

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A No. 1463/2000  
T.A No.

(18)

Date of Decision 12-4-2001

Sh.R.D.Gupta and Ors. ..Petitioner  
Sh.P.P.Khurana, Sr.counsel with Ms.Rinchen Ongmu ..Advocate for the Petitioner(s)

Versus

UOI & Ors ..Respondents

Sh.H.K.Gangwani for Respondents 1-2. ..Advocate for the Respondents  
Mrs.B.Rana for R-3  
Sh.G.K.Agarwal for Respondent 4.

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)  
Hon'ble Shri Govindan S.Tampi, Member (A)

1. To be referred to the Reporter or not? Yes  
2. Whether it needs to be circulated to other Benches of the Tribunal? No

Lakshmi Swaminathan  
(Smt.Lakshmi Swaminathan )  
Vice Chairman (J)

Central Administrative Tribunal  
Principal Bench

O.A. 1463/2000

New Delhi this the 12th day of April, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).  
Hon'ble Shri Govindan S. Tampi, Member(A). (9)

1. Shri R.D. Gupta,  
Chief Engineer & Executive  
Director (CSO),  
CPWD "E" Wing 1st Floor,  
Nirman Bhawan,  
New Delhi.
2. Shri Krishan Kant Chief Engineer  
(NDZ)1, Nirman Bhawan,  
New Delhi.
3. Shri K.N. Aggarwal,  
Chief Engineer-Zone IV,  
PWD(NCTD),  
MSO Building,  
New Delhi.
4. Shri S.P. Banwait,  
Chief Engineer-Zone I,  
PWD (NCTD),  
MSO Building,  
New Delhi.

(By Advocate Shri P.P. Khurana, Sr. Counsel with  
Ms. Rinchen Ongmu)

Versus

1. Union of India through  
Secretary, Department of  
Urban Development,  
Ministry of Urban Affairs and  
Employment, Nirman Bhawan,  
New Delhi.
2. The Secretary,  
Department of Personnel & Training,  
(Ministry of Personnel,  
Public Grievances & Pensions),  
North Block, New Delhi.
3. The Secretary,  
Union Public Service Commission,  
Shahjehan Road,  
New Delhi.
4. Shri J.L. Khushu,  
D-II/2779, Netaji Nagar,  
New Delhi. .... Respondents.

(By Advocates Shri H.K. Gangwani - for Respondents 1 & 2,  
Mrs. B. Rana - for Respondent 3 and Shri G.K. Aggarwal -  
for Respondent 4).

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O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

(20)

This O.A. has been filed by four applicants who claim that a review DPC should be held in place of the DPC held on 1.8.1995 and 2.8.1995, to prepare a fresh panel of officers for promotion to the grade of Chief Engineers (CES) (Civil). They are aggrieved that the respondents have not taken necessary action and, therefore, they have prayed that the Tribunal should direct the respondents to hold the review DPC for filling up, what they claim is the correct number of vacancies, that is 16. They have also submitted that in spite of the decision taken by respondent 1 in their letters dated 29.4.1998 and 25.8.1998, respondent 3, that is the UPSC, has not agreed to hold the review DPC and hence, this O.A.

2. The brief relevant facts of the case are that according to the applicants, the correct number of vacancies for which the DPC ought to have been held on 1st and 2.8.1995 was 16 but on the wrong recommendations of the Director Administration, CPWD, with the approval of the DG (Works), CPWD, this number was increased to 20. This in turn had the effect of inflating the zone of consideration of officers in the feeder grade. They have submitted that accordingly 8 ineligible officers who would not have come within the zone of consideration, were considered by the DPC for selections to the posts of CES for the vacancies arising in the years 1994-95 and 1995-96. Respondents 1 and 2 have stated that on 29.6.1995, Ministry of Finance, Department of Expenditure had sent a letter giving the approval of the Hon'ble Prime

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Minister to abolish 4 posts of CEs/Chief Architects. They have submitted that the posts, therefore, stood abolished on 29.6.1995, as approved by the Prime Minister, although the formal orders for abolishing the posts were issued on 2.4.1996 in respect of 3 posts of CEs (Civil) and one post of CE (Electrical). However, extra number of vacancies were reported to the UPSC in expectation that the Ministry of Finance would on reconsideration rescind their order dated 29.6.1995. Respondents 1 and 2 have clarified in their reply that while conveying the vacancy position to the UPSC, the retirement vacancy of one Shri Mohan Asnani, CE (Civil) was erroneously included, who was on deputation to the Delhi Tourism Development Corporation (DTDC) and retired from there on superannuation on 31.3.1995.

3. Both the applicants and respondents 1 and 2 have contended that, there was over reporting of the vacancies to the UPSC on 25.7.1995, when 20 vacancies were indicated, for preparation of the panel of CEs for the year 1995-96. The applicants have submitted that at the relevant time, Respondent 4 was posted as Director Administration (CPWD) and it was his duty to furnish proper and correct information to the UPSC through the Ministry. They have submitted that if 16 number of vacancies had been informed to the UPSC, Respondent 4 would not have come within consideration zone, as he was at serial No.40 in the Seniority list and only 36 officers would have come within the zone of consideration, in accordance with the relevant guidelines. They have stated that Respondent 4 had taken advantage of his official position and manipulated the situation while projecting the number of vacancies as 20, instead of 16, in 1995.

The DPC which was held for filling 20 vacancies had selected Respondent 4 in August, 1995 as CE. They have relied on the letter issued by the Ministry of Finance dated 29.6.1995. In this letter, which was addressed to the Joint Secretary and Financial Adviser in the office of Respondent 1, they have referred to their earlier D.O. letter dated 15.9.1993 regarding identification of posts of JS equivalent posts in the Ministry. It was also mentioned that the Prime Minister has approved abolition of 4 posts of CEs/Chief Architects. It was requested that orders for abolition of the above mentioned posts may be issued early with copies to that Ministry.

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4. The main contention of Shri P.P. Khurana, learned Senior counsel for the applicants and Shri H.K. Gangwani, learned counsel for respondents 1 and 2, is that the 4 posts stood abolished as on 29.6.1995, as approved by the Prime Minister and conveyed by the Ministry of Finance. It is, however, not disputed that the formal orders for abolishing the posts were issued on 2.4.1996 in respect of 3 posts of CEs (Civil) and one post of CE (Electrical) with reference to the Ministry of Finance D.O. letter dated 29.6.1995. According to the respondents, 20 vacancies were, however, reported to the UPSC, in expectation that the Ministry of Finance would reconsider their decision and rescind their letter dated 29.6.1995 and they would not have to abolish any posts of CE. They have also referred to the cadre review of Central Engineering Service Group 'A' of CPWD. By the letter dated 12.7.1995, the President had sanctioned revised strength of CEs in the Ministry of Urban Affairs from the existing number of 26 to 40 CEs, (Civil) and from 4 to 7

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CEs, (Electrical). It was submitted that even though the Rules were notified as on 28.10.1996, the revision had taken place earlier. Learned counsel <sup>has</sup> also submitted that as of now, there are 37 posts of CEs, but taking into account the issues involved in this case, we are of the view that the posts as in October, 1999, is not relevant. Shri P.P. Khurana, learned Sr. Counsel has also submitted that the contention of the UPSC and Respondent 4 that the O.A. is barred by time is not correct. He has submitted that Respondent 4, Shri J.L. Khushu, had filed OA 913/2000 which was disposed of by Tribunal's order dated 24.8.2000. Besides, he has also referred to the order in CP 212/2000 in which the order dated 24.8.2000 has been noted. He has, therefore, submitted that there is no question of any bar of limitation in the present case. Learned counsel for the applicants has also submitted that it is evident from the reply filed by Respondents 1 and 2 that they have agreed that there was over reporting of vacancies to the DPC in 1995 as 20. Both the applicants and the respondents have relied on the DOP&T guidelines for holding review DPCs, for correcting errors, or procedural lacuna or mistakes that took place, <sup>with a</sup> view to ensure that no unintended benefits are accrued to any one and no one is denied what is due to him. Learned counsel for these parties have submitted that where an ineligible person, like Respondent 4, has been considered by mistake by the DPC, it is a case where a review DPC has to be held. They have relied on the DOP&T clarificatory O.M. dated 13.4.1998. He has submitted that the mistake can be either over-reporting or under-reporting of vacancies and here it was over-reporting of vacancies to the UPSC in the posts of CEs(Civil) in July/August, 1995.

5. The learned counsel for Respondents 1 and 2 has more or less adopted the arguments of Shri P.P. Khurana, learned Senior counsel. He has also submitted that the respondents have also tried to persuade the UPSC to hold a review DPC but they have not agreed. He has submitted that on the basis of the recommendations of the DPC held on 1&2.8.1995, Respondent 4 was promoted as CE vide Office Order dated 24.7.1996 and he has superseded several persons owing to incorrect projection of vacancies of CEs. In order to ensure that no intended benefits are accrued to any one, in May, 2000 they had proposed to the UPSC to hold a review DPC for redrawing the panel of CEs (Civil) for the year 1995-96 which was not agreed to in their letter dated 21.6.2000. Shri H.K. Gangwani, learned counsel has submitted that even earlier they had taken up the matter with the UPSC to hold a review DPC. He has also relied on the letter from Respondent 2 dated 29.4.1998 but the UPSC has unfortunately not agreed to it. The respondents have stated in the reply that they are examining the matter again and a final decision is yet to be taken in the matter. However, it is relevant to note that the reply has been filed on 18.10.2000, whereas the promotion of Respondent 4 has been given effect to by their own order dated 24.7.1996. The same position appears to have continued even till the date of final hearing of the present application.

6. We have seen the reply filed by the UPSC and heard Mrs. B. Rana, learned counsel and Shri G.K. Aggarwal, learned counsel for Respondent 4. According to the UPSC, the DPC meeting was held for promotion to the

grade of CEs (Civil) against 3 vacancies pertaining to the year 1994-95 and 20 vacancies for the year 1995-96. Before this meeting was held in pursuance of the Prime Minister's directives for 10% cut in the cadre strength of various posts/grades, the Ministry of Finance had asked Respondent 1 to abolish 3 posts of CEs(Civil) in CPWD. However, they have submitted that Respondent 1 did not intimate to them that there has been any reduction in the number of vacancies required to be filled in the grade of CEs (Civil) at the relevant time. According to them, they have considered the matter carefully in the light of the relevant Govt. of India's instructions/guidelines regarding holding of review DPCs. They have submitted that in the facts and circumstances of the case, this is not a fit case for holding a review DPC. They have also referred to the fact that Respondent 2 had taken up the case with them in June, 1997 itself, insisting that a review DPC should be held which they have not agreed to. Regarding the clarificatory O.M. issued by the DOP&T dated 13.4.1998, on the earlier O.M. dated 10.4.1989, they have commented that while they have never raised any doubt on the question of holding review DPCs in cases involving over reporting of vacancies, their stand is that in the present case, the change in the number of vacancies had taken place only after the DPC meeting was held in August, 1995. Further, retrospective abolition of posts could not be taken as a case of over reporting of vacancies. They have also stated that the DOP&T O.M. dated 13.4.1998 has only clarified what was already clear. They have accordingly informed the position to Respondent 2 vide letter dated 6.7.1998, followed by letter to Respondent 1 dated 21.6.2000. According to the UPSC,

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neither of the DOP&T O.Ms implicitly or explicitly lay down that DPC proceedings are required to be reviewed, even in those cases where posts are abolished and vacancies are reduced subsequent to the DPC meeting. According to them, as the order of abolition of posts of CEs (Civil) was issued by the Ministry much later in their letter dated 2.4.1996, which is after the DPC meeting, the actual number of vacancies available at the relevant time was 20 and not 16. Mrs. B. Rana, learned counsel has, therefore, emphasised that there is, therefore, no case for holding a review DPC in terms of the extant instructions issued by the DOP&T. She has also submitted that in the present case, the UPSC, in discharge of its Constitutional duty, has consciously taken a decision not to hold the review DPC, which stand they have reiterated in writing to the Respondents. Her written brief is also placed on record.

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7. Mrs. B. Rana, learned counsel has submitted that the ACC has taken the decision in 1996 regarding promotion of the selected candidates, that is after the letter dated 2.4.1996 was issued and the respondents were well aware of the factual position. She has relied on **Anil Kumar Soni Vs. Managing Director, Punjab Financial Corporation** (AIR 1991 (SC) 1840) that there cannot be any retrospective abolition of posts. She has also relied on **Paluru Ramkrishnaiah Vs. Union of India** (AIR 1990 SC 166 at 171). She has submitted that the letter dated 29.6.1995 is not on behalf of the President and such an executive instruction cannot override the statutory rules. She has also submitted that the O.A. is barred by limitation and applicant No.1, Shri R.D. Gupta, had made

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several representations from 13.5.1995 onwards in respect of the DPC which was held on 1st and 2nd August, 1995 and 2.8.1995. This O.A. has been filed belatedly on 2.8.2000. Learned counsel has also submitted that as no appeal has been filed against the decision of the Tribunal in OA 1219/98, it has become final. She has, therefore, submitted that the reasons given by the UPSC in their letter dated 21.6.2000, following the obiter dictum given in OA 1219/98, that if any post is to be abolished as an economy measure, it can only be done prospectively and not retrospectively, is correct. She has, therefore, prayed that the O.A. may be dismissed as the stand taken by the UPSC cannot be assailed in law. She has also relied on the judgement of the Delhi High Court in **Y. Rajeshwari Vs. Bombay Tyers International Ltd.** (39 (1989) Delhi Law Times 542).

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8. Respondent 4, Shri J.L. Khushu, has filed MA 2197/2000 and his counsel Shri G.K. Aggarwal, learned counsel was heard initially. He has also contended that the O.A. is a misuse of process of law and should be dismissed with exemplary costs. We have also seen the written brief submitted by him which is placed on record. He has submitted that the applicants in the present case were impleaded as Respondents in OA 854/1996 in which, according to him, they had taken the same pleas raised here. That O.A. was dismissed as infructuous by Tribunal's order dated 2.8.1996. He has, therefore, submitted that the O.A. is barred by the principles of res judicata. He has submitted that they have not challenged the promotion orders in respect of Respondent 4 dated 24.7.1996 and 11.10.1996 or the DPC proceedings

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dated 1st and 2nd August, 1995. Respondent 4 had also filed another OA (OA 1219/98) in which a reference has been made to the pleadings and decision given in OA 854/96. In OA 1219/98, the learned counsel for the official respondents had not denied that the applicant/Respondent 4, had worked on the post of CE(C) since 1996. It was held in that case that 'Manifestly, therefore, if any post is to be abolished as an economy measure, it can be done only prospectively and not retrospectively'. Learned counsel has emphasised that the Tribunal held that "it is clear, therefore, that respondents cannot retrospectively abolish the post held by applicant at this stage, against which he has continuously worked and been paid from 24.7.1996 onwards". To this extent, the Tribunal directed that respondents are not to interfere with the applicant's promotion order dated 24.7.1996 by seeking to abolish the post of CE (C) held by him with effect from that date. Shri G.K. Aggarwal, learned counsel, has submitted that another OA (OA 913/2000) was filed by Respondent 4 on the same subject which has been disposed of by Tribunal's order dated 24.8.2000, where the applicants in the present case had also got themselves impleaded and were represented by Shri P.P. Khurana, learned Sr. Counsel. In this case also, it was noted, based on the statement of Shri K.R. Sachdeva, learned counsel appearing on behalf of the same official respondents, that while dealing with the prayer for interim relief that the applicant/Respondent 4 was not being reverted from the post of CE pursuant to the exercise being undertaken by them and the O.A. was dismissed. In that O.A., the Tribunal has noted that the question whether an error was committed in reporting of

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vacancies to UPSC for the post of CE(Civil) is a question of fact and cannot be adjudicated upon at this stage and if consequent to any review DPC which respondents might hold and the applicant was adversely affected, it would be open to him to agitate his grievance in accordance with law. He has submitted that in the light of the fact that the same issues have already been agitated several times by the concerned parties before the Tribunal, the applicants in the present O.A. cannot reagitate the same issues over and over again. Learned counsel has also drawn our attention to the prayers in the O.A. in which he has submitted that there is no prayer for setting aside the DPC proceedings of August, 1995. So he has contended that the prayer for holding a review DPC is not legally in order. He has submitted that the letter dated 29.6.1995 conveying the Prime Minister's approval for abolishing certain posts is not in the name of the President as required under Article 77 of the Constitution, to abolish the posts. He relies on the judgement of the Supreme Court in **Bachittar Singh Vs. State of Punjab** (1962 SCR Supp(3) 713). On the other hand, he has submitted that the letter from the Ministry of Urban Affairs and Employment dated 2.4.1996, on the subject of abolition of 4 posts of CEs in CPWD, was issued on behalf of the President. He has contended that the posts can be abolished only with prospective effect and not retrospectively. He has contended that the number of vacant posts was 20 at the relevant time and even a person in the select panel at the 18th position, namely, Shri A.K. Saxena was promoted later by Office Order dated 11.10.1996. Another contention is that the applicants are seeking to revive the same issues with mala fide

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intentions at lower levels through officers in the Ministries of Urban Development and Department of Personnel, without any sanction from the competent authority, namely, the Appointments Committee of the Cabinet (ACC), which had already seen and approved the DPC proceedings of August, 1995 after which Respondent 4 had been duly promoted as CE (Civil). In the facts of the case, he has submitted that there was no mistake of fact or law in the DPC held in August, 1995. Therefore, the question of fresh selection or review DPC is not required.

9. Shri P.P. Khurana, learned Sr. counsel has been heard in reply to the arguments submitted by Mrs. B. Rana and Shri G.K. Aggarwal, learned counsel. He has relied on the decision of the Supreme Court in **M.P.B. Jaiswal and Ors. Vs. D.N.B. Jeejeebhoy** (1970(1) SCC 613) and has submitted that res judicata can only be if there is a decision of a competent court where the right has been adjudicated upon. He has submitted that the principles of res judicata would, therefore, not be applicable to the present case in the light of the orders of the Tribunal, referred to above. Learned Sr. counsel has also referred to the judgement of the Supreme Court in **Kirloskar Brothers Ltd. Vs. Employees State Insurance Corporation** (1996(2) SCC 682 (Para 12); **Union of India Vs. B.S. Aggarwal and Anr.** (1997(8) SCC 89). In **B.S. Aggarwal's case** (supra), the Court has held that "the date of accrual of vacancy is a fixed one and even if any manipulation is made about the date of accrual of vacancy, the actual date can always be ascertained by closer scrutiny". According to the learned Senior Counsel, in the present case, the date of abolition of 4 posts has

been done by the letter dated 29.6.1995 which is clear from the letter itself and there is no ambiguity in this. He has submitted that under Article 320 of the Constitution, the UPSC was bound to act as per the requests of the Government and could not refuse to hold the review DPC. He has submitted that the DPCs' recommendations are only advisory in nature and Government may or may not accept the same. (See **Union of India & Ors. Vs. N.P. Dhamania and Ors.** (1995 Supp.(1) SCC 1); **Jatinder Kumar Vs. State of Punjab** (1985(1) SCC 122). He has also referred to **Dr. H. Mukherjee Vs. Union of India & Ors.** (1994 Supp.(1) SCC 250). Another case he has relied upon is **M/s. Bayer India Ltd. and Ors. Vs. State of Maharashtra and Ors.** (1993(3) SCC 29) where it has been observed that as the request made to the High Court was contained in a judicial order passed by the Supreme Court, "it does no credit to either institution that it was not heeded to". We are of the view that these observations of the Apex Court are not relevant to the facts and issues in the present case. Finally, learned Sr. Counsel has submitted that following the observations of the Supreme Court in **Gurdeep Singh Vs. State of J&K & Ors.** (1995 Supp.1 SCC P-188), a selection procured by illegal means should not be permitted to continue on human considerations. He has submitted that Respondent 4 is to retire next year in 2002 and, therefore, he should not be allowed to continue further as CE (Civil) as he had misused his position while acting as Director of Administration in 1995. He has also submitted that as Respondent 4 has jumped six batches and is now placed with the 1965 batch of officers, although he belongs to the 1971 batch, this is also illegal.

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10. Respondents have submitted the relevant official records pertaining to the consideration given by them in respect of holding a review DPC in the grade of CE (C) for the year 1995-96, and the approval of the ACC given to the panel of officers who had been recommended by the DPC which met on 1.8.1995 and 2.8.1995 for promotion to the grade of CE (C), CPWD for our perusal.

11. A mere perusal of the brief facts as discussed above shows that the main issues raised in the present case have to a large extent been considered by the Tribunal in the aforesaid cases which have been filed by the concerned parties. The main relief prayed for by the applicants is for a direction to the respondents to hold a review DPC within a fixed time, in place of the DPC which was held on 1st and 2nd August, 1995, for preparing a panel of CES (Civil) for filling up 16 vacancies, which they contend is the correct number, as also <sup>to</sup> hold review DPCs for the subsequent years. During the hearing, Shri P.P. Khurana, learned Sr. Counsel had submitted that the applicants are certainly not interested in depriving Respondent 4, who is one of their colleagues, the monetary or other benefits he had got during the intervening years but only that he should not gain any further advantage of seniority over them, as he had already got illegal benefits in the DPC held in August, 1995. However, as correctly pointed out by Shri G.K. Aggarwal, learned counsel, without quashing the DPC held in August, 1995, the prayer of the applicants is not legally tenable. Needless to say the benefits that have accrued to Respondent 4 cannot be allowed to be retained by him

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merely on the largesse of the applicants as they tried to make out, but has to be founded on firm legal grounds, which we are of the view exist in the present case. (33)

12. Much has been stated by the learned Sr. Counsel for applicants that the letter dated 29.6.1995 issued by the Government of India, Ministry of Finance, is the letter which has conveyed the approval of the Prime Minister for abolishing of the JS equivalent posts with Respondent 1, namely, 4 posts of CEs/Chief Architect. We are unable to agree with this contention. The relevant portion of this letter reads as follows:

"2. The Prime Minister has approved abolition of the following JS equivalent posts in the Ministry of Urban Development:

1. Four posts of Chief Engineers/Chief Architect.

3. It is requested that orders for abolition of the above mentioned posts may be issued early and copies thereof furnished to this Ministry".

From the above letter, it is not clear as to how many posts each of CEs and Chief Architect have to be abolished, although it has been stated that four posts in these categories which are JS equivalent posts, are to be abolished. Further, in paragraph 3, it is clear that a request has been made to Respondent 1 to issue orders for abolition of the above mentioned posts early. It is not disputed that Respondent 1 tried to write back to the Ministry of Finance to let them continue with the posts without effecting the economy measure as approved by the Prime Minister, which was, however, not agreed to. Thereafter, the letter dated 2.4.1996 has been passed by the Government of India/Respondent 1, in which it has been

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stated that the President is pleased to order that 3 posts of CE (Civil) and one post of CE (Electrical) is to be abolished w.e.f. 29.6.1995 in pursuance of the directions contained in the aforesaid letter from the Ministry of Finance dated 29.6.1995. This letter also shows that the approval of the President had been obtained for abolishing the posts and also that the abolition of one post at least has not been in the category of Chief Architect but in the category of CE (Electrical). The letter dated 2.4.1996 clearly conveys the President's approval for abolishing the posts in question and to this extent, we agree with the contentions of the learned counsel for UPSC and Respondent 4, that necessary orders had to be issued by the competent authority, i.e. the President in pursuance of the Prime Minister's approval for cuts in the existing posts/cadres. In the meantime, respondent 1 had reported to the UPSC on 25.7.1995, indicating 20 vacancies for preparation of the panel of CEs (Civil) for the year 1995-96. The stand of the official respondents that the order abolished the posts formally, which was issued on 2.4.1996 in respect of 3 posts of CE (Civil) and one post of CE (Electrical), with retrospective effect from 29.6.1995 cannot be agreed to. It is clear that although Respondent 1 had received the letter dated 29.6.1995 nearly a month earlier, as contended by them, in anticipation of the approval of the Ministry of Finance that they would not have to abolish any of the posts, they had reported 20 posts as vacant to the UPSC on 25.7.1995, <sup>on</sup> the basis of which the DPC was held on 1st and 2nd August, 1995.

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13. In the note of the Secretary, ACC dated 19.4.1996 reference has been made to the proposal of Respondent 1 for promotion of officers to the grade of CE (Civil) to fill up 3 vacancies in that grade for 1994-95 and 20 vacancies for 1995-96. The DPC had recommended 2 panels for these two years. It was noticed that in respect of the panel for the year 1995-96, Shri J.L. Khushu/Respondent 4, who is at Serial No. 40 in the zone of consideration, has superseded all the officers senior to him by virtue of his having been graded "Outstanding" and has been placed on the top of the panel. It has been further noted that the proposal was under consideration, as a spate of representations had been received from the Central Engineering Services, Class-I (Direct Recruits) Association, alleging irregularities in the calculation in the number of vacancies for the year 1995-96, which had enabled Respondent 4 to be brought within the zone of consideration. Two points were raised and it was admitted by Respondent 1, that retirement of one Shri Mohan Asnani on 31.3.1995 would not have resulted in a vacancy in CPWD and the same, therefore, needs to be deleted from the vacancies for the year 1995-96. Regarding the second point, namely, the question of reduction of 3 posts on the CE (Civil) side, after the Ministry of Finance had categorically turned down their plea and had stated that 10% cut in pursuance of the PM's directives on 29.6.1995 cannot be waived, the Ministry issued orders abolishing 3 posts of CE (Civil) w.e.f. 29.6.1995, that is the date of receipt of the orders conveying PM's directives. In this note, reference has also been made to the fact that Respondent 1 had consulted the UPSC regarding the changed situation for calculation of the number of vacancies for the year 1995-96. However, the UPSC had not agreed with

the reasoning and had intimated them that their recommendations for the year 1995-96 may stand. However, Respondent 1, with the approval of the Minister Incharge, had proposed that based on the assessment already given by the DPC, a panel of 20 names may be approved for 1995-96 in which it is noted that the name of Respondent 4 did not figure. Later, after obtaining the approval of the new Minister for Urban Affairs and Employment, the proposal was again placed before the ACC for approval and in particular, the proposal in the note dated 19.4.1996 wherein the name of Respondent 4 was proposed to be deleted. However, it is relevant to note that the Hon'ble Prime Minister/ACC has approved the panel for the years 1994-95 and 1995-96 as recommended by the DPC which met on 1.8.1995 and 2.8.1995 for promotion of officers to the grade of CE (Civil), subject to, inter alia, the outcome of the case filed by Shri Khushu in the Tribunal. Subsequently, the respondents have issued the promotion order promoting Respondent 4 as Chief Engineer vide Office Order dated 24.7.1996, on the basis of which the Tribunal passed the order dated 2.8.1996 in OA 854/96.

14. Respondent 1, after consultation with Respondent 2, have taken up the matter on a number of occasions with the UPSC for holding a review DPC for the year 1995-96. However, it is relevant to note that all this has been done without approval of the ACC to review or upset their earlier approval of the panel as per the recommendations of the DPC held on 1st and 2nd August, 1995. In the facts and circumstances of the case, we find that the proposal for holding a review DPC has been raised and agitated time and again without the approval of the competent authority i.e. the ACC, as also in the present case.

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15. We also see force in the submissions made by the learned counsel for respondents 3 and 4 that the abolition of 3 posts of CEs (Civil) can only be done prospectively and not with retrospective effect. The relevant Recruitment Rules of 1954 and 1961 which have been superseded by the Notification dated 28.10.1996 dealing with the Ministry of Urban Affairs and Employment (Department of Urban Development), Central Engineering (Civil) Group 'A' Service have all been made by the President in exercise of the powers conferred on him under the proviso to Article 309 of the Constitution. Under these Rules, the number of posts for each cadre have been specified and any posts which are to be abolished or added has to be done only by the competent authority, that is the President and not by executive instructions. Therefore, the letter dated 29.6.1995, with reference to the approval of the Prime Minister for abolition of JS equivalent posts in the office of Respondent 1, cannot be taken as the order passed by the competent authority, which is also clear from paragraph 3 of that letter. The necessary order was passed subsequently by the President on 2.4.1996 in terms of the letter dated 29.6.1995. We also respectfully agree with the observations of the Tribunal in its order dated 1.12.1998 in OA 1219/98 that a post can be abolished only prospectively and not retrospectively, which will adversely affect the interests of the person holding the post. The fact that Respondent 4 had already worked on the post of CE (Civil) for well over two years at that time, was noted and now, a further three years has lapsed. Therefore, the abolition of the posts in question has taken place w.e.f. 2.4.1996, that is after the DPC had been held in August, 1995.

16. The DOP&T O.M. dated 10.4.1989 which has

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been further clarified by their O.M. dated 13.4.1998 on the subject of holding review DPCS are not applicable to the facts and circumstances of the present case. The change in the number of vacancies in the grade of CE (Civil) had taken place, as mentioned above, only after the DPC meeting had already been held and the recommendations made. Therefore, this will not be a case of over reporting of vacancies in 1995 as contended by Shri P.P. Khurana or Shri H.K. Gangwani, learned counsel. As regards this contention of Respondent 1, it is relevant to note that they could not also persuade the ACC to support them at the relevant time in 1996. In the facts and circumstances of the case, the stand taken by the UPSC that the proceedings of the DPC held in August, 1995 are not required to be reviewed cannot be faulted. It may also be added that the fact that Respondent 4 was holding the post of Director Administration in CPWD at that time will not have the effect of vitiating the decisions taken by the competent authority, which has no doubt considered all the relevant facts before taking a decision in the matter, to accept the panel of officers as recommended by the DPC which met on 1st and 2nd August, 1995.

17. When Respondent 1 had reported to the UPSC on 25.7.1995 for preparation of a panel of CE (Civil) for the year 1995-96 for 20 posts, they had also kept in view the fact that they were trying to persuade the Ministry of Finance to agree to their proposal not to abolish any of the posts. Therefore, the allegations of the applicants

that the whole exercise of "over-reporting" 20 posts as vacant to UPSC in 1995, was only because of maneuvering and mala fide action of Respondent 4 as he was Director, Administration, is without any force. In this connection, we note from the Departmental File No. 30/21/94-EC-I (Notes portion) submitted by Respondent 1, that these issues have been examined by them thoroughly. It is relevant to note that in the Note of the Secretary in the Department of Urban Development dated 10.2.1997, he has ~~also~~ minuted that according to the general norm, no post can be abolished or created retrospectively if it adversely affects the career prospects of any individual. He has also noted that even though the Ministry had proposed that due to retrospective abolition of 3 posts of CE (Civil) and one post of CE (Electrical), a truncated panel for 1995-96 should be approved, excluding the name of Shri Khushu/Respondent 4, However, the ACC had rightly rejected the above recommendations of the Ministry and conveyed its approval to the entire panel of 20 CEs (Civil), including Respondent 4. In this note, reference has also been made correctly, that the whole issue has got distorted due to the representations from some disgruntled officers who could not reconcile to supersession by a junior with a better service record, which is inherent in a "selection post". He has also noted that all sorts of allegations of manipulations in the number of vacancies and ACRs of Shri Khushu are now being made but it has been clearly noted that the number of vacancies were based on a conscious decision taken by this Ministry and the DPC took the unanimous view that Shri Khushu deserved to be rated as "Outstanding" on the basis of his service record. It is, therefore, evident that after discussing the facts and circumstances of the case, the view was taken that there

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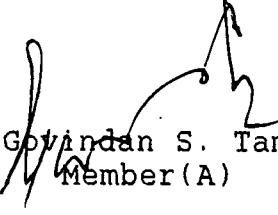
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is no need for reviewing the panel for 1995-96 but later on the exercise to review the panel, on the persuasion of Respondent 1 with the approval of the Minister of State and in consultation with Respondent 2 was undertaken. In the facts and circumstances of the case, the selection of a person based on merit cannot be ordered to be reviewed in the manner the applicants are seeking, which does not fall within the parameters laid down by the DOP&T O.M. dated 10.4.1989 and clarified by O.M. dated 13.4.1998. It is also relevant to mention that in service matters dealing with the issues of seniority and promotions, it is not advisable to unsettle the settled position ( See. **The Direct Recruit Class-II Engineering Officers' Association Vs. State of Maharashtra** (JT 1990 (2) SC 264). In this context, we are constrained to note the rather unusual stand taken by the official respondents in supporting the applicants and not giving a quietus to this issue for the past several years. Had the official respondents been serious in disagreeing with the recommendations of the UPSC, they could have taken other steps on their own which are open to them in law. We have also considered the other contentions of the applicants but do not find any merit in them.

18. In this view of the matter, the judgements relied upon by the learned counsel for the applicants will not assist them and on the contrary, the other judgements relied upon by the learned counsel for Respondents 3 and 4 are fully applicable to the facts of the present case.

Besides, the prayer of the applicants that without quashing and setting aside the recommendations of the DPC held on 1.8.1995 and 2.8.1995, and at the same time to re-allot a junior position to Respondent 4 who had been selected in 1995-96 on the basis of his "Outstanding" ACRs, which resulted in ~~his~~ superseding a number of his senior colleagues, is also not tenable. It will lead to confusion in the seniority positions which is neither justified or legal in this case.

19. In the result, for the reasons given above, we find no merit in this application or any justification to order the UPSC to hold a review DPC for that held in August, 1995. The O.A. fails and is dismissed. No order as to costs.

  
(Govindan S. Tampli)  
Member(A)

  
(Smt. Lakshmi Swaminathan)he  
Vice Chairman(J)

'SRD'