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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 53/86  
REASON

198

DATE OF DECISION 19/10/86

Shri Balwant Singh Petitioner

Mrs. Indira Sawhney Advocate for the Petitioner(s)

Versus

Union of India Respondent

Mrs. Avinish Alhalwat Advocate for the Respondent(s)/cmd

Mr. M. M. Sudam Advocate for Respondent 3 to 6

**CORAM :**

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

  
(S.P. MUKERJI)  
VICE CHAIRMAN(A)

  
(P.K. KARTHA)  
VICE CHAIRMAN (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

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O.A. No. 53/86

Date of decision \_\_\_\_\_

Shri Balwant Singh ..... Petitioner(s)

Vs.

Union of India ..... Respondent(s)

Mrs. Indira Sawhney ..... Advocate for the  
Petitioner(s)

Mrs. Avinish Ahlawat ..... Advocate for the  
Respondent(s) 1 & 2

Mr. M. M. Sudam ..... Advocate 3 to 6

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN (J)

THE HON'BLE MR. S.P. MUKERJI, VICE CHAIRMAN (A)

(The judgment of the Bench delivered by Hon'ble  
Shri S.P. Mukerji, Administrative Member)

Shri Balwant Singh and another, who have been  
working as Supervisors, Adult Education, moved this  
Tribunal with their application dated 10.1.1986 under  
Section 19 of the Administrative Tribunals Act praying  
that the Recruitment Rules for the post of Project Officer

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Grade-II in the Adult Education Department under the Directorate of Education, in so far as they seek to provide for promotion of Technical Assistants (Social Education) and Supervisors (Social Education) to the post of Project Officer Grade-II without making provision for the prior claim of Supervisor (Adult Education) to such promotion, should be struck down as unconstitutional and to declare the promotions of respondent No.3 to 16 made under those rules as illegal and that they should be quashed directing respondent No.1 & 2 to promote the applicants to the post of Project Officer with effect from 1.2.1985 with all consequential benefits.

2. The brief facts of the case are as follows.

In 1979 Delhi Administration established 10 Urban Adult Education Projects with inter alia 10 posts of Project Officers (Rs.550-900) and 30 posts of Supervisors (Rs.440-750). The applications were invited from the School Teachers for the post of Supervisors and Project Officers. The applicants were working as Trained Graduate Teachers (TGTs) (Rs.440-750) and having been interviewed on 9.5.1979, they were transferred to the post of Supervisors and posted as such. Likewise, 10 Post Graduate Teachers/Headmasters in the scale of Rs.550-900 were selected for the post of Project Officers. Respondent No.3 to 6 have been working in programmes run by the Government of India of Social Education and the Rural Literacy Functional Projects as

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Supervisors (Social Education) and Technical Assistants (Social Education) and were absorbed in the National **of the Delhi Administration** Adult Education Programmes. They were promoted while working in the Social Education Projects as Project Officer in the Adult Education Programme under the new Recruitment Rules of 1983. These Recruitment Rules, however, did not provide for the Supervisors (Adult Education) against which posts the applicants were working, to be considered for such promotion. The promotions of the respondents were made on 1.2.1985. The applicants' representations have remained unrepplied so far. The contention of the applicants is that they have been working as Supervisors (Adult Education) for more than  $6\frac{1}{2}$  years assisting the Project Officers and while in the Adult Education Branch they have been ignored, the respondents who were Demonstrators/ Supervisors in Social Education Branch without in any way being associated with Adult Education directly, have been promoted. They have also indicated that the respondents have lower qualifications than those of the applicants and they do not have the B.Ed. qualification which the applicants possess.

3. The respondents have indicated that the points raised in the application had been raised by the Government School Teachers Association of which the applicants are members, in a writ petition before the High Court of Delhi, but the same was dismissed on 20.1.1984, as such the present application is barred by the principle of res judicata. The respondents have argued that the applicants and the respondents belong to different categories altogether,

and the applicants have no locus standi in this case. The applicants are teachers and can look forward to promotion in their own line as PGT, Vice-Principal, Principal, etc., and have already been given stagnation increments as teachers. On the other hand, the respondents 3 to 6 have no other avenues of promotion except those opened by the 1983 Recruitment Rules which are thus not violative of Articles 14 and 16 of the Constitution of India. The respondents have argued that the applicants were only transferred at their own option purely on ad hoc basis as an interim arrangement and the post of Supervisors to which they were transferred is of the same scale as the post of TGT, which they have been holding. They have further stated that respondent No.3 to 6, who have been working in the Social Education Scheme since 1971 have a wider field of experience of which Adult Education is only a limited part. The applicants are still entitled to all the benefits in the teaching cadre. They have denied that respondent No.3 to 6 were not qualified for the post of Project Officers. The respondent No.1 and 2 have argued that respondent No.3 to 6 have 30 years of <sup>not</sup> experience/only as Supervisors (Social Education) but also as Adult Education Organisers/Field Officers and have even undertaken training of/instructors of the Adult Education Centres and monitoring and evaluating Literacy Programmes, Adult Education Projects etc., in coordination with the Directorate of Adult Education, Municipal Corporation of Delhi, Director of Social Welfare, NCERT etc. The short experience of the

petitoners of 6 years is a poor comparison with the respondents' experience of 30 years covering both Social Education and Adult Education Programmes.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The preliminary objection at the threshold which we would like to dispose of is that of res judicata raised by all the respondents. It has been stated by them that similar points and matters had been agitated by the petitioners under the name of the Association " Government School Teachers Association " acting through Shri Bharat Bhushan, an authorised General Secretary of the Association representing the petitioners also specifically in a representative capacity in Civil Writ No.2790/83 challenging the bonafide of the Recruitment Rules impugned in this application. That application was rejected in limine by a Division Bench of the Delhi High Court on January 20, 1984, which passed the following non speaking order:-

" No merit in the case. Dismissed".

The applicants before us in their rejoinder have indicated that in that writ petition " the Recruitment Rules 1983 were challenged on the basis that National Adult Education programme is a time-bound and result oriented programme and Lt. Governor was not competent to frame the Recruitment Rules. Petition was dismissed in limine and non speaking order was passed by the learned Judges." The question of res judicata in the context of the various rulings of the Supreme Court notably, Hoshnak Singh v. Union of India etc.,

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A.I.R. 1979 S.C. 1328, Daryao and others v. State of U.P. and others, 1962(1) S.C.R. 574, P.O. Sharma v. State Bank of India (1968) 3 S.C.R. 91, The Workmen of Cochin Port Trust v. The Board of Trustees of the Cochin Port Trust and another, A.I.R. 1978 Supreme Court 1283, Ramesh's case 1966 Curr. L. J. 152 : A.I.R. 1966 S.C. 1445, etc., was analysed in great depth by the Full Bench of the Punjab and Haryana High Court in Teja Singh v. Union Territory of Chandigarh and Others, 1981(1) SLR 274. The Full Bench came to the following conclusions:-

(1) That in the matters which have not been specifically dealt with by the Writ Rules, the provisions of the Code of Civil Procedure, so far as they can be made applicable, would apply to the proceedings under Article 226 of the Constitution.

(2) That the explanation added to section 141 of the Code of Civil Procedure, by the Amendment Act, does not in any way nullify the effect of rule 32 of the Writ Rules.

(3) That when a writ petition is dismissed after contest by passing a speaking order, then such decision would operate as res judicata in any other proceeding such as suit, a petition under Article 32 etc.

(4) That if a petition is dismissed only on the ground of laches or the availability of an alternate remedy or on a ground analogous thereto, then any other remedy by way of suit or any other proceeding will not be barred on principle res judicata.

(5) That even in cases where a petition is dismissed on the grounds of laches or on the ground of alternate remedy or on a ground analogous thereto, a second petition on the same cause of action under Article 226 would be barred.

(6) That there is an exception to proposition (5) that where the first petition is dismissed on the ground that the alternative remedy under the Act has not been availed of, then after availing of the statutory remedy under the Act, a second petition may be maintainable.

on the principle that the same has been filed on a cause of action which has arisen after the decision of the appropriate authority under the Act.

- (7) That a second petition on similar facts and in respect of the same cause of action by the same party would not be maintainable even if his earlier petition has been disposed of by one word 'Dismissed'.
- (8) That the provisions of Order 22, Code of Civil Procedure would apply to the proceedings under Article 226 of the Constitution.
- (9) That provisions of Order 23, rule 1 of the Code of Civil Procedure would apply to the writ proceedings and that a petition which has simply been got dismissed as withdrawn would be a bar to the filing of a second petition on the same facts and in respect of the same cause of action.
- (10) That the provisions of the Limitation Act are not applicable to the Writ Proceedings or to the miscellaneous applications filed in the writ proceedings".

From the above it is clear that even if a writ petition has been disposed of by a one word order "dismissed", a second/writ petition on similar facts in respect of same cause of action by the same party would not be maintained. In the instant case, however, the applicant have not moved any writ petition, but an application under Section 19 of the Administrative Tribunals Act. Therefore, strictly speaking the principle of res judicata expatiated about will not apply as a bar to the consideration of the application before us.

5. It is also not clear whether the applicants before us had duly authorised the Association to represent their interest in the aforesaid writ petition. What the petitioners have stated in their rejoinder is that the issues raised in that writ

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petition were different (competence of the Lt. Governor and not vires of the Rules) from those in the present application leaves us to think that even the bar under the principle of res judicata may not apply. The principle of res judicata will not apply where the subject matter of the earlier suit and that of the subsequent suit are entirely different (vide Ramagya prasad Gupta and Others vs. Murli Prasad, AIR, 1974 SC 1320).

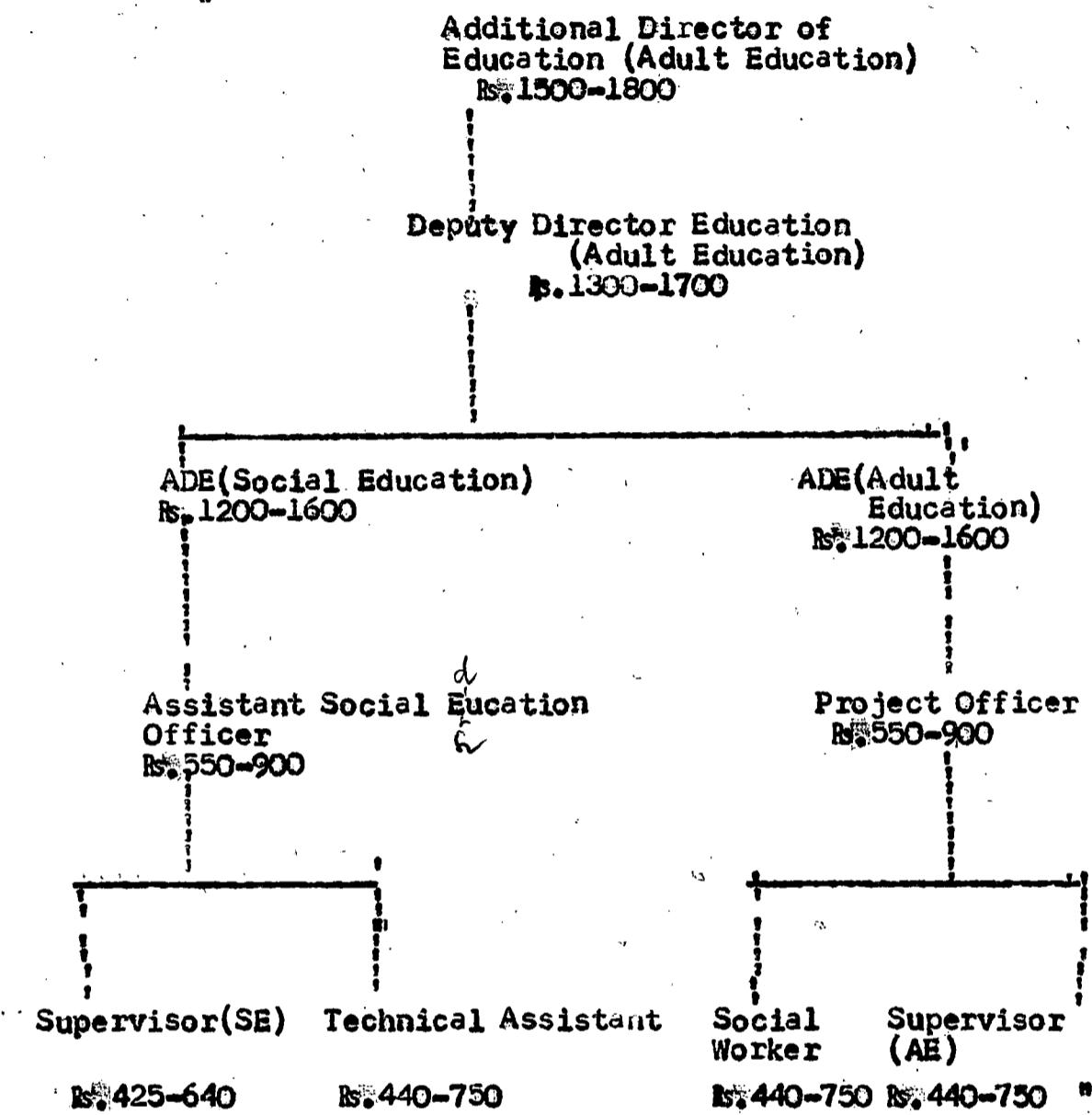
6. The Supreme Court has held in Shri B. Prabhakar Rao and Others Vs. State of Andhra Pradesh & Others, 1985(3) SLR 138 at 159 that even in a case where a writ petition similar to the writ petitions filed in the Supreme Court had been dismissed in limine, the jurisdiction of the Court will not be barred. In this context it was observed as follows:-

"We do not see how the dismissal in limine of such a writ petition can possibly bar the present writ petitions. Such a dismissal in limine may inhibit our discretion but not our jurisdiction!"

Further, it has been held by the High Court of Madras in Dr. S. Mahadevan v. The Commissioner and Secretary to Government, Agriculture Department, Madras and Others, 1987(2) SLR page 85, that even in case of the writ proceedings, when a glaring instance of injustice is brought to the notice of the Court, the rights of persons cannot be defeated on such rules which are intended to attain finality of litigation. Since we are ultimately convinced that grave injustice seems to have been meted out to the petitioners, in this case, we dismiss the preliminary objection raised on the score of res judicata.

7. The simple question involved in this case is whether the applicants, who are basically Trained Graduate Teachers, but were selected and duly appointed as Supervisors (Adult Education) can be deprived of even being considered for promotion to their immediately next higher post of Project Officer in the Adult Education Wing as distinguished from the Social Education Wing when the Supervisors in the Social Education Wing, who are working not under the Project Officer (Adult Education), but under the Assistant Social Education Officer have been made exclusively eligible for promotion as Project Officer. This will /the following

hierarchical table, which was given to us during the course of arguments by the respondents themselves:-



In the impugned Recruitment Rules of 1983 (pages 33 & 34 of the Paper Book) for the post of Project Officer Grade II (Rs.550-900), 20% vacancies have been reserved for promotion and 80% by direct recruitment. In case of direct recruitment, the essential qualification is "Master of Social work or Graduate with three years experience in the field of social work" or Adult Education or community development. The promotion has been confined to " Technical Assistant (Social Education), Supervisor(Social Education) with 5 years

experience in the grade". The Supervisors(Adult Education) have been totally excluded from the eligible feeder category. The main contention of the respondents is that since the posts of Supervisor (Adult Education) had been filled up on an interim and ad hoc basis by drafting Trained Graduate Teachers(TGT) from the teaching cadre, <sup>(TGT's)</sup> they cannot have any right of being considered for promotion as Project Officer in the Adult Education Wing. Their further contention is that the respondents who are working as Supervisors in the Social Education Wing have been stagnating as Supervisors for 5 years or more without any promotion and, therefore, in order to give them some relief, the post of Project Officers have been made exclusively available to them by promotion.

7. We are not highly impressed by these arguments tabular statement above of of the respondents. As the hierarchy will show, the Project Officers are directly above the posts of Supervisors (Adult Education). These Project Officers supervise and control the work of Supervisors in the Adult Education Wing. The Project Officers have ~~no~~ no control over the Supervisors on the Social Education Wing, who are directly under the Assistant Social Education Officer, who is in the same grade as that of Project Officers. Therefore, the Supervisors (Adult Education) have the first pre-emptive right as the <sup>holds</sup> feeder post for promotion as Project Officer in the Adult Education Wing. Denial of their right to be

considered for such promotion while Supervisors (Social Education) only have been made eligible is clearly a case of unmitigated discrimination.

Between Supervisors (AE) and Supervisors (SE), the former is more similar to the category of Project Officer(AE) in the Adult Education Wing than Supervisors(SE). By excluding Supervisors(AE) for consideration for promotion as Project Officers, the Recruitment Rules have not only treated dissimilar as similar, but also excluded more similar to accommodate the dis-similar.

8. The argument of the respondents that the Supervisors (SE) needed some outlet for promotion to remove stagnation after five years is not very convincing either. They could have easily provided the necessary <sup>and same</sup> outlet to the Supervisors (SE) without ~~excluding~~ Supervisors (AE) by enhancing the promotion quota of the Project Officers from 20% to 40%. We had occasion to through glance ~~at~~ the discussions in the relevant files where the Recruitment Rules were finalised. Originally it was proposed to keep the promotion quota as 40%, but it was found that against the 20 posts of Project Officers, thereby the number of posts available for promotion ~~would be~~ eight as against the number of Supervisors (Social Education) being only five ~~and~~ one post of Technical Assistant. It looked absurd that for six officials in the feeder cadre, there were eight promotional posts. Accordingly, it was decided to keep the promotion quota

at 20%, but keeping that exclusively reserved for Supervisors (SE). Interestingly enough it was also suggested that when Supervisors (AE) became eligible for promotion, one could consider increase in the promotion quota. It will, therefore, be clear that there was no over-crowding <sup>in the grade</sup> of Supervisors (SE) nor was there any basic intention of excluding Supervisors (Adult Education).

9. It has also come on record that respondent 3 was actually promoted as Assistant Social Education Officer in his own line of promotion on the Social Education side and was later transferred as Project Officer ~~in~~ the Adult Education Wing. This also shows that the plea of stagnation on the Social Education side has been over done. The applicants themselves have been stagnating as Supervisors (AE) for more than 5½ years and by excluding them altogether even for consideration for promotion merely on the ground that they are having their lien in the teaching cadre will be invidious. The plea of stagnation for respondents 3 to 6 gets further belied by the fact that respondent No. 3 had already been promoted as Assistant Social Education Officer in the equivalent grade of Project Officer in his own line of promotion and later transferred as Project Officer on the Adult Education side.

10. Even accepting the plea of the respondents that the Supervisors (Social Education) have a wider field

of experience and are competent for Adult Education work also, we have difficulty in accepting this argument in justifying the total exclusion of Supervisors (Adult Education) for even consideration for promotion as Project Officer in the Adult Education Wing. The argument of the respondents will be valid for making both Supervisors (SE) and Supervisors (AE) eligible for promotion as Project Officer (AE), but certainly not for letting Supervisor (Adult Education) monopolise promotion as Project Officer.

11. We are also intrigued by the fact that inspite of the alleged stagnation and over-crowding in the Social Education Wing, respondents 1 & 2 had in 1979 to bank upon the services of Post Graduate Teachers and Trained Graduate Teachers in the teaching cadre <sup>to</sup> <sub>also</sub> <sup>(SE)</sup> fill up the posts of Project Officers and Supervisors in the Adult Education Wing. This may be pointer to the fact that respondents 1 & 2 themselves considered PGTs and TGTs to be as competent, if not more, to man the Adult Education posts as the Supervisors in the Social Education Wing.

12. Further, if PGTs could hold the post of Project Officers and TGTs could hold the post of Supervisors (AE) and if PGTs are in <sup>the</sup> <sub>indirect</sub> line of promotion of TGTs, there is no reason why the Project Officers also could not be in the direct line of promotion of Supervisors (AE)

13. The Recruitment Rules of 1983 for Project Officers

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seem to be doubly discriminatory when it is realised that whereas Supervisors (SE) have been made eligible for promotion both as Assistant Social Education Officer on the Social Education side and Project Officers on the Adult Education side, the Supervisors (AE) have been deprived of even the single line promotion as Project Officers in their own wing of Adult Education. The plea of the respondents that the incumbents to the post of Supervisors (AE) belong to the teaching cadre is no consideration for excluding the Supervisors (AE's) post altogether from the feeder line of Project Officers. The Recruitment Rules are framed in regard to the nature of duties and responsibilities of the posts and not in relation to the 'characteristics' of the incumbents thereof.

The TGTs came to occupy the post of Supervisors (AE) after due process of screening and selection and cannot be denied the normal channels of promotion as Supervisors.

There is nothing in the orders of appointment as Supervisors that they will not be entitled to even being considered for promotion in the Adult Education Wing.

14. In regard to the direct recruits, the Recruitment Rules prescribe experience not only in Social Education, (AE) but also in Adult Education as one of the essential qualifications. There is no reason, therefore, to exclude Supervisors (AE) from the field of consideration for promotion. That the Supervisors (Adult Education)

were given a step motherly treatment is evident from the fact that while this application was pending before us, the respondents 1 & 2 declared them as surplus in the Adult Education Wing and reverted them to the teaching cadre.

15. In D.K. Bhardwaj & Others Vs. Union of India and Others, 1988(2) SLJ 152(Pb. & Hy.) the Punjab and Haryana High Court held that the promotion policy whereby the Managers and Accountants have been clubbed together for promotion and some Accountants have become senior to Managers while the latter were superior, is discriminatory and violative of articles 14 and 16 of the constitution as it has treated unequals <sup>as</sup> equals and has adversely affected the eligibility and chances of promotion of the petitioners. In the instant case the Supervisors(AE) <sup>having been</sup> ~~by being~~ excluded altogether, while Supervisors(SE) have been allowed to monopolise promotions as Project Officers, the degree of discrimination is worse and violative of articles 14 and 16 of the Constitution.

16. In the facts and circumstances, we allow the petition and declare that the Recruitment Rules for the post of Project Officers Grade-II notified on 27.8.83 suffer from the vice of discrimination and are violative of articles 14 and 16 of the Constitution in so far as they exclude Supervisors (Adult Education) as one of the feeder categories for promotions. We, therefore, set aside the Recruitment

Rules only to the extent of such exclusion and direct that like Supervisors(SE), Supervisors (Adult Education) with five years of experience in the grade should also be included as the first of the eligible categories for promotions. A review DRC should be held to consider Supervisors (Adult Education) with five years of service as on 1.2.1985 when respondents 3 to 6 were promoted and if some of them are included in the panel within the number of vacancies of Project Officers available on that date they should be given notional promotion as Project Officers till they are retained in their Adult Education Wing.

Action on the above lines with payment of arrears of higher pay and allowances, if any, should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.

*S.P. Mukerji*

17.10.88

(S.P. MUKERJI)  
(VICE-CHAIRMAN(A))

*Partha*  
18/10/88

(P.K. PARTHA)  
VICE CHAIRMAN(J)