

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

D.A.1631/89

22.11.93

New Delhi the

Shri

1. H.N.Rai
s/o B.N.Rai

Sr. Investigator, Central Statistical
Organisation, Ministry of Plng.,
New Delhi.

2. Suraj Bhan
s/o Raghbir Singh

-do-

3. Pitam Singh
s/o Karam Singh.

-do-

4. R.P.Shokhanda
s/o Surat Singh

-do-

5. K.B.Sethi
s/o K.C.Sethi

-do-

6. Ved Prakash
s/o Sewa Ram

-do-

7. Prem Chand
s/o Chhejjumal

-do-

8. K.C.Saxena
s/o Har Saroop Saxena

-do-

9. Suresh Kumar
s/o Parsot Ram

-do-

10. R.S.Attri
s/o B.S.Attri

-do-

11. K.L.Goyal s/o
Godhuram

-do-

12. M.E.Sharma
s/o Murari Lal

-do-

13. Saroj Chaba
s/o Raj Paul

-do-

14. R.K.Sharma
s/o C.B.Sharma

-do-

15. V.K.Gupta
s/o Dr.D.C.Gupta

-do-

16. S.N.Gupta
s/o R.K.Gupta

-do-

17. Satinder Kanwar
s/o H.S.Kanwar

-do-

18. Sarandha Gupta (Smt.)
d/o R.N.Gupta

-do-

19. Lalit Mohan
s/o B.D.Sharma

-do-

20. R.C.Khurana
s/o G.L.Khurana

-do-

21. K.K.Kohli
s/o R.C.Kohli

-do-

22. Ms. Asha Rani
d/o V.K.Sharma

-do-

...Applicant

(By Shri B.S.Mainee, Advocate).

1. Secretary,
Deptt. of Statistics,
Govt. of India, New Delhi.

2. Director General,
Central Statistical Organisation,
Govt. of India, New Delhi.

Respondents.

(By Shri PH Ramchandani, Sr. Standing Counsel)

Sr. Investigators
in the Central
Statistical Orgn.,
Govt. of India,
New Delhi.

3. Shri R. Kumar s/o Sh. KRS Manian
4. PP Singh s/o Adel Singh
5. DP Singh s/o Ram Chander
6. BS Kambo s/o Lakhbir Singh
7. KS Rawat s/o Gaimal Singh
8. AK Sharma s/o DD Sharma
9. Inderjit Arora w/o Gurubachan Singh
10. RK Gupta s/o RD Gupta
11. DS Sastry s/o late DV Shiva Rama Krishnayya.

(By Shri SS Tiwari, Advocate)

.. Respondents.

O.A.No.2051/89

Shri Vijay Bhushan Gupta
s/o Shri HP Gupta
Sr. Investigator,
Central Statistical Orgn.,
New Delhi.

Applicant.

(By Shri Ranjan Mukherjee, Advocate).

1. Ministry of planning, Deptt. of Statistics,
through the Secretary.

2. Director General, CSO, New Delhi.

3. Secretary, Deptt. of Statistics,
New Delhi.

Respondents

4. Secretary,
Deptt. of Personnel, Govt. of India,
New Delhi.

(By Shri PH Ramchandani, Sr. Standing Counsel).

Coram: Hon'ble Shri NV Krishnan, Vice Chairman(A).
Hon'ble Shri BS Hegde, Member (J).

ORDER

Both these applications raise similar issues and have been heard together with the consent of parties and are being disposed of by this common judgment. The prayer in both the applications is that the applicants should be regularised in the post of Sr. Investigators (SI for short) in the Central Statistical Organisation (CSO) with effect from the respective dates on which they were given ad hoc promotion to that post. The applicant in OA 2051/89 has also prayed that the date of his regularisation should not be later than that of his three juniors who are applicants in OA 1631/89.

2. We shall first take into consideration the brief facts of O.A.1631/89 which are, as follows:-

2.1 There are 22 applicants in this O.A. They were initially appointed as Junior Investigators (JI for short) on an ad hoc basis and were later regularised on that post (Rs.210-425) on various dates.

2.2 The next higher post is SI (Rs.325-550 pre-revised pay scale) which is filled up 50% by direct recruitment and 50% by promotion of JIs.

2.3 Admittedly, the applicants were promoted on an ad hoc basis as SIs on various grades between 1975 and 1991. The earliest date of ad hoc promotion is given to Suraj Bhan and RP Shokhanda (applicants 2 & 4) from 13-1-75 and the latest date of ad hoc promotion is 5-3-81 when Lalit Mohan, PR Khurana, KK Kohli and Ms.Asha Rani (applicants 19 to 22) were given ad hoc promotion.

2.4 Admittedly, the applicants have been continuously working on these posts without being reverted.

2.5 While so, 7 of their senior colleagues, who had also been similarly promoted on ad hoc basis between 1971 and 1973, but were regularised on that post with effect from 15-4-83, i.e. the date on which the DPC met to consider their cases, approached this Tribunal by filing O.A.1984/86 (Dina Nath & Ors. V UOI & Ors.) seeking regularisation from the date of their initial ad hoc promotion to SI. 5 more persons who claimed similar benefit for themselves ^{but were regularized only} from 21-5-79, when the DPC recommended to regularise them, were permitted to implead themselves as additional applicants. During the pendency of that O.A, the respondents took permission to review the DPC proceedings of 21-5-79 and 15-11-83 on the ground that these two DPCs did not deal with regularisation according to the recruitment rules, which required that promotion should be on the basis of selection. Accordingly, a fresh review DPC was held in 1987. The persons found

of the review DPC. In the An.A3 judgment dated 10-8-88, disposing of the O.A., the Tribunal allowed the application with the direction that all the applicants and the interveners (i.e. the additional applicants) shall be regularised as SIs from the date of their initial ad hoc promotion and that they shall be entitled to seniority and other consequential benefits. That judgment has become final as the SLP filed by the respondents in the Supreme Court was dismissed by the An.A4 order and a review filed in respect of that judgment by certain affected direct recruits was also dismissed.

2.6 The respondents gave effect to the An.A3 judgment in respect of the persons, in whose favour that judgment was rendered, by regularising them from the dates from 1971 to 1973 when they were given ad hoc promotion vide the order dated 23-2-89 (An.A1).

2.7 When the applicants came to know about the judgment in O.A. 984/86, they represented to the Department (An.5 series) to give them also the benefit of that judgment, because they were also similarly situated as the applicants in that O.A. They were informed on 29-3-89 that their representations were under consideration (An.A6 series).

2.8 When no reply was received, this O.A. was filed for a direction to the respondents to regularise the applicants as S.Is and assign them seniority and consequential benefits from the dates of their ad hoc promotion as S.I.

2.9 During the pendency of the O.A. the applicants filed an additional affidavit stating that the applicants have since been regularised in batches as S.I. by the orders dated 10-9-90, 26-11-90 and 18-1-91 produced as An.X series to that affidavit. The order dated 10-9-90 and 18-1-91 grant regularisation from 2-4-90

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and 14-1-91 respectively and the orders dated 26-11-90 is effective from that date. Therefore, the prayer in the O.A. remains unfulfilled.

3. Respondents 1 & 2- Dept. for short- filed a reply contesting the claims made by the applicants and have prayed that the applications should be dismissed. Giving a brief background of the case, the Dept. has stated that the cadre of S.I is the feeder category to Grade IV (Assistant Director) of the Indian Statistical Service. It was the practice to promote S.Is purely on ad hoc basis as Assistant Directors thus resulting in temporary vacancies in the SI cadre. They used to be reverted as SI when regular appointments were made to Grade IV. Until then, the resultant vacancies of SI were only ad hoc in nature. It is to such ad hoc vacancies of SIs that the applicants were also promoted on an ad hoc basis. In 1986, the Supreme Court rendered judgment in the case of Narender Chada (AIR 1986 SC 638) ^{therein} by which all the petitioners/who were S.Is promoted on an ad hoc basis as Assistant Directors and had continued without interruption for 15 to 20 years, were directed to be regularised w.e.f. 11-2-86. Consequently, the ^{held} posts of S.Is ~~by those~~ petitioners became substantively vacant for considering the case of regularising the applicants on those posts. The Department took action to fill up 50% of the vacancies by direct recruitment through the UPSC. It intended to fill up the remaining 50% by promotion by considering the regularisation of the ad hoc appointees like the applicants. This was held up because of the pendency of the O.A. filed by Dina Nath & Urs. i.e. O.A.984/86 in which judgment was delivered on 10-8-88 (An.43). Hence the case of regularisation of the applicants could be considered only subsequently.

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4. It is also stated that the case of many of the applicants were considered by the Review DPC which met on 14-5-87 but their names were not included in the panel. It is on the recommendation of this Review DPC that some of the applicants and some of the interveners in O.A.984/86 were regularised as SI with prospective effect from the date on which that DPC meeting was held. It is this decision which has been quashed in that O.A. The respondents have pointed out that the same DPC had considered the case of some of the present applicants who were also in the zone of consideration. However, they could not be selected for regularisation as SI, either because they were found unfit or, in the selection process, others were found to be more suitable than they for regularisation. Therefore, it is contended that the applicants cannot claim that their case is similar to that of Dinanath & Ors. whose O.A. was decided by the An.A3 judgment.

5. The respondents also contend that the posts of SI held by the applicants on an ad hoc basis, were actually held by others on a regular basis when they were given ad hoc promotion as Assistant Director. The officers working on an ad hoc basis as Assistant Director held a lien on the post of SI. Therefore, there was no question of regularising the applicants on those posts, because, on one post, only one person can be regularised at one point of time. It is only after the judgment of the Supreme Court in Narender Chadha's case and after the ad hoc Assistant Directors were regularised on those posts on 10-2-86 that the posts of SI held by them on a regular basis, fell vacant for regularisation of others.

6. As the DPC could not meet for regularisation for reasons beyond the control of the respondents, the applicants could not be regularised earlier. The reply

indicates that the DPC was about to meet in 1990. To complete the record we may add that, as stated in para 2.9, the applicants were regularised by the three orders dated 10-9-90, 26-11-90 and 18-1-91.

7. When this O.A. was pending, M.P.1694/92 was filed on 2-6-92 on behalf of 9 petitioners, who are directly recruited SIs for impleadment, claiming that they would be adversely affected if the O.A. was allowed without giving them an opportunity of being heard. They were, therefore, permitted to be impleaded as additional respondents by the order dated 20-7-92, directing that they should argue the case without filing any pleading.

8. We now deal with the facts of O.A.2051/89. This O.A. has been filed only by one applicant V.B.Gupta.

He was a Computer to begin with. He was regularly appointed as SI w.e.f. 15-12-76 (An.IV).

The seniority

9. List of regular JIs as on 1-4-79 is at An.VII. Certain ad hoc promotions were made to the post of SI, wherein juniors to the applicant were promoted on 5-6-79 (An.VIII). This included RS Attri, KL Goyal & Phool Singh of whom the two former persons are applicants in CA 1631/89. The representations made by the applicant were of no avail. In fact, some more persons, junior to him, were promoted as SI on 29-12-79 (An.XV). The representation of the applicant was finally rejected by the An.XXIII letter dated 30-12-87.

10. The respondents on 17-7-89 published the seniority list of regular SIs of 1-6-89 (An.XXIV) and permitted objections to be filed. The applicant's name was not there though it included the names of some persons, who were his juniors in the feeder category of JIs.

11. The applicant filed his objection (An.XXV) on 17-8-89. He then filed this O.A. on 5-10-89 seeking the following reliefs:-

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- (a) that the Applicant be promoted as Senior Investigator retrospectively w.e.f. 1-6-79;
- (b) that the Applicants service in the said post of Senior Investigator be regularised w.e.f. 1-6-79;
- (c) that the fixation of Seniority and Payment of Pay, arrears of pay of the Applicant be fixed in the category of Senior Investigator w.e.f. 1-6-79 alongwith suitable costs.

12. The stand of the Dept in this case is also the same as in the earlier case.

13. Both the U.As came up for final hearing and all the counsel were heard in great detail by us.

14. Shri BS Mainee, the learned counsel for the applicants in UA 1631/89, pointed out that in the judgment of Dinanath & Urs. (An.3) the Tribunal has, after a survey of various decisions of the Supreme Court, come to the conclusion that some of the applicants and some of the interveners therein were regularized by the 1987 Review DPC and they were holding the post of SI on an ad hoc basis for nearly 15 years and that, therefore, they were entitled to be regularised from the date of their ad-hoc appointment, following the ratio in the Supreme Court judgment in GP Duval & Urs. V Chief Secretary, Govt. of U.P. (1984 (4) SCC 829), Baleshwar Das & Urs. V State of U.P. & Urs. (AIR 1981 SC 1941). In regard to the other applicants and the other interveners who were not regularised by the 1987 Review DPC, though they were earlier regularised by the DPC of 1979 or the DPC of 1983, the Tribunal noticed that they were also holding the post for nearly 15 years without interruption. There was a provision of relaxation in the 1976 Recruitment Rules. Therefore, relying on the ratio in Narender Chadha Vs. UCI (AIR 1986 SC 638) the Tribunal held that even these persons are entitled to regularisation from the

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date of initial ad hoc appointment.

15. The Tribunal also subsequently rendered judgment in OA 1521/89 (Inderjit Luthra & Ors. Vs. UOI) and O.A. 1627/89 (BB Mathur & Ors. Vs. UOI). Extracts of paras 3 to 5 of that judgment are given below:-

"3.- The learned counsel for the applicants Shri BS Mainee pointedly referred us to Dina Nath (Supra) case and submitted that the applicants who are senior to some of the beneficiaries in Dina Nath (supra) case would be discriminated if they are not allowed the seniority and consequential benefits with effect from the date they were appointed on adhoc basis.

The learned counsel further relied on the conclusion (B) of the Direct Recruit Class II Eng. Officers' Ass. Vs. State of Maharashtra JT 1990 (2) SC 264 in support of his case.

4.- Shri PH Ramchandani, senior counsel for the respondents fairly conceded that the resistance to the claim of the applicants would be of little consequence and ineffectual in the circumstances the respondents are placed in.

5.- We have heard the learned counsel for both the parties and considered the material on record. The case of the applicants is admittedly covered by the Direct Recruit Class II Eng. Officers' Ass. (supra) vide conclusion (B) which reads as under:-

"(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

16. Shri BS Mainee pointed out that these principles are squarely applicable to the present L.A. The facts of the present case are that the applicants have rendered about 9 to 15 years of continuous adhoc service as SI before they were regularised in 1990/1991.

17. He also urged that the decision in the Direct

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Recruits case has since been clarified by the Supreme Court in State of West Bengal V Aghore Nath Dey (1993) 3 SCC 171). In that judgment conclusion 'A' & 'B' of the Maharashtra Engineers case (i.e. Direct Recruits case) were reproduced and the distinction between them was considered. Para 15 and para 21 to 25 of that judgment are reproduced below:-

"15.- The question, therefore, is whether Shri Sanghi is right in his submission that this case falls within the ambit of the said conclusion (B) in Maharashtra Engineers case. The submission of the other side is that this case falls, not within conclusion (B) but the corollary mentioned in conclusion (A), of that decision. Conclusions (A) and (B), which alone are material, are as under: (SCC p.745, para 47)

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterrupted till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

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"21.- We shall now deal with conclusions (A) and (B) of the constitution bench in the Maharashtra Engineers case quoted above."

X X X
"22.- There can be no doubt that these two conclusions have to be read harmoniously, and conclusion (B) cannot cover cases which are expressly excluded by conclusion (A). We may, therefore, first refer to conclusion (A). It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has

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to be initially appointed 'according to rules'. The corollary set out in conclusion (A), then is, that 'where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such posts cannot be taken into account for considering the seniority'. Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stopgap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority."

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"23.- This being the obvious inference from conclusion (A), the question is whether the present case can also fall within conclusion (B) which deals with cases in which period of officiating service will be counted for seniority. We have no doubt that conclusion (B) cannot include, within its ambit, those cases which are expressly covered by the corollary in conclusion (A), since the two conclusions cannot be read in conflict with each other."

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"24.- The question, therefore, is of the category which would be covered by conclusion (B) excluding therefrom the cases covered by the corollary in conclusion (A)."

x x x

"25.- In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the 'rules' and the latter expression 'till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy,

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not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stopgap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A)."^{over} (emphasis over)

The learned counsel has contended that on the ratio of this judgment, the applicants should be regularised from the date of their ad hoc promotion as SI. It was not their fault that they were not regularised / appointed from the first date when they were eligible.

18. Shri P.H. Ramchandani the learned Senior Counsel for the Department submits that, whatever may be the decisions of the Tribunal in the past, there is one major qualitative change in the situation. The Supreme Court has clarified conclusion 'B' in the Direct Recruits case (1990)2 SC 715) in two subsequent decisions namely KC Joshi Vs UOI and Aghorenath's case supra (1993) (3) SCC 371). In Joshi's case the Supreme Court has clarified that conclusion 'B' should not be read in isolation, but should be read along with para 13 of the judgment in that case which refers to the principles evolved in Narender Chadha's case on the special facts and circumstances of that case. Subsequently, in Aghore Nath's case extracts of which have been reproduced above, the Supreme Court has explained the types of cases to which conclusion 'B' would apply. The learned counsel emphasised the point that, whatever be the procedural formalities which were ignored at the time of ad hoc appointment, the ad hoc appointees should at least satisfy the eligibility conditions of appointment on a regular basis. Any infringement of this requirement would take away the case from the purview of conclusion 'B' and bring it within the purview of the corollary to conclusion 'A'. He also contended that the manner in which ad hoc promotion was given should also be in conformity with the recruitment rules. It is only other matters that can be considered to be peripheral and these can be satisfied later at the time of regularisation. He points out that the appointment to these posts was governed by the "General Central Service" (Class II & Class III posts) in the C.S.O. Recruitment Rules until it was in force before/ superseded on 16-2-76 by the 1976 Rules. The 1960 rules provided that the post of SI

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will be filled up 75% by direct recruitment and 25% by departmental promotion of JI who have put in a minimum of two years service in this grade. It is pointed out that two applicants namely Suraj Bhan, applicant No.2 and RP Shokhanda applicant No.4 were appointed on 13-1-75 when they had rendered only about 1½ years regular service as JI. All others were appointed after the 1976 recruitment rules i.e. the Central Statistical Organisation, Department of Statistics (Senior Investigator) Recruitment Rules, 1976 came into force. These rules provided for appointment by direct recruitment to the extent of 50% and appointment by promotion to the remaining 50% from Junior Investigators with 5 years regular service in the grade, the promotion being made by selection. He points out that the applicants other than applicant No.2 & applicant No.4, who were appointed before 1976 rules came into force, did not have five years regular service as required by the 1976 rules on the date of their ad hoc appointment. Further, they were not appointed by selection. In the circumstances, he contended that the applicants did not have any case for regularisation from the date of the initial appointment.

19. Shri S.S.Tiwari, the learned counsel for the contesting private respondents 3 to 11, who were permitted to implead themselves, has filed written arguments alongwith a number of annexures thereto. Copies of the written arguments have been served on the other parties also. These respondents argue as follows:-

(i) The draft seniority list of SI in the CSO was circulated on 20-1-81 and the final list was published on 21-10-84 (An.I). The applicants whose names are not mentioned in the An.I seniority

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list kept quiet and did not make any representation in this behalf. Likewise, the applicants have also not represented against the up-dated seniority list of regular SIs as on 1-6-89. Hence this application is barred by limitation.

(ii) After the filing of this application 11 of the applicants have been regularised w.e.f. 2-4-90 by the order dated 10-9-90; 9 others have been regularised from 26-11-90 by an order of the same date and 3 others have been regularised from 14-1-91 by the order dated 18-1-91 (An.III). Therefore, the applicants should now have no grievance.

(iii) At the time of their initial ad hoc appointment as SI, the applicants other than applicant No.2 and applicant No.4, did not have the 5 years regular service as SI which was required by the 1976 rules.

(iv) It was also pointed out that if the prayer of the applicants was granted, an anomalous situation would arise in respect of the applicants No.12 to 22 who will stand regularised in the higher post of SI from dates varying 27-12-79 to 5-3-81, while they were not even holding the feeder post of JIs on those dates, because they were regularised as JIs only from much later dates varying from 17-7-83 to 5-9-84 when alone they became members of that cause.

20. In the connected CA 2051/89, Shri Ranjan Mukherjee, the learned counsel for the applicant, endorsed the arguments advanced by Shri B. Mainee in CA 1631/89. He also urged that the applicant should be regularised as SI from the date he was granted the ad hoc promotion to that post.

21. He, however, urged that there is one special point to be taken note of. Three applicants in

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DA 1631/89 viz., Suresh Kumar, RS Attri and KC Goyal (applicants 9, 10 & 11) have been given ad hoc promotion as SI from 1-6-79. Therefore, if that DA is allowed, they will be regularized as SI from that date. If the same principle is applied, the applicant, who was given ad hoc promotion from 28-1-81, will be regularized only from that date. This will create a serious anomaly because the applicant is senior in the feeder category of JI to the three persons named above. Therefore, he should be regularized from the same date i.e. 1-6-79. In fact the Dept. has recognized this principle by placing the applicant above these three persons in the order dated 10-9-90 (An.X in DA 1631/89 produced by the applicants, by which 14 persons have been regularized as SI from 2-4-90).

22. Shri PH Ramchandani, the learned Sr. Counsel for the respondents contended that this DA has also to be dismissed for the reasons already adduced by him in regard to DA 1631/89. The applicants' prayer for being placed above Suresh Kumar, RS Attri and KC Goyal is already conceded by the order dated 10-9-90 referred to above.

23. We have carefully perused the records including an original document produced for our perusal by the Dept. We have also given our anxious consideration to the rival contentions of the counsel.

24. We do not find any merit in the contention of the private respondents 3 to 11 that the application is barred by limitation merely because the applicants did not submit any representation against the seniority list of SIs. A representation would have been required only if the name of the applicants had been mentioned in that list but the grievance was in respect of the places assigned to them. That is not the situation.

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In the present case, the applicants represented (An.A5) that they should be regularised from the dates of their initial appointment. The Dept. indicated by the An.A6 Memo dated 29-3-89 that the matter was under consideration. Yet, no reply has been given to them. With reference to this An.A6 reply, this OA is not barred by limitation.

25. However, we are unable to agree with the contention in para 1.4 of the OA that the cause of action arose from 10-8-88 i.e. the date of judgment of the Tribunal in OA 984/86 in the case of Dina Nath & Urs. (An.A3). For, except in the case of the applicants Suraj Bhan and RP Shokhanda (applicants 2 & 4), the orders of ad hoc appointment issued to all other applicants (An.A2 Colly.) between 30-6-77 to 5-3-81, specifically state that the ad hoc appointment would not confer any right to claim regular appointment to the grade of SI nor would the ad hoc service rendered by them as SI be counted for seniority in the grade of SI nor for eligibility for regular promotion to that grade. Therefore, these applicants should have been aggrieved by this condition imposed at the time of their appointment. However, we do not propose to disallow this application on this ground in view of the important points raised in the O.A.

26. The contention that the applicants are similarly placed as the applicants and interveners in Dina Nath's case (OA 984/86) and that therefore the An.3 judgment in that OA should be made applicable to them is devoid of merit for the following reasons.

(i) All except applicants 2 & 4 have been appointed after the 1976 Rules came into force. These Rules specify that for regular promotion, JIs should have rendered regular service for 5 years.

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Respondents have contended that the other 20 applicants do not have such service as is evident from the chart of service rendered, produced at the argument stage. Therefore, it is urged, the applicant cannot be regularized from the date of ad hoc promotion as JI- Applicants 2 & 4 who were given ad hoc appointment when the 1960 Rules were in force, requiring 2 years service only, do have such service if ad hoc service is counted, but do not have such service, if only regular service is to be taken into account. We are of the view that if the recruitment rules specify that service of a specified period is necessary to be eligible for consideration for promotion, it is always to be treated as a reference to regular service. Otherwise, persons who have rendered ad hoc service and who may happen to be junior in service, will steal a march over their seniors, who may not have been appointed on ad hoc basis. In Dina Nath's case, no such challenge on the basis of length of service as JI to the initial ad hoc appointment was made by the respondents. Hence, the applicants cannot claim that they are similarly situated.

(ii) The Dept. has contended in their reply under the heading 'Brief background of the case' that some of the applicants were considered by the Review DPC in 1987- which is referred to in An.3 judgment in Dina Nath's case- but were found not to make the grade for selection. The applicants have not denied this averment in their rejoinder. They have remained content by stating that it is only a matter of record. The learned counsel for the Dept. has produced for our perusal from File No.A.32012/1/87-Est.II the "Minutes of the meeting of the Review DPC for group 'B' (class II) posts in the C.S.O held on 14-5-87 to review the proceedings

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of the DPC held on 15-11-83". It is seen, that this DPC considered the names of 39 persons, which included the names of applicants 1 to 11 and applicant 14. None of these 12 applicants found a place in the list of 13 names recommended by the DPC on the basis of the grading given for selection.

(iii) The judgment in Dina Nath's case automatically cannot now apply in view of the subsequent developments, particularly the decision by the Supreme Court in the Direct Recruits' case followed by the clarification by the Supreme Court of conclusion 'B' of that case in KC Joshi's case and Aghore Nath's case.

Therefore, the applicants cannot state that they are similarly placed like Dina Nath and Ors. and that the judgment in that case An.A3 should apply to them.

27. Before we enter into a discussion on the important legal aspects raised in the U.A., we have to straightaway admit that the respondents 3 to 11 are entirely right in their submission that in respect of the applicants 12 to 22, the grant of their prayers would mean that they would stand regularised on the higher post of SI on dates when they were not even regular members in the feeder cadre of JI. Thus applicant 12, MC Sharma, was regularised as JI only on 15-11-83, but if the UA is allowed, he has to be regularised as SI on 27-12-79. The cases of applicants 13 to 22 are also similar. This cannot be permitted because one cannot be a member of a higher cadre by promotion before becoming a member of the lower cadre from which promotion is made.

28. We can now consider the important legal issue raised by the parties. The learned counsel for the applicant Shri B. Mainee, lays considerable stress

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on the first emphasised ^{portion} of para 25 of the judgment of the Supreme Court in Aghore Nath's case, reproduced in para 17 above. He points out that if the appointment had been in accordance with rules, principle 'A' of the Direct Recruits' case would have applied and the applicants would not have filed this application for granting regularisation on the ground that the ad hoc appointment had continued for a long time. It is only because there was some irregularity that the applicants invoke conclusion 'B' of the Direct Recruits' case. In terms of the decision in Aghore Nath's case, it is contended that the irregularity should not stand in the way of regularisation, particularly when there was a provision for relaxation of the rules and the appointment continued uninterruptedly from 10 to 15 years.

29. We have carefully considered the judgment of Supreme Court in Aghore Nath's case. A careful ^{the emphasized portion} reading of para 25 of the judgment of the Supreme Court shows that conclusion 'B' of Direct Recruits' case can be made applicable only if the following conditions are satisfied.

(i) The ad hoc appointment is otherwise regular. The barest minimum expected is that the appointee should be "eligible and qualified in every manner for a regular appointment on the date of initial appointment". The judgment has not left anybody in doubt about this requirement, which is stated explicitly.

(ii) There should be an existing vacancy. In the context in which this condition is stipulated it means that there should be a regular vacancy on the date of appointment/ad hoc promotion, on which alone regular appointment can be made.

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(iii) The order of appointment should not have limited the appointment to any fixed period of time or purpose.

(iv) The only deficiency ^{that remained should be} ~~that~~ that there was a nonfulfilment of procedural requirement prescribed by rules "for judging suitability of the appointee". The appointment should have been made subject to curing this deficiency at the time of regularisation.

(v) Lastly, the question whether these conditions are satisfied ^{in any case} ~~should~~ be determined on the basis of the terms of the initial appointment itself and the provisions in the rules."

30. In the present OI, the applicants did not have the eligibility to be appointed regularly as SI on the dates they were actually appointed on ad hoc basis as SI, as pointed out in para 26(i) supra.

31. Shri BS Mainee raised an ingenuous argument to meet this situation. He states that by the An.I order dated 23-2-89, effect has been given to the An.A3 judgment in Dina Nath's case by regularizing 12 persons (applicants and interveners in that case as SI from dates varying from 7-5-71 to 9-7-73. It is contended that as a result thereof, the lien of these persons on the posts of JI stand terminated from these dates. Therefore, the dates of regularisation of the applicants as JI, the earliest of which is from 18-6-73 (applicants 2 & 4) can ^{now} ~~be~~ be upgraded and thereby, the applicants can be held to have satisfied the ^{stipulated} condition in the 1960/1976 Recruitment Rule regarding the length of service as JI needed for promotion.

32. We are not impressed by this plea. In the first place, such ex-post-facto regularisation as JI has not been granted to the applicants as a sequel to the An.I order. Therefore, we need not decide whether such an order would be sufficient to overcome

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the objection we have considered in para 30 supra. What is certain is that as on the date of ad hoc promotion none of the applicants had the eligibility to be promoted regularly as a SI. The judgment of the Supreme Court is clear that this requirement has to be satisfied on the date of appointment and not on any later date ^{consequent to} development and the possibility of passing an ~~ex-post-facto~~ order converting the ad hoc service in the feeder post into regular service. This defect ^{which goes to the rest of the matter} alone ~~is~~ sufficient to defeat the arguments advanced for applying conclusion 'B' of the Direct Recruits' case.

33. The specification both in the 1960 and the 1976 rules is that promotion to the post of SI will be by selection by a DPC. The learned counsel for the respondents submits that this is not a mere matter of procedure. This is a substantive requirement. In a selection post, depending upon the responsibility of the post, a bench mark is prescribed in regard to the degree of merit needed. Evaluation of merit is done by grading. Anyone in the zone of consideration not coming up to the bench mark, irrespective of his seniority, is weeded outright. Thereafter, all persons rated as 'outstanding' are placed above all persons rated as 'Very Good' who in turn are placed above all persons rated as 'Good'. It is only within each category that the inter se seniority will prevail. In other words, merit is a factor which can supersede service seniority. The required number of persons is then picked up from this list on the basis of the merit order in this list. Therefore, promotion to a selection post is not one of mere procedure but one of substance. Admittedly, such a process of selection had not been resorted to at the time of, ^{ad hoc} initial ~~appointment~~ as required by the Recruitment Rules.

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We have considered this matter. This contention is not acceptable. This is only a matter of procedure. This is absolutely clear from para 25 of the judgment which refers to "deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee." This can refer only to the selection procedure.

35. The posts were also not substantively vacant, as pointed out by the respondents vide para 3 supra.

36. Therefore, at least two important ingredients (viz., possession of eligibility for regular appointment and existence of regular vacancy) did not exist and hence conclusion 'B' of the Direct Recruits' case is patently inapplicable.

36. The learned counsel for the applicant contended that the implied relaxation of the rules should be **inferred** when the applicants have been allowed to continue uninterruptedly for long periods. We are unable to agree. As pointed out above, even at the time of initial appointment all the applicants but two were specifically told that the ad hoc appointment will not confer any right to claim any regular appointment nor would that service be counted for seniority in the grade of SIs nor for eligibility for regular promotion to the grade. That stipulation was deliberately made because regular vacancies of SIs had not arisen. They arose when SIs posted as ad hoc Assistant Directors were regularised in 1986 as a result of the judgment in Narender Chadha's case. The question of relaxation therefore does not arise nor can it be inferred.

37. Considerable stress was laid by the learned counsel for the applicants on the application of Narender Chadha's judgment to the facts of this case

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on the ground that the quota rota system of recruitment has failed. He pointed out that direct recruitment had not taken place for a number of years and that, therefore, the quota rota system had failed. When it was pointed out to him that the OA filed by the applicant contained no averment, whatsoever, to this effect, he pointed out that this fact has been declared in para 8 of the An. 43 judgment in Dina Nath's case holding that there was a break down of the quota rule and appointments to the posts of SIs were not made in the ratio 1:1 by direct recruitment and promotion. We are unable to agree. That observation of the Bench is relatable to the years 1971 to 1973, when the applicants and the interveners in that O.A. were given ad hoc appointment as SI. It is thus clear that no averment has been made by the applicants in respect of facts laying a foundation to invoke the application of the ratio of Narender Chadha's case. That is necessary for invoking conclusion 'B' of Direct Recruits' case, because, as clarified by the Supreme Court in KC Joshi's case, conclusion 'B' should be read with para 13 of the same judgment in which approval was given to the ratio of the judgment in Narender Chadha's case, which was of a special nature. That apart, we find merit in the explanation of the Dept. as to why regular recruitment (50% direct recruitment and 50% promotion) was not resorted to and only ad hoc promotion was made, to which we have referred in para 3 and para 34 supra.

38. It is also important to note that, even in Narender Chadha's case, the appointment of the promotees as Assistant Director, was regularised only in February, 1986 and not retrospective from dates 15 to 20 year back when they were given ad hoc promotion.

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39. For these detailed reasons we are unable to find any merit in OA 1631/89.

40. In so far as OA 2051/89 is concerned, we notice that the applicant has impugned the order dated 5-6-79 (An.8) by which five JIs were granted ad hoc promotion from 1-6-79 as SIs of whom three viz., Suresh Kumar, RS Attri and KL Goel are applicants in the connected OA 1631/89. Against this order, the applicant had sent a representation dated 15-6-79 to the Director, CSO (An.9). Ultimately, by the An.12 Memorandum dated 4-6-79, the applicant was informed that his representation dated 15-6-79 has been rejected.

41. Subsequently, another group of juniors was promoted over the head of the applicant as ad hoc SIs. The applicant made representation on 6-8-79 claiming ad hoc promotion from 1-6-79. That was rejected by the An.23 order dated 30-12-87 of the Department of Statistics. The applicant's representation dated 6-8-79 was rejected as no new points had been made by him in this regard. These orders have become final and are now not open to challenge.

42. The other order assailed in his OA is the An.24 circular dated 17-7-89 by which the seniority list as on 1-6-89 for regular SIs was circulated, in which the applicant's name was not mentioned. This is because he was regularised only subsequently by the order dated 10-9-90 w.e.f. 2-4-90. We have already held in OA 1631/89 that the applicants therein have no right to be regularised as SIs from the date of their ad hoc promotion. That applies equally well to the present applicant also, because he too was not eligible for regular appointment as SI on 28-1-81 when he was given ad hoc promotion.

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to this post, because, having been regularly appointed as JI from 15-12-76, he did not have the 5 years service as JI. In view of that order, the applicant's apprehensions that his juniors Suresh Kumar, RS Attari and KL Goel would be regularised earlier than him has no basis.

43. For these reasons, both these OAs are liable to be dismissed on merits. However, there is one point which requires consideration. Admittedly, the applicants in both the OAs have been regularised only by the order issued on 10-9-90 or on subsequent dates. The respondents themselves have conceded that regular vacancies of SIs arose in 1986, consequent upon the implementation of the judgment in Narender Chadha's case. Timely regularisation of the applicants against these posts could not be made because of the pending litigation in Dina Nath's case etc. While that may be true, we are also of the view that by regularising the applicants only from September, 1990 and thereafter, even though vacancies were available from 1986 onwards, an opportunity has been given to direct recruits who might have been recruited between 1986 and 1990 to steal a march over the applicants in the matter of inter se seniority. Such a result cannot be allowed to come about to the detriment of the applicants' interests. Therefore, while we find no merit in the OAs, in so far as the specific prayers made in them are concerned and would have dismissed them, we find it necessary to grant the applicants partial relief by quashing the orders dated 10-9-90 and directing the respondents to consider the cases of the applicants by a Review DPC for regularisation, in accordance with the rules, as and when the regular vacancies arose, i.e., in 1986 and thereafter and

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regularise them with effect from the date on which the vacancies were available for regularisation of promotees. We do so accordingly. This shall be done within a period of three months from the date of receipt of this order and the applicants shall be intimated.

44. There shall be no order as to costs.

(B.S. HEGDE)
Member (J).

22/11/83
(N.V. KRISHNAN)
Vice Chairman (A).