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Central Administrative Tribunal
Principal Bench, New Delhi

RA-133/88
Regn. No. DA-1017/88
MP-2273/88

Date: 21.12.1988

Shri Niader Singh & Others Applicants

Versus

The Administrator & Others Respondents

For the Applicants	Shri G.D. Gupta, Advocate
For Respondents 1-3	Shri M.M. Sudan, Advocate
For Respondents 4 & 5	Shri K.N.R. Pillai, Advocate
For Respondents 6-7	Shri Mukul Rohtagi, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri S.P. Mukerji, Vice-Chairman (Admn.).

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicants in this review application had filed OA-1017/88 in which we pronounced our judgement on 17.10.1988. The applicants have prayed that our judgement dated 17.10.1988 should be reviewed in the light of the submissions made in the review application.

2. At the outset, it may be mentioned that the applicants, in their original application, had sought two reliefs, namely, (i) to quash the notification dated 14.3.1986 whereby provision was made in the recruitment rules as originally notified on 23.12.1971 for promotion as Laboratory Assistant from the category of Group 'D' employees belonging to Delhi Administration who are matriculates or equivalent/higher secondary with Science or who have successfully undergone a three-month Orientation Course in Science conducted by the Directorate of Education, Delhi Administration, Delhi; and (ii) to

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direct the respondents to fill the posts of Laboratory Assistant as per the seniority of the applicants in accordance with the recruitment rules, 1971 as amended from time to time (excluding the amendment brought about by the notification dated 14.3.1986).

3. In our judgement dated 17.10.1988, we had upheld the validity of the impugned notification dated 14.3.1986 and had directed that the posts of Laboratory Assistant in the Department of Education should be filled up by promotion of the eligible Group 'D' employees in accordance with the provisions of the recruitment rules as amended by the impugned notification dated 14.3.1986. We had also held that ad hoc appointments already made on 31.5.1988 on the basis of the recruitment rules notified on 14.3.1986, may continue till regular appointments are made.

4. Numerous grounds have been mentioned in the present application to the effect that there is an error apparent on the face of the record and that our judgement dated 17.10.1988 should be reviewed in the light of those grounds. Shri G.D. Gupta, appearing for the applicants, drew our attention to para.31 of our judgement in which reference has been made to the memorandum issued by the Ministry of Home Affairs, Department of Personnel & Administrative Reforms on 24th December, 1980. The aforesaid memorandum envisages preparation of year-wise panels by DPCs in respect of the vacancies which had occurred in the previous years. At the time of hearing of the original application, Shri Gupta had heavily relied on the aforesaid memorandum and the decision of this Tribunal in Shri S.N. Sharma Vs. Union of India &

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Others, A.T.R. 1988 (2) C.A.T. 450 in which the relevance of the various Office Memoranda issued by the Government from time to time on the periodic holding of DPCs has been considered. Shri Gupta stated that our judgement dated 17.10.1988 does not make any mention of the judgement of this Tribunal in Shri S.N. Sharma's case.

5. With regard to the above contention, while it is true that no reference has been made in our judgement to Shri S.N. Sharma's case, we have referred to the contention of the applicants based on the memorandum dated 24th December, 1980 which also had been considered in Shri S.N. Sharma's case. The non-mention of Shri S.N. Sharma's case in our judgement does not, in our opinion, support the contention that there is an error apparent on the face of the record.

6. Another point raised by Shri G.D. Gupta related to the soundness of our distinguishing the decisions of the Supreme Court in Y.B. Rangaiah Vs. J. Srinivasa Rao, 1983 (3) SCC 284 and in P. Ganeshwar Rao & Others Vs. State of Andhra Pradesh & Others, J.T. 1988(3) SC 570 at 574 from the facts and circumstances of the case before us. In this context, he drew attention to paras. 33-35 of our judgement dated 17.10.1988.

7. To our mind, the aforesaid contention raised by Shri Gupta also does not indicate that there is any error apparent on the face of the record.

8. In Shri Rangaiah's case, the Supreme Court considered the effect of amendment of the A.P. Registration and Subordinate Service Rules in 1977. Prior to amendment,

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the rules laid down that all first appointments to a Service, State or subordinate, and all promotions ^{in a} to a Service shall be made from a list of approved candidates. The rule further provided that such list shall be prepared in the prescribed manner by the appointing authority or any other authority empowered in the said rules in that behalf. The rule further required that the list of approved candidates for appointment by transfer, where the Public Service Commission was not consulted on the suitability of a candidate, shall be prepared in the month of September every year so as to be in force until the list of approved candidates for the succeeding year is prepared and for the purpose of preparing the said list, the claims of as many eligible candidates as such ^{an} authority considered necessary, shall be considered. This rule further enjoined that the list of approved candidates shall contain such number of candidates as was approximately equal to the number of vacancies expected to arise during the currency of that list. Further, persons who were included in the previous year's list of ^{approved or} candidates but who had not commenced their ^a probation, should be considered for inclusion in the next year's list.

9. Apart from the aforesaid rules, the Government also ^{instructions} issued administrative ^a from time to time. The Memo. dated 7th November, 1975 in paragraphs 5 and 6 stated as follows:-

"5. It needs hardly be urged that prompt preparation of panels is essential both for increasing administrative efficiency, and also for filling up vacancies without delay.

6. All the appointing authorities are directed to bear in mind the instructions issued on the preparation of panels and ensure that the panels are prepared promptly in the month of September every year."

10. By amendment to the rules made in 1977, the original rules providing for consideration of Lower Division Clerks for appointment as Sub-Registrar Grade II ^{and} were done away with and promotion or transfer to that category was to be made from amongst Upper Division Clerks employed in the Registration and Stamps Department. The grievance of the petitioner was that contrary to the rules and instructions, a list of the approved candidates was not prepared as on September, 1976. It was drawn up only in 1977 after the amendment of the rules. By delaying the preparation of list of approved candidates till after the rules were amended, it was alleged that their chances for consideration for appointment to the higher posts were adversely affected.

11. It was in the above context that the Supreme Court held that the vacancies which occurred prior to the amended rules, would be governed by the old rules and not by the amended rules. In para.9 of the judgement, the Supreme Court noted that under the old rules, a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar, Grade II should have been made out of that panel.

12. In the case before us, the recruitment rules of 1981 stipulated that "The ratio proportion between the two categories (i.e., Group 'D' employees of the Directorate of Education having three years of service on a regular basis who are matriculate or equivalent/Higher Secondary with Science as one of the subjects and, employees who are matriculate or equivalent/Higher Secondary without Science provided they have successfully undergone

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a three months' orientation course in Science conducted by the Directorate of Education) will be determined on 1st May every year depending upon the actual number of eligible employees under the respective category on that day". Shri Gupta contended that the above stipulation, coupled with the Office Memorandum of 1980 mentioned above, are similar to those considered by the Supreme Court in Rangaiah's case.

13. With regard to the Recruitment Rules of 1981, it may be stated that under these rules, promotion was restricted to Group 'D' employees of the Directorate of Education only. In view thereof, a large number of representations were made by Group 'D' Employees Association. The said Association submitted that whereas all the Group 'D' employees of Delhi Administration including those of the Directorate of Education were eligible for promotion to Grade IV in Delhi Administration Subordinate Service Rules, 1967, in addition, the employees of the Directorate of Education had an additional advantage of being promoted to even a higher pay-scale post of Laboratory Assistant in that Directorate. This has resulted in discrimination among the Grade IV employees of Delhi Administration. This aspect was a great cause of heart-burning and resentment among the employees of Delhi Administration. In order to remove such discrimination, the impugned notification of 1986 was issued whereby equal chances to all employees of Delhi Administration have been sought to be provided. (Vide Reply affidavit of Respondents 1 to 3, pages 134 to 136 of the paper-book.)

14. Thus, in the instant case, the impugned notification of 1986 sought to remove discrimination among the lowest paid category of employees of the Delhi Administration as a whole by enlarging the field of choice in the matter of promotion as Laboratory Assistant. In Rangaiah's case, the effect of the impugned amendment of 1977 was to restrict the field of choice for promotions to Upper Division Clerks and exclude Lower Division Clerks who were eligible for such promotion under the unamended rules. This also makes Rangaiah's case clearly distinguishable.

15. In Shri Ganeshwar Rao's case, the Supreme Court relied upon its earlier decision in Rangaiah's case.

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In that case, the Supreme Court considered the impact of an amendment made in 1980 to the Andhra Pradesh Panchayat Raj Engineering Service (Special) Rules. Prior to the amendment of the rules, it was open to the State Government to fill 37½ per cent of the vacancies (both substantive and temporary) in the cadre of Assistant Engineers by direct recruitment. By the amendment made in 1980, the rules were amended as follows:-

"37-1/2 of the substantive vacancies arising in the category of Assistant Engineers shall be filled by direct recruitment on the results of the competitive examination and the remaining 62½ by promotion or transfer as indicated under explanation (d) below...."

16. Prior to the aforesaid amendment, the State Government had requested the Public Service Commission to recruit 51 Assistant Engineers by direct recruitment. The number of vacancies was based on the total number of substantive and temporary vacancies which had arisen in the years 1978 and 1979. The petitioners contended that the 51 vacancies which had been notified to the Public Service Commission, could not be filled up by direct recruitment after amendment of the rules in 1980 inasmuch as the amended rules provided for filling up of only substantive vacancies by direct recruitment. They contended that the amendment was only prospective in effect and had no effect on the vacancies which had arisen prior to the date on which the amendment was made.

17. The Supreme Court considered the question whether the amendment made in 1980 applied only to the vacancies that arose after the date on which the amendment came

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into force or whether it applied to the vacancies which had arisen before the said date also. The Supreme Court referred to the language of the amendment and observed that "If the above clause had read '37½ per cent of the substantive vacancies in the category of Assistant Engineers shall be filled by direct recruitment', perhaps there would not have been much room for discussion. The said clause then would have applied even to the vacancies which had arisen prior to the date of the amendment but which had not been filled up before that date." The Court found much force in the submission made on behalf of the appellants and the State Government that the introduction of the word 'arising' in the above clause, made it applicable only to those vacancies which came into existence subsequent to the date of the amendment.

18. The decision in Ganeshwar Rao's case also is clearly distinguishable. In that case, the State Govt. had taken the decision before the amendment came into force to fill up the vacancies by direct recruitment according to the law prevailing then. The Supreme Court observed that "Had it been the intention of the State Government while promulgating the amendment that the amendment should be applicable to the vacancies which had arisen prior to the date of the amendment, simultaneously the State Government would have addressed a letter to the Public Service Commission to make recruitment in accordance with the special rules as amended on 28.4.1980. No such action was taken by the State Government in this case." It will thus be evident that the decision in Shri Ganeshwar Rao's case is also clearly

distinguishable inasmuch as the State Government had already taken a decision before the amendment came into force to fill up the vacancies under the old rules. There is nothing to indicate that the Delhi Administration had taken any ^{such or} decision in regard to the filling up of the vacancies under the old rules.

19. Shri K.N.R. Pillai, learned counsel for the interveners, contended that the Court should not issue a mandamus as to when vacancies are to be filled. That was a matter to be decided by the executive in the exigencies of administration. He submitted that the impugned amendment of 1986 had removed hostile discrimination between employees of the Directorate of Education and the rest of the employees of the Delhi Administration belonging to Class IV category and had opened up avenues for promotion to every one, depending on his seniority. He forcefully contended that if the contention of the original applicants that the impugned notification of 1986 could not apply to vacancies which arose prior to 14.3.1986 was accepted, it would lead to absurd results. In that case, vacancies would have to be filled up as follows which would have great unsettling effect:-

- a) Pre-10.2.1972 vacancies by direct recruitment of Matriculates with 6 months experience as essential qualification.
- b) Vacancies of 10.2.72 to 6.7.75 by direct recruitment of Matriculates with 6 months experience as desirable qualification.
- c) Vacancies of 7.5.75 to 3.3.81 by promotion of Matriculates Science Class IV employees of all departments.

Or

- d) Vacancies of 3.3.81 to 14.3.86 by Matriculates Science Class IV staff of the Directorate of Education or Matriculates Arts Class IV staff of the Directorate of Education who have undergone 3 months' Orientation Course.
- e) Post-14.3.86 vacancies by Matriculates Science of all Departments and Matriculates Arts of Directorate of Education who have undergone the 3 months' Orientation Course.

20. We found considerable merit in the aforesaid contention advanced by the Respondents and upheld the validity of the impugned notification of 1986 (vide paras.27 to 29 of our judgement dated 17.10.1988).

21. Shri M.M. Sudan, learned counsel for Delhi Admn. (Respondent Nos.1-3) and Shri K.N.R. Pillai, appearing for respondents 4 and 5 (interveners) vigorously opposed the maintainability of the present application for review on the ground that the judgement of this Tribunal does not suffer from error. They relied upon the following decisions of the Supreme Court:-

1. Tungabhadra Industries Ltd. Vs. Govt. of Andhra Pradesh, A.I.R. 1964 S.C. 1372.
2. Chandrakante Vs. Sheikh Habib, A.I.R. 1975, S.C. 1500.
3. A.T. Sharma Vs. Arilan Pishal Sharma & Others, 1979 S.C. 1047.

22. The learned counsel also referred to the decision of this Tribunal in Anil Kumar Bose & Others Vs. Presidency Post Master, Calcutta, A.T.R. 1987 (1) C.A.T. 112, wherein relevant extracts from the aforesaid judgements of the Supreme Court have been reproduced.

23. Shri G.D. Gupta, the learned counsel for the

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applicant has also relied upon the following authorities:-

1. A.I.R., 1954 S.C. 526
2. A.I.R., 1974 Ker. 116
3. A.I.R., 1977 Ker. 196
4. A.I.R., 1963 S.C. 1372
5. A.I.R., 1972 Mad. 463
6. A.I.R., 1966 A.P. 173
7. A.I.R., 1973 P&H 265.

24. The scope of review is well settled. As early as in 1957, the Supreme Court had held in M/s The Associated Tubewells Ltd. Vs. Gujarmal, A.I.R. 1957 S.C. 742 at 743 that "It is possible that a view which ultimately appeals to a Judge in coming to his conclusion is erroneous. That by itself can afford no ground for review".

25. In Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, 1980(2) S.C.C. 167 at 171-172, the Supreme Court has observed that "A party is not entitled to seek a review of the judgement delivered by this Court merely for the purpose of a re-hearing and a fresh decision of the case.....In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47 Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record (Order XL, Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgement delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility"; Sow Chandra Kanta Vs. Sheikh Habib." (See also A.T.Sharma Vs. A.P. Sharma, A.I.R. 1979 (4) S.C.C. 389; and Avtar Singh Vs. Union of India, A.I.R. 1980 S.C. 2041.)

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26. In view of the aforesaid authoritative pronouncements of the Supreme Court, we have to see whether there is any glaring omission or patent mistake or grave error in our judgement dated 17.10.1988. In this context, Shri G.D. Gupta heavily relied upon the decision of this Tribunal in S.N. Sharma's case wherein the various Office Memoranda issued by the Government regarding the periodical convening of DPCs has been discussed. Shri Gupta stated that the SLP filed against the judgement has been dismissed by the Supreme Court. He also drew our attention to para. 9 of the original application wherein it has been averred that though posts of Laboratory Assistant were available at the time when the applicants became eligible for promotion to the posts of Laboratory Assistant as per their respective dates of eligibility for promotion from May, 1983 to June, 1984, yet they were not given promotion because of some intervening mala fide acts. In the reply filed by respondents 1-3, it has been submitted that due to litigation pending in the Court, the Department could not hold D.P.C. during the period 1986-87. The vacant posts were available for promotion but because of restraint order, no promotion could be made.

27. Shri Gupta also relied upon the Recruitment Rules of 1981 which have already been discussed above.

28. As already pointed out, para.31 of our judgement refers to the administrative instructions issued by the Ministry of Home Affairs in 1980 providing for preparation of year-wise panels by DPCs in respect of the vacancies which had occurred in the previous years. Q

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29. The question whether a mere executive instruction confers any legal rights on the persons covered by it, was not directly in issue in S.N. Sharma's case. In the present case before us, the recruitment rules of 1971 which have been amended from time to time, nowhere stipulate that DPCs should be held annually or periodically by a particular date. The contention of the learned counsel for the respondents, in regard to the office memorandum of 1980 and other similar office memoranda relied upon by Shri G.D. Gupta is that these office memoranda are applicable to selection posts and the post of Laboratory Assistant being a non-selection post, they would not be of any relevance.

30. The Supreme Court has considered the question whether or not an administrative instruction confers justiciable rights. In Union of India Vs. K.P. Joseph & Others, 1973 (1) SLR 910 at 912-913, the Supreme Court has observed that "Generally speaking, an administrative order confers no justiciable right but this rule like all other general rules, is subject to exceptions". The Court further observed that to say that an administrative order can never confer any right, would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights that we have imported the principle of natural justice of audi alterum partem into this area. However, the Court did not like to lay down any general proposition in this regard as will be clear from the following observation contained in para.11 of the judgement:-

"We should not be understood as laying down any general proposition on this question".

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31. The decision of the Supreme Court in Joseph's case was pronounced on 27.10.1972. In the subsequent decision of the Supreme Court in State of Assam Vs. Basanta Kumar Das, 1973(1) S.C.C. 461 at 466, which was decided on 22nd December, 1972, the Supreme Court referring to an Office Memorandum issued by the State Government of Assam, raising the age of retirement of its servants from 55 years to 58 years, observed in para.13 of its judgement as follows:-

".....We must first of all point out that the memorandum, dated March 21, 1963 is a mere executive instruction and not a rule made under Article 309 of the Constitution. It did not confer any legal rights on the persons covered by it. No legal action can be founded on it. A similar view has been taken in a recent decision of this Court in Assam Vs. Premadhar".*

32. In view of the above, we are of the opinion that the applicants before us cannot seek to enforce the directives contained in the office memoranda issued by the Government regarding the periodic convening of the DPCs. To our mind, provisions of the Office memoranda relied upon by Shri G.D. Gupta, are only directory and not mandatory.

33. It is relevant to note that the Recruitment Rules of 1981 evoked protests from a large number of

* 1970(2) S.C.C. 211, 214 (para.11).

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Group 'D' employees of the Delhi Administration which led to the ^{issue of the a}impugned notification of 1986. We have pointed out in para.22 of our judgement that the issues raised before us have to be considered in the background of the existing promotional avenues to Group 'D' staff belonging to the Delhi Administration who have been stagnating for a number of years for want of avenues for promotion to the next higher grade. The Delhi Administration therefore, wanted to provide some avenues to the Group 'D' staff who were matriculates with Science or who had undergone Orientation Course in Science conducted by the Delhi Administration. We have pointed out that the recruitment rules of 1981 sought to restrict the field of choice only to the employees of the Directorate of Education. The amendment of the rules in 1986 which has been impugned in the present proceedings, was with a view to enlarging the field of choice so as to throw open these posts numbering 1061 for promotion to all Group 'D' employees belonging to all the Departments of the Delhi Administration who possessed the requisite qualifications. In para.24 of our judgement, we have observed that there is nothing illegal or unconstitutional in the impugned rules. In para.25, we have also come to the conclusion that the reduction of chances of promotion of the applicants cannot be the ground of challenge, in view of a catena of decisions of the Supreme Court. In para.26 of our judgement, we have stated that the applicants cannot also be said to have developed a vested right to promotion pursuant to the recruitment rules by the Delhi Administration in 1971 which were amended from time to time. In paras.27, 28 and 29 of our judgement, we have given our

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opinion that the impugned amendment of 1986 insofar as it makes all Group 'D' employees of all the departments of Delhi Administration eligible for promotion to the posts of Laboratory Assistant subject to their fulfilling the requisite qualifications prescribed in that behalf, cannot be challenged on the ground of unfairness or unreasonableness within the meaning of Articles 14 and 16 of the Constitution.

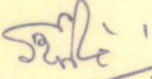
34. The recruitment rules of 1981 were thus changed by the respondents in view of the ^{same on} being unfair and unreasonable. In this background, we have upheld the validity of the impugned notification of 1986. Therefore, reference in the recruitment rules of 1981 to the determination of eligible employees on 1st May every year in a stated proportion is hardly of any relevance or significance for filling up of the vacancies in the posts of Laboratory Assistant.

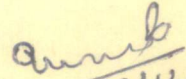
35. On a careful consideration of the grounds raised in the review application, we are of the opinion that there is no error apparent on the face of the record warranting a review as prayed for. It may be that in a case of this kind, more than one view is possible and we have favoured a view which would satisfy the aspirations of the largest number of Group 'D' employees of the Delhi Administration as a whole, though it may reduce the chances of the lesser number of Group 'D' employees in the Directorate of Education of the Delhi Administration. We also have taken note of the submissions made by the learned counsel for the respondents that teaching in the schools under the Delhi Administration is being hampered due to non-appointment of a large number of Laboratory Assistants. If the applicants were dissatisfied with our judgement

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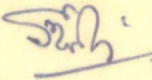
dated 17.10.1988, the proper course for them would have been to take up the matter in appeal to the Supreme Court. In the facts and circumstances of the case, we see no merit in the review application and the same is rejected. The parties will bear their own costs.

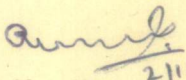
36. Incidentally, we have noticed that in para.1 of our judgement, while enumerating the reliefs sought for in the original application, a typographical error has crept in. For the words 'Higher Secondary with Science', it has been erroneously mentioned 'High Court with Science'. This typographical error is hereby corrected.


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(S.P. Mukerji)
Vice-Chairman(Admn.)


2/12/88
(P.K. Kartha)
Vice-Chairman(Judl.)

After the above order was pronounced in the open Court, Shri G.D.Gupta, learned counsel for the review applicant submitted that a reasonable ^{time or} may be given to them to approach the Supreme Court, during which period the operation of the present order may be stayed. In view of the importance of the matter, the above prayer is granted. The operation of the present order is stayed upto 20th December, 1988. A copy of this order be delivered to the learned counsel for both parties in the course of today itself.


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(S.P. Mukerji)
Vice-Chairman(Admn.)


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(P.K. Kartha)
Vice-Chairman(Judl.)