

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1554/91 199
T.A.-No. Sh.P.K.Sinha & Ors.

O.A. 1047/92 DATE OF DECISION 10 Sep 93
&
OA 2192/92
Shri N.K.Kakkar & Anr. Petitioner

Shri B.B.Raval Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri Jog Singh. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V.Krishnan, Vice Chairman (A).

The Hon'ble Mr. B.S.Hegde, Member (J).

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 ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri N.V.Krishnan, Vice Chairman (A))

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

N.V.KRISHNAN
 (N.V.KRISHNAN)
 Vice Chairman (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.A. 1554/91

Date of decision: 10 Sep 93

P.K. Sinha & Ors.

... Petitioners.

Versus

Union of India & Ors.

... Respondents.

C.A. 1047/92

N.K. Kakkar & Ors.

... Petitioners.

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Union of India & Ors.

... Respondents.

C.A. 2192/92

N.K. Kakkar & Anr.

... Petitioners.

Versus

Union of India & Ors.

... Respondents.

CORAM:

THE HON'BLE MR. N.V. KRISHNAN, VICE CHAIRMAN(A).
THE HON'BLE MR. B.S. HEGDE, MEMBER(B).

For the Petitioners.

Shri B.B. Raval, Counsel.

For the Respondents.

Shri Jog Singh, Counsel.

JUDGEMENT

(Delivered by Hon'ble Mr. N.V. Krishnan,
Vice Chairman(A))

These three original applications have been heard together with the consent of the parties as they are inter-connected matters and are being disposed of by this common judgement.

2. The applicants are direct recruits who joined the

Intelligence Bureau and were holding the post of Deputy Chief Intelligence Officer ('DCIO' for short). Some of them were promoted on an ad hoc basis as Joint Assistant Directors (Executive) ('JAD(E)' for short), but subsequently, some of them who were not selected for regular appointment on the basis of the recommendations made by the DPC, were reverted. Some others, though not promoted on an ad hoc basis, were considered but not selected for appointment as JAD(E) on regular basis by the DPC. The representation made in this connection by one applicant has been rejected. Thus, shortly stated, the grievance in these three applications is in respect of,

- (i) Non-promotion as JAD(E); and
- (ii) Non-promotion as JAD(E) coupled with reversion from ad hoc appointment on that post.

With this background, we can now proceed to set out the facts of each case and the grievance raised based on the ^{as} pleadings/also the original records produced for our perusal by the respondents.

3. Chronologically, O.A.1554/91 is the first application and raises issues which are common to the other two O.As also. The facts of this case can be stated briefly as under.

3.1 This O.A. has been filed by 9 applicants, of whom the applicant No.8 (M.G.S. Nambuthiry) and applicant No.9 (N.K. Bajpai) were given ad hoc appointment as JAD(E) in November, 1989, but not selected for regular appointment, while the other seven applicants were not selected.

3.2 The channel of promotion available to the applicants, who were all regularly appointed DCIOs, is to the rank of Senior Intelligence Officers ('SIO' for short) and thereafter,

as JAD(E). Appointment to the post of SIO (Rs.1100-1500 with special pay of Rs.100 - pre-revised) is governed by the Intelligence Bureau (Senior Intelligence Officer) Recruitment Rules, 1986 ('SIO Rules' for short). It provides for 90% by promotion by the selection method from DCIOs who have 8 years regular service and 10% by transfer on deputation/transfer. A copy of the rules produced by the respondents is kept on record.

3.3. The Intelligence Bureau (Joint Assistant Director-Executive) Recruitment Rules, 1986 ('JAD(E) Rules' for short) was notified on 7.11.1986 (Annexure A-1). The schedule to the rules indicates the manner of recruitment. The posts of JAD(E) are in the pay scale of Rs.1200-60-1700 (pre-revised) and are to be filled up by promotion to the extent of 33 1/3% and, by transfer and deputation to the extent of 66 2/3%. Both are by selection. The promotion, with which alone we are now concerned, is from SIOs with three years regular service and is made on the recommendations of the Group 'A' Departmental Promotion Committee which is chaired by the Chairman or a Member of the Union Public Service Commission ('UPSC' for short).

3.4. The Fourth Pay Commission recommended that the revised pay scale of the posts of SIO and JAD(E) should be Rs.3000-4500 and this was accepted by Government. The former post had also a special pay of Rs.200/- attached to it. This created an anomalous situation. This matter was, therefore, considered by Government and an order was issued on 10.11.1989. The respondents have filed a copy of this order as Annexure R-2, extracts therefrom are reproduced below:

"The question of removing anomalies in the revised scales of pay and the quantum of Special Pay in the ranks of Senior Intelligence Officer, Joint Assistant Director and Assistant Director belonging to the executive cadre in the Intelligence Bureau, following the implementation of the Fourth Central Pay Commission's recommendations had been under consideration of Govt. of India for some time as on account of these anomalies, promotions to the above stated levels of the executive cadre in the Bureau were held up.

2. While the matter is still being examined in detail by the Anomalies Committee of the Ministry of Home Affairs in order to remove the difficulty in filling up the vacancies in these ranks, the President is pleased to decide as under:

- i) the posts of SIO shall henceforth be redesignated as JAD and merged with the JD grade in the scale of Rs.3000-100-3500-125-4500, without any special pay. Accordingly, all the existing incumbents holding the posts of SIO shall be redesignated as JADs with immediate effect.
- ii) the combined service of 2 years in the grade of SIO/JAD would be taken into account for eligibility for promotion to the rank of Assistant Director.

3. These orders take effect from the date of issue".

3.5 With the merger of the SIOs with the JAD(E) cadre, the next lower feeder category post available for promotion to the post of JAD(E) is that of the DCIO. But recruitment rules to make promotions from DCIO had yet to be made. Therefore, the respondents filled up 55 posts of JAD(E) by the ad hoc promotion of DCIOs who had at least 8 years regular service, Vide the order dated 24.11.1989 (Annexure A-4) for a period of one year or till the officer concerned retired or till regular promotion to the grade of JAD(E) was made, whichever was earlier. Only applicants 8 and 9 were promoted by this order.

3.6 Subsequently, a DPC meeting was held in the UPSC and on the basis of the recommendations of that DPC the respondents issued three orders as follows on 29.4.1991, which is the starting point of the grievances of the applicants.

(i) By Notification No. 15/CIII/89(11) dated 29.4.1991 (Annexure A-6), the President issued an order regularising the appointment on the post of JAD(E) of 31 officers. It is noticed that they had earlier been given ad hoc promotion by the Annexure A-4 order dated 12.11.1989 by which 55 officers were given ad hoc promotion.

(ii) It would appear that some persons given such adhoc promotion had, in the meanwhile, retired or died. Excluding them, 17 persons who were given ad hoc promotion, were not found fit for regularisation. Instead of reverting them, their ad hoc appointment as JAD(E) were continued by the order No. 16/CIII/89 (11)/673 dated 29.4.1991 (Annexure A-7) upto 3.10.1991. The names of applicants 8 and 9 are included in this order.

(iii) By another Order No. 16/CIII/88(2)/11 dated 29.4.1991 (Annexure A-5), 36 other officers were promoted to officiate as JAD(E). This does not include the names of the applicants who are senior to some of those promoted.

3.7 The first applicant, Shri P.K. Sinha, made a representation (Annexure A-9) on 6.5.1991 which has been rejected by Annexure A dated 21.6.1991 of the third respondent. That letter is reproduced below:

"Shri P.K. Sinha may please refer to his representation dated 06.5.1991 regarding his promotion to the rank of JAD(Executive). The record indicate that he was duly considered for promotion to the rank of JAD(Executive) by the DPC held in the UPSC. However, due to relative lower grading assigned to him by the DPC on the basis of his service record, he could not be covered for promotion within the available vacancies. The promotion to the rank of JAD(Executive) is on the basis of 'Selection' criteria. Therefore, the supersession are inherent/inevitable".

3.8 The second applicant also made a similar representation on 16.5.1991 (Annexure A-10) but the pleadings do not disclose as to what happened to that representation.

3.9 It is in these circumstances that the applicants who have been given permission to file a joint application, have filed this O.A. seeking the following main reliefs:

"In view of the facts mentioned in the foregoing paras, the applicants pray for the following reliefs:

- (i) To quash the impugned order dated 21st June, 1991 (Annexure 'A'); 29th April, 1991 (Annexure A-5 and A-6) as illegal, arbitrary and violative of the Fundamental Rights of the applicants guaranteed under Articles 14, 16 and 21 of the Constitution of India;
- (ii) Consequent to relief at (i) above, direct the respondents to hold a review OPC wherein year-wise panels should be prepared and only those coming within the consideration zone of those respective years should be considered and promoted with retrospective effect along with all consequential benefits accruing from the same and also payment of difference of pay and allowances with 18% interest till the date of realisation..."

4. A reply has been filed on 26.10.1991, which has been verified by T.S. Negi, Assistant Director in the Intelligence Bureau. Though Mrs Raj Kumari Chopra entered appearance for the second respondent, the Chairman, Union Public Service Commission, on 30.10.1991 and was given four weeks to file a reply, no reply has been filed by this respondent. Instead, on 17.12.1991, Shri Jog Singh, learned counsel for the respondents 1 and 3, prayed that the counter already filed may be treated as the reply of Respondent No. 2 also.

5. The respondents have stated that consequent upon the merger of the post of SIO with that of JAD(E) by the Annexure R-2 order dated 10.11.1989, it became necessary to frame rules for the promotion to the post of JAD(E) from the post of DCIO, the immediately next junior level post in the hierarchy. As the process of finalisation of such rules was

likely to take time, ad hoc promotions were made in November, 1989 to the post of JAD(E) vide the Annexure A-4 order.

These promotions were strictly based on seniority subject to rejection of the unfit, which is the criteria to be adopted in ad hoc promotion.

6. Draft recruitment rules providing for the promotion of DCIOs as JAD(E) were prepared in the Intelligence Bureau and, after obtaining the approval of the Ministry of Home Affairs and the Ministry of Personnel, they were sent to the UPSC on 15th June, 1990. Therefore, a proposal was sent to the UPSC on 13.9.90 (and not on 13.9.91 as stated in the reply, which is a mistake) to consider promotion of DCIO as JAD(E). There were 54 regular vacancies in 1989 and 16 vacancies in 1990, i.e. 70 vacancies in all, of which 54 had to be filled by general candidates and the remaining 16 were reserved for SC/ST. The Intelligence Bureau had furnished to the UPSC relevant information about the status of the recruitment rules, as mentioned above, the seniority list of the DCIOs as also particulars of the persons eligible for consideration for promotion both against the 54 vacancies of 1989 and the 16 vacancies of 1990. The meeting of the DPC was held in the UPSC on 11th and 12th March, 1991. As a result of the recommendations made by this DPC based on the selection method of promotion, the ^{orders} Annexures A-5 and A-6/ were issued. The officers appointed on an ad hoc basis but who were not regularised by the DPC - of whom only 17 remained for consideration including applicants 8 and 9, the rest having already died or retired - were, however, allowed to continue on ad hoc basis upto 3.10.1991 by the Annexure A-7 order. Efforts were also made simultaneously to send them on deputation to other

organisations as JAD(E) as is clear from the circular letter dated 1.5.91 issued to them (Annexure A-8). The regularisation/promotion was on the basis of selection. This necessarily meant choosing the best out of those in the zone of consideration by giving priority to those who have been graded "Outstanding", followed by those who were graded as "Very Good" below whom alone those who graded 'Good' were placed. It is in this process that the applicants and A-6 had to be left out of the Annexure A-5/ by which some of their juniors have been promoted/regularised.

7. In the circumstances, the respondents contended that this application is without any merit and is to be rejected.

8. We can now consider the second case, O.A. No.1047/92. This is a sequel to the first O.A. 1554/92. As mentioned in para 3.6(ii) above, the ad hoc appointment of 17 persons was continued on ad hoc basis as JAD(E) till 3.10.1991 (Annexure A-5 in this O.A.). The Intelligence Bureau had sent a proposal for further extension of the ad hoc appointment by three months ending 3.1.1992. This was approved by Government on 23.12.1991. The extension was needed only for 11 officers, out of the 17 officers mentioned in the Annexure A-5 order, as the others had retired or were sent on deputation to other organisation. The order extending the ad hoc appointment upto 3.1.1992 in respect of 11 officers was issued on 17.1.1992 (Annexure A-7).

9. In the meanwhile, proposal for filling up 25 fresh vacancies of JAD(E) arising in 1991 was sent to the UPSC and the UPSC was requested to hold the DPC for this purpose. That meeting, however, took place only in July, 1992. In the

(I.B.)

circumstances, Intelligence Bureau sent a proposal for further continuance of the adhoc appointment beyond 3.1.1992. This was not approved by the Ministry of Home Affairs. Hence, nine persons, who alone remained on adhoc appointment, were reverted by the impugned Annexure A order No. 16/C-III/89(II)945 dated 27.3.1992 issued by the third respondent which reads as follows:

*Reference Order No.16/C-III/89(II)-207 dated 17.1.1992 conveying approval of M.H.A. for extension of ad-hoc promotion of DCIOs as JDA(Executive) upto 3.1.1992.

2. The M.H.A. vide their O.O. No.479/92-P1 dated 24.2.1992 have not agreed to the further extension of continued ad-hoc promotion as JAD (Executive) in respect of the following officers. As such, these officers will stand reverted as DCIO with effect from 04.01.1992:

S/Shri

1. Ramavtar Sharma, SIB Shillong.
2. M.M. Jha, I.B. HQrs.
3. Kailash Rai, I.B. HQrs.
4. N.K. Bajpai, SIB Lucknow.
5. G.P. Nigam, I.B. HQrs.
6. Ram Chandra Jha, SIB Patna.
7. Hem Bahadur Rai, SIB Dibrugarh.
8. N.K. Kakkar, I.B. HQrs.
9. J.N. Mehrotra, SIB Lucknow".

10. Three persons who have been reverted by the Annexure-A order have filed this O.A. challenging their reversion. They have claimed the following reliefs:

(i) To declare the impugned order treating the applicant reverted to the post of DCIOs with retrospective effect from 4.1.1992 as illegal, arbitrary, malafide and, therefore, non-est in the eyes of law.

OR IN THE ALTERNATIVE

quash and set aside the same being contrary to law, violative of the laid down rules and regulations and, therefore, violative of the Fundamental Rights of the applicants guaranteed under Articles 14, 16 and 21 of the Constitution of India and for this purpose direct the respondents to produce before the Honourable Tribunal for their judicial dissection all the relevant records including ACRs, DPC proceedings pertaining to the rank of DCIOs, JADs and SIOs, in which the applicants figure".

11. A reply has been filed by the respondents denying that any relief is due. It is stated that the approval of the competent authority to continue the adhoc appointment of 17 persons upto 3.10.1991 had been obtained in the first instance (Annexure A-5) when they were not regularised by the last DPC. Therefore, further extension was given to 11 persons, who alone ~~received~~^{needed} it, upto 3.1.1992 (Annexure A-7). A proposal was sent on 2.1.1992 by the third respondent, requesting the Ministry of Home Affairs, first respondent, to continue the ad hoc appointment for some more time as the second DPC was yet to meet. This proposal was turned down by the Ministry and, therefore, the impugned order Annexure-A dated 27.3.1992 was issued which has been reproduced in para 9 above. It is clear that the reversions have been made from 4.1.1992. The respondents state that, nevertheless, this does not amount to retrospective reversion, as alleged, because, the concerned officials were informed as early as on 20.1.1992 about this possibility of reversion, if the Ministry did not accept the I.B's proposal for extension.

12. When the O.A. came up for admission on 20.4.1992, an interim order was issued directing that the impugned Annexure A order dated 27.3.1992 shall remain stayed for 14 days and this interim order has since been renewed from time to time.

13. Thus, in this O.A., the grievance is against the reversion from the adhoc post of JAO(E) held by the applicants.

14. We can now consider the third case, i.e. O.A.2192/92 where the grievance arose after a second lot of persons were promoted as JAO(E) on a regular basis on 20.8.1992.

15. A requisition was sent by the I.B. to the UPSC on 4.10.1991 for recruitment to 25 vacancies of the year 91-92.

A DPC was held in the UPSC and a second selection was held. In that selection, the cases of all those who were not selected earlier as also others who came in the zone of consideration for the first time were considered. On the recommendations of this DPC, the impugned Annexure A order dated 20.8.1992 was passed promoting 24 DCIOs on an officiating basis to the rank of JAD(E). The promotees include three persons (Kailash Rai, Rameshwar Sharma and M.M. Jha) who were not selected by the first DPC and whose adhoc appointments were continued upto 3.1.1992. The other persons whose adhoc appointments were continued on an adhoc basis upto 3.1.1992 were not regularised and were reverted (An-A7). One of them - N.K. Kakkar and G.P. Jha, have joined in the present application and impugned the Annexure A order as they have not been selected.

16. This application has been filed on the following important grounds:

- (a) The first applicant is a very senior officer and has been continuously officiating as JAD(E) without interruption from 21.11.1989.
- (b) The initial adhoc appointment was made in November, 1989 when rules for recruitment to the post of JAD(E) had not been finalised, that position still continues and, therefore, there was no occasion to disturb the adhoc appointments made or to proceed with the regular appointment in the absence of rules.
- (c) The entire process of regular recruitment, ending with the impugned Annexure-A order is irregular.

17. The respondents have filed a reply contesting the claims made by the applicants. It is stated that on the request of the third respondent to fill up 25 vacancies, the UPSC had convened a meeting of the DPC which was held on 3.7.1992 in respect of the vacancies which arose in 1991. The recruitment rules for promoting DCIO to the rank of SIC have been approved by the Home Ministry and the Ministry of and Personnel is awaiting the approval of the UPSC. In the circumstances, the DPC was conducted in terms of the Department of Personnel and Training OM No. 39021/5/85-Estt.

(B) dated 9.7.1985. The process of selection will necessarily involve supersession if the applicants are adjudged to be inferior to others who are found to be more meritorious.

referred to

in the D.M.

dated 30-3-88

(An.R-1 in

OA. 1554/91)

18. When these cases came up for final hearing, Shri B.B. Raval, the learned counsel for the applicants, spent a little time on what he considered to be an important background for appreciating the grievance of the applicants in these cases. This has been made a part of the pleadings. He gave a comprehensive history of the Intelligence Bureau with particular reference to management and recruitment policies. In substance, he contended that the leadership of the I.B. has fallen into entirely wrong hands, viz., officers of the Indian Police Service who were not equipped to hold any responsible post in the I.B. Having control of the decision making levels in the Home Ministry, these officers of the IPS have managed to find for themselves and their brethren in other Central Police Organisations safe positions in the I.B., after having run away from their parent organisation to escape onerous responsibilities which they would have had to shoulder. He submitted that the recruitment

rules were so designed as to always keep the direct recruits to the IB - i.e. those who were born in the IB itself and can be considered to be 'sons of soil' in subordinate positions and away from the seat of power and authority. It is for this purpose that a strange rule was designed whereunder a direct recruit DCIO had to work for 8 years to become a SIO and then for three years to become a JAD and then for 2 years to become an Asst. Director (AD) while all these three higher posts carry the same pay scale. As against this, the ministerial staff equated to the rank of DCIO get directly promoted as AD. Thus, the authorities have sought to drive a wedge between such direct recruits and Ministerial staff of the IB.

19. In the light of these submissions, the learned counsel for the applicants was asked to clarify whether the persons who have been promoted as JAD(E) as a result of the recommendations given by the DPC on two different occasions - the subject matter of O.A 1554/91 and O.A. 2192/92 - are officers who are not direct recruits like the applicants, ^{but are} members of the IPS or other Central Police Organisations or members of the Ministerial staff of the IB, in regard to all of whom a general grievance has been voiced by him that they are out to run down the direct recruits. The learned counsel for the applicants clarified that such is not the case. In all these applications, the applicants as well as the persons selected by the DPC and appointed by Government as regular JAD(E) belong to the same category of direct recruits i.e. they belong to the same species as the learned counsel for the applicants put it.

20. In this view of the matter, we find that the preliminary background given by the learned counsel for the applicants complaining of unnecessary domination of the I.B. by the IPS officers has no direct relevance for a proper decision of these applications. For, the challenge in O.A.1554/91 and O.A.2192/92 is to the selection of certain persons in preference to the claims of the applicants therein and the challenge in O.A.1047/92 is to the retrospective reversion of adhoc appointees, when they were not selected as JAD.

21. To facilitate decision, both the counsel have also filed written notes of arguments with the citation of authorities relied upon. These are kept with OA 1554/91.

22. The applicants have challenged the selection and reversion on a number of important grounds which are referred to below:

(i) A fundamental objection to the holding of the DPC meeting is that two main prerequisites were missing. Firstly, there was no recruitment rule as to how promotion should be made from DCIO to JAD(E). Secondly, a final seniority list of DCIO was not available or published. In the absence of these two vital ingredients, a DPC for regular appointment could not have been held at all.

(ii) The vacancies in the cadre of JAD(E) belong to at least two years 1989/1990 in so far as O.A.1554/91 is concerned, i.e. 54 vacancies of 1989 and 16 of 1990. In the circumstances,

the DPC should have taken the zone of considerations separately for filling up the 54 vacancies of 1989 and the 16 vacancies of 1990. On the contrary, all the vacancies have been bunched together with the result that a larger zone of consideration was taken into account which has adversely affected the applicants, inasmuch as their non-selection on merit was directly due to the inclusion in the panel of a number of juniors who would have been outside the zone of consideration, if the 54 vacancies of 1989 had alone been considered separately.

(iii) In the written argument, it is submitted that even the 54 vacancies of 89 did not arise in that year. These had arisen in the earlier years as follows:

1983	-	3
1984	-	4
1985	-	3
1986	-	5
1987	-	14
1988	-	5
1989	-	20
<hr/>		
Total	-	54
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Therefore, the DPC should have been held for these vacancies separately for each year.

(iv) Admittedly, rules have not been finalised for promotion from DCIO to JAD(E). Such being the case, the respondents had no right to go in for regularisation of adhoc appointees or selection for regular appointment.

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(v) In any case, they had no authority to adopt the selection method for the purpose of promotion. It is contended that as no rules existed, seniority subject to fitness alone should have been adopted for promotion.

(vi) The respondents have continued some of the applicants on an ad hoc basis for about two years. That gives them a vested right to be regularised in preference to others.

(vii) The persons sought to be reverted have experience and have been graded 'Good' - which is the benchmark for selection - and they were also proposed for deputation to other organisations as JADs. Therefore, they ought not to be reverted.

(viii) The reversion cannot be made with retrospective effect. It is illegal on that single ground.

23. On the contrary, the respondents contend that adhoc appointment as DCIO as JAD(E) was resorted to when the cadre of SID got merged with JAD(E). There was a regular seniority list of the DCIO dated 18.5.1989 exhibited as Annexure A-2 in O.A.1554/91. As the revised recruitment rule regulating promotion of DCIO directly as JAD(E) was not ready, adhoc appointment was made. The draft rules were then finalised by the Home Ministry and Ministry of Personnel and sent on 15.6.1990 to the UPSC for concurrence. Therefore, there was sufficient guidance in the draft rules to enable regular promotions to be made. Hence, regular promotions were made in two lots - one by the issue of the two orders dated 29.4.91 (Annexure A-5 and Annexure A-6 in O.A. 1554/91) and again by the order dated 20.8.1992 (Annexure A in O.A. 2192/92). Those who could not be regularised, had to be reverted as they had no right to continue on the posts of JAD(E). Hence, the respondents contend that all the three O.A.s are liable to be dismissed.

24. We have carefully considered these rival contentions and also perused the pleadings in the three O.As as also the original records that the respondents produced for our inspection, and the gist of written arguments filed by both the parties.

25. The crux of the applicants' case in the three O.As lies in three important contentions which go to the root of the matter. Firstly, there were no rules governing the promotion of DCIO as JAD(E) and, therefore, regular selection or regularisation of adhoc appointments should not have been made. Secondly, even if regular appointment had to be made, it should have been only on the criterion of seniority subject to fitness in the absence of recruitment rules and the criterion of selection could not have been adopted at all. Thirdly, the proceedings of the first DPC held on 11.3.91 and 12.3.91 are illegal because they suffer from the vice of clubbing all vacancies and considering appointments to them, without separating the vacancies yearwise and considering the claims of only the eligible persons who are in the zone of consideration for those yearwise vacancies. We can first consider these objections.

26. The learned counsel for the applicant has cited a number of authorities in support of the contentions raised in the O.As and the arguments advanced by him. But, he has failed to produce any authority to support the first two contentions mentioned in para 25 supra. Where rules of appointment/promotion are not available, nothing prevents Govt. from making regular appointments and determining what criterion -i.e. seniority or selection - should be followed for regulating promotions. This position seems to be well established by the Supreme Court's judgement in Ramesh Prasad Vs. State of Bihar (AIR 1978 SC 327). That was a case where the

Bihar State Electricity Board created a temporary Telecommunication Division at Patna and a temporary post of Executive Engineer (Telecommunication). There were no recruitment rules governing appointment to this post. The appointment (appellant) of Ramesh Prasad was made on the recommendation of the Board's Expert Selection Committee. Thereupon, the respondents 3 to 28 before the Supreme Court challenged the promotion on the ground of malafide and irregular supersession of their claims, though they were senior to Ramesh Prasad. The matter was decided against the appellant in the High Court. On appeal to the Supreme Court, the appointment of Ramesh Prasad was upheld and the following observations were made.

"Regarding the observation of the High Court that in the absence of rules laying down qualifications for appointment and promotion to the post of Executive Engineer (Telecommunication), respondents 3 to 28 could not be excluded from consideration for appointment to that post, we would like to say that though it cannot be gainsaid that before initiation of the proposal for creation of post of Executive Engineer (Telecommunication), respondents 1 and 2 had not framed any rules prescribing qualifications for that post, it cannot be overlooked that it is not obligatory to make rules of recruitment etc. before a service is constituted or a post is created or filled up. As is well known, the process of rule-making is a protracted and complicated one involving consultation with various authorities and compliance with manifold formalities. It cannot also be disputed that exigencies of administration at times require immediate creation of service or posts and any procrastination in that behalf cannot but prove detrimental to the proper and efficient functioning of public departments. In such like situations, the authorities concerned would have the power to appoint or terminate administrative personnel under the general power of administration vested in them as observed by this Court in B.N. Nagarajan v. State of Mysore, (1966) 3 SCR 682. It follows, therefore, that in the absence of rules, qualifications for a post can validly be laid down in the self same executive order creating the service or post and filling it up according to those qualifications?"

We are, therefore, of the view that the respondents were only within their rights in proceeding to make regular appointments to the post of JAD(E) either by considering the cases of the adhoc appointees for regularisation or considering the claims of other DCIOs and stipulating that the promotion would be made on the basis of selection.

27. That apart, there are two other circumstances to justify the holding of the DPC meetings to make regular selections and for the adoption of the selection method - and not seniority-cum-fitness test - for regular appointment.

(i) Firstly, the respondents have drawn our attention to O.M. No.28036/8/87-Estt.(D) dated 30.3.1988 of the Department of Personnel and Training (Annexure R-1 in O.A. 1554/91) which was issued to impress upon the authorities not to resort to ad hoc appointments if it could be avoided. Adverting to the practice of effecting ad hoc promotions on the ground that recruitment rules are not available, this OM states as follows:

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"Adhoc appointments are frequently resorted to on the grounds that Recruitment Rules for the post are in the process of being framed. In this Department's O.M. No.39021/5/83-Estt.(B) dated 9th July, 1985, all Ministries/ Departments have been advised that if there/overriding compulsions for filling any Group 'A' or Group 'B' post in the absence of Recruitment Rules, then they may make a reference to the Union Public Service Commission(UPSC) for deciding the mode of recruitment to that post. Further action to fill the post may be taken according to the advice tendered by the UPSC. All such appointments will be treated as regular appointments".

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This O.M. has not been challenged. Respondents contend - and rightly too - that their actions were in pursuance of this O.M.

(ii) Secondly, the decision to adopt the selection method is justified on a priori considerations. For, the promotion from the grade of SIO - which is a post superior to DCIO - to JAD(E) was on the basis of selection as provided in the JAD Recruitment Rules (Annexure A-1 in OA 1554/91). The feeder category has now become the still lower post of DCIO. Therefore, the promotion from DCIO to JAD(E) cannot but be on the basis of selection. The same conclusion can be reached from another angle. So long as the post of SIOs were not merged with the JAD(E) cadre in 1989, the DCIOs were entitled to be promoted only to the post of SIOs as provided in the Intelligence Bureau (Senior Intelligence Officer) Recruitment Rules, 1986. The post of SIO was a selection post for DCIOs with 8 years regular service and the case of promotion is to be screened by the Group 'A' DPC. Therefore, if selection was the appropriate method for promotion to the post of SIO, which, admittedly, was the only feeder category post for promotion as JAD(E), then, it is clear that when DCIOs are to be considered for promotion to the post of JAD, selection alone has to be the only method of promotion.

28. Therefore, we do not find any merit in the first two grounds urged by the learned counsel of the applicant, as stated in para 25 supra.

29. We can take for consideration the third ground based on bunching of vacancies of different years for joint consideration without considering the yearwise vacancies separately. In this connection, the learned counsel for the

applicants has drawn our attention to the consolidated instructions of the Department of Personnel in the C.M. dated 10.4.1989 (Annexure A-3 in O.A. 1554/91) - Part IV deals with "procedure to be observed by DPC". Para 6.4.1 of that part deals with "Preparation of yearwise panels" by the DPC where they have not met for a number of years" and is as follows:

"6.4.1. Where for reasons beyond control, the DPC could not be held in an year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedures:

- (i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.
- (ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.
- (iii) Prepare a select list by placing the select list of the earlier year above the one for the next year and so on".

It is alleged that this principle has been grossly violated because the UPSC has considered the 70 vacancies, together, though, admittedly, 54 vacancies arose in 1989 and 16 in 1990.

30. Further, in the written argument, it is also stated that even 54 vacancies of JAO(E)/AD stated to have arisen in 1989, had, in fact, arisen as follows:

1983	-	3 Vacancies
1984	-	4 "
1985	-	3 "
1986	-	5 "
1987	-	14 "
1988	-	5 "
1989	-	20 "
<hr/>		
Total	-	54 "
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Therefore, the DPC should have considered the vacancies of each year separately in accordance with the above instructions.

31. We have perused the records in File No.2/Prom (G)/89(4) dealing with the OPC for promotion to the rank of JAD(E) in the IB. It may be mentioned here that the learned counsel had serious objections to our looking into the revised draft rules for recruitment/promotion to the rank of JAD(E), as his view is that draft rules have no meaning and carry no legal authority. Be that as it may, we consider the draft rules to be relevant, as will be shown presently. A perusal of this file discloses the following important facts:

- (i) The Intelligence Bureau (Senior Intelligence Officers) Recruitment Rules, 1986 provides that 90% of the post of SIO is to be filled by DCIO by selection.
- (ii) The merger of posts of SIOs in the cadre of Joint Assistant Director was done on 10.11.1989 (Annexure R-2 in OA 1554/91) with the approval of the Ministries of Finance and Home and the Department of Personnel.
- (iii) Consequently, a proposal to amend the Intelligence Bureau (Joint Assistant Director) Recruitment Rules, 1986 was sent to the UPSC on 15.6.1990 explaining the background for the amendment. The draft amendments provide for 75% promotion to the post of JAD(E) by promotion of DCIO with 8 years service on the basis of selection.

(iv) The letter also indicated that a proposal to repeal the recruitment rules for the erstwhile posts of SIC had been sent to the UPSC on 22.5.90. On the approval of that proposal, the Intelligence Bureau (Senior Intelligence Officer) Recruitment Rules, 1986 was repealed by the notification 19.10.90 of the Ministry of Home Affairs with immediate effect.

(v) A request to hold a DPC for regular appointment of DCIOs as JAD(E) was sent to the UPSC on 13.9.90. It was stated that draft rules approved by Ministry of Home Affairs and Department of Personnel have been sent to the UPSC and are pending with them. This letter indicated that there were 54 vacancies of 1989 and 16 vacancies of 1990. This was computed by allocating 75% of the 142 posts in the revised JAD cadre to the promotion quota. Two separate eligibility lists for 1989 and 1990 vacancies and a seniority list of DCIOs containing 117 names were enclosed.

(vi) The DPC met on 11.3.91 and 12.3.91 and considered the question of filling up 70 vacancies for the year 1990-91 and recommended 112 considered a panel of 69 names out of as one post reserved for scheduled caste had to be left vacant due to non-availability of suitable SC/ST. The officers were graded 'Outstanding', 'Very Good', 'Good' and 'Unfit'. In the panel, the arrangement is Outstanding followed by Very Good and Good, maintaining the inter se seniority in each category.

32. It can thus be seen that as on 10.11.1989, the post of SIO ceased to exist as the feeder category post for promotion to the rank of JAD(E). If the post of SIOs had continued without being merged in the cadre of JAD, a claim could have been made by the SIOs that a number of posts in the JAD(E) were vacant from 1983 onwards, as alleged in the written note of the applicants, and they could have staked their claim for promotion in the respective years. If they failed in their efforts, they could have filed an application before this Tribunal for a suitable direction to the respondents. That is not the situation now. For, in Nov., 1989, the posts of SIOs ceased to exist and, therefore, the DCIOs also ceased to be a feeder category post for promotion to the post of SIO. This was formalised by the repeal of the SIO Recruitment Rules w.e.f. 19.10.1990. The DCIOs were then not legally recognised as a feeder category post for promotion to JAD. The vacancies of JAD(E) which existed in Nov., 1989 had to be filled up. In the above circumstances, ad hoc promotion was resorted to in the first instance in Nov., 1989 by considering the claims of all the DCIOs on the basis of seniority subject to fitness.

33. The draft rules providing for promotion of DCIOs as JAD(E) as approved by the Ministry of Home Affairs and the Ministry of Personnel - i.e. two of the three agencies involved were available in June, 1990. They were then sent to the UPSC for its concurrence. Thus, it could be held that a tentative decision had been taken by Government in June, 1990, subject to concurrence of the UPSC, that recruitment to the post of JAD should be done in the manner indicated in the draft rules. It is only on the basis of these draft rules that the DCIOs could get for the first time, if at all, a right to be considered for promotion directly to the post of JAD(E). In other words, the existence of vacancies in 1989 - or from 1983 to 1989 in the JAD(E) Cadre as pointed out in the applicants' written note even if it is correct - will not give any right to the DCIOs to be considered for those vacancies in those years, for the simple reason that they were not eligible to be considered -

those vacancies in those years, for, in those years, the JAD Recruitment Rules in O.A. 1554/91)

(Annexure A-1) were in force which provided for promotion to these posts from the grade of SIOS and that too to the extent of 33 1/3% only. DCIOs were not in the picture at all for promotion to the posts of JAD(E) upto June, 1990 - ~~May~~, upto the date the DPC was held for the first time on 11.3.1991 and 12.3.1991 taking cognizance of all the aforesaid changes.

34. The DPC proceedings of 11.3.91 and 12.3.91 show that the member of the UPSC who presided over the DPC meeting accepted that 75% of the posts in the JAD cadre should be filled by promotion of DCIOs with 8 years regular service on the basis of the selection method, all of which are the provisions of the draft amendments to the JAD Recruitment Rules. It is only when the UPSC impliedly concurred in these proposals on 11.3.91 and 12.3.91 that the DCIOs can be considered to have become eligible for consideration for promotion as JAD(E). All the 70 vacancies had occurred well before that date. Therefore, no impropriety was committed either by the UPSC or by the DPC in considering the claims of the eligible persons/officers for filling up all these 70 vacancies. It was not necessary for the UPSC or the DPC to consider the claims for promotions in two compartments, i.e. for 54 vacancies of the year 1989 in the first instance and for 16 vacancies of 1990 subsequently, on the basis of two different eligibility lists of officers who fall in the zone of consideration. Therefore, we find that the selection made by the DPC which met in March, 1991 does not suffer from the vice of bunching, because the DCIOs, having acquired a right for consideration only in March, 1991, cannot stake a claim to yearwise vacancies which arose long before that date. The authorities relied upon by the learned counsel for the applicants are being considered later, but it has to be straightaway stated that he has not cited any ~~any~~ authority which squarely applies to the situation in which the impugned orders were passed in O.A. 1554/91, which is the basic case in this bunch of applications. It is, no doubt, unfortunate that a brief note as to the applicability of

rules in the above circumstances has not been left either by the member of the UPSC who presided over the DPC or by the DPC itself. If a note had been recorded, it would not have been necessary to draw the above inferences from the conduct of various parties to the DPC. However, it is clear that, if the action taken by the UPSC or the DPC, can be justified on the grounds mentioned by us, the absence of any written observations by either the member of the UPSC or the DPC is not of any consequence.

35. The learned counsel for the applicants had serious doubts about the legality of restricting the zone of consideration to only 144 persons, even if the 70 vacancies were taken into account without segregation, i.e. on the basis of the formula $2x + 4$. He pointed out that this is contrary to the Annexure A-3 instructions in O.A.1554/91, which require that the number of persons to be considered should be three times the number of vacancies, if the vacancies are four or more. A plea of this nature can be raised only by the persons who have been excluded from the zone of consideration by determining it as $2x + 4$, where 'x' is the number of vacancies exceeding ^{one}. That apart, the learned counsel for the applicants submitted that the zone of consideration (i.e. $2x + 4$) has been correctly determined on the basis of the modified instructions in D.C.P.T. O.M. No. 22011/1/90-Estt.(D) dated 12.10.90 kept on file.

36. That takes us to the next important issue regarding reversion of the DCIOs who were appointed on ad hoc basis as JAD(E) but have not been regularised as JAD(E)s by the DPC. The plea of the applicants in O.A.1047/92 who are aggrieved on this score is that they should be regularised because they have already held the post for about two years on an ad hoc

basis. We do not find any merit in this contention. The officers were appointed in November, 1989 only on an ad hoc and seniority-cum-fitness basis, as the recruitment rule to govern their promotion had not been finalised. The draft recruitment rule, which has been approved by the Home Ministry and the Ministry of Personnel and has received the implied approval of the UPSC, provides for selection. Therefore, the above promotion cannot confer any right on the appointees for regularisation, unless they are selected by the DPC. Otherwise, it will be highly discriminatory, because, more meritorious persons, who might be their juniors, but would have stolen a march over them if a proper selection had been held, would be denied their legitimate due.

37. The principle of regularisation merely on the length of ad hoc service cannot extend to a promotion post. That principle has validity for posts to which appointment is made by direct recruitment and hence, an ad hoc appointee, working for a long period against a vacancy to be filled by direct recruitment, can claim regularisation. But even in such a case, he has to satisfy all the conditions of recruitment. That principle cannot apply where the post is to be filled up by promotion after considering the claims of all persons who are in the zone of consideration.

38- However, a perusal of the record (File No.2/Prom(G)/89 (4)) shows that there are some special features about the circumstances in which the order of reversion has been passed, which require consideration.

39. The bench mark for selection by the DPC in accordance with para 6.3.1 of Annexure A-3, guidelines in OA 1554/91, is only "Good". File No. 2/Prom(G)/89-(4) relating to the DPC was also seen by us. For the first selection held

in March, 1991, there were 70 vacancies, of which only 54 vacancies were to be filled by the general candidates like the applicants in the C.As. The DPC of March, 1991 recommended 69 names on merits after considering 112 persons, including the cases of all the ad hoc appointees and others who fell in the zone of consideration and were eligible, leaving one place for a Scheduled Caste candidate. These 69 names included 54 general candidates, of whom one was adjudged to be outstanding and 52 persons were adjudged to be 'Very Good'. Thus, 53 persons were already better in merit than persons adjudged to be 'Good', whatever be their inter-se seniority. These included 21 out of the 47 general candidates who had been given ad hoc appointment by the Annexure A-4 order (OA 1554/91) and the remaining 32 were only DCIOs, junior to the applicants. The remaining one place i.e. 54th vacancy, was filled up by the seniormost ad hoc appointee who was graded 'Good' (viz., I.T. Panwala). The DPC also included ~~the~~ two persons, Harish Ch. Joshi and Mahendra P. Singh, belonging to the general category, who had also 'Good' grading, among the 16 vacancies reserved for SC/ST. *I given 'good' grading & also* These three general category persons are at Serial Nos 1, 2 and 3 of the seniority list of eligible DCIOs considered by the DPC. That left 17 persons from the ad hoc appointees, who alone remained unselected in 1991 and who had ~~only~~ 'Good' grading, but could not be regularised for want of vacancies and should have been reverted prospectively, on not being selected.

40. For our present purposes, it is sufficient to note that the I&B proposed to extend the ad hoc appointment of the non-selected ad hoc appointees, as a one time exception, till they are considered by the next DPC. Two reasons were given, (File No.2/Prom(G)/89(4) relating to "DPC for promotion of DCIO to the rank of JAD"). Firstly, the persons have been graded 'Good' and, therefore, are fit to hold the post of JAD(E). Secondly, while there were ~~no~~ vacancies in the promotion quota, there were 33 vacancies of JAD(E) in the

deputation/transfer quota and there was little possibility of these posts being filled up. This was agreed to by the Minister of State in the Home Ministry and subsequently, by the Department of Personnel for six months upto 3.10.1991. Likewise, a further extension of three months in the ad hoc appointment upto 3.1.1992 was also agreed to in respect of 11 persons out of the list of 17 persons, who alone faced the prospects of reversion otherwise. While agreeing with this proposal on 9.12.1991, the Home Minister also recorded the following minute:

"I think reference for ad hoc appointments should have been made before making the appointment. I would like to know the reasons".

(File No.2/Prom(G)/89(4) regarding adhoc appointment of DCIO to the rank of JAO).

41. No doubt, reasons were given by the IB on 2.1.1992 - somewhat imperfectly as we think - but that is not important. What is important to note is that while furnishing the reasons on 2.1.1992 - i.e. one day before the extended term of adhoc appointment of 11 persons was to expire on 3.1.1992- IB also made a proposal that as the UPSC has still not met for making the second round/selection, the term of ad hoc appointment of 9 officers, who alone remained for regularisation, be extended till 31.3.1992 or till the new panel was received, whichever was earlier. This proposal was considered by the Joint Secretary, Police in the Ministry of Home Affairs, who rejected it on 22.2.1992, in view of the Home Minister's earlier minute reproduced above and the file returned to the I.B., without obtaining the orders of the Home Minister. Thereupon, the impugned order dated 27.3.1992 reverting 9 persons from 4.1.1992 was issued which is challenged in O.A.1047/92.

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42. The learned counsel for the applicants has raised the issue that as the extension of ad hoc appointment was approved by the President of India and issued in his name, the impugned Annexure A order of reversion dated 27.3.1992 in O.A. 1047/92, which has not been issued in the name of the President of India, is illegal and invalid. We do not find it necessary to go into merits of this issue, in the view that we are talking about this order.

43. After a perusal of the files, we are satisfied that a proper reply had not been given to the Home Minister's minute dated 19.12.1991. The Home Minister's objection was not that the Intelligence Bureau comes up with a last minute proposal for extension of ad hoc appointment, instead of sending such proposal within time. The minute of the Home Minister makes it clear that he was under the impression that the adhoc appointment was made, in the first instance, without obtaining Government's prior sanction. That seemed to be justified because, the preceding note dated 15.11.1991 by the Under Secretary merely clarified that the extension of the ad hoc appointment upto 3.10.1991 had already been approved by the Minister of State for Home. He did not make it clear that the first ad hoc appointments made in November, 1989, which ~~were~~ ^{were} ~~last~~ to ~~exist~~ till regular selection was considered, had been made with the approval of the Home Minister. If that point had been made in that note, perhaps, there might not have been any occasion for the Home Minister to make the remark he did on 19.12.1991. In our view, the officers in the Home Ministry have misconstrued the minute of the Home Minister. It was not as if the Home Minister was against extension of the ad hoc appointment, whatever be the justification. Therefore, the Joint Secretary, Police was not right in assuming that this was the purport of the Home Minister's minute. He should have put up

the latest proposal dated 2.1.1992 of the Intelligence Bureau to the Home Minister, with his comments on their merit and also clarified, with reference to the minute dated 19.12.1991, that the initial ad hoc appointment made in November, 1989 was made with the specific approval of the Home Minister.

44. As this has not been done, we are of the view that this is a case where a decision has not been taken properly on the proposal of the I.B for further continuance of the ad hoc appointment in respect of 9 persons. The fact that the DPC had not yet met for the second selection and also that there were vacancies in the Intelligence Bureau, which the Director stated, was difficult to fill, are important factors which should have been taken into account by the competent authority before the impugned order of reversion was passed. It is useful to remember here that in the draft amendment to the Recruitment Rule a provision was being made for filling up by promotion those vacancies (25%) which are not filled up by deputation/transfer. The proposal dated 2.1.1992 of the I.B should, therefore, have been examined on merits keeping in view the background to the proposal and the proposed changes in the rules of recruitment and order of the Home Minister ought to have been obtained. As this has not been done, the applicants in O.A. 1047/92 are entitled to relief.

45. We should now deal with certain other contentions raised in these cases in the subsequent paras.

46. In the written statement of the applicants, it is contended that the ad hoc appointment made in 1989 (Annexure A-4 an order in OA 1554/91) is as good as/ appointment by regular selection by the appropriate DPC. This contention is devoid of any substance. It is seen that in accordance with the JAD Recruitment Rules for promotion of SIC as JAD (Annexure A-1 of that OA), a DPC chaired by either the Chairman, UPSC or a

Member of the UPSC with the Deputy Director, Establishment, Intelligence Bureau and Deputy Secretary, GPO, Ministry of Home Affairs as Members (i.e. the Group 'A' Departmental Promotion Committee) and the method of recruitment is by selection. If the ad hoc appointment was made after consideration of the cases by such a DPC by selection, one could contend that the appointment had the trappings of a regular appointment. The records (File No. 2/From(G)/89(4) of the IB dealing with this subject) reveal that the officers eligible for consideration for ad hoc promotion were considered by a DPC consisting of the Deputy Director (Establishment), Deputy Director (W), Deputy Director (CR) of the Intelligence Bureau, and the scrutiny was made strictly on the basis of non-selection (seniority-cum-fitness as mentioned in the DPC proceedings).

47. Another ground raised is that as the respondents themselves have found it fit to extend the ad hoc appointment from time to time and also as they were to be sent on deputation to other organisations as JAD (Annexure A-8 in OA 1554/91), there was no basis either for supersession in the matter of selection, regularisation or for reversion. The contention raised is untenable because, the DPC which specifically met to consider the cases of the ad hoc appointees for regularisation of and/others for appointment, did not find some of the ad hoc appointees eligible to be included in the panel of 69 names for the 70 vacancies. This circumstance gives the respondents full authority to revert these not included in the panel. The other attendant circumstance referred to by the applicants is only the steps initiated by the much maligned third respondent to postpone, for as long as possible, the day of reckoning for such non-selected ad hoc appointees and does not give them any right to be regularised.

48. An attempt has been made to cast obliquely a doubt about the fairness of the selection made by the DPC on the second occasion in OA 2192/92. It is pointed out that Kailash Rai who was not selected in the panel by the first DPC was adjudged to be outstanding in the subsequent DPC held in July, 1992. This is really astounding and reflects on the objectivity of the DPC. A perusal of the records of the two DPCs meeting shows that the suspicion is without any basis. When the DPC first met on 11.3.91 and 12.3.91, Kailash Rai, an ad hoc appointee, who was at Serial No. 18 of the seniority list, was graded only 'Good'. As pointed out in para 39 Supra, out of the general candidates inducted in the panel of 69 names, -- there were only three persons with 'Good' grading, who were at Serial No. 1, 2 and 3 in the seniority list. Hence, Kailash Rai, who had 'Good' grading was not inducted in the panel, he being junior at serial No. 18. In the subsequent DPC held in July, 1992, Kailash Rai was at serial No. 8 of the seniority list. He was assessed this time as 'Very Good'. There is nothing improbable or impossible about this assessment nor can it be attributed to bias. Such a revised assessment has not only been made in the case of Kailash Rai, but also in the case of L.S. Reddy at Serial No. 1 of the seniority list, who also was graded only 'Good' in the earlier selection. If, out of five years, a person has secured only for two years 'Very Good' grading and 'Good' grading for the remaining three years, he is likely to be placed in the category 'Good'. In the case of such a person, reconsideration after one year can make a substantial difference, if he earns a 'Very Good' grading for the latest year such that in the five years considered for review, there are three 'Very Good' reports and only two 'Good' reports, in which case he is likely to be categorised as 'Very Good'. The suspicion entertained by

the applicants in this regard, thus, have no basis.

49. It is contended that, in the absence of rules, two different methods have been followed to the prejudice of the applicants. The first is an ad hoc method of promotion in November, 1989. The second is regular promotion in 1991 and 1992 following different standards. It has been stated that this has been done to ensure that the favoured candidates are selected. This has to be rejected outright because no official has been impleaded by name, alleging that he was guilty of bias in making the selection. That apart, we have already seen in what circumstances ad hoc promotion was first resorted to in 1989 and how a proposal was made for regular promotion in 1990 when the draft amendments to the recruitment rules had been sent to the UPSC in June, 1990.

50. An objection has been taken in the written note to the absorption of SIOs as JADs in 1989. It is stated that the JAD Recruitment Rules required three years of regular service of SIOs to become eligible for consideration for promotion as JAD(E). This rule was thrown to the winds when SIOs who had less than three years service were absorbed as JAD(E)s, whereas, a number of DCIOs who already had the requisite qualifications were not even considered for such absorption as JAD(E)s.

51. In the first place, if the applicants were really aggrieved by the absorptions/ineligible SIOs as JAD(E)s, they should have impugned the orders sanctioning such absorptions and they should also have impleaded the SIOs likely to be adversely affected by such challenge. This has not been done. That apart, the respondents have explained why it became necessary to merge the cadre of SIOs with the cadre of JAD(E)s, irrespective of the service rendered as SIO. At best, this

can be construed to be a promotion of SIOs as JADs under the JAD Recruitment Rules, after relaxing the provisions regarding length of qualifying service. That by itself does not give any right to DCIOs, irrespective of their experience, to be absorbed directly as JADs.

52. A plea is made by the applicants that the respondents should be directed to produce the character rolls of all the and persons/not merely the character rolls of those officers who were not regularised by the UPSC. For three reasons, we do not find any need to look into any character roll. Firstly, the applicants themselves have contended that the appointment should be on the basis of seniority subject to fitness and not on the basis of the selection method. Therefore, they cannot ask for a perusal of the character rolls of all the persons to find out whether the selection has been done properly by the DPC on the basis of the character roll. Secondly, no pleading has been made alleging bias on the part of any member of the DPC in considering the selection for regularisation/appointment as JAD. We have also held in para 48 supra that the suspicions entertained about the selection by the applicants have no basis.

53. What remains is to refer to the authorities cited by the parties. A long list of such authorities have been furnished by the learned counsel for the applicants. The particulars of these authorities are given in the footnote on page 38. We notice that the applicants have not been able to cite any authority which militates against the conclusions reached by us. Nevertheless, we shall refer to the few authorities which we feel explain the correct position and are relevant.

54. There is no need to reiterate that clubbing of vacancies by the DPCs vitiates its proceedings. The question is when this bar will apply. In our view -/para 29 to 34 Supra - this objection can be raised only in respect of the years after the applicants became eligible for consideration which was March, 1991 when the DPC met and took note of the amendment to the rules. No

direct authority has been produced that even then, the vacancies of 1989 and 1990 could not be clubbed and considered together. In fact, Uttram Singh Vs. The State of Punjab and Others, 1986(1) SLR 644 (Punjab and Haryana High Court) relied upon by the applicants follows the judgement of the Supreme Court in Y.V. Rangaiah and Ors. Vs. J. Sreenivasan Rao and Others, AIR 1983 SC 852, which laid down the rule that the eligibility of a candidate for purpose of promotion has to be seen when the vacancy for such a candidate occurred. We have already held that the eligibility of the applicants arose only in March, 1991. Therefore, the vice of clubbing can be raised only in respect of vacancies of 1991 and later years. We do not find anything wrong in the DPC considering the vacancies of 1989 and 1990 together in the meeting of the DPC held on 11th and 12th March, 1991.

55. Relying on the decision of the Allahabad High Court in Lala Ram Katiyar Vs. State of UP, 1986(1) SLR 105, it was urged by the learned counsel for the applicants that the ad hoc appointees have necessarily to be regularised in preference to others who had not been given ad hoc appointment. We have seen that judgement. It is clearly distinguishable for the simple reason that the Government of UP had issued the UP Regularisation of Appointments (On post outside the purview of Public Service Commission), Rules, 1979. Rule 4 thereof provided that any one appointed on an ad hoc basis prior to 1.1.1979 and continuing on the date of the commencement of the Rules and has the necessary prescribed qualifications and has completed three years service shall be considered for regularisation before any regular appointment is made on that basis in accordance with the relevant service rules. In other words, there was a special dispensation in favour of the ad hoc appointees in preference to outsiders which distinguishes that case from the present case.

56. It is pointed out that the Supreme Court has laid down the rule in State of Haryana and Ors Vs. Pyara Singh and Ors. (J.T 1992(5) SC 179) that if an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation, provided he is eligible and qualified according to rules, and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. It is, therefore, urged that the ad hoc JAO(E) should have been regularised as JAO(E)s because that they had held the post on ad hoc basis from November, 1989 and, therefore, they could not either be overlooked in the process of selection or reverted later due to non-selection. We do not know how this judgement helps the applicants. For, the respondents have done nothing but what the Supreme Court has directed. The DPC has considered the applicants working on an ad hoc basis in March, 1991 and later in July, 1992. The criterion of selection was adopted which cannot be faulted as shown elsewhere and the applicants were not found as meritorious as others. That apart, it has to be mentioned that the principle contained in this judgement is applicable to a case of direct recruitment, where it does not affect the interests of others. On the contrary, in the present case, the case of the applicants cannot be considered in isolation as that will be detrimental to the interests of others who were also eligible for promotion on the criterion of selection.

57. Thus, the applicants have not been able to cite any authority to establish their case.

58. The respondents have relied on the following authorities. (See Page 38) In the view that we have taken about these O.As, we do not find it necessary to examine them.

FOOTNOTE (See para 53 and 58).

LIST OF CASES CITED BY THE LEARNED COUNSEL FOR THE APPLICANTS.

1. 1986(1) SLR-644 Uttam Singh Vs. The State of Pb and Ors.
2. 1980(1) SLR-291 M.P. Aggarwal Vs. The State of Rajasthan.
3. 1987(2) CAT 631 Krishan Chander Vs. Union of India.
4. 1986(4)-SLR-155 T.R. Kapur Vs. State of Haryana & Ors.
5. JT 1991(5) SC 35 Nirmal Chander Chatterjee Vs. Union of India
6. 1988(2) SLR-182 Govt. of Andhra Pradesh & anr. Vs. Dr. Mumli Babu Rao and anr.
7. ATR 1992(1) CAT-151 S.M. Nandgaonkar Vs. Union of India & Ors
8. Special Appeal No.91 of 91 Lalita Prasad Vs. U.O.I. & Ors, (Allahabad High Court)
9. JT 1992(5) SC-179 State of Haryana Vs. Paura Singh & Ors.
10. 1988(1) SLR-327 Gajinda Ram & Ors. Vs. MCD & Ors.
11. AIR 1978 SC 1326 Tejinder Singh Sandhu Vs. State of Pb & Ors.
12. 1987(2)SLR 362 Karnail Singh Vs. Delhi Administration.
13. AIR 1983 853 SC Y.N. Rangaiah Vs. J. Sreenivasa Rao & Ors.
14. 1986(4) SLR 704 Alik Narayan Jha Vs. UOI & Ors.
15. 1989(4) SLR 2891 Sunil Kumar & Ors. Vs. State of Haryana & Ors
16. 1986 AIR (SC)1626 Jarnail Singh & Ors. Vs. State of Pb & Ors.
17. 1991(1) SLR-799 State of Haryana Vs. Karam Singh Peon.
18. 1990(1) SLR-784 State of Pb & Anr. Vs. Jarnail Singh & Ors.
19. Writ Petitions No.1181 to 1191 Syed Younus Ali Vs. UOI & Ors. of 1992
20. 1986(4) SLR 701 Akojam Punyabati Vs. Manipur Public Service Commission & Ors.
21. 1986(1) SLR 105 Lala Ram Katya Vs. State of UP & Ors.
22. 1984(1) SLR 520 Raminder Singh & Ors. Vs. Jagdish Prasad & Ors.
23. 1987(5) SLR 531 B.M. Sharma Vs. State of Haryana & Ors.
24. AIR 1987 SC-415 T.R. Kapur Vs. State of Haryana.

LIST OF CASES CITED BY THE LEARNED COUNSEL FOR THE RESPONDENTS

1. 1989(1)SLR CAT (Hyderabad)493.
2. AIR 1988 SC 1069.
3. 1989(16)SLR(CAT CHANDIGARH)407.
4. 1989(4) SLR (CAT CALCUTTA)205.
5. 1987(1) SLR (CAT DELHI) 705.
6. 1992(2) SLR (CAT CALCUTTA) 320.

59. For the detailed reasons given above, we dispose of these O.As as follows:

(i) We find that the orders dated 29-4-1991, Annexure A-5, Annexure A-6 and Annexure-A.7 in O.A. 1554/91 are valid and cannot be assailed on any ground and that the Annexure-A order dated 21-6-1991 in that O.A. rejecting the representation of the applicant P.K.Sinha cannot be faulted. Accordingly, O.A. 1554/91 is dismissed.

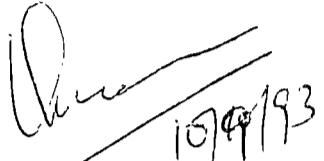
(ii) Likewise, we find that the Annexure A order dated 20-8-1992 in O.A.2192 promoting 24 DCIOs as JAD(E)s after regular selection is valid and cannot be assailed on any ground. In the circumstances, O.A.2192/92 is dismissed.

(iii) In so far as O.A.1047/92 is concerned, the impugned Annexure-A order dated 27-3-1992 therein, in so far as it reverts the three applicants in that O.A. from 4-1-1992 to the post of DCIO, is quashed- both due to its being retrospective in effect and arbitrary in nature- and we direct that these three applicants shall be deemed to be continuing as Joint Assistant Director(E) on an ad hoc basis w.e.f. 4-1-1992 and they shall continue as such, until an appropriate order is passed by the competent authority, in accordance with law, after considering on merits the proposal made by the Intelligence Bureau on 2-1-1992 for continuing their ad hoc appointment, in the light of the observations we have made in this regard and we further direct that, in no circumstance, shall these applicants be reverted with

retrospective effect.

60. These three applications are disposed of as above. There will be no order as to costs. A copy of this judgement be placed in each of the three cases.


(B.S. HEGDE)
MEMBER(J)


(N.V. KRISHNAN)
VICE CHAIRMAN(A)
10/9/93