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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 1875/94

New Delhi, this the 7th April, 1995

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

1. Shri I.S. Khanna,
s/o Shri R.K. Khanna,
R/o 142-B, LIG
Rajouri Garden,
New Delhi.
2. Shri H.C. Dahiya,
s/o Shri Kanhaiyalal
R/o 16, Chandralok Enclave,
Pitampura,
Delhi.
3. Shri J.S. Dabbas,
s/o Shri Lehri Singh,
R/o B-235, Saraswati Vihar,
Delhi.
4. Shri Mahender Singh,
s/o Shri Kashi Ram,
R/o 405, Maitrai Apartments,
Sector-9, Rohini,
Delhi.

... Applicants

By Advocate: Shri P.P. Khurana

Vs.

1. Government of National Capital Territory of Delhi,
through the Lt. Governor,
Delhi
Raj Niwas Marg,
Delhi.
2. Department of Transport of
National Capital Territory of Delhi
through the Commissioner
45/9, Under Hill Road,
Delhi.
3. Union Public Service Commission
through the Secretary,
Dholpur House,
Shahjahan Road,
New Delhi.

...2.

4. Mohan Singh,
Enforcement Officer,
Department of Transport,
5/9 Under Hill Road,
Delhi.

.... Respondents

By Advocate: Shri Jog Singh alongwith Shri
S.D. Saji for official respondents
Shri Govind Mukkoti with Shri
C.M. Khan for Private Respondents
Shri R. Venkatramani, counsel for Respondent No.4.

ORDER

Hon'ble Shri J.P. Sharma, Member (J)

Applicant No.1 is Chief Motor Vehicle Inspector and Applicant Nos. 2 to 4 are Motor Licensing Officer in the Department of Transport, Delhi Administration. The channel of promotion from the grade of Motor Licensing Officer in the grade of Rs.2000-3200 is to the grade of Deputy Director in the grade of Rs.3000-4500. This promotion is governed by the Recruitment Rules for appointment to the post of Deputy Director (Transport) and by the notification dated 18.1.94. The earlier Recruitment Rules for the said post notified on 10.9.93 and subsequently amended in November 1983 and March 1986 have been cancelled and new Recruitment Rules for the said post has been notified. According to these new rules, the post of Deputy Director is classified as General Central Service Grade A Gazetted post and 75% of the vacancies are filled by promotion and remaining 25% by transfer on deputation or re-employment for Ex-servicemen. The eligibility condition for promotion is given in the schedule in Column 12 which is reproduced below:-

"Promotion"

Motor Licensing Officer, Chief Motor Vehicle Inspector, Technical Officer and Enforcement Officer with 10 years regular service in the respective grades in the Transport Deptt. of the Delhi Administration.

NOTE: 1: The regular incumbents of the feeder posts on the date of notification of the revised rules will continue to be eligible for promotion after 8 years of regular service.

NOTE: 2: The eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service in the respective grade/post.

TRANSFER ON DEPUTATION: Officers of the Central/ State Governments/Union Territories

- (a) (i) holding analogous posts on a regular basis or
- (ii) with 5 years regular service in posts in the scale of pay of Rs.2200-4000 or equivalent; or
- (iii) with 8 years regular service in posts in the scale of pay of Rs.2000-3500 or equivalent; and
- (iv) possessing a degree of a recognised University or equivalent and having 5 years experience in the field of General Admin. with 2 years experience in matters relating to Transport Department."

2. Shri Mohan Singh, Respondent No.4 was serving in Delhi Police in the rank of Sub Inspector and he came on deputation in the Transport Department in 1984 on the same post. He was subsequently absorbed in the Transport Department as Inspector Enforcement w.e.f. 15.7.85 in the pay scale of Rs.550-750 which has been revised to Rs.1600-2660. Subsequently, the date of absorption was changed to 30.1.86 by the order dated 22.3.90. However, Lt. Governor by the order dated 8.4.94

granted proforma promotion to him as Inspector in Delhi Police in the pay scale of Rs.2000-3200 w.e.f. 1.1.86. Respondent No. 4 having come on deputation on the post of Sub-Inspector in February, 1984 in the Transport Department he maintained his lien in the parent Police Department and was subsequently absorbed in the Transport Department w.e.f. 15.7.1985 but his lien was retained in the parent police Deptt. till 30.1.1986. While on deputation the applicant was promoted as Inspector (Enforcement) w.e.f. 1.4.1985 and was subsequently promoted as Enforcement Officer on 6th September, 1989. The grade of Enforcement Officer is in the pay scale of Rs. 2000-3200/-. However, the respondent No. 1 by the order dated 8.4.1994 granted proforma promotion to respondent No. 4 as Inspector in Delhi Police in the pay scale of Rs. 2000-3200/- w.e.f. 1.1.1986 as has been stated above.

3. The grievance of the applicant is that the respondent No. 4 Sh. Mohan Singh had made a representation to the effect that he has completed more than eight years of regular service in the grade of Rs.2000-3200/- and was thus eligible for promotion to the post of Deputy Director Transport in the scale of Rs. 3000-4500/-. As said above the feeder post as per the extant rules for the post of Deputy Director Transport notified on 18.1.1994 are Motor Licencing Officer, Chief Motor Vehicle Inspector, Technical Officer and Enforcement Officer. The applicant No. 1 is Chief Motor Vehicle Inspector since 1989 and applicant Nos. 2 to 4 have been holding the post of Motor Licencing Officer since August, 1989. In view of this the applicants averred that as they have been promoted earlier in the grade of

of Enforcement Officer to respondent No. 4 they also qualified for consideration for the post of Deputy Director particularly as the post of Inspector/Enforcement Officer was not a feeder post in the recruitment rules of 1973 as amended and modified with notification issued in the year 1983 and 1986. It is only for the first time in 1994 that the new recruitment rules for the post of Deputy Director, the post of Enforcement Officer has been prescribed as one of the feeder cadre post. Being aggrieved by the consideration of respondent No. 4 in the D.P.C. held on 22nd August, 1994 the applicants jointly filed this application on 16th September, 1994. The applicants in this application (amended) has prayed for the grant of the following reliefs:-

- (a) Issue a writ of certiorari or any other appropriate writ or order quashing the minutes of the D.P.C. WHICH took place on 22.8.1994 for consideration of respondent No. 4 for appointment as Deputy Director (Transport) and which recommended his name as such;
- (b) Restraine the respondents No. 1 and 2 from appointing respondent No. 4 as Deputy Director (Transport);
- (c) Quash the appointment of Respondent No. 4 as Enforcement Officer made vide order dated 6.9.1989.
- (d) to issue a writ of mandamus or any other appropriate writ or order directing the respondents nos. 1 to 4 to consider the candidatures of the applicants to the grade of Deputy Director in accordance with Recruitment Rules, 1973 as amended in 1983 and 1986 by granting them relaxation if need be and if recommended by the Departmental Promotion Committee to appoint them as such.

(e) To quash the order dated 18.6.85 granting promotion to the respondent No.4 from the grade of Sub Inspector to Inspector(Enforcement).

(f) To quash the order dated 15.7.85 read with order dated 30.1.86 read with order dated 22.3.90 permanently absorbing the respondent No. 4 in the transport department with all consequences flowing therefrom; and in alternative to quash the order dated 22.3.90 changing the date of absorption of 30.1.86 instead of 15.7.85.

(g) To quash the order dated 8.4.94 giving retrospective promotion w.e.f. 1.1.1986 as Inspector, Delhi Police to the respondent No.4.

(h) To quash the stipulations in the recruitment rules of 1994 for the post of Deputy Director (Transport), wherein the post of Enforcement Officer has been added as the Feeder post for promotion to the grade of Deputy Director.

(i) To direct the respondents to issue a common seniority list of MLO/CHVI/TD/EO on the basis of their continuous length of service in the respective grades after calling objections.

Any other order or directions as may be deemed to be fit and proper by this Hon'ble Tribunal in the facts and circumstances of this case, may also be passed.

The official respondents and the Respondent No.4 Shri Mohan Singh filed their reply to the averments made in the amended O.A. denying the facts to some extent and also taking the objection that the applicants have no cause of action as well as locus to file the present application. The respondents separately have taken the stand that the reliefs prayed for cannot be granted to the applicants because they were not eligible for being considered for the post of Deputy Director(Transport) as per the extant recruitment rules dated 18.1.94. The respondents have also in their reply separately interpreted the provisions of Column 12 of the aforesaid recruitment rules with regard to the promotion to the post of Deputy Director(Transport) in the promotion quota from the feeder post of Motor Licensing Officer(M.L.O.), Chief Motor Vehicle Inspector(C.M.V.I.), Technical Officer(T.O.), and Enforcement Officer (E.O.). The emphasis of the respondents in their separate counter is that Note 2 in Column 12 of the aforesaid recruitment rules states that the eligibility list for promotions shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service in the respective grade/posts. It is emphasised that if in the feeder post the incumbent has been in the grade of Rs.2000-3200 for the required period of 8 years on regular basis he will qualify for being considered as per Note i in Column 12 of the recruitment rules. The respondents separately also challenged locus of the applicant to challenge at such a point of time the promotion of Respondent No.4 to the post of Enforcement Officer w.e.f. 16.9.89 or the absorption in the Transport Department by the revised order issued in January,1990 w.e.f. 30.1.86 instead of earlier notified dated w.e.f. 15.7.85.

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The applicants have also filed the rejoinder reiterating the stand that since they belong to the feeder grade post and have been promoted to that post earlier to Respondent No.4, Applicant No.1 in April, 1989 and the other applicants in August, 1989 while Respondent No.4 was promoted to the feeder post of Enforcement Officer in September, 1989 so if the official respondents have considered the Respondent No.4 for promotion to the post of Deputy Director (Transport) in relaxation of the provisions contained in Column 12 of the rules, the applicants also have a claim to be considered and not to be declared ineligible for the post. In view of this, they have a right to challenge the promotion of Respondent No.4 wherein the Department has misrepresented to the U.P.S.C. that only Respondent No.4 has been eligible for promotion to the post of Deputy Director (Transport) as per extant recruitment rules in the promotion quota of 75%. It is further stated that Respondent No.4 was promoted ^{on regular basis} to the post of Enforcement Officer in September, 1989. The post was not / included as a feeder post for promotion to the post of Deputy Director. It was only by the extant rules of 1994 that this post for the first time has been included as a feeder post for promotion to the post of Deputy Director (Transport). The order issued by the administration dated 22.3.90 by which the earlier date of absorption of the applicant w.e.f. 15.7.85 as Enforcement Inspector was changed to 30.1.86 so the cause of action arose to the applicants only when as per extant recruitment rules notified in 1994 the respondents considered filling the post of Deputy Director (Transport) ignoring the

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claim of the applicants. It is said that the applicants have a right to challenge even absorption of Respondent No.4 from 30.1.86 as well as giving him promotion to the post of Inspector in Delhi Police in the grade of Rs.2000-3200 w.e.f. 1.1.86.

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We/heard the learned counsel for the parties at considerable length and perused the records. Before analysing rival contentions of the parties, certain dates with respect to Respondent No.4 are necessary to be considered and the post held by Respondent No.4 at the relevant points of time. What appears in this application is that though the applicants may not be eligible for consideration for the post of Deputy Director(Transport), they have a grievance that Respondent No.4 can also not be considered as he is not eligible as per the extant recruitment rules having not put in 8 years of service in the grade/post of Enforcement Officer in the Delhi Transport Department. Respondent No.4 joined initially as Sub-Inspector in Delhi Police in the scale of Rs.425-600 which is now revised to Rs.1640-2900. The scale of S.I. in the Transport Department was revised to Rs.330-480 which has been Rs.1200-1800. Respondent No.4 initially came on deputation on 21.2.84 and he was allowed to retain his pay scale as in Delhi Police i.e. Rs.425-600. While working in the department on deputation post, the applicant was given promotion in the Transport Department as Inspector(Enforcement) on adhoc basis on 1.4.85. The scale of Inspector(Enforcement Officer) in the Transport Department is Rs.550-750 which has been revised to Rs.1600-2660. Since the Respondent No.4 got

promotion as Inspector in the Transport Department one month thereafter on 5.5.85, he requested the Director, Transport that he be absorbed in the Enforcement Branch of the Directorate of Transport and prayed that he may be given the scale equal to that of Inspector, Police i.e. Rs.550-900 which is revised to Rs.2000-3200. 2 months thereafter in July, 1985 an order was issued absorbing the applicant as Inspector, Enforcement in the scale of Rs.550-750 revised scale Rs.1600-2660 pending approval of the service department and his lien was maintained in the Police Department for 2 years. In the meantime in September, 1985 the Deputy Commissioner of Police, Headquarters wrote to the Joint Director, Department of Transport that Respondent No.4 shall be deemed to be on deputation till he is permanently absorbed unconditionally in the Transport Department. The Departmental Promotion Committee met for the post of Inspector in Delhi Police but since Respondent No.4 was on deputation at that time, he was not considered though his junior was given promotion and as such on 7.12.85 Respondent No.4 made a representation to the Lt. Governor, Delhi. It was on 30.1.86 that finally Respondent No.4 was absorbed in the Transport Department in the scale of Rs.550-750 w.e.f. 15.7.85 and his lien was terminated in the Delhi Police, his parent department. However, by virtue of a subsequent order of 22.3.90 the date of absorption in the Directorate of Transport was changed to 30.1.86. Here it may be mentioned that on 8.4.94 the Lt. Governor of Delhi granted proforma promotion to Respondent No.4 as Inspector of Delhi Police in the pay scale of Rs.2000-3200 w.e.f. 1.1.86. It is this order which Respondent No.4 as well as official respondents are taking as the eligibility criteria of Respondent No.4 for promotion to the post of

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Deputy Director, Transport. Now the post of Enforcement Officer was created for the first time on 26.7.88 in the pay scale of Rs.2000-3200 and the pay of the post was equal to the pay of Inspector of Delhi Police as well as MLO/CMVI/TD in the Department of Transport. After the creation of the post in July, 1988, Respondent No.4 was given adhoc promotion as Enforcement Officer w.e.f. 13.10.88. Thereafter, the recruitment rules for the post of Enforcement Officer were promulgated on 13.7.89 and the Respondent No.4 was given regular promotion w.e.f. 06.9.89. Here it may be recalled that the applicants' case is that Respondent No.4 can count his service from 6.9.89 and since 8 years regular service is required, he will be eligible for that post in September, 1997 while he has been illegally promoted to that post in the D.P.C. held on 22.8.94. Here it may also be observed that new rules for promotion to the post of Deputy Director, Transport came into force w.e.f. 18.1.94 in supersession of the earlier rules of 10.9.73, 9.11.83 and 27.3.86.

As regards the applicants, Applicant No.1 joined as M.V.I. in October, 1977 and was promoted as CMVI in April, 1989, Applicant Nos. 2 and 3 were appointed as MVI in February, 1979 and were promoted as MVO in August, 1989, Applicant No.4 was appointed as MVI in December, 1989 and was promoted to the post of MLO in 1989. It may also be observed that as the recruitment rules of 1973 which were amended in 1983 and also in 1986 the post of Deputy Director, Transport was to be filled up by promotion failing which by transfer on deputation. The feeder cadre of the post had been as MLO/CMVI/TD with 8 years of regular service in the respective grades. Since the post of Enforcement Officer

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was created only in 1988 so that was not prescribed as a feeder cadre in the earlier recruitment rules and it was included for the first time in the recruitment rules issued on 18.1.94 for the post of Deputy Director, Transport.
also
Here it may be observed that the revised scale of pay of CMVI/MLO is Rs.2000-3200 and the scale of Enforcement Officer, Transport is also Rs.2000-3200. The learned counsel for the respondents Shri R. Venkataramani and Shri Jog Singh laid more emphasis on the preliminary objection that the application under section 19 of the A.T. Act, 1985 is not maintainable and also the Tribunal has no jurisdiction because the applicants have no locus to challenge the promotion of Respondent No.4 on the ground that the applicants as per extant recruitment rules of January, 1994 have not put in 8 years of service in the grade of CMVI/MLO. The Tribunal cannot sit to correct any administrative error in a case where the respondents have exercised their administrative power as per the recruitment rules on their own understanding and a person not eligible has no right to challenge and interpretation of the rules by the administration. Both the learned counsel have referred to certain law on the point. The reliance has been placed on the case of State of Andhra Pradesh Vs. K. Jaya Raman reported in AIR 1975 S.C. 633

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In the reported case the State of Andhra Pradesh came before the Hon'ble Supreme Court against the judgement delivered by the High Court of Andhra Pradesh on a writ petition filed by Govt. servants claiming that Rule 22 of Andhra Secretariat Service Rules does not apply to them as they are not reverted probationer or probationers who are re-appointed on or after 1.11.56. The Hon'ble Supreme Court held that the said Govt. servants failed to prove that they were aggrieved persons and could not show that they would be adversely affected by the application of the relevant rules. The appeal was therefore allowed. The facts of the present case are totally different inasmuch as the applicant belongs to the feeder post and there is a 75% quota for promotion. As and when the applicants get eligible as per column 12 of the 1994 Rules they would be considered if the vacancies are filled up. They could not get any vacancy and so they are aggrieved persons. The reported authority also does not have the relevancy to the case in hand as it is on the interpretation of Article 16(1) of the Constitution of India i.e. equality in matters of employment. It is further stated that assuming without deciding that matters of promotions are matters relating to employment within the meaning of Article 16(1), such equality of opportunity in matters of promotion, and in the present case the post of Enforcement Officer

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was created only in 1988 as that was not prescribed as a feeder post for promotion in the earlier recruitment rules and it was included for the first time in the recruitment rules issued on 18.1.94 for the post of Deputy Director, Transport. Here it may also be observed that the revised scale of pay of CMVI/MLO is Rs.2000-3200 and the scale of Enforcement Officer, Transport is also Rs.2000-3200. The contention of learned counsel for the respondents Shri R. Venkataramani and Shri Jog Singh has no substance and misplaced emphasis on the preliminary objection that the application under section 19 of the A.T. Act, 1985 is not maintainable and also /the Tribunal has no jurisdiction because the applicants have no locus to challenge the promotion of Respondent No.4 on the ground that the applicants as per extant recruitment rules of January, 1994 have not put in 8 years of service in the grade of CMVI/MLO. The further contention raised by them that the Tribunal cannot sit to correct any administrative error in a case where

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the respondents have exercised their administrative power as per the recruitment rules on their own understanding and a person not eligible has no right to challenge the interpretation of the rules by the administration. Both the learned counsel have referred to certain law on the point but the issue in the present application is totally different as to whether the applicants have been rightly by-passed and Respondent No.4 has been rightly considered. This can be gone into by the Tribunal in this application.

The authorities cited by the learned counsel for the respondents do not cover the cases of such aggrieved parties who have a vested potential right of promotion to the higher post. These cases also do not cover the cases wherein relaxation of rules or debars the rules if promotion is made then those who are in the feeder cadre and are governed by the set of rules can challenge if the action of the

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administration is likely to affect their service and career prospects. Section 19 of the A.T. Act used the word a person aggrieved by any act by an order passed by the administration. Here the promotion to the post of Deputy Director, Transport of Respondent No.4 is a specific order by which the applicants are aggrieved. The contention of the respondent's counsel is that when the application was filed, there was no order cannot be accepted because the D.P.C. was held on 22.8.94 and the present application was filed in September, 1994. We, therefore, hold that the present application is maintainable and the applicants are aggrieved by an act of the respondents which has given them a cause of action to assail the promotion of Respondent No.4 in supersession of the claim of the applicants on the same footing on which the promotion of Respondent No.4 was considered.

However, besides the above observation we do find that some of the reliefs claimed in this application cannot be granted to the applicants even on the face of it. The absorption of the applicant in the Transport Directorate which was originally w.e.f. 15.7.85 was subsequently made effective from 30.1.86. The applicant had earlier been given promotion to the post of Enforcement Inspector w.e.f. 1.4.85. 2 posts of Enforcement Officer were created in the pay scale of Rs.2000-3200 in the Department of Transport. However, the recruitment to these posts were promulgated on 13.7.89 but before the enforcement of these rules

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Respondent No.4 was given adhoc promotion to the post of Enforcement Officer in the grade of Rs.2000-3200 and he was given regular promotion as Enforcement Officer w.e.f.

6.9.89. The recruitment rules for the post of Enforcement Officer lays down 4 years regular service in the Transport Department in the cadre of Inspector Enforcement. If the absorption of the Respondent No.4 in the Transport Department is taken to be 30.1.86, in that event he will not be eligible for promotion to Enforcement Officer on regular basis w.e.f. 6.9.89. The applicants therefore have challenged both the date of absorption of the applicant w.e.f. 30.1.86 which was originally effected w.e.f. 15.7.85 and ~~he~~ also got promotion on regular basis as Enforcement Officer w.e.f. 6.9.89. In fact giving promotion to Respondent No.4 even assuming dehors the rules of changing the date of absorption from 15.7.85 to 30.1.86 as Enforcement Inspector in the Department of Transport, the applicants have no cause of action to challenge the same. Only those who are effected by these orders at that relevant point of time could harbour a grievance to assail that order. The applicants have not done so at that time and obviously because the orders though may not be regular, cannot be said to be illegal did not give any cause of action to the applicants. The applicants had already stood promoted in the grade of Rs.2000-3200 earlier to 6.9.89. Thus, the reliefs claimed by the applicants cannot be granted as well as the application can be said to be maintainable with regard to those reliefs because of limitation as well as multiplicity of reliefs claimed in the same application which is hit by Rule 10 of the Administrative Tribunal Procedure Rules, 1987.

The learned counsel for the applicants has fairly conceded not to press relief prayed for in sub clause 'c' of para 8 in the amended G.A. that the respondent Nos. 1 to 3 be directed to consider the candidature of the applicants to the grade of Deputy Director in accordance with Recruitment Rules of 1973, granting them relaxation if need be and if recommended by the D.P.C. to appoint them as such, that recruitment rules of 1973 has since been superceded by the new rules promulgated on 18.1.94. According to these new rules as contended by the learned counsel for the applicant, the vacancy is to be filled up not of the period of 1973 but the vacancy of Deputy Director which has fallen vacant after the promulgation of these rules. Thus as per the recruitment rules of 18.1.94 none of the applicants is eligible for consideration of the post of Deputy Director, Transport. The DPC which held on 22.8.94 after enforcement of the rules amended/promulgated by the circular dated 18.1.94, the applicants could not have been considered at all on the basis of promotion from the feeder post of CMVI or MLO which the applicants were holding in the grade of Rs.2000-3200 in the Transport Department. These reliefs therefore, prayed for by the applicants cannot be granted.

Now coming to the main relief prayed for by the applicants that the minutes of the DPC which took place on 22.8.94 for considering Respondent No.4 i.e. Shri Mohan Singh for appointment as Deputy Director, Transport be quashed and that the direction be issued restraining

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Respondent No. 1 and 2 from appointing Respondent No.4 as Deputy Director, Transport without considering the claim of the applicants in accordance with law.

Both the counsel have agreed that the recruitment rules promulgated by the notification dated 18.1.94 have to be strictly followed. The stand of the respondents is that the applicants were not eligible for consideration for the post of Deputy Director, Transport in the grade of Rs.3000-4500 and the respondents have squarely confined the arguments on the aforesaid rules of 1994. The text of the aforesaid rules with respect to promotion from the feeder post of MLO, CMVI, TO and E.O. has already been referred to in the earlier part of this judgement. It is laid down that incumbents in any of the referred post to feeder / in the scale of Rs.2000-3200 are eligible if they put in 10 years regular service in the respective grade in the Transport Department of Delhi Administration (emphasis supplied). Note I of the aforesaid rules reduces this period of 10 years to 8 years of regular service if the incumbents in the feeder posts appointed in regular basis were working on the feeder post on the date of notification of 1994 rules. Note II lays down the manner of the preparation of the eligibility list for promotion, that the list shall be prepared with reference to date of completion of the officers of the prescribed qualifying service in the respective grade/post. The language used by the rule making authority is very simple and cannot be

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judicially extended in any manner whatsoever to give eligibility to those who are not covered by Note II.

The learned counsel for the applicants conceded that unless these rules are relaxed with reference to the date of completion of the prescribed qualifying service of the officers, the applicants are not eligible and obviously because the applicants have been working on the feeder post from different dates only from the year 1989. In the case of Applicant No.1 it is April, 1989 while in the case of Applicant Nos. 2, 3 and 4 it is in the month of August, 1989. They could not complete the qualifying service when the DPC was held on 22.8.94.

The learned counsel for the respondent Shri Jog Singh has also argued that the respondents are considering a suggestion of relaxation of rules even to accommodate the applicants in the promotion quota. Thus unless the rules are relaxed, the applicants cannot be considered. The DPC therefore held in August, 1994 rightly did not consider the applicants, as they could not be brought in the eligibility list of the candidates to be promoted to the promotee quota post of Deputy Director, Transport. However, with respect to Respondent No.4 Shri Mohan Singh the official respondent as well as the counsel for respondent No.4 emphatically argued that he is eligible and since he was the only officer whose

name was forwarded to the DPC he has been rightly considered and therefore when the UPSC has recommended for the appointment of Respondent No.4, his appointment cannot be challenged by the applicants. Now considering whether the Respondent No.4 Shri Mohan Singh was eligible counsel for or not, the/official respondent as well as/ private respondent (for considering the eligibility for completion of qualifying service in the feeder post of Enforcement Officer) contended that Shri Mohan Singh who was Sub Inspector in Delhi Police in the grade of Rs.425-600 which has been replaced to the scale of Rs.1640-2900 subsequently was appointed on deputation in the same capacity as S.I. in the Directorate of Transport. The scale of pay of S.I. in the Directorate of Transport was however less than the scale of pay prevalent in Delhi Police. The scale of pay of S.I. in Transport Department was Rs.350-480 and the replacement scale is Rs.1200-1800. However, this scale of pay in Delhi Police or in Transport Department is irrelevant because Respondent No.4 Shri Mohan Singh was given protection of pay while he was on deputation carrying the pay scale of Rs.425-600. It is also immaterial that the applicants at the time when Respondent No.4 came on deputation in Transport Department were working on lower scale of pay. Actually we have not to see the comparative scale of the applicants as well as of Respondent No.4, we have only to see whether Respondent No.4 is eligible

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as per rules of 1994. Now the Respondent No.4 while on deputation was given a promotion on adhoc basis as Inspector(Enforcement) w.e.f. 1.4.85. The scale of Inspector in the Transport Department has been Rs.550-750 which has been revised to Rs.1600-2660. The scale of Inspector in the Delhi Police has been Rs.550-900 which has been replaced by pay scale of Rs.2000-3200. The Respondent No.4 has been absorbed as Inspector(Enforcement) in the pay scale of Rs.550-750 i.e. the revised scale of Rs.1600-2660/-w.e.f. 15.7.85.

The Respondent No.4 has made certain representations claiming the scale of Rs.550-900 of the post of Inspector in Delhi Police but the respondents shelved the matter as the report of the Fourth Pay Commission was to come. In the meantime, certain DPC was held in Delhi Police for promoting Sub Inspector for the post of Inspector and whether rightly or wrongly the Respondent No.4 was given the notional promotion in Delhi Police w.e.f. 1.1.86 in the scale of Rs.2000-3200 and his date of absorption in the Directorate of Transport was also changed from 15.7.85 to 30.1.86.

It appears that the benefit of this notional scale of pay was given to the applicant while he was working as Enforcement Inspector in the Transport Department but the applicant continuous to be an Inspector(Enforcement) and the scale of Enforcement Inspector cannot be equated to the scale of Rs.2000-3200, a scale of Inspector in Delhi Police. It was in July,1988 that

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2 posts of Enforcement Officer for the first time were created in the Department of Transport and thereafter from October, 1988 the Respondent No. 4 was given promotion as Enforcement Officer in the grade of Rs.2000-3200. Here it may be recalled that the applicant had already been given notional promotion in his parent department as Inspector in the scale of Rs.2000-3200 but that will not count as qualifying service for eligibility to be drawn in accordance with Note II to fill up the promotee quota of Deputy Director, Transport as laid down in Column 12 of the Recruitment Rules. The Respondent No.4 was given regular appointment in September, 1989 only after the recruitment rules for the post of Enforcement Officer were promulgated. These rules also laid down that the officer should have worked for 4 years as Inspector, Enforcement. If the date of absorption in the Transport Department of the applicant is taken as 30.1.1986, he cannot complete 4 years of service but it was upto the respondents to give promotion and that has not been challenged by anybody at that particular point of time. The applicants also could not challenge the same as already observed in the earlier part of this order. So the Respondent No.4 has come in the regular scale of Enforcement Officer w.e.f. 6.9.89 in the grade of Rs.2000-3200 and as per Note II of Column 12 his

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service can be counted from 6.9.89 in the Transport Department as qualifying completion of service as envisaged under Note I of Column 12. This 8 years of qualifying service will be completed in September, 1997. Even if we take into account the adhoc service rendered by the applicant since October, 1988 even then this qualifying period for eligibility will be completed in October, 1996. In view of this, there is no substance in the rival contention as stated by the official respondent as well as counsel for respondent No.4 that since the Respondent No.4 came in the grade of Rs.2000-3200 w.e.f. 30.1.86 so he becomes eligible contention is logical when he in January, 1994 while the applicant's counsel/has fervently argued that this is not the position of the rules which have to be interpreted in letter and spirit.

From the above discussion it is evident that Respondent No.4 asserts his claim that he is eligible to be considered for the post of Deputy Director, Transport because Note II in Column 12 of the Rules of 1994 provides that the eligibility for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service in the respective grade/post. It has therefore been contended that the use of words respective grade/post clearly means and explains that a grade in recruitment rules is either pay scale or post. In support of this contention, the learned counsel has also referred to certain interpretation of the phrase grade/post with reference to F.A.R. Bennion's commentary on Statutory Interpretation published

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by Butterworths, London 1992 Edition. We have appreciated the contention of the learned counsel but we are unable to interpolate this definition in the clearly and unambiguous language of the recruitment rules. The recruitment rules as referred to above are specific that eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service in the respective grade/post and the qualifying service should be 8 years regular service in the respective grade in the Transport Department of the Delhi Administration. The respective grade here are referred to as the posts of MLO/CMVI/TD and E.O. Even if we take it for granted without accepting the correct proposition of law regarding the eligibility of qualifying service in the grade, undisputedly the applicant was absorbed as S.I. in the Transport Department in July, 1985. At that time, the applicant stood promoted w.e.f. 1.4.85 as Inspector (Enforcement).

The scale of Inspector (Enforcement) in the Directorate of Transport has been revised to Rs. 1600-2660. The letter of absorption issued in July, 1985 was to absorb in the pay scale of Rs. 550-750. This scale of pay has been revised to Rs. 1600-2660. The date of absorption has subsequently been changed by the order dated 22.3.90, which is reproduced below:-

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"In pursuance of Deputy Commissioner of Police Head Quarter-I Delhi's letter No.A/11/3/3/18/ 84-85/29466 dated 10.9.85 and partial modification of this office order No.P.Ado/Tpt/34/946-49 dated 30.1.86, date of permanent absorption and confirmation of Shri Mohan Singh, Inspector may be read as 30.1.86 instead of 15.7.85 in view of the Services Department clarification vide their letter No.F.2(62)/85-S.II dated 3.1.86 accordingly. His lien in the Police Department shall stand terminated from 30.1.1986."

The letter dated 30.1.86 is as follows:-

"In continuation of the office order No.F.ADO/Tpt/34/10724-30 dated 15.7.85 and in view of the approval of Secretary(Services) conveyed vide his letter No.F.2(62)/85-S.II dated 3.1.86, Shri Mohan Singh, Inspector(Enforcement) stands permanently absorbed and confirmed in this Directorate in the pay scale of Rs.550-750 w.e.f. 15.7.85. His lien in the Delhi Police shall stand terminated with immediate effect."

Further order has been issued regarding giving proforma promotion on 8.4.94, which is quoted below:-

"The Lt. Governor of Delhi is pleased to grant proforma promotion to Shri Mohan Singh, Sub Inspector No.D-830 (presently working as Enforcement Officer in Transport Department, Government of Delhi) as Inspector in Delhi Police in the pay scale of Rs.2000-3200 with effect from 1.1.1986."

Thus, the applicant was absorbed in the scale of Rs.550-750 and he cannot claim the scale of the post of Inspector of Delhi Police Rs.2000-3200 because he was given only notional promotion by the order dated 8.1.94 and no subsequent order was passed by the Directorate of Transport giving him benefit of the scale. The pay of the applicant

therefore on the date his absorption on 30.1.86 is to be fixed in the revised scale Rs.550-750 which is Rs.1600-2660.

respondents
The argument of both official/as well as counsel for Respondent No.4 is that the respondent no. 4 shall be deemed to be as Inspector(Enforcement) in the scale of Rs.2000-3200. This itself shall be contradictory because the post of Enforcement Officer is in the scale of Rs.2000-3200 which was created only in July,1988 and thereafter the recruitment rules were framed and the respondent no. 4 was given the adhoc promotion w.e.f.13.10.88 when/recruitment rules were under the process of being finalised.

In fact when respondent No.⁴ was promoted without any recruitment rules in vogue, he cannot claim benefit of this period till he has been appointed according to rules which were framed and notified on 13.7.88 providing 4 years regular service in the grade of Inspector(Enforcement). The respondent was, however, given appointment as Enforcement Officer w.e.f. 6.9.89. If the date of absorption was taken as 15.7.85, then he is eligible according to recruitment rules for being promoted to the post of Enforcement Officer but by the order dated 22.3.90 his date of absorption in the Transport Department has been changed and revised from 15.7.85 to 30.1.86 and as such he was not eligible for promotion to the post of Enforcement Officer. But since the respondents in their

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wisdom has given him promotion and obviously because at that time his current date of absorption was 15.7.85 and that was taken into account it is not, therefore, called for to go into this matter and it is for the respondents to consider the same. By the order of 22.3.90 his date of absorption was changed from 15.7.85 to 30.1.86. The respondent ^{no.4} was given the grade of Rs.2000-3200 w.e.f. 13.10.88. Earlier he was in the grade of Inspector(Enforcement) in the grade of Rs.1600-2660. It is not evident from record whether the respondent No. 4 was fixed in this scale of pay or was given higher scale of pay from 30.1.86 to 13.10.88 but legally he is entitled only to the scale of Inspector(Enforcement) in the Directorate of Transport. For Respondent No.4 the recruitment rules cannot be altered or changed to change the scale of pay of Inspector(Enforcement) to the scale of Rs.2000-3200. If this logic is taken into account then MLO/CMVI and T.O. can aspire that the respondents should also treat them in the same grade of pay ~~before~~ the rules. Neither of these proposition is therefore acceptable. Thus, respondent No.4 can claim the benefit of the scale Rs.2000-3200 and of the grade of Enforcement Officer w.e.f. 6.9.89 and for the post of Deputy Director, Transport 8 years service shall stand

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completed in September, 1997. Respondent No.4 therefore could not be eligible for consideration by the D.P.C, on 22.8.94 in a vacancy which has fallen vacant in the year 1994.

The learned counsel for Respondent No.4 has taken to the number of authorities on the point. Reliance has been placed on the case of P.C. Nandi Vs. Controller of Stores reported in 1970(3) S.C.C. 870. The Hon'ble Supreme Court interpreting the Railway Fundamental Rules 2007, 2010 and 2011 held that competent authority is empowered to order transfer from one post to another and the employee is entitled to ~~is not~~ lien. This issue involved in the present case. The issue is entirely different regarding eligibility of qualifying service in the Directorate of Transport in any of the feeder post. Both the counsel have placed reliance on the case of K. Madhavan reported in 1987(4) S.C.C 566 where the Hon'ble Supreme Court laid down that if a person holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service on the post before his transfer should be taken into consideration in computing his seniority in the transferred post. The contention of the learned counsel for the applicant is that it has relevance only when the post on which a person is absorbed namely transferred post. Thus, the authority does not help the Respondent No.4 in counting the period when he was Inspector (Enforcement).

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in the grade of Rs.1600-2660. The respondent's counsel has also placed reliance on the case of R.L. Gupta Vs. UOI reported in 1988(2) SLR 133 and in that case the Hon'ble Supreme Court has given the benefit of post on which the petitioner of that case has been sent on deputation though he was in the cadre of Additional District Judge. That case also does not help the Respondent No.4 because Respondent No.4 was absorbed in the post of Inspector (Enforcement) w.e.f. 15.7.85 and that date was subsequently altered to 30.1.86. He shall be deemed to be Inspector (Enforcement) from 30.1.86 in the grade of Rs.1600-2660 till he is promoted on regular basis as Enforcement Officer on 6.9.89. A number of other decisions have also been cited on the similar other points that the benefit should be given of the service rendered in the parent department. However, the issue has not been considered in right perspective. In the present case the question of considering the service of the applicant in the post of S.I. or Inspector of Delhi Police is immaterial because in the promotional post of Deputy Director, Transport the person must have qualifying service in any of the feeder post mentioned therein that there should be a seniority when all the persons eligible have to be considered to find out the qualifying service and that would be only when an incumbent is appointed to any of the feeder post. When we apply this standard to the applicant's case CMVI/MLD we cannot apply another standard counting qualifying service for eligibility for the post of Enforcement Officer. The learned counsel has also

placed reliance on certain authorities that notional service counts for seniority and other consequential benefits. That is not the issue at all in this case and a number of authorities have been cited by the learned counsel for the respondent no. 4.* However, these authorities do not lay down the law that eligibility for promotional post can be dehors the rules.

The learned counsel has also dealt heavily on the meaning of word 'Grade' and in this connection has placed reliance on the case of K.S.Srinivasan Vs. UOI reported in AIR 1958 SC 419 and AIR 1970 SC 40 Hari Nandan Karan Bhatnagar Vs. S.N.Dixit and other and 1975 (1) SCC 319 A.K.Subramaniam Vs. UOI. The Hon'ble Supreme Court of India in all these cases considered the definition of the word 'Grade'. The dictionary meaning of the word 'Grade' is rank, position or scale, a class or position in a class according to value. In that case the post of Superintendent was a selection post and the Speaker has to take into consideration the claims of Senior Upper Division Assistants but under the rules his choice is not limited to the Upper Division Assistants alone. He can consider the claims of others who are in the same grade, that is to say, enjoying same

* 1972 SLR 372 (SC) R.P.Khanna vs. S.A.F Abbas;

1972 SLR 379 (P&H) K.K. Jaggia Vs. The State of Haryana;

1976 (4) SCC 875 S.K.Krishnamurthy Vs. The General Manager.

AIR 1965 SC 868 - State of Mysore Vs. M.H.Ballary;

1987(3) ATC 598; - P.V. Subramanian Vs. UOI & Another

scales of pay and pick out the person considered by him to be qualified in all respects to perform the duties of a Superintendent. While interpreting Rule 7 of the United Provinces Legislative Department Rules which read with recruitment to the post of Superintendent shall be made by promotion from the grade of superior service assistants in the Council Department. However, in the present case, the Rules of 1994 in Column 12 specifically without any ambiguity given direction for counting the qualifying service in the feeder grade.

The learned counsel has also cited certain authorities on locus regarding the correction of the administrative order at any time and the construction of explanation and also on the point of natural justice.

The learned counsel has also relied on the case of Shitla Prasad Shukla Vs. State of U.P. reported in 1986(2) SLR 628 where the Hon'ble Supreme Court held that so long the competent authority has acted bonafide and acted on principles of fairness and fair play, court does not exercise jurisdiction akin to appellate jurisdiction. However the question again rests on the point whether Respondent No.4 can be given the benefit of a service when he was only Inspector (Enforcement) in the directorate of Transport in the scale of Rs.1600-2660 and the simple answer is 'no'.

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The learned counsel for the applicant has also placed reliance on the case of Ram Saran Vs. State of Punjab reported in JT 1991(1) SC 569, Kamaluddin Vs. State of Rajasthan reported in JT 1994(6) SC 356, T.K. Ponnuswamy Vs. State of Tamil Nadu reported in JT 1994(6) SC 255 and N.D. Mitra Vs. UOI reported in 1994(27) ATC 733.

In the case of Ram Saran Vs. State of Punjab(supra), the Hon'ble Supreme Court also considered the promotion to the cadre of Excise and Taxation Officer from the Ministerial cadre, under the Punjab and Excise Taxation Department (State Service Class III-A) Rules, 1956 and Punjab Excise & Taxation Department (State Service Class II) Rules. The Hon'ble Supreme Court also considered the Punjab Civil Rules Vol.I, Part I. It has been held that if the method of promotion is provided in the scheme of the rules as well as of recruitment so the petitioners of that case while working as Inspector on appointment by transfer to that cadre had the advantage of being considered for promotion as officers under the amended Rule 5 of the State Class II Rules(supra) ~~and amended Rule 5~~ out of the quota for Inspectors while the ministerial staff to the exclusion of the Inspector were entitled to certain percentage. The appellants of that case

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joined the ministerial cadre of the Excise & Taxation Department as Clerks. The writ petitioners i.e. private respondents also joined the ministerial cadre of the Excise and Taxation Department as Clerks. The writ petitioners were promoted to the higher post and later appointed as Excise/Taxation Inspector by transfer under the Punjab Excise Subordinate Rules, 1943. The lien of the writ petitioner was suspended. The appellants however, continued in the ministerial cadre. The Hon'ble Supreme Court after considering the case that employees on deputation/ transfer or holding the post in another cadre are not entitled to claim the experience in the ex-cadre post. Though the ratio of this case is not fully applicable to the case in hand but it leads to the conclusion that if a posting is by way of transfer or on deputation while the lien has been suspended in the parent department then the benefit of the service rendered on the ex-cadre post cannot be claimed in the parent department. On this basis, the Hon'ble Supreme Court held that when the rule is clear and specific in the reported case and for the purpose of promotion from the cadre of Superintendents, Assistants, Accountants, Senior Scale Stenographers to the post of Excise & Taxation Officers, the eligibility qualification is experience of working as such for 5 years, the employees ^{are} _^ not entitled to claim the experience in the ex-cadre as the experience of working in the ministerial cadre. In the case in hand, the counsel for

Respondent No.4 has fervently argued that since Respondent No.4 has been granted notional promotion to the grade of Inspector of Delhi Police w.e.f. 1.1.86 in the grade of Rs.2000-3200 for all purposes he will reckon his seniority in that grade but it cannot be accepted as the applicant has been Inspector(Enforcement) till 13.10.88 in which grade he was absorbed earlier on 15.7.85 and that date was altered to 30.1.86 but the scale remained Rs.550-750 unrevised (Rs.1600-2660 revised). The learned counsel for the applicant has also placed reliance on the decision of Dr. D.N. Mitra and another V. UOI and ors decided by Hon'ble Supreme Court in the matter of seniority, Geological Survey of India of Senior Deputy Director General reported in (1994) 27 ATC 733. In the Geological Survey of India there are six disciplines with separate seniority list of officers upto the rank of Deputy Director General. Interse seniority amongst Deputy Director General has to be fixed on the basis of continuous length of service int he said post in the absence of any statutory rules or executive instructions to the contrary. The Hon'ble Supreme Court also considered that there are feeder posts for a common promotional post. Delay in holding the meeting of D.P.C. and implementation of its recommendation in respect of the feeder post in a particular discipline has to be condemned and directions were issued for future guidance. In the present case in hand also there are 4 feeder posts

✓ of CMVI, MLO, TO and EO and the promotion to the post of Deputy Director, Transport is given on certain eligibility of qualifying service in the particular grade. It therefore itself be visualised that service rendered on another post not included in the feeder post cannot be considered for qualifying service. It is another matter that a person has been appointed on a feeder post and has been made to work on a post of equivalent grade but in any case does not lose his designation being appointed to the feeder post. The service rendered by Respondent No.4 in the cadre of Inspector (Enforcement) therefore cannot be taken to be service rendered on the post of Enforcement Officer prior to 6.9.89. The learned counsel also placed reliance on the case of T.K. Ponnuswamy Vs. State of Tamilnadu (supra). In that case, the Hon'ble Supreme Court considered the promotion of the appellants to the post of District Revenue Officers from Deputy Collectors. While interpreting Tamilnadu State Civil Service (Executive Branch) Recruitment Rules interpreted six years experience to be an experience as six years experience as Deputy Collector irrespective of the fact whether the officer is Deputy Collector by reason of direct recruitment or on account of promotion and the appeal of the petitioner was allowed. This authority also helps the case of the applicant. Like the present 1994 rules as stated above particularly column 12nd there was also a rule in the reported aforesaid case for promotion as District Revenue Officer. In that case the rule is not specific as to whether six years

service as Deputy Collector or six years service in the Revenue Department and it merely says "provided that no Member of the Tamilnadu Civil Service (Executive Branch) shall be considered for inclusion in the panel of officers fit for promotion as District Revenue Officer unless he had been on duty for not less than six years in the Revenue Department." The Hon'ble Supreme Court read down the rule holding when it says six years experience, it should be only six years experience as Deputy Collector irrespective of the fact whether the officer is a Deputy Collector by reason of direct recruitment or on account of promotion. Similarly, in the case of Kamaluddin Vs. State of Rajasthan the Hon'ble Supreme Court considered the matter of promotion of caner to the post of workshop supervisor in the Rajasthan Civil Service (CC) Rule, 1956 - Schedule II. The appellant in that case was a caner and he claimed promotion to the post of Workshop Supervisor. His case was rejected by the High Court and on an appeal the Hon'ble Supreme Court further observed that the subordinate service posts have been specifically mentioned in Schedule II and a post which has not been included in the Schedule II cannot be brought into the category of subordinate service post merely by analogy. The appellant Kamaluddin was given relief by the Labour Court on the view that he was appointed as Caner Mistry and further

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that post of Caner Mistry deemed to be included in Schedule II of the Rajasthan Civil Service (CCS) Rules and was a subordinate service post. This fact was not agreed to by the High Court and also by the Hon'ble Supreme Court concurred with the decision of the High Court.

In view of the above position of law there is no doubt that Respondent No.4 was not eligible nor having 8 years of qualifying service at the time when the DPC was held on 22.8.94. The DPC therefore was not told the true facts and only the name of the applicant was sent proposing that he is eligible but no details of earlier qualifying service in the grade of Enforcement Officer has been put and as such the DPC has grossly erred in considering the case of Respondent No.4 for promotion to the post of Deputy Director, Transport. Such a proceeding of the DPC therefore cannot be sustained.

In view of the above facts and circumstances, the application is partly allowed. The promotion of Respondent No.4 Shri Mohan Singh on the basis of DPC held on 22.8.94 is quashed and set aside. The interim order dated 19.9.94 is upheld to the extent that the Respondent No.4 cease to discharge

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the duties of Deputy Director, Transport with immediate effect stands reverted to the post of Enforcement Officer.

The respondents shall fill up the post of Deputy Director, Transport according to the 1994 Rules considering the eligibility of the incumbents of the feeder post, taking into account and following the interpretation given to the provisions of Note 2 of Column 12 of the Recruitment Rules of 1994. In case none is eligible alternative mode of recruitment can be adopted, if so advised. Cost on parties.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

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