

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 112/87

New Delhi, this the 11th day of April, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)
Hon'ble Shri S.P.Biswas, Member (A)

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J.K.Biswas,
r/o A-4, H.B.Town,
Road No. 1,
Post Sodpur, Distt. 24 Parganas,
West Bengal.

...Applicant

(By Shri Gyan Prakash, Advocate)

Versus

Union of India through:

1. Secretary,
Ministry of Textiles,
Udyog Bhawan,
New Delhi.
2. The Development Commissioner (Handicrafts),
West Block No. VII,
R.K.Puram, New Delhi- 66.
3. T.S.Venkatesha,
Assistant Director (A&C),
Office of the Development Commissioner
(Handicrafts),
Field Administrative Cell,
64, Mall Road, Varanasi Cantt.
4. Shri J.P.Dimri,
Assistant Director (A&C)
Office of the Development Commissioner
(Handicrafts), Carpet Weaving Training-cum-
Services Centre, 23, Indra Nagar,
P.O. Izzatnagar, Bareilly (UP).
5. Shri V.K. Srivastava,
Assistant Director (A&C),
Carpet Weaving Training-cum-Service Centre,
Office of the Development Commissioner
(Handicrafts), M.I.G. Flats, Indra Nagar,
Lucknow (UP).
6. Shri C. Venkataraman,
Assistant Director (A&C),
Carpet Policy Section,
Office of the Development Commissioner
(Handicrafts), Field Administrative Cell,
64, Mall Road, Varanasi.
7. Shri Jag Mohan Prashad,
Assistant Director (A&C),
Office of the Development Commissioner
(Handicrafts), Field Administrative
Cell, 64, Mall Road, Varanasi,
Cantt (UP).

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8. Shri P.C. Yadav,
Assistant Director (A&C),
Office of the Development Commissioner
(Handicrafts), Carpet Weaving Training-cum-
Service Centre,
Gaya (Bihar).
9. Shri Mohan Pal,
Assistant Director (A&C),
Office of the Development Commissioner
(Handicrafts), Carpet Weaving Training-
cum-Service Centre,
Allen Ganj, Allahabad (UP).
10. Shri B.L.Meena,
Assistant Director (A&C),
Office of the Development Commissioner
(Handicrafts), Carpet Weaving Training-
cum-Service Centre,
4A, Sindhi Colony, Kalwar Road,
Jhotwada, Jaipur.
11. Shri R.K.Rustogi,
Carpet Training Officer,,
Office of the Development Commissioner
(Handicrafts), Carpet Weaving Training-cum-
Service Centre, Rajpura, anasi,
P.O. Bhadohi, Distt. Varanasi (UP).
12. Shri S.P. Sharma,
Assistant Director (A&C),
Office of the Development Commissioner
(Handicrafts), Carpet Weaving Training-cum-
Service Centre, Khawaspura, ,
Faizabad (UP).
13. Shri A.K. Malhotra,
Assistant Director (A&C),
Field Administrative Cell,
64, Mall Road, Varanasi Cantonment.
14. Shri V.K.Verma,
Assistant Director (A&C),
Field Administrative Cell,
64, Mall Road,
Varanasi Cantonment. ...Respondents
(By Shri E.X.Joseph, Advocate)

O R D E R

By Hon'ble Dr. Jose P. Verghese, V.C(J) --

The petitioner started his career as a Junior Field Officer in the year 1975 in the office of the Development Commissioner (Handicrafts), Ministry of Textiles. This post was re-designated as Carpet Training Officer (in short CTO). The petitioner was

made quasi-permanent in the year 1978 and the next promotional available was that of Assistant Director in the scale of Rs. 650-1200/-.

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2. There were 16 posts of Assistant Directors available, out of which 12 posts were required to be filled by promotion from the cadre of C.T.O. and 4 posts by transfer on deputation. A DPC was held on 26/28.4.1990 to fill up these 12 posts on a regular basis. The proceedings of the said Committee is available at Annexure 'B'. It is clear from the same that three persons namely J.C.Kalra, S.P. Sharma and A.K.Malhotra were given the grades 'outstanding' while V.K. Srivastava the petitioner as well as Shri C. Vemkataraman were graded 'Very good' and Shri T.S. Venkatesh was graded 'Good'. There were two in select panel from amongst scheduled triobe and scheduled caste categories.

3. The statement found in the said annexure shows that the DPC was convened for the purpose of regular promotion to the cadre of Assistant Directors. This was not disputed by the respondents either. The respondents in their reply vide para 7-A of the reply stated that the DPC convened in 1980 was for the purpose of appointing Assistant Directors on a regular basis but keeping in view, the uncertain future Carpet Weaving Training Scheme (hereinafter called Scheme), the Head of the Department decided to appoint Assistant Directors against Carpet Weaving Training-cum-Service Centres on ad hoc basis only. It is on this basis, that so far as the petitioner is concerned, he happened to be appointed on ad hoc basis and the said letter is annexed at Annexure - C in which the petitioner alongwith others have been appointed as ad hoc. Thereafter some

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more appointments were made vide Annexure -L dated 10.9.1982.

The petitioner had approached this Tribunal after he happened to be reverted as his name was not found included in another DPC held on 8.10.1985, seeking direction to treat him as having been promoted on the basis of ranking assigned by DPC held in the year 1980.

This petition had come up for hearing and happened to be finally disposed of by a Division Bench of this court on 5.11.1992 wherein findings were recorded that the petitioner is entitled to regular promotion with effect from 1980 as the DPC then held was for regular promotions. It was also found that there were no concrete defence against the petitioner's case at the instance of the respondents. Respondents did not dispute that the petitioner then had acquired a higher grading at the hands of the DPC held on 26/28.4.80. It was also not disputed that the said DPC was convened for the purpose of making regular promotions nor the fact that there were 12 posts for being filled up on regular promotion available to the said D.P.C. In the normal circumstances, the court found that the petitioner should have secured regular promotion as there were enough regular vacancies in which he should have been promoted as Assistant Director, but the promotion given to the petitioner/ ^{then} was only on an ad hoc basis. The reasons stated by the respondents was that the Head of the Department decided so as the sanction to continue the Scheme, had not come and as such it was not proper to make regular promotions. According to the previous court, this was an understandable caution. But it was also stated that when continuance of the Scheme was sanctioned and there were more people subsequently appointed on

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ad hoc basis after the petitioner and his colleagues were promoted, and in the light of the fact that the DPC held on 26/28.1980 was for regular promotions, the respondents should have regularised their services including that of the petitioner. The court was of the opinion that having regard to the fact that DPC was held for making regular promotion and adhoc promotions were made only because the sanction for continuance of the Scheme had not come, obviously the authority should have, on the basis of the recommendations of the DPC, made regular promotions since the continuance of the Scheme was duly sanctioned. Our predecessor court was of the view that the respondents had acted arbitrarily in subjecting the petitioner to another DPC and thereby depriving his rights acquired on selection in DPC held in the year 1980. The court was of the opinion that the entry of the petitioner even though called ad hoc, but was not a back door entry. The petitioner was found suitable in the year 1980 and the regular promotion was not given only because the sanction for continuance of the Scheme had not come and the moment the sanction was received, it was observed by the court that it was the duty of the respondents to give regular promotion in accordance with the DPC held in the year 1980. The court further observed that the petitioner was entitled to secure his regular promotion on the basis of the recommendations of the DPC held on 26/28.4.80.

After the judgement was pronounced, an application for review of that judgement dated 5.11.1992 was filed at the instance of Mr. R.K.Rastogi, who is respondent no. 11 in this OA, who pointed out to the court that he has acquired a judgement in his favour from the Allahabad Bench of the Central Administrative Tribunal in TA No. 138/87 dated 28.8.1992. Apparently, the said decision of the Allahabad Bench was not

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brought to the notice of this court when OA 112/87 was finally disposed of. It goes without saying that it was the duty of the review applicant namely R.K.Rastogi, since he was respondent no. 11 in this case, to bring to the notice of this court that he had a judgement in his favour from Allahabad Bench of this Tribunal in TA 138/87 dated 28.8.92. Nor did the Union of India who was also party to both the proceedings bring it to the notice of this court the fact of previous judgement of the Allahabad Bench of this Tribunal. Thus, court, on the basis of the review application at the instance of R.K.Rastogi, did not consider these lapses committed at the instance of the review applicant Shri Rastogi, as well as the Union of India and proceeded to review the said final decision of this court dated 5.11.1992 on finding that the directions in both the judgements do conflict each other. The petitioner herein also did not dispute that there is a conflict between the two decisions. But finally this court set aside the order passed in this OA dated 5.11.1992 and directed the matter to be re-heard by an appropriate Bench of which neither of the Members of the previous Bench is a party. It is, according to the said order, that this matter has come before us for a final decision.

The Allahabad Bench in TA 138/87 filed at the instance of R.K.Rastogi and TA 232/87 filed at the instance of one Sh. Krishna Kumar, heard the petitions together and passed appropriate orders. Shri R.K.Rastogi had challenged his reversion to the post of CTO from the post of Assistant Director and Shri Krishna Kumar claimed his promotion to the post of Assistant Director challenging the promotion of various respondents as Assistant Directors claiming that he is senior

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to them. It was noticed in the judgement that Shri R.K.Rastogi who was initially recruited on ad hoc basis after coming into force of the statutory rules, was regularised as direct recruit on the post of CTO on the basis of Selection Committee. It was also noticed by the Allahabad Bench that in the year 1982 Shri Rastogi was appointed as Assistant Director on ad hoc basis under the Scheme which was continued by the Govt. on year to year basis, as in the year 1980, the approval of the Govt. was not forthcoming. The regular appointment on these posts were made in the year 1985 when the Scheme got permanent status by the Government.

The Allahabad Bench also found that the seniority list of 1980 cannot be challenged in 1982 when the same was not challenged at the appropriate time and was acted upon as the basis for the list of 1985. The list of 1985 was prepared after regular appointments following second DPC and it was to be prepared in accordance with rules and according to the Allahabad Bench it was so done. It also held that the list of 1985 was prepared on the basis of merit unlike the list of 1978 which was prepared category-wise. The list of 1985 could not be challenged and as such the earlier list of 1980 also could not be challenged for valid reasons.

It is worth mentioning here that there was no other final seniority list prior to 1980 as the seniority list issued prior to 1980 was category-wise. It is also not disputed that the subsequent seniority list issued on 1.3.85 is also a final seniority list and thereafter no seniority list has subsequently been issued by the respondents in accordance with rules. We would like to compare both the seniority lists of 1980 as well as that of 1985 and by a close look it is found

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that both the seniority lists are substantially the same and even if we hold that under the rules the subsequent seniority list which has become final shall be operative for all the purposes w.e.f. 1.3.1985 and even though the seniority list issued in the year 1980 was also final and since there is no difference between the two, for all purposes the seniority list issued on 1.3.1985 shall be operative until a fresh final seniority list is issued in accordance with rules. It is also not disputed that regular vacancies existed in 1980 and the DPC held in 1980 was for filling up regular vacancies; and selected candidates happened to be appointed ad-hoc for the reason that the respondents were not sure of the continuity of the Scheme. Nevertheless the fact is undisputed that regular vacancies existed in 1980. It is obvious, therefore, the directions of Allahabad Bench to review promotions on the basis of 1985 seniority list, shall not be understood to have directed to have the review DPC as on 1985. The logical understanding would be on the basis of the seniority list of 1985 shall be held as on 1980 onwards, as and when yearwise regular vacancies arose.

The Allahabad Bench had held that DPC held in 1980 is invalid and as such the said decision had become contrary to the previous decision of this court in this case and it was with a view to avoid conflict of decisions, this court set aside his previous order and set the petition for final hearing before a different Bench of the same Tribunal.

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While giving relief to Shri Sustogi, the Allahabad Bench had given the directions that as a consequence, the respondents will accordingly fix the seniority of the applicants and give all consequential benefits within three months. So far as the selection or promotion of 1980 as per the meeting of 26/28.4.1980 is concerned, the Allahabad Bench held it invalid and the result of the same is that the promotion or selection so made became without authority of law and stated that it cannot be given any legal recognition. Byway of conclusion, the Allahabad Bench held that the result will be that the selection or promotion have to be made afresh on the basis of the seniority list so finalised in the year 1985. Thus by following the Allahabad Bench, all the way, there will be no conflict, if the directions issued thereof is followed further, in a logical manner.

The main dispute before this court now to be decided is in what manner the directions of Allahabad Bench shall be implemented. The Allahabad Bench in its decision has categorically stated that the DPC held in 1980 was invalid and that the selection or promotion will have to be made afresh on the basis of the seniority list finalised in the year 1985. We are of the considered view that full effect to the decision of the Allahabad Bench, which has become now final for want of appeal to any superior forum, would be to have review DPC held on the basis of the seniority list which has become final in the year 1985. As we have observed in

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para 7 above, there is no substantial difference between the seniority list of 1980 which was also valid and final as well as the seniority list of 1985 which was as well valid and final and both, according to rules. There is no dispute that the subsequent final seniority list as per the decision of the Allahabad Bench on this count is unquestionable. The respondents will have to make fresh selection or promotion on the basis of the subsequent final seniority list namely that of 1985.

Learned counsel appearing on behalf of the respondents while arguing the case brought to our notice that as per the decision of the Allahabad Bench which has now become final, the respondents had held a review DPC in the year 1994 and produced some documents to show that such a DPC had been held in the year 1994. We verified and found that it is true that in 1994 the respondents had held a review DPC to give effect to the decision of the Allahabad Bench but on closer scrutiny, it was found that the review DPC held was as on 1985. Learned counsel for the respondents submitted that since Allahabad Bench had directed that the selection or promotion will have to be made afresh on the basis of the final seniority list of 1985, there was an irresistible conclusion that a review DPC should be held as on 1985.

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Learned counsel for the petitioner vehemently opposed and stated that such a narrow view of understanding the directions given by the Allahabad Bench would be contrary to law. The Allahabad bench only, according to the counsel for the petitioner, has stated that selection or promotion shall be made afresh on the basis of the final seniority list of 1985 that shall not be taken to mean that the DPC to be held will be as on 1985. The review DPC to be held after the Allahabad Bench decision which has become final, should have been correctly understood that the review DPC should be held in accordance with rules. Rule affecting the review DPC is that whenever a DPC is held it shall be in accordance with year-wise vacancies available and the consideration of the incumbent shall also be on year-wise scrutiny of the records. We find substance in the contention of the petitioner. We also find that the Allahabad Bench has noticed this aspect at another place of the same judgement namely at para 10 of the decision while dealing with which of the rules will be applicable, whether the amended or unamended. The Allahabad Bench very clearly stated:

The amended rules neither specifically nor even by implication cannote an idea that it would apply to pending selection. It has been specifically provided in that, it shall come into force with effect from the date of publication. In the case of N.T. Devin Katti vs. Karnatka Public Service Commission, AIR 1990 SC P. 1233 it was observed "where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing Govt. orders and any amendment of rules or the government order pending the selection should not effect the validity of the selection made by selecting authority or the Public Service Commission unless the amended rules or the amended Govt. orders or by necessary intendment indicate that amended rules shall be applicable to the pending selection. The court laying down the above law took into consideration the earlier case of Y.Y. Rangaih vs. J. Shrinivasa Rao (1983) 3 S.C.C. P. 284, in which it was held that the vacancies which occurred prior to the amendment of the rules, would be governed by the old rules and not by the amended rules. In the said case, those who are earlier qualified became disqualified as the state government suitably delayed the appointment for the vacancy arose. In the case of P. Ganeshwar Rao

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Vs. State of Andhra Pradesh, AIR 1988 SC P. 2068 the existing rule (Rule-2 of A.P. Panchayat Raj Engineering Service (Special) rules 1963) the provisions being 37 (2% of total number of vacancies both substantive and temporary for direct recruitment was amended by providing that only the substantive vacancies of the said extent arising in the cadre shall be filled by direct recruitment. It was held that the word 'arising' qualifying the word 'vacancies' in the amended provision indicates prospective operation of the statutes. Vacancies both substantive and temporary arising prior to date of amendment were not affected by amendment and would be governed by old rule. As such, the decision taken by the Government before the amendment to fill up the vacancies by direct recruitment in accordance with the rule then existing and appointments made accordingly valid. If vacancies of the period when unamended rules were in force and the selection process for which was completed before coming in to force of amended rules which were published and enforced soon after selection any selection and appointment made in accordance with new rules without cancelling the earlier selection holding fresh selection in accordance with the amended rules would be invalid and the post would go to one who was entitled to it under unamended rules."

These observations are relevant also for the purpose of considering whether the review DPC that is said to have been held in furtherance to the decision of the Allahabad Bench was rightly held as on 1985 or not. We are of the view that the contention of the respondents is not correct. Review DPC should have been held according to the year-wise availability of the vacancies and the year-wise availability of the petitioners whose previous records also should have been considered as on each year when the vacancy had arisen; that is to say, the records that should be considered for the same in the year 1980 would be the three years' record that are available with the respondents prior to 1980 if the vacancy being considered is that of 1980.

The following directions are, therefore, being issued:-

- (i) The decision of the Allahabad bench, which has become final, shall be implemented fully in accordance with directions given by the said court and the selection or promotion will have to be made afresh on the basis of the final seniority list of 1985;

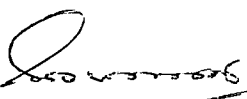
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- (ii) The review DPC held on 1994 purportedly in compliance with the Allhabad Bench decision is wrong since the said DPC has been held in accordance with the final seniority list of 1985 but it has been wrongly held against all vacancies, including those arose prior to 1985, as on 1985. Therefore, the purpose of the review DPC wrongly held in the year 1994 against vacancies that arose prior to 1985 but held as on 1985 and is, therefore, to being contrary to rules, be ignored/ and a fresh review DPC shall be conducted by the respondents for promotion or selection of all the concerned incumbents;
- (iii) A fresh review DPC, therefore, shall be held on the basis of final seniority list of 1985 but in accordance with year-wise availability of vacancies and the records of each incumbent shall be perused in accordance with availability of the vacancy of each year. It is made clear that in order to see the records of the available incumbents for the year 1980, it shall not be proper for the respondents to consider their suitability as on 1985.
- (iv) This review DPC shall be held within three months hereafter and review the selection or promotion of all the incumbents, presently occupying the seniority list of 1985, that is to say, excluding those persons who are already retired or promoted, for the purpose of considering the inter-se position in the select panel.
- (v) In the event any change in the position in the select panel is found by the review DPC, all the consequential benefits arising out of such finding of the review DPC shall be available to all the incumbents, not only the

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petitioner in this case but also to all similarly placed employees out of the same seniority list.

With these directions, this Original Application is disposed of.


(S.P. Biswas)

Member (A)


(Dr. Jose P. Verghese)

Vice-Chairman (J)

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