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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 1543/2000

New Delhi, this the <sup>29<sup>th</sup></sup> day of August, 2002

HON'BLE MRS. LAKSHMI SWAMINATHAN, V.C. (J)  
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

1. Smt. Supriti Biswas,  
Aged 45 years,  
W/o Shankaracharya Biswas,  
Flat No. D1/1E2/2CIT,  
Scheme No. VII M  
Kanckuragachi Samabay Abesan Samithi  
Calcutta - 700 054
  2. Sri. Biswanath Sarkhel  
Aged 44 years,  
S/o Late Krishna Kumar Sarkhel,  
G.P. Dass Lane,  
Chandinichowk P.O.,  
Cuttak - 753 002  
Orissa  
(Working as Architect in  
Senior Time Scale)
  3. Smt. Keka Roy,  
Aged 42 years,  
W/o Ashoka Roy,  
No. A-12/30, DLF Quitab Enclave,  
Phase I, Gurgaon,  
Haryana - 122 022  
(Working as Architect,  
Telecommunications, Dehradun)
  4. Mrs. Sadhana S. Hazare,  
Aged 55 years,  
W/o Mr. Sudhir K. Hazare,  
Department of Posts, 4th Floor,  
Sion, P.O. Building, Sion West  
Bombay - 400 022  
(Working as Architect Department of Posts)
  5. Smt. Supriya Ghosh,  
Aged 43 years,  
Department of Telecom, 3rd Floor,  
Yojana Bhavan,  
Calcutta-12
- ... Applicants
- (By Advocate: Shri E.X. Joseph, senior counsel with  
Sh. Abhay N. Das and Ms. Aarti Mahajan)

Versus

1. Union of India represented by  
the Secretary to Government,  
Department of Telecommunications,  
Sanchar Bhavan,  
Sansad Marg, New Delhi - 1
2. Secretary to Government of India,  
Department of Personnel and Training  
New Delhi - 1

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3. The Secretary,  
Union Public Service Commission  
Dholpur House, New Delhi
4. The Senior Deputy Director General,  
(Architecture) Department of Telecommunications,  
Room No. 108-H, Dak Bhavan,  
New Delhi - 1
5. Sri A.K. Sharma,  
Architect,  
Office of the Senior Architect,  
Telecom, 13th Floor,  
Devika Tower,  
Nehru Place,  
New Delhi - 19
6. Sri M.K. Saxena,  
Asstt. General Manager (Architecture)  
Office of the Director,  
7th Floor, ALTTC,  
Ghaziabad, UP
7. Sri B.D. Bhalla,  
Architect,  
6th Floor,  
Devika Tower, Nehru Place,  
New Delhi - 19
8. H.R. Bharkatulla,  
Architect  
O/o the Senior Architect,  
Deptt. of Telecom Services,  
1st Floor, Leeman's Complex,  
Cunningham Road, ....
9. K.C. Khanna,  
Architect,  
Deptt. of Posats,  
3rd Floor, Dak Bhawan,  
Sansad Marg, New Delhi - 1
10. N.C. Keshavani,  
Architect,  
O/o the Sr. Architect-II,  
Deptt. of Telecom Service,  
6th Floor, Devika Tower,  
Nehru Place, New Delhi - 19
11. C.M. Sharma,  
Architect,  
O/o the Sr. Architect-II,  
Deptt. of Tel. Services,  
Devika Tower,  
Nehru Place, New Delhi-19

.....Respondents

(By Advocate : Shri R.N. Singh for official respondents,  
Sh. Rajesh Mahale for private respondent  
8 and none for other pvt. respondents)



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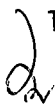
O R D E R

BY S.A.T. RIZVI, MEMBER (A) :

5 applicants, all directly recruited Deputy Architects, so recruited/appointed in 1985, pray for quashment and setting aside of orders both dated 6.6.2000 issued by the respondents and placed at Annexure A-12 and A-13. The order at A-12 lays down that the provisional seniority list of Architects issued on 26.11.1999 will be treated as final seniority list (page 40 of the paper book). The other order placed at A-13 is an order by which one Shri A.K. Sharma, Architect figuring in the aforesaid final seniority list at serial No.6 has been promoted to the post of Senior Architect. The further prayer made is for a direction to the respondents to prepare a fresh seniority list based on the principle that those appointed regularly earlier in point of time should be placed above those appointed later.

2. The official respondents dispute the various contentions raised on behalf of the applicants and have contended that the impugned seniority list (page 40 of the paper book) has been prepared in accordance with the relevant rules and instructions and is in order. Accordingly, the present OA, according to them, is without substance and deserves to be dismissed.

3. We have heard the learned counsel on either side at length and have also perused the material placed on record.



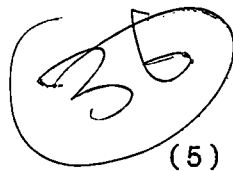


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4. Briefly stated the facts relevant for the purpose of adjudication of the present OA are the following:-

5. The Posts and Telegraphs Department (Civil Engineering Wing) Architects (Gazetted) Recruitment Rules, 1973, hereinafter referred to as the 1973 Rules, provide for the posts of Assistant Architects, Architects and Senior Architects. The Assistant Architects under the aforesaid Rules became eligible for promotion to the post of Architect after rendering 8 years of regular service. Similarly, Architects became eligible for promotion to the post of Senior Architect after rendering 7 years of regular service in the grade of Architect. At the level of Assistant Architect, appointments were to be made 50 per cent by promotion and the remaining 50 per cent by direct recruitment. In 1982, the official respondents decided to create a new post of Deputy Architect with the intention to promote Deputy Architect to the post of Architect after 5 years of regular service in the grade of Deputy Architect. The decision to create the post of Deputy Architect having been taken, one Shri R. Baral was directly appointed as Deputy Architect through the UPSC on 18.10.1982. Similarly, another person was also appointed as Deputy Architect in 1982 followed by one more in 1983. Another five persons were directly appointed as Deputy Architects in 1985. Thus, in all 8 persons were appointed directly as Deputy Architects in accordance with the aforesaid decision. When the time to promote the aforesaid Deputy Architects to the post of Architect arrived, the official respondents sent a letter to the UPSC on 11.7.1989 (A-1) seeking the Commission's permission to make regular



  
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promotion to the post of Architect from amongst the Deputy Architects and the Assistant Architects in accordance with modified (draft) Recruitment Rules, which were proposed to be notified in due course. The Commission was told, in the aforesaid letter, that the official respondents were intending to make provisions for the promotion of Deputy Architects with 5 years of regular service, and Assistant Architects with 8 years of regular service, in the ratio of 1:1. After the aforesaid letter to the UPSC had been issued, the official respondents proceeded to promote 9 Deputy Architects to the post of Architect by their order of 2.7.1990 (A-5). Eight of these figure in the aforesaid impugned seniority list (page 40 of the paper book). The aforesaid promotions are stated to be regular promotions and have been made admittedly without consulting the UPSC and without the Commission's permission. The aforesaid promotions were questioned by the UPSC in their letter of 13.2.1996 (A-8).

6. On 18.8.1997, the official respondents issued a notification promoting 7 Assistant Architects including one Shri H.R. Barkathulla to the post of Architect w.e.f. 12.6.1997. A tentative seniority list of Architects dated 1.4.1998 (A-4) was also issued thereafter by the official respondents. Shri H.R. Barkathulla who had not till then been promoted to the post of Architect was aggrieved by the official respondents' order dated 2.7.1990 by which 9 Deputy Architects were promoted to the post of Architect. He was also aggrieved by a subsequent order issued by the official respondents on 12.2.1997 by which some of the Architects promoted from the cadre of Deputy Architect were



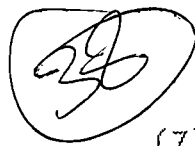
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further promoted as Senior Architects on ad-hoc basis, and also by the official respondents' order of 25.9.1997 whereby the aforesaid ad-hoc appointments to the post of Senior Architect were continued upto 31.12.1997. Having failed to obtain redressal of his aforesaid grievances, Shri H.R. Bharkathulla went up before the Bangalore Bench of this Tribunal through OA No.568/1997 which was decided on 23.10.1998 (A-15).

7. Since the various contentions raised in the present OA by and large centre around the aforesaid decision of the Bangalore Bench of this Tribunal the essential details of the aforesaid decision are being brought out as under

8. The Tribunal, in the aforesaid case, had noted that while the Deputy Architects had been promoted by the official respondents in July 1990, even in the absence of duly notified Recruitment Rules, they had done precious little to promote the Assistant Architects readily available in the Department in accordance with the 1973 Rules, which then held the field. The challenge to the promotion of Deputy Architects to the post of Architect resorted to by the official respondents in July 1990 was, however, found by the Tribunal to be barred by time. The Tribunal felt intrigued by the official respondents' action in ordering the promotion of Deputy Architects to the post of Architect in July 1990, at a point of time when no such promotion could have been made in terms of the 1973 Rules which alone then held the field, and equally by the official respondents not acting even in accordance with the provisions of the draft amendment Rules of 1989 providing

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for filling up of 50 per cent vacancies in the post of Architect by the Assistant Architects with 8 years of regular service in the grade. The Tribunal had also taken a serious note of the fact that while the official respondents could find time to promote the Deputy Architects as above by constituting a DPC for the purpose, they could not convene a DPC for considering the promotion of the Assistant Architects including Shri H.R. Bharkatulla. What is more important, the Tribunal had clearly observed that the official respondents' action in promoting Deputy Architects to the post of Architect was in contravention of the statutory rules of 1973. Meanwhile, a new set of rules being Posts and Telegraphs Building Works (Group-A) Service Rules, 1994 hereinafter referred to as the 1994 Rules had come into force w.e.f. 6.8.1994. These rules provide for the post of Deputy Architect to be filled by the direct recruitment through the UPSC at the entry level. The next higher post of Architect was to be filled to the extent of 50 per cent in accordance with these rules by promoting Deputy Architects with 4 years service in the grade. Remaining 50 per cent vacancies in the post of Architect were to be filled by promoting Assistant Architects (Group-B) with 8 years of service in the grade and having a degree in Architecture. The fact that the 1994 Rules had come into force was noted by the Tribunal. In conclusion, the aforesaid OA filed by Shri H.R. Bharkatulla was allowed with a direction to the official respondent "to constitute and convene a review DPC for the purpose of consideration of the applicant and other similarly placed officers for consideration of their case for regular promotion as Architects against the vacancies

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in the cadre of Architects as in October 1990". In regard to Shri H.R. Bharkatulla, the Tribunal had directed that "if found fit he was to be promoted with all consequential benefits w.e.f. October 1990 including the benefit of seniority as an Architect from October 1990". Insisting that the applicant (H.R. Bharkatulla) should have been promoted in accordance with the provisions of the 1973 Rules, the Tribunal had gone on to observe that the respondents had unnecessarily driven Shri Bharkatulla to a corner and forced him to seek remedy at the hands of the Tribunal.

9. After the Tribunal's aforesaid order in Shri Bharkatulla's case, the official respondents revised the date of regular promotion of Assistant Architects to the post of Architect from 12.6.1997 as indicated in their notification of 18.8.1997 (A-3) to different dates in 1988, 89, 90, 91 and 1992. A corresponding order was issued by the official respondents on 16.4.1999 (A-5) in pursuance of the aforesaid judgement of the Bangalore Bench of this Tribunal. The various dates from which the aforesaid 7 Assistant Architects including Shri H.R. Bharkatulla were stated to have been regularly promoted to the post of Architect as shown in the aforesaid order of 16.4.1999 are as follows:-

Sl. No.	Name (S/Shri)	Revised date of regularisation
1.	A.K. Sharma	01.07.88
2.	M.K. Saxena	28.02.88
3.	B.D. Bhalla	01.07.89
4.	H.R. Bharkatulla	19.10.90
5.	K.C. Khanna	01.10.91
6.	N.C. Keshwani	17.08.92
7.	C.N. Sharma	26.08.92



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The aforesaid order (A-5) also conveys that while in respect of Shri H.R. Bharkathulla, the date of regular promotion has been revised in accordance with the directions of the Bangalore Bench of this Tribunal, in respect of the other six Assistant Architects similarly placed as Shri Bharkathulla, dates of regular promotion have been revised by determining their eligibility on completion of 8 years of qualifying service as per rules.

(emphasiss supplied)

10. The aforesaid revised dates of regular promotion were incorporated in the tentative seniority list dated 1.4.1998 (A-4) to yield the final seniorty list (page 40 of the paper book). It will be seen that in the aforesaid tentative seniority list and the final seniority list, the inter-se seniority position has remained unchanged upto serial No.12 (Shri H.R. Bharkathulla). There has been a change in the order of seniority after serial No.12 and the change is as follows:-

Shri K.C. Khanna, Assistant Architect who occupies 13th place in the final seniority list was listed at serial No.14 in the tentative seniority list. He has, therefore, gained by one position. Smt. Keka Roy, Deputy Architect has lost one position and occupies place at serial No.14 in the final seniority list. Shri B. Sarkhel, Deputy Architect continues to occupy the same position at serial No.15 in the final seniority list. Thereafter, Shri N.C.

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Keshwani, Assistant Architect and Smt. Supriya Ghosh, Deputy Architect have exchanged places with the latter gaining one place. Like-wise Shri C.M. Sharma, Assistant Architect and Smt. S.S. Hazare, Deputy Architect have also ended up by mutually exchanging their positions with Smt. Hazare gaining one place, thus occupying 18th place in the final seniority list. The aforesaid Shri C.M. Sharma who occupied 18th place in the tentative seniority list now occupies 19th place in the final seniority.

The aforesaid marginal changes have been challenged in the present OA along with the dates of regular promotions to the post of Architects assigned to S/Shri A.K. Sharma, M.K. Saxena, B.D. Bhalla and H.R. Bharkathulla as also the others, namely, S/Shri K.C. Khanna, N.C. Keshwani and C.M. Sharma.

11. We have carefully considered the rival contentions raised and have come to the conclusion that there are serious problems with the way the official respondents have resorted to making promotions without following the provisions either of the 1973 Rules or of the 1994 Rules.

12. It is admitted that the official respondents had drafted certain Recruitment Rules, and the draft rules had been approved by the UPSC on 8.9.1989. They had also sought the UPSC's permission to make promotions to the post of Architect from amongst the Deputy Architects and the

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Assistant Architects in accordance with the draft rules. However, without taking the UPSC in confidence they proceeded to make promotions to the post of Architect exclusively from amongst the Deputy Architects without bothering about the Assistant Architects. The promotions in question were made, as already stated, in July 1990. It was left to Shri H.R. Bharkathulla to bring the aforesaid matter before this Tribunal (Bangalore Bench) which passed orders in the matter on 23.10.1998.

13. The official respondents' act in making the aforesaid promotions in the absence of duly notified amended RRs was seriously questioned by the UPSC much later in 1996. In Shri Bharkathulla's case the Tribunal (Bangalore Bench) had directed convening of a review DPC for considering the case of Shri Bharkathulla and other similarly placed officers for promotion to the post of Architect against the vacancies in the cadre available as in October 1990. Clearly the vacancies arising in the post of Architect after October 1990 were not covered by the aforesaid direction of the Tribunal. Only Shri Bharkathulla was to be promoted w.e.f. October 1990 with all consequential benefits and his promotion was to be made in accordance with the 1973 Rules. Taking advantage of the aforesaid direction of the Bangalore Bench of this Tribunal, the official respondents hastened to pass orders on 16.4.1999 (A-5) revising the dates of regular promotions of six Assistant Architects, all promotee Assistant Architects, along with that of Shri Bharkathulla who was a directly recruited Assistant Architect. In the corresponding list (A-5), S/Shri K.C. Khanna, N.C.

Keshwani and C.N. Sharma are shown to have been regularly promoted by way of revision of dates respectively from 1.10.1991, 17.8.1992 and 26.8.1992. These dates evidently fall after October 1990. The aforesaid three Assistant Architects could not, therefore, have been promoted as Architects from the aforesaid revised dates in pursuance of the order of the Bangalore Bench of the Tribunal. At the same time we are not quite sure about the other three Assistant Architects, namely, S/Shri A.K. Sharma, M.K. Saxena and B.D. Bhalla being similarly placed to Shri H.R. Bharkathulla. Shri Bharkathulla admittedly is a directly recruited Assistant Architect whereas the other three are promotee Assistant Architects. We are also not quite sure about the official respondents' action in promoting S/Shri A.K. Sharma, B.D. Bhalla, N.C. Keshwani and C.N. Sharma exactly on the expiry of 8 years from the dates of their respective appointment as Assistant Architects. The aforesaid position respect of Shri M.K. Saxena could not be ascertained due to non-availability of relevant facts. Shri K.C. Khanna, of course, appears to have been promoted as Architect more than 11 years after he was appointed as Assistant Architect. The order dated 16.4.1999 (A-5) which discloses the revised dates of regular promotion of the aforesaid Assistant Architects including that of Shri Bharkathulla does not clarify the position regarding availability of vacancies in the post of Architect on the dates the aforesaid Assistant Architects are shown to have been promoted in Annexure A-5.

14. The revised/amended Recruitment Rules, as stated, came into force in August 1994. These relate to the posts

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of Deputy Architect, Architect etc. The only other Recruitment Rules which have held the field and which apparently still hold the field are the 1973 Rules. The Assistant Architects covered by the 1973 Rules are to be promoted to the post of Architect in accordance with the 1994 Rules and to this extent the 1973 Rules will not apply. For further promotion to the post of Senior Architect also the 1994 Rules alone will apply. The same also applies in respect of the post of JAG (Selection Grade) and SAS (Chief Architect). The draft amendment rules which saw the light of the day sometime time in 1989 ~~which were not implemented~~ admittedly under went some changes as reflected in the 1994 rules formally notified in July 1994. In the circumstances, and keeping in view the observations made by the Bangalore Bench of this Tribunal in the aforesaid case, the official respondents cannot be said to have acted properly by making promotions of the nine Deputy Architects to the post of Architect without following the 1994 Rules which alone made provisions to that effect. The official respondents have also, in our view, not acted properly by assigning revised dates of regular promotion to the Assistant Architects as per their order of 16.4.1999 (A-5). The promotion of Shri H.R. Bharkathulla to the post of Architect w.e.f. 19.10.1990 which is wholly in accordance with the directions of the Bangalore Bench of this Tribunal cannot, however, be questioned as we cannot sit in judgement over the decision of a Co-ordinate Bench.

15. The final seniority list (page 40 of the paper book) contains a few entries which cannot be properly explained. For instance, Shri R. Baral who was directly



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appointed on 18.10.1982, i.e., after Shri J.P. Sharma, Deputy Architect was appointed on 11.10.1982, has had the privilege of being appointed as Architect on 6.7.1990 whereas the aforesaid Shri Sharma has been promoted as Architect on 3.8.1990. Thus, Shri Baral who was junior as Deputy Architect has become senior as Architect vis-a-vis Shri Sharma. This is despite the fact that the aforesaid Shri Sharma became eligible for appointment as Architect on completion of 5 years on 11.10.1987 whereas the aforesaid Shri Baral became eligible for the purpose a week later, i.e. on 18.10.1987. Similarly, Smt. Keka Roy appointed as Deputy Architect on 11.11.1985 has been promoted as Architect on 2.7.1990, i.e., before completion of five years service. If the rule of five years in service in the grade of Deputy Architect was followed, as contended by the official respondents, Mrs. Keka Roy could not have been promoted as Architect before 11.11.1990. This way Smt. Keka Roy has become senior to Shri B. Sarkhel, Deputy Architect, who had become eligible for promotion as Architect on 2.2.1990. The same is the position in respect of Smt. Supriya Ghosh. Mrs. Supriya Ghosh, Deputy Architect, became eligible for promotion as Architect on 8.5.1990 but has been shown to have been promoted w.e.f. 6.7.1990. The same applies to Smt. S.S. Hazare, Deputy Architect, who became eligible for promotion as Architect on 1.3.1990 but has been shown to have been promoted to that post w.e.f. 5.7.1990. The aforesaid discrepancies remained without any plausible explanation.

16. Taking a look at the year-wise vacancy position, we find from the official respondents' letter of 29.1.1996

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(Annexure AA-II) enclosed with the additional affidavit filed by them that four vacant posts of Architect were in existence for the period upto 1985-86. Three more vacant posts became available for the year 1986-87. Similarly, one, five and one vacant posts respectively became available for the years 1987-88, 88-89 and 1989-90. Year-wise vacancy position respect of the period prior to 1986-87 has not been disclosed. From the same letter we find that no vacant post of Architect existed in 1990-91 ✓ whereas one vacant post became available in 1991-92, three in 1992-93 and one in 1993-94. From the final seniority list, it would be seen that all the nine Deputy Architects were promoted as Architect on various dates during 1990-91. This would imply that these nine Deputy Architects had been promoted as Architect against vacancies for the year 1990-91. We have just seen that for the year 1990-91, no vacancy has been shown to exist in the aforesaid letter. Further, since the official respondents were, according to their own admission, supposed to follow the ratio of 1:1, an equal number of Assistant Architects should have been promoted as Architects in the same year, namely, in 1990-91. There is no evidence of the official respondents having done that.

17. The official respondents have heavily relied on the table of vacancies showing how the vacancies were filled up placed at Annexure-6. A corresponding statement of vacancies has also been placed at Annexure AA-I as enclosure to the additional affidavit filed on behalf of the official respondents. It is interesting to see that in the aforesaid table as well as in the statement, calendar

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year-wise vacancies have been shown for 1987, 1988 and 1989. Thereafter, the financial year-wise picture has been given. There is no explanation for adopting this dubious practice. As against the aforesaid position, we have, from the official respondents' letter of 29.1.1996 referred to in the above paragraph gathered that whereas four vacancies in all in the post of Architect had existed upto 1985-86, three, one, five and one vacancies respectively have become available in 1986-87, 87-88, 88-89 and 1989-90. It is not possible to reconcile the differences which have thus surfaced in the vacancy position in the post of Architect. Thus, it will be seen that the official respondents have neither been able to work out the vacancies on year-wise basis properly and correctly nor have they been able to promote the Deputy Architects and Assistant Architects in the proportion of 1:1 in each year in which they could do so.

18. From the official respondents' letter of 29.1.1996 (Annexure AA-II) we also find that 12 vacancies in the post of Architect came into existence after the 1994 Rules came into force and upto 1.8.1995. Certain proposals were sent to the UPSC vide Annexure AA-II. In what manner the matter proceeded thereafter and how the vacancies shown in the aforesaid Annexure AA-II have actually been filled has not been disclosed. Incidentally, from the aforesaid Annexure AA-II we also discover that the 1973 amendment Rule, which was approved by the UPSC on 8.9.1989 and which is supposed to have been followed by the official respondents in making the promotions, was never notified and was apparently dropped in view of the decision taken by the official respondents to constitute an organised service for Group-A



service of the P&T. That is how the Assistant Architects presently constitute Group-B Service whereas the Deputy Architect, Architect and upward constitute Group-A Service. In the same letter (Annexure AA-II) the official respondents have indicated that the posts of Architect were to be filled 50 per cent from amongst the Deputy Architects with four years service in the grade and remaining 50 per cent from amongst the Assistant Architects (Group-B) with eight years regular service in the grade and who possess a degree in Architecture. Since the proposal contained in the Annexure AA-II does not appear to have been proceeded with, the official respondents do not seem to have adhered to the 1994 Rules even in respect of vacancies in the post of Architect arising after the coming into force<sup>of</sup> the 1994 Rules. In order to appreciate the situation arising from the doubtful position out-lined by us in the previous paragraph, insofar as the action taken by the official respondents is concerned, we have perused the 1994 Rules. We are left in no doubt that the 12 vacancies in the post of Architect which arose after the coming into force of the 1994 Rules and upto 1.8.1995 together with such other posts of Architect as might have become available after 1.8.1995 should, in any case, have been filled by following the 1994 Rules. The Deputy Architects directly recruited in 1982 onward came to have a Recruitment Rule which could take care of their promotion only after the 1994 Rules came into force. Prior to that, Assistant Architects only could be considered for promotion against the vacancies which had arisen before 6.8.1994. When the 1994 Rules came into force, Deputy Architects became members of the Group-A service at the time of initial constitution of service vide 1994

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Rules. Rule 6 of the 1994 Rules provides that the regular continuous service of officers becoming members of service at the initial constitution stage shall, inter alia, count for the purpose of qualifying service for promotion. Thus, Deputy Architects could be given the benefit of the continuous service rendered by them from 1982, 1983 and 1985 for the purpose of granting promotion to the post of Architect. No attempt has been made to follow the 1994 Rules by taking note of the aforesaid provision. The 1994 Rules also contain the usual rule relating <sup>to</sup> the power to relax the rules. Any of the provisions of the 1994 Rules can be relaxed with respect to any class or category of persons. If the official respondents wanted to give full benefit of the long services rendered by the Deputy Architects, nothing prevented them from having recourse to the rule 16 which provides for relaxation. The matter has been complicated not only because the official respondents have not followed the 1973 Rules nor the 1994 Rules but also because they have not determined the year-wise vacancies properly and correctly and have also not maintained the ratio of 1:1 in correct order.

19. The post of Architect which was to be filled exclusively from amongst Assistant Architects in accordance with the 1973 Rules by way of promotion is required to be filled in accordance with the 1994 Rules, 50 per cent from amongst the Assistant Architects and 50 per cent from amongst the Deputy Architects. The promotion of Assistant Architects to the post of Architect is by way of selection whereas the promotion of Deputy Architects to the post of Architect is subject to the criterion of

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seniority-cum-fitness. Accordingly, while the DPC in respect of promotions of Assistant Architects is headed by the Chairman/Member of the UPSC, the DPC for the promotion of Deputy Architects is headed by the Member<sup>Board</sup>. Thus, two different DPCs have been constituted for promoting the Assistant Architects and the Deputy Architects in accordance with the 1994 Rules. The principle to be followed in determining the inter-se seniority of persons promoted from the posts of Assistant Architects and Deputy Architects respectively has been illustrated in the DOP&T's OM dated 7.2.1990 reproduced at Annexure A-17 under General Principle 5 (ii) under<sup>the</sup> head "Clarification". Prior to coming into force of the 1994 Rules, there was no question of determining the inter-se seniority as above in view of the fact that for the vacancies which arose prior to 6.8.1994 only the Assistant Architects could be promoted and not the Deputy Architects.

20. For all the reasons brought out by us in the preceding paragraphs, we find some merit in the OA. Accordingly, the respondents' communication dated 6.6.2000 (Annexure A-12) being the final seniority list of Architects is quashed and set aside. For the same reason, the official respondents' letter dated 6.6.2000 (Annexure A-13) by which one Shri A.K. Sharma has been promoted on the basis of the aforesaid seniority list is also quashed and set aside. The official respondents will do well first to determine year-wise vacancies properly and correctly and thereafter proceed to make promotions in accordance with the 1973 Rules in respect of vacancies arising before 6.8.1994 and according to the 1994 Rules for vacancies

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arising after 6.8.1994. For determining the inter-se seniority of Architects, the official respondents may follow the principle/guide-line laid down by the DOP&T vide their OM dated 7.2.1990 referred to above. They are advised, however, to consult the DOP&T in the matter. It is left to the official respondents to consider granting relaxation in terms of rule 16 of the 1994 Rules in their discretion. The aforesaid exercise will be completed by the official respondents within a period of four months from the date of receipt of a copy of this order. We direct accordingly.

21. At this stage we would also like to deal with the contention raised on behalf of the official respondents that the draft Recruitment Rules seeking to amend the 1973 Rules could be relied upon for purposes of promotion of Deputy Architects as well as the Assistant Architects without any legal problem. In support of this contention, the learned counsel appearing on their behalf has relied on Vimal Kumari vs. State of Haryana and Others decided by the Supreme Court on 4.2.1998 and reported in (1998) 4 SCC 114. This is what has been held in the aforesaid case:

"It is open to the Government to regulate the service conditions of the employees for whom the rules are made by those rules even in their "draft stage" provided there is clear intention on the part of the Government to enforce those rules in the near future. Recourse to such draft rules is permissible only for the interregnum to meet any emergent situation. If however the intention is not to enforce or notify the rules at all, as is evident in the instant case, recourse to draft rules cannot be taken. Such draft rules cannot be treated as to be rules made under Article 309 of the Constitution and cannot legally exclude the operation of any existing executive or administrative instruction on the subject covered by the

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draft rules nor can such draft rules exclude the jurisdiction of the Government or for that matter, any other authority, including the appointing authority, from issuing the executive instructions for regulating the conditions of service of the employees working under them"

On a careful consideration of the rule laid down by the Supreme Court as above, we find that there is nothing in the aforesaid observation of the Court which would support the contention raised by the learned counsel. The aforesaid observation lays down that there should be a clear intention on the part of the Government to enforce the draft rules in the near future. Recourse to draft rules has been permitted by the Court only for the period of interregnum and that too in order to meet emergent situations. In the instant case, the official respondents framed the draft amendment rules in 1982 and sent a letter to the UPSC<sup>for</sup> permitting them to make promotions on the basis of the draft rules in 1989. The draft rules were approved by the UPSC in September 1989. However, the draft rules themselves were never notified. Instead the service was ~~re-~~<sup>ur-</sup>structured into Group-B and Group-A services and entirely new rules were framed and notified for Group-A Service in July 1994 which came into force on 6.8.1994. Thus, it cannot be said that the Government in the present case intended to enact the draft rules as formal rules promptly enough. Moreover, as stated, the draft rules have been given up altogether in favour of a new rule meant for Group-A service. Further, the official respondents have not shown to us as to <sup>how</sup> ~~why~~ an emergent situation had come into existence necessitating promotion of Deputy Architects to the post of Architect. The Supreme Court has clearly laid down in the above case that if the Government intend

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not to enforce or notify the rules at all, as is indeed the case in the present situation, a recourse to the draft rules could never be taken. For these reason we are clear in our mind that the respondents had no business to give effect to the draft rules<sup>of</sup> 1982/1989 in the way they have done for making promotions and for issuing seniority lists on that basis.

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22. The OA is disposed of in the aforestated terms.

2 There shall be no order as to costs.

*S.A.T. Rizvi*  
(S.A.T. RIZVI)  
MEMBER(A)

*Lakshmi Swaminathan*  
(MRS. LAKSHMI SWAMINATHAN)  
VICE CHAIRMAN (J)

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