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Central Administrative Tribunal, Principal Bench

O.A.No.1033 of 2000

Date of Decision 31.1.2001

Shri T.R.Mehra & another

- Applicants

(By Advocate - Shri M.K.Gupta)

Versus

Union of India & others

- Respondents

(Official respondents by Advocate Shri K.C.D.Gangwani
& Private respondent by Advocate Shri V.S.R.Krishna)

CORAM :

Hon'ble Mr.V.K.Majotra, Member (Admnv)

Hon'ble Mr.Shanker Raju, Member(J)

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

V.K.Majotra
(V.K.Majotra)
Member (Admnv)

rkv.

(7A)

Central Administrative Tribunal, Principal Bench

Original Application No.1033 of 2000

New Delhi, this the 31st day of January, 2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)
Hon'ble Mr.Shanker Raju, Member(J)

1. Sh.T.R.Nehra, S/o Late Sh.G.R.Nehra, R/o Flat No.3, Type-V, Palika Vihar, Wilingdon Crescent Road, New Delhi-110011
2. Dr.S.C.Mittal, S/o late Sh.G.D.Mittal, R/o 23/2, Punjabi Bagh Extension, New Delhi-110026.

Working as Principal Scientific Officers
Central Forensic Science Laboratory, New Delhi-110003.

- Applicants

(By Advocate Shri M.K.Gupta)

Versus

1. Union of India, through its Secretary, Ministry of Home Affairs, North Block, New Delhi-110001.
2. Central Bureau of Investigation, through its Director, Block-3, CGO Complex, Lodhi Road, New Delhi-110003.
3. Central Forensic Science Laboratory through its Director, Block-4, CGO Complex, Lodi Road, New Delhi-110003.
4. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi-110003.
5. The Secretary, Deptt, Of Personnel and Training, North Block, New Delhi-110001
6. Dr.S.R.Singh, S/o Sh. S.N.Singh, aged 53 years working as Director CFSL (Adhoc) in the Central Forensic Science Laboratory, New Delhi

- Respondents

(Official respondents by Advocate Shri K.C.D. Gangwani
Private respondent no.6 by Advocate Shri V.S.R.Krishna)

O R D E R

By V.K.Majotra, Member(Admnv) -

MA 2370/2000 was filed by Dr.S.R.Singh, who is shown at serial no.1 in the impugned seniority list of PSO. It was stated by him that any relief afforded to the applicants in the matter of seniority will have the effect of adversely altering his seniority and his promotional prospects although admittedly he is many years senior to the applicants in the OA. On hearing

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Shri V.S.R.Krishna, learned counsel of Dr.S.R.Singh, Shri Gangwani, learned counsel of the official respondents and Shri M.K.Gupta, learned counsel of the applicants, we are of the view that in the interest of justice this MA should be allowed and Dr.S.R.Singh impleaded as respondent no.6 in the OA. We order accordingly.

2. The applicants are aggrieved by the allegedly arbitrary and malafide action of the official-respondents in not assigning them proper seniority in the post of Principal Scientific Officer (for short 'PSO') from the year 1990 i.e. when they were eligible for promotion and for which year they have been empanelled by respondent no.4. Though vacancies were available for promotion to the said grade no DPCs were held on yearwise basis in spite of the directions of the Court. Consequently, this action of the respondents has resulted in making the applicants ineligible for promotion to the next higher post of Director, Central Forensic Science Laboratory (for short 'CFSL').

3. The applicants at present are working with respondent no.3 as PSO. They were initially appointed as direct recruit on different posts as Scientific Assistant in the year 1968 and 1970, respectively. Later they were promoted to various posts including Senior Scientific Officer (for short 'SSO') Grade-II. The applicants were promoted as SSO Grade-I in the scale of Rs.3000-4500 with effect from 9.6.1985 under the Flexible Complimenting Scheme (for short 'FCS').

4. Under the Central Bureau of Investigation, Central Forensic Science Laboratory, New Delhi (Group A Posts) Recruitment Rules, 1982 (hereinafter referred to

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as 'the 1982 Rules') an officer with 5 years regular service in the grade becomes eligible for promotion to the next higher post of PSO. Similarly, the recruitment to the next higher post of Director, CFSL is governed by the Rules of 1999 (Annexure-A-2). Under the Rules the applicants became eligible for promotion to the said grade of PSO on 9.8.1990. As no DPC was held by the respondents for considering the applicants for promotion to the said grade they filed OA NO.409/1991 which was disposed of vide order dated 28.2.1995 with the following observations/directions:-

"5. This OA has come up for hearing today. Shri S.S.Tiwari, learned counsel for the applicant appeared. None for the respondents, and in the circumstances, we do not know that action, if any, has been taken by the respondents in pursuance of the direction dated 24.4.1991 of the Tribunal in MA 1242/91 and whether consultation with MHA and DP&T has since been completed and if so with what result.

6. We, therefore, dispose of this OA with a direction to the respondents to consider the case of the applicants for promotion to the posts of PSO's, strictly in accordance with the extent rules/ instructions on the subject as already directed vide order dated 24.4.1991 within a period of four months from the date of receipt of a copy of this judgment, in the event, that the same has not yet been done. If the case of the applicant has already been considered, in pursuance of the direction of the Tribunal dated 24.4.1991, intimation of the same should be given to the applicants along with a copy of the upto date seniority list, if prepared by now. Thereafter, if any grievance still survives, it will be open to the applicants after exhausting the available departmental remedies to agitate the matter through appropriate fresh proceedings in accordance with law, if so advised".

Vide order dated 26.9.1995 in MA 1818/95 (Annexure-A-6) the respondents were allowed extension of time till 31.10.1995 for complying with the directions contained in the order dated 28.2.1995.

5. The UPSC held a DPC for the post of PSO (in situ) on 30.10.1995 under the FCS. The applicants were found fit for promotion in the ^{Year 16} order of their

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eligibility i.e. 1990. They were promoted as PSO vide order dated 12.7.1996 in the pay scale of Rs.3700-125-5000 (Annexure-A-7). This order was subsequently amended vide order dated 19.8.1996 (Annexure-A-8) making their promotion as "provisional".... "subject to the final out-come of application OA No.2031/95 filed by Dr.G.D.Gupta" before this Tribunal. According to the applicants they were promoted on regular basis but the order dated 19.8.1996 treated their promotion on provisional basis without any justification. Nevertheless the said OA 2031/95 has ultimately been dismissed vide order dated 22.2.2000 (Annexure-A-9).

6. Applicant no.1 made a representation dated 10.2.1997. Vide communication dated 28.2.1997 (Annexure-A-10) he was informed that the representation of Dr.Johri, PSO in situ was considered by the MHA in consultation with DP&T and it has been decided as follows:-

"Dr.M.C.Johri was appointed to the post of SSO-I as a direct recruit on the recommendations of UPSC on 10.1.86 and hence he was eligible for promotion to the post of PSO in 1991 after completing five years service in the grade of SSO.I and he was rightly considered for the panel 1991. S/Shri T.R.Nehra, S.C.Mittal and Rup Singh were appointed to the post of SSO.I in 1985 and were eligible for the panel of 1990 to the post of PSO and accordingly UPSC has prepared a consolidated panel to the post of PSO. The consolidated panel prepared by the UPSC will prevail".

7. The respondents issued a seniority list of PSO vide circular dated 3.6.1999 as on 1.1.1999, wherein the applicants were assigned seniority from the year 1996 instead of the year 1990 for which year they were empanelled. According to the applicants they are not responsible for the delay in the holding of the DPC and further in implementing the recommendations made by the DPC. The applicants have sought the following relief:-

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(i) allow the instant OA and to quash the impugned Seniority list dt 3.6.99 of Principal Scientific Officers issued by the respondent no.3 with all its consequences including promotion made to the next higher post of Director, if any, based on impugned Seniority List;

(ii) declare the respondents action in not assigning them the seniority from its due date i.e. the year 1990, when the applicants were eligible and for which year they have been empanelled by the Respondent No 4, as illegal, arbitrary, discriminatory & untenable in law with all its consequences;

(iii) direct the respondents to antedate the applicants promotion in the grade of PSO in accordance with the UPSC empanelment w.e.f. the year 1990 and accordingly grant them all consequential benefits i.e. seniority from the said year, arrears of pay and allowances etc.

(iv) issue a Writ of Mandamus or any other appropriate Writ, Order or direction quashing Para 6.4.4. of OM dated 10th April 1989 issued by the Deptt of Personnel & Training with all its consequences;

(v) direct the respondents to consider the applicants for the promotion to the post Director, CFSL under the 1st mode of eligibility as provided under col.12 of the 1999 Rules with all its consequences;

(vi) allow cost of the petition;

(vii) grant any other relief or orders which this Hon'ble Tribunal may deem just & fit in the facts & circumstances of the case.

8. Vide interim order dated 31.8.2000 passed by the Tribunal in this OA the applicants were allowed to appear in the interview held on 1.9.2000 provisionally under the (Primary Clause). The respondents were also directed not to fill up the vacancy of Director CFSL. This interim order has continued from time to time till date.

9. Respondent 6 has adopted the counter filed by the official respondents. The applicants have filed rejoinder as well.

10. The first issue raised by the respondents relates to limitation. Shri Gangwani learned counsel of the official respondents has contended that the

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applicants were promoted to the next higher grade in 1996 and have been drawing emoluments of the higher post and also performing the duties of the same post from 1996. If they had any grievance they should have moved the Tribunal within a year thereof. Their claim for promotion to the post of PSO from 1990- through OA filed in 2000 is barred by limitation. Shri V.S.R.Krishna, learned counsel of Dr. S.R.Singh, respondent 6, supporting the contention of Shri Gangwani contended that cause, if any, for the applicants had arisen in 1996 when they were promoted to the next higher grade of PSO or at the most on 28.2.1997 when representation of Dr.M.C.Johri was rejected stating that the consolidated panel prepared by the UPSC would prevail. The respondents have relied on the decision of K.R.Mudgal & others Vs. R.P.Singh & others, (1986) 4 SCC 531 in which it was held that in matters of seniority and promotion they should not be disturbed after a long lapse of time.

11. The learned counsel of the applicants Shri M.K.Gupta answering the objection of the respondents in respect of limitation contended that a perusal of his foremost relief indicates that he had challenged the seniority list dated 3.6.1999 of PSOs with all its consequences including promotion made to the next higher post of Director based on impugned seniority list. According to him the applicants have made the OA within one year of 3.6.1999, therefore, the OA has been made within limitation. The learned counsel also drew our attention to the decision in the case of Kuldip Chand Vs. Union of India & others, (1995) 5 SCC 680. In that case writ petition had been made against wrong determination of seniority. Representations against seniority list dated 23.12.1982 were made on 10.1.1983

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and 1.8.1983. They were rejected. Writ petition was filed in 1991 after supersession. Since no vacancy in the promotion post had arisen earlier after the preparation of seniority list rejection of the said representations was held not to dis-entitle the concerned employee to file the said writ petition to claim seniority over the superseded candidate. The facts in the present case are also some what similar. Although the applicants have been aggrieved by non-assignment of seniority in the post of PSO from the year 1990 the question of filling up of the promotional post of Director,CFSL from the level of PSOs has arisen recently when the respondents proceeded to hold interview for the post of Director on 1.9.2000. The ratio in the case of Kuldip Singh (supra) is squarely applicable in the present case. We may also observe that the UPSC had held a DPC for the post of PSO in situ on 30.10.1995 under the FCS. The applicants were promoted vide order dated 12.7.1996. The order was subsequently amended vide order dated 19.8.1996 making their promotion as provisional subject to the final outcome of the OA 2031/95 filed by Dr.G.D.Gupta. The said OA was ultimately dismissed vide order dated 22.2.2000. Since the amended order dated 19.8.1996 remained provisional till the final decision dated 22.2.2000 in OA 2031/95, the limitation could not have been related to an earlier date than 22.2.2000. Thus, the objection relating to limitation raised by the respondents cannot be sustained.

12. Shri Krishna, learned counsel has next raised the issue of res judicata. He pointed out that the applicant had earlier on filed OA No.409/1991 which was finally disposed of on 28.2.1995 with a direction to the

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respondents to consider the case of the applicants for promotion to the post of PSO in accordance with the relevant rules and instructions and if the applicant is still aggrieved he would be entitled to agitate the matter through fresh proceedings after exhausting the departmental remedy. The learned counsel contended that the issues in question in the present case have been adjudicated by the earlier OA. In this manner this case suffers from the res judicata.

13. Shri Gupta, learned counsel of the applicants drew our attention to Section 11 of the Code of Civil Procedure, 1908 which reads as follows:

"11. Res Judicata.- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

He maintained that if in the earlier case the same matter had been in issue directly or ~~in~~^{ly} substantially and had been heard and finally decided by the Court; only then the case is hit by res judicata. We have to see whether in the earlier case the same issue was directly and substantially raised and whether the same had been heard and finally decided by the Tribunal. He relied on the following decisions in the cases of (i) Ferro Alloys Corpn. Ltd. Vs. Union of India, (1999) 4 SCC 149; and (ii) Krishan Lal Vs. State of J & K, (1994) 4 SCC 422. In the latter case it was held that when there is no decision on merits as regards the grievance of the appellant, the principle of res judicata has no application. In the former case it was held that an issue raising questions inter se among contesting respondents should be shown to have been

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expressly considered and decided and the decision obtained finality so as to operate as res judicata in subsequent proceedings. Observations made by the Hon'ble Supreme Court regarding assessment of captive mining requirement of different industries and application of the principle of equitable distribution of mining leases was held not to be an express decision on the question as to whether the Expert Committee's assessment of need for chrome ore, as regards the appellant, as approved and accepted by Central Government involved any error or not or whether it was required to be reassessed for upward revision - such issue having not been expressly adjudicated upon and there being no final decision thereon inter se the parties, controversy in that regard raised in subsequent proceedings was not barred by res judicata. Drawing attention to the order dated 28.2.1995 in OA 409/1991 the learned counsel of the applicants contended that the respondents had been directed to consider the case of the applicants for promotion in accordance with the extant rules/ instructions. Neither the relief sought in that OA had been accorded to the applicants nor was the issue of promotion of the applicants finally decided in the earlier case. As a matter of fact the Tribunal had given them the liberty to agitate the matter through appropriate fresh proceedings in case their grievance survived after the implementation of the directions of the Court by the respondents. In this background according to Shri Gupta the present case does not suffer from res judicata at all. We are inclined to agree with the learned counsel of the applicants that neither the relief sought in the earlier OA 409/1991 had been



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accorded to the applicants nor was the issue of their promotion finally decided in that case. As a matter of fact the present OA has been made at the time when the respondents have initiated the process of promotion to the next higher post of Director, CFSL and the applicants have become ineligible for promotion on non-assignment of seniority in the post of PSO from the year 1990. In the back drop of the above discussion the respondents' objection relating to the plea of res judicata is not sustainable.

14. The learned counsel of the official respondents Shri Gangwani stated that under the FCS the number of officers in the grade of PSO shall not exceed 30% of the total number of posts in the three grades of PSO, SSO-I and SSO-II. As the sanctioned strength of the PSO is 1, that of SSO-I is 10 and SSO-II is 20, the total number of PSOs cannot exceed 9 at a time. Dr. S. R. Singh, respondent no. 6 joined as Assistant Director (now redesignated as SSO Grade-I on 29.4.1982 through the direct recruitment by UPSC. He became eligible for promotion to the post of PSO after completing five years as SSO Grade-I on 29.4.1987. However, such a proposal was sent by the CBI to UPSC on 31.1.1990 for filling up the post of PSO against the regular vacancy of the year 1988. Dr. S. R. Singh was appointed as PSO on 19.7.1991. Applicants Shri T. R. Mehra and Dr. S. C. Mittal were promoted as SSO Grade-I under the FCS on 9.8.1985 on in-situ basis based on recruitment rules of 31.7.1982. They were subsequently promoted as PSOs under the same scheme on in situ basis on 12.7.1996. When a proposal in respect of Dr. S. R. Singh and another SSO-I for filling up the two posts of PSO against the vacancy of the year 1988 was

* Corrected vide
order dt 5/3/02

* 29.4.1987
29.4.1991

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sent to the UPSC on 23.11.1990, the applicants along with other officers filed OA No.409/91 dated 12.2.1991. By an interim order passed on 24.4.1991 the Tribunal directed the respondents to consider the applicants for promotion to the post of PSO on in situ basis by the next DPC expeditiously in accordance with the rules. A DPC was convened by the UPSC on 26.4.1991 and the case of Dr.S.R.Singh for promotion as PSO on in situ basis was finalised and he was appointed as such on 19.7.1991 on in situ basis. Thereafter no DPC for promotion to the rank of PSO in situ was held till 5.4.1995. In the meantime Dr.G.D.Gupta filed OA No.2031/1995. On 28.11.1995 the Tribunal ordered that any promotion to the post of PSO which may be done by the respondents may be subject to the out come of that case. Accordingly, all promotion orders to the post of PSO after 28.11.1995 were issued on provisional basis. A proposal for merit promotion of SSO-I to the grade of PSO was sent to the UPSC on 23.6.1995 whereby seniority list of SSO-I as on 31.3.1995 was also enclosed. The names of the applicants Shri T.R.Nehra and Dr.S.C.Mittal figure at serial nos.3 and 8 respectively. On receipt of the judgment dated 28.2.1995 in OA 409/1991 a proposal dated 23.6.1995 was sent to the UPSC for considering promotion of officers including the applicants to the rank of PSO. The DPC meeting was held on 30.10.1995. The UPSC recommended the names of the applicants along with other officers for promotion as PSO on in-situ basis. The seniority list of PSOs as on 1.1.1999 on provisional basis was issued vide circular dated 3.6.1999. As Dr.S.R.Singh had become ineligible for promotion in the year 1987 itself but his case was taken in the year 1991, ~~he~~ ^{* eligible} is the senior most PSO in CFSL. The

+ corrected order
- order dt 5.3.2002

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respondents have maintained that the date of eligibility does not determine seniority. Non-holding of the DPC was beyond the control of the respondents. The learned counsel of the respondents drew our attention to the definition of 'in-situ' promotion and the concept of inter se seniority of officers in a grade as per the relevant rules. These rules are called the Department of Health (Group 'A' Gazetted Non-Medical Scientific and Technical Posts) In Situ Promotion Rules, 1990 (Annexure-14). The expression "In Situ promotion" has been described as personal promotion of a candidate holding any post in Annexure-II from the existing Scientist Level to the next higher Scientist Level without any change in the post or in the designation ~~t~~hereof. Rule 4(2) of the aforesaid Rules relates to inter se seniority and reads as follows:-

"The inter se seniority of officers in each grade shall be determined in accordance with the date of their regular appointment to the respective grades".

The learned counsel of the respondents contended that the applicants had been accorded in-situ promotion in the grade of PSO on 12.7.1996 and since they have not held this post on a regular basis for the last 5 years they are ineligible for consideration for promotion to the post of Director. The learned counsel of the applicants has contended that the respondents had been called upon by the Tribunal vide its order dated 24.4.1991 in OA 409/91 to consider the case of the applicants for promotion to the post of PSO by the next DPC expeditiously in accordance with the rules (Annexure-A-4). However, the main O.A. was decided on 28.2.1995 reiterating that the applicants' case for promotion to the post of PSO should be considered as already directed vide order dated 24.4.1991 within a

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period of four months. The learned counsel of the applicants stated that if the DPC had been held in 1991 when the applicants were eligible for the post of PSO they would have held that post for about 10 years and become eligible for the post of Director, CFSL.

15. The learned counsel of the respondents contended that the applicants were empanelled for in-situ promotion to the grade of PSO only after 1st November, 1995 by the UPSC and they took over on 12.7.1996 as PSOs. They are not eligible for consideration for the post of Director, CFSL.

16. Shri Gupta, learned counsel of the applicants stated that vide UPSC's communication dated November 1, 1995 the Assessment Board recommended the following candidates fit in the year of their eligibility in the order~~s~~ stated below for in-situ promotion to the grade of PSO in CFSL, CBI:-

"PANEL FOR THE YEAR 1990

S.No. Name (S/Shri)
1. T.R.Mehra
2. S.C.Mittal
3. Dr.M.C.Johri
Panel for the year.....
" " " " "
" " " "

Consolidated Panel

1. T.R.Mehra
2. S.C.Mittal
3. Rup Singh
4. Dr.M.C.Johri
5. V.K.Khanna
6. Ms.Bibha Rani

He maintained that though the applicants had been included in the panel for the year 1990 and a few others were empanelled for other years, the UPSC at the end recommended a consolidated panel of six officers in which the applicants were at serial nos.1 & 2 respectively. The learned counsel of the applicants contended that when they had been empanelled for the year 1990, they should have been accorded seniority with

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effect from 1990 and not from 1996. He contended that the delay in holding of the DPC was not caused by the applicants. The learned counsel of the respondents refuted the contention of the learned counsel of the applicants and stated that the applicants have been kept in a consolidated panel and their empanelment cannot be given a retrospective effect. The consolidated panel has to be given prospective effect otherwise the UPSC would not have formulated a consolidated panel.

17. The decision in the case of Union of India and others Vs.N.R.Banerjee and others, (1997) 9 SCC 287 is relevant on the point of yearwise panels. The relevant portion of the judgment is extracted below:-

"Preparation of action plan for consideration by the DPC of the respective claims of the officers within the zone and thereafter for setting in motion the process of preparation of panel on year-wise basis is elaborately laid down in the instructions issued by the Government of India, Ministry of Personnel and Training. In case of failure on the part of the departmental authorities to do so, what further procedure is required to be followed is also indicated in these instructions. It manifests the intention of the rule-maker that the Government should estimate the anticipated vacancies, regular vacancies and also vacancies arising thereafter due to various contingencies and get the ACRs prepared and approved. It has also been laid down in these instructions that the DPC should sit on regular basis to consider the cases of the eligible candidates within the zone of consideration. The object is that the Government should keep the panel ready in advance so that the vacancies arising soon thereafter may be filled up from amongst the approved candidates whose names appear in the panel (Para 3)

The departmental instructions prescribe one year as the life of the panel. It is therefore essential that appointing authorities concerned should initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like ACRs, integrity certificates, seniority list etc. for placing before the DPC. (Para 5)

The DPC is required to sit every year, regularly on or before 1st April or 1st May of the year to fill up the vacancies likely to arise in the year of being filled up. The required material should be collected in advance and merit list finalised by the

appointing authorities and placed before the DPCs for consideration. The requirement can be dispensed with only after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion, or that no officers are due for confirmation, during the year in question. (Para 6)

The instructions also specifically mention about the preparatory action to be taken for assessing the number of vacancies. The authorities are required to anticipate in advance the vacancies for promotion on regular basis including long term deputation posts and additional posts created and then to take action for finalising the ACRs, preparation of the selected list and place necessary material before the DPC for consideration of the candidates within the zone of consideration, as are found eligible for the relevant year/years. (Para 9)

It is true that the Government is under no obligation to fill up a vacancy and empanelment of a candidate does not create any right in his favour, yet the administrative instructions issued by the Government of India clearly indicate the need for taking action for preparation of panel well in advance to fill up the clear vacancies or anticipated vacancies. The preparation and finalisation of yearly panel, unless duly certified by the appointing authority that no vacancy would arise or no suitable candidate was available, is a mandatory requirement. If the annual panel can not be prepared for any justifiable reason, year-wise panel of all the eligible candidates within the zone of consideration for filling up of the vacancies each year should be prepared and appointments made in accordance therewith (Para 12)".

It is clear from the aforesaid judgment that preparation of yearly panels is a mandatory requirement. UPSC's letter dated November 1, 1995 makes it clear that the applicants were found fit in the year of their eligibility for in-situ promotion to the grade of PSO. Obviously, there were three vacancies for the year 1990 and although the panel was formulated in 1995 the applicants and another candidate were empanelled for the year 1990. In our considered view basically there was no need for the UPSC to have given a separate consolidated panel. When they had recommended different panels for different years there was no need for consolidating them. The scheme for in-situ promotion aims at accelerating promotions of the personnel. If

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they are not promoted as per their eligibility despite existence of vacancies, the objective behind the scheme of in-situ promotion gets defeated. If the idea behind formulating one consolidated panel is not to accord in-situ promotion to the applicants for respective years when they became eligible then there was no need to put the candidates in separate panels for separate years. All the vacancies could have been clubbed in 1995 and a single consolidated panel could have been recommended by the UPSC. In our view whereas the UPSC recommended separate panels for separate years they have unnecessarily consolidated the panels. This consolidated panel is meaningless in our view. In the light of the ratio of N.R.Banerjee (supra) the applicants who were eligible in and were empanelled for the year 1990 for in-situ promotion to the grade of PSO have to be accorded in-situ promotion with effect from the year 1990.

18. Having regard to what has been stated above, the respondents' action in not assigning seniority to the applicants from the year 1990 when they became eligible for and were empanelled for in-situ promotion for the post of PSO is illegal and arbitrary.

19. In the result, the OA is allowed. The respondents are directed to grant the applicants in-situ promotion to the post of PSO from the year 1990. The applicants shall, however, not be entitled to any backwages but would be entitled to notional fixation of pay including other consequential benefits. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (Admnv)