 The applicant would have been promoted if the Bench-mark 'good' was adopted for them, as they are graduate A.Es.

4. It is stated that, in respect of this impugned order, Annexue A-1, the applicants filed Contempt Petition 367/93 in Civil Appeal No.5363/90 before the Supreme Court which was dismissed by the following order :

"Heard learned Counsel for the parties.
We find no substance in the contempt petition.
If the petitioners have any other remedy in law, they are at liberty to initiate substantive proceedings. It requires to be observed that petitioners were not ~~co-nominees~~ parties to the proceedings. It is, therefore, necessary for them to adopt such other appropriate steps as may be open to them. The contempt petition is dismissed."

5. Hence, the applicants have filed the present application and sought the following relief :

"Direct respondents -1,2 to consider the Applicants for promotion from the grade of Assistant Engrs (Civil) to the next higher grade of Executive Engineers (Civil) in the batch of promotees shown in impugned annexure A/1 dt 08.09.93 on the basis of seniority-cum-fitness with benchmark of 'good' and, if they made the grade, promote them with effect from 08.09.93 with arrears and all other consequential benefits and amend the impugned annexure A/1 dt 08.09.93 as to include their names therein by dropping, if necessary, the names of respondents-3,4 from A/1, grant any other relief."

6. After notice to the respondents, an interim direction was issued on 17.2.94 directing the respondents not to give ad hoc promotion to Assistant Engineer (Civil) to the rank of Executive Engineer (Civil), except on the basis of seniority.

7. The respondents 1 and 2 (i.e. government) have filed a reply contesting the claim of the applicants. Notice of the O.A. was sent to Respondent 3 & 4 by Regd. post on 2.2.94 but the acknowledgement has not been received. Service is presumed.

8. The matter was heard in detail in connection with the further directions to be issued in respect of the interim order and after a lengthy hearing, it was agreed that the O.A. itself be disposed of. We proceed to do so.

9. Government have filed two replies. It is contended that this O.A. is not maintainable as the Contempt Application filed by the applicants in respect of the Annexure A-1 impugned order was dismissed by the Supreme Court. We do not find any merit in this submission. The applicants are entitled to file this substantive O.A. questioning the the method of promotion adopted in the Annexure A-1 order.

10. It is stated that, due to the long history of litigation in the CPWD in regard to seniority in the rank of A.E and EE, such promotions are being made on an ad hoc basis from 1973. The promotions are being made to long term vacancies by considering the claims of eligible persons by a Screening Committee which is the same as the DPC specified in the Recruitment Rules, but excluding the Member UPSC.

11. To begin with, the Screening Committee adopted a bench mark 'very good' in respect of all Assistant Engineers, whether they were graduates or diploma holders,

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as stated in the extract at (i) in para 3.7 supra. Subsequently, w.e.f. 6.4.92, the bench-mark adopted for graduate AEs was 'good' while it was 'very good' for diploma holder AEs, as stated in the extract at (ii) ibid.

12. Accordingly, a list was drawn up on 21.5.1992 for ad hoc promotion of 31 officers after considering 68 seniormost eligible officers in the zone of consideration. Out of these, 28 were graduates and 40 were non-graduates. Out of 40 non-graduates, only 3 were assessed as 'Very good'. Out of 28 graduates, 20 were assessed as 'very good'. These 23 persons were included in the panel on the basis of their 'very good' assessment. Out of the remaining 5 vacancies, 1 was kept vacant for a scheduled caste. The remaining 4 vacancies were filled up only from Graduate Assistant Engineers who had 'Good' grading. No diploma holder with 'Good' grading was promoted.

13. Likewise, a subsequent meeting of the Screening Committee was held on 26.7.1993 for preparation of a panel of 53 Officers for promotion as Executive Engineers. 12 posts were reserved for scheduled castes and scheduled tribes. 42 posts were available for the general category candidates. The applicants were also considered by this Committee, along with the other eligible officers in the zone of consideration. The applicants were assessed as 'good' by the Committee. Though they attained the bench mark 'good', they could not be empanelled because, sufficient number of persons, both senior and junior to the applicants, with better record of service, i.e. 'very good', were available and empanelled to the extent of

the available vacancies. Hence, the applicants' names were not included in the Annexure A-1^{order} of promotion dated 8.9.1993.

14. Government rely on the O.M. dated 10.4.89 of the Ministry of Personnel which forms part of the consolidated instructions issued on promotion and published in Chapter on Establishment & Administration of 1993 on Page-646 Para 6.3.1. 49 of Swamy's Complete Manual. A copy of the consolidated instructions is at Annexure R-I. Para 6.3.1, of the instructions, which is relied upon, reads as follows :-

"Whenever promotions are made for induction to Group 'A' posts or services from lower groups, the benchmark would continue to be 'Good'. However, officers graded as 'Outstanding' would rank enbloc senior to those who are graded as 'Very Good' and officers graded as 'Very Good' would rank enbloc senior to those who are graded as 'Good' and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post."

15. It is stated that the promotions made are against long term vacancies and, therefore, it is submitted that the instructions of the Department of Personnel dated 30.3.1988 (Annexure A-7) would not apply. It is pointed out that no ad hoc promotion made to the grade of Executive Engineer (Civil) after 1972 has been made only for a period of one year. In fact, none of the Officers given such ad hoc promotion has been reverted. The promotions were made after the claims of the persons were considered by a Screening Committee which consisted of all the Departmental Members of the DPC, but did not include anyone from the UPSC. This procedure was adopted to avoid large

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scale reversions later, when regular promotions are made after obtaining the full-fledged DPC's recommendations at the appropriate time i.e. when ~~the~~ the litigation ends or when specifically ordered by a Court. In any case, all promotions have been made subject to the outcome of the petition pending in the Supreme Court. The respondents also submit that they have not deviated from the stand taken by them before the Supreme Court in Contempt Petition No.120/93 (Annexure A-3).

16. We have heard the learned counsel for the parties. They generally reiterated the pleadings. The learned counsel for the applicants contended that if promotion was to be made by selection, as provided in the Recruitment Rules, the records should ~~be~~ have been examined by the D.P.C. presided over by the Chairman or Member, U.P.S.C. and not by an unauthorised Screening Committee. This was permitted by the ~~U~~ Supreme Court & such promotions could have been treated as provisional subject to the decision of the Supreme Court. He also pointed out that the Annexure A-1 order is contrary to the statement made before the Supreme Court (Annexure A.3) in the Contempt Petition No. 120/93 and has to be struck down. The Tribunal has, therefore, to act in aid of the Supreme Court under Article 144 of the Constitution. The respondents should either be directed to order promotions strictly on the basis of seniority-cum-fitness or the applicants who have been assessed as 'good' should also be promoted.

17. We have carefully considered the rival contentions and perused the records.

18. Before we proceed further, we cannot help noticing one major incongruity in the relief sought in the O.A. The applicants have questioned the authority of Government from deviating from the provisions of the Recruitment Rules by not constituting a D.P.C. as envisaged therein and in the standing instructions, and appointing a Screening Committee' to examine the records of the eligible persons considered for promotion. Yet, the applicants, claim promotion for themselves on the basis of their being graded 'good' ^{by the} unauthorised Screening Committee. In short, they are reprobating and approbating in one breath.

19. As one line of attack on the impugned order is based on the O.M. dated 30.3.88 issued by the Department of Personnel (Annexure A-7) in regard to giving ad hoc appointments, it is necessary to examine that O.M. That O.M. examines the excuses given by Departments for making ~~a~~ ad hoc appointments and in effect, informs the Departments that those ~~excuses~~ excuses are not sound and that there was no justification to resort to adhoc appointments which led to several claims and litigation. The O.M. explained what should be done to obviate adhoc appointment in the absence of recruitment rules; or when recruitment rules are being revised or, when seniority list was being revised or there has been shortage in direct recruitment and vacancies existed. It was explained

that, in all these circumstances, there was no need to resort to adhoc appointment and that the problem could be dealt with equally effectively by other methods as indicated therein.

20. The O.M. then narrates in the third para the three circumstances where, nevertheless, adhoc appointment may have to be made. Two of them relate to unfilled vacancies in the direct recruitment quota and short-term vacancies arising from leave, deputation. We are not concerned with them. We are concerned with the third circumstance which is as follows :-

"Where there is an injunction by a court/Tribunal directing that the post may not be filled on a regular basis and if the final judgement of the Court/Tribunal is not expected early and the post also cannot be kept vacant."

Neither party has produced evidence that this circumstance obtains in this case, but admittedly, there is pending litigation in the matter of seniority.

21. The guideline to be followed in this circumstance is contained in para 4 of the O.M. Relevant extracts are reproduced below :-

"In such exceptional circumstances, adhoc appointments may be resorted subject to the following conditions :-

(i) The total period for which the appointment/promotion may be made, on a adhoc basis, will be limited to one year only. The practice of giving a break

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periodically and appointing the same persons on an adhoc basis may not be permitted. In case there are compulsions for extending any adhoc appointment/promotion beyond one year, the approval of the Department of personnel & Training may be sought at least two months in advance before the expiry of the one year period. If the approval of the Department of Personnel & Training to the continuance of the adhoc arrangements beyond one year is not received before the expiry of the one year period, the adhoc appointment/promotion shall automatically cease on the expiry of the one year term.

ii) If the appointment proposed to be made on an adhoc basis involves the approval of the Appointments Committee of the Cabinet, this may be obtained prior to the appointment/promotion being actually made.

iii) Where adhoc appointment is by promotion of the officer in the feeder grade, it may be done on the basis of seniority-cum-fitness basis where promotion is by selection method as under :-

a) Adhoc promotions may be made only after proper screening by the appointing authority of the records of the officer.

b) Only those officers who fulfil the eligibility conditions prescribed in the recruitment rules should be considered for adhoc appointment. If, however, there are no eligible officers, necessary relaxation should be obtained from the competent authority in exceptional circumstances.

c) The claims of Scheduled Castes and Scheduled Tribes in adhoc promotion shall be considered in accordance with the guidelines contained in the Department of Personnel & A.R. Office Memorandum No.36011/14/83-Estt(SCT) dated 30.4.1983 and 30.9.1983."

22. It is clear that the instructions are issued by the Department of Personnel to eliminate ad hoc appointments in most circumstances, and to regulate such appointments in unavoidable circumstances. They do not confer any right on employees to question adhoc appointments made in violation of this O.M. The only authority who can question such appointments is the Department of Personnel. Employees can question such appointments only if they are otherwise ~~bad~~ in law.

23. The adhoc promotions to the posts of E.E. are being made from 1973 onwards i.e. long before the Annexure-A.7 O.M. was issued. This had to be resorted to, because the seniority lists in ^{feeder} the category have been under litigation from that time. The vacancies were long-term vacancies. In the normal course, they would have been filled by selection i.e. by the ~~best~~ persons available. As the disputes have lasted for a long time, there is merit in not granting adhoc promotions on the basis ^{on the basis of selection} of seniority cum fitness but only If a certain method was adopted to make a selection - though not strictly in conformity with the Recruitment Rules - and adhoc promotion was made on the basis of the selection and not on seniority-cum-fitness basis,

it was, no doubt, ^a violation of the Annexure A-7 O.M. but that does not detract from the need to resort to such selection. That need cannot be disputed as these are long-term vacancies and in conformity with the Recruitment Rules, the best persons have to be selected. Therefore, the selection, ^{on} adhoc basis, was made in public interest.

24. The question is whether the procedure adopted can be assailed on any other ground. Applicants have not alleged any malafide in this action or any hostile discrimination against them. The Screening Committee consisted of all those Departmental Officers who would have been members of the regular D.P.C. No allegation is made against them. The criterion of selection was the same as the D.P.C. itself would have adopted. No injustice appears to have been done to the applicants by such selection in which they had to be eliminated.

25. Therefore, the procedure of selection adopted, before adhoc promotion was given, is not liable to attack on any reasonable ground. The adhoc promotion made is valid, notwithstanding that it is not in conformity with the Annexure A-7 O.M.

26. We have, however, to notice the following guidelines given in the Annexure A-7 O.M. as to how the situation should be faced if the seniority list is under revision.

(sic-adhoc?)

"Another reason for making arrangements and delaying regular promotion is that the seniority position of the officer holding the post in the feeder grade is disputed. In all such cases regular DPCs may be held based on the existing seniority list. In case such disputes are pending before a court/Tribunal, unless there is an injunction/stay order against making regular promotions, the appointing authority may convene the DPC and make promotions on the basis of the existing seniority list. However, while issuing the orders in such cases it should be stipulated that these promotions are provisional and subject to the final decision of the Court/Tribunal. Subsequently, when the directions of the Court/Tribunal become available, a Review DPC may be held and the necessary adjustments made in the promotions of officers based upon the revised seniority list. In case any of the officers provisionaly promoted do not figure in the list approved by the Review DPC, they may be reverted to the posts held by them earlier."

As pointed out in para 20 Supra, neither party has produced any injunction from any Court or Tribunal making forbidding/any regular promotion, except for the mention in the in the counter-affidavit at Annexure A.3 about such a direction having been issued by the Principal Bench. Even if there is such a direction, we are unable to see why the procedure laid down above cannot be followed in such cases also (i.e. consideration of all cases by a regular DPC on the basis of the latest available seniority list to order promotions) unless there is a direction not to follow this procedure. The promotions, can then be made on a provisional basis subject to the final orders of the court, because of the direction that no regular

promotion shall be made. There appears to be no need to make any adhoc promotion de hors the rules, unless the rules have been quashed or they are nonexistent.

27. The major deviation from the recruitment rule is that the Chairman, UPSC or a Member of UPSC has to preside over the DPC in accordance with the Rules. ^{the} while in present case, neither was included in the Screening Committee. The learned counsel for the Respondents could not explain the rationale of this decision, except to point out that as the promotion was on an adhoc basis it was, perhaps, felt that regular DPC need not be held. It is stated in the Annexure A-3 counter-affidavit filed by Government before the Supreme Court in C.P. 120/92 as follows :-

"Promotion to the grade of EEs in the CPWD are being made on adhoc basis since 1973 as the seniority in that grade had been the subject of litigation both in the High Court and in the Supreme Court. Such adhoc promotions continue to be made even now as regular appointments can be made only after the adhoc appointments earlier made are regularised by holding DPC in accordance with the Recruitment Rules."

This stand has consistently been taken by the Respondents in this O.A. also.

28. Therefore, it is clear that the promotions have been made after following a procedure which has all the trappings of the procedure prescribed in the Recruitment Rules, except in one respect viz that the UPSC was not associated. In other words, the 'Screening Committee' was, to this extent, adhoc in nature, and consequently the promotions are 'also' 'adhoc'. This had to be resorted as the 'seniority' in the 'feeder category' was

in question. In our view, the respondents could also very well have taken action in the past to hold regular meetings of the fullfledged DPC to consider the cases of A.Es for promotion on a regular basis and ordered such regular promotions on a provisional basis subject as pointed out in para 2.6 supra. to the outcome of the pending litigation. We are, however, not concerned with what happened in the past. What is before us is the impugned Annexure A-1 Order dated 8.9.93.

29. The question is whether on 8.9.93, when A-1 Order was issued, the cases of the officials could have been considered by the regular DPC and regular promotions granted - instead of adhoc promotions - making them also subject to the decisions of the Supreme Court in SLP 12006/1990 and other cases referred to in para 3 of the Annexure A-I order? A careful perusal of the records shows that the position had materially changed by this time because of an order dated 30.4.90, stated to have been passed by the Principal Bench of the Tribunal. Reference is given to this Order in the Counter-affidavit of Government before the Supreme Court (Annexure A-3) in C.P 120 of 1992. After advertizing to Rule 21 of the Central Engineering Service Group-A Recruitment Rules, which contains the following proviso viz

"Provided that the Govt., in consultation with the Commission may promote an Assistant Engineer of outstanding ability and record to Group 'A' service in relaxation of educational qualification provided in Clause 'a'."

The counter affidavit proceeds to state as follows :-

"This particular provision in the rules has been challenged in the Hon'ble CAT, PB, New Delhi and the Tribunal by an order dated

30.4.90 observed as under :-

"In the facts and circumstances of the case, we are of the view that proviso to rule 21(3) is arbitrary and discriminatory. The proviso therefore requires to be substituted by a rational and just criterion e.g. holding of qualifying test for diploma holder AEs, annually or as may be necessary to obviate the element of arbitrariness and make the Rules reasonable. Those who qualify in such a departmental test should be considered alongwith graduate AEs for promotion to the next higher grade by the DPC by following the normal procedure."

"The Hon'ble Tribunal accordingly directed amendment of the rules within a period of six months and also directed that until the rules are so amended, no regular promotion of diploma holder AEs should be made and the adhoc promotion already made shall be regularised in accordance with the amended rules.

I say that no amendment to the recruitment rules in pursuance of the orders of the Hon'ble CAT delivered on 30.4.90 is possible in view of the order of stay passed by the Hon'ble Supreme Court." (Emphasis added)

Thus, it appears that there is now a specific direction by the by the Tribunal that no regular promotion should be made. The proviso to rule 21(3), though not struck down in specific terms, was thus made inoperative by the Tribunals Judgement. The effect was that only degree holder A.Es could be promoted as observed in para 3.4 supra. In the absence of the amended rule, regular promotions could not be granted to any A.E., who does not have a degree as directed

to be framed by the Tribunal. Apparently, the Tribunal did not forbid granting, adhoc promotion until the rule was amended as directed. Therefore, in this new situation, the respondents could grant only adhoc promotions to the diploma holder A.Es by the impugned order.

30. Only one more point remains to be considered. This concerns the allegation in Para 4.02 and 4.09 of the O.A. which have been adverted to in para 3.10 supra. It is clear that the principles followed by Government from 6.4.92 are as follows :-

- i) 'Good' should be the bench mark for graduate A.Es.
- ii) 'Very good' should be the bench mark for diploma holder A.Es
- (iii) To the extent vacancies are available, those having 'Very good' grade - whether they are graduates or diploma holders- should be appointed on the basis of relative seniority.
- (iv) If there are some more vacancies, only graduate A.Es who have 'good' grading - i.e. the bench mark - will be appointed, but not the Diploma holder A.E having good grading.

Thus, Government have not dispensed with the difference between graduates and diploma holders built in Rule 21, as alleged.

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31. Thus, having given our anxious consideration to the issues raised in the O.A., we find no merit in the submissions made. The adhoc promotions granted by the impugned order are justified. We also hold that the impugned Annexure A-1 order of promotion, is fully consistent with the submissions made by the respondents in their Annexure A-3 counter-affidavit before the Supreme Court in Contempt Petition 120 of 1992. Therefore, in our view, there is no question of the respondents having violated any order of the Supreme Court as alleged. Accordingly, the O.A. is dismissed. The interim order issued is vacated. No costs.

15/7/94
(C.J. Roy)
Member (J)

15/7/94
(N.V. Krishnan)
Vice Chairman (A)

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