

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI  
\*\*\*

(17)

O.A. No. 545/92

Date of decision 12/11/92

Dr. NARENDRA BIHARI ... APPLICANT

v/s

UNION OF INDIA ... RESPONDENTS  
AND OTHERS

CORAM:

HON'BLE MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN (J)

HON'BLE MEMBER MR. I.P. GUPTA, MEMBER (A)

For the Applicant ... Shri G.D. Gupta with  
Shri R.P. Oberoi, Counsel.

For the Respondents ... Smt. R.K. Chopra, Counsel

✓ (1) Whether Reporters of local papers may be Yes,  
allowed to see the Judgement ?

✓ (2) To be referred to the Reporter or not ? Yes.

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✓ Delivered by Hon'ble Mr. I.P. Gupta, Member (A) 7

In this application filed under Section 19  
of the Administrative Tribunal Act, 1985, the appli-  
cant has prayed for the following relief :-

(i) Declaration of the provisions of

sub-rule (3) of Rule 8 of CHS Rules,

1982, so far as they relate to the

eligibility of Doctors for promotion

to the post of Director General of

Health Services (DGRS) and Additional

(18)

DGHS, and clauses (i) and (ii) of Schedule III to the above rules as ultra vires of the provisions of Articles 14 and 16 of the Constitution since the doctors holding posts equivalent to those of Additional DGHS are excluded from consideration for promotion to the post of DGHS and the doctors already in the higher administrative grade (Rs 7300-7600), like the applicant which is equivalent to the scale of pay of the post of Additional DGHS are clubbed with doctors in the super time grade (Rs. 5900-6700) for purposes of eligibility for the post of Additional DGHS, thereby subjecting the former category of officers to a second un-called-for process of selection for the same scale of pay for which they have already been selected; and

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(ii) issue suitable directions to the respondents to suitably amend the aforesaid rules so as to rectify the anomalies

arising from the application thereof

in the matter of promotion to the post

of DGHS and Additional DGHS before

proceeding with the selection of officers

for the post of Additional DGHS.

(iii) Issue further directions that the

applicant be designated/treated as

Additional DGHS against one of the

available posts in that grade as he

has already been appointed to an

upgraded post in the scale of Rs. 7300-7600,

without subjecting him to a second pro-

cess of selection.

2. Rule 8(3) of the CHS Rules, 1982 reads

as follows :-

The method of recruitment, the field

of selection for promotion including the

minimum qualifying service in the immediate

lower grade or lower grades as the case may

be for appointment or promotion to the posts

in the respective sub-cadres and specialities

within the sub-cadre concerned included in

this Service shall be as specified in Sch-

dule <sup>III</sup> 3.

(20)

3. Schedule III~~is~~ referred to above incorporates, inter-alia, the following provisions :-

SCHEDULE III

See Rule 8(4)

The method of recruitment, field of selection for promotion and the minimum qualifying service in the immediate lower grade or lower grades for appointment or promotion of officers to ~~to~~ Group 'A' duty posts and deputation posts in the Central Health Service.

Name of post	Method of recruitment.	Field of selection and the minimum qualifying service for promotion.
1.	2.	3.
<b>1. General Administrative post (SUPERTIME GRADE)</b>		
(i) Director General of Health Service	By promotion failing which by direct recruitment.	Additional Director General of Health Services with two Years regular service in the grade failing which Additional Director General of Health Service with 5 years combined regular service in the grades of Additional Director General of Health Services and Level I Supertime Grade
(ii) Additional Director General of Health Services.	By promotion failing which by direct recruitment.	Officers holding posts in Level-I of Supertime Grade with 3 Years regular service in the Grade.

(21)

4. The applicant is a member of the Central Health Services to which he was appointed as a direct recruit on the recommendation of UPSC and he was appointed to the Specialist Grade II from 24.4.1969. He was selected and appointed as Medical Superintendent and Civil Surgeon of Dr. Ram Manohar Lohia Hospital, New Delhi from June 15, 1988 in the scale of Rs. 5900-6700. He was selected for appointment to one of the supertime scale posts upgraded to the scale of Rs. 7300-7600, through the due process of selection by ~~a DPC~~ <sup>an Expert Committee</sup> presided over by a Member/Chairman of UPSC. He was accordingly appointed in the scale of Rs. 7300-7600 from 11th November 1991. The appointment letter said that he was appointed under Rule 4(9) of the CHS Rules, 1982 to the upgraded post in the scale of Rs. 7300-7600 plus MPA with effect <sup>from</sup> the date of assumption of charge and until further orders. The upgradation of the post held by Dr. Narendra Bihari (Medical Superintendent, Dr. Ram Manohar Lohia Hospital, New Delhi) and his appointment to the upgraded post will be personal to him and the post presently held by him will stand so upgraded in the scale of Rs. 7300-7600

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plus NPA as provided under Rule 4(9) of the CHS

Rules, 1982. This would continue till the upgraded post is held by the applicant, who was appointed to the upgraded post. Rule 4(9) of the CHS Rules, 1982 reads as follows :-

"(i)" The Controlling Authority shall upgrade four posts in the Supertime Grade to the scale of Rs. 7300-7600. The upgradation of the posts will be personal to the incumbents who are approved for appointment to these upgraded posts, under Sub-rule (iii).

(ii) The selection for appointment to the upgraded posts under Sub-rule (i) shall be made by a Committee of Experts consisting of the following :-

1. Chairman/Member, Union Public Service Commission. ... Chairman
2. Secretary (Health) ... Member
3. Director General of Health Services. ... Member
4. Director General, Indian Council of Medical Research. ... Member
5. One Technical Expert of eminence in the concerned field(s) to be co-opted by Health Secretary.

(iii) Officers of the Central Health Service in all

(93)

the sub-cadres and specialities of the Sub-care, as the case may be, with at least three years' regular service in the Super-time Grade of Rs. 5900-6700, will be considered by the Committee of Experts and officers who are adjudged by the Committee of Experts to have done outstanding work in their field will alone be recommended for appointment to the upgraded posts under Sub-rule (i).

The aforesaid provisions were added by an amendment of CHS Rules, 1982 in 1989.\*\*

5. The Learned Counsel for the applicant contended that -

(i) The post of Additional DGHS is in the pay scale of Rs. 7300-7600. The applicant was selected by a DPC<sub>A</sub> comprising of five members, in accordance with Rule 4(g)(ii) quoted above. He is thus holding a post equivalent to that of Additional DGHS which also is in the scale of Rs. 7300-7600. He has not been made eligible for appointment to the post of DGHS on the plea that the post of DGHS is to be filled according to Schedule III of the Rules by an Additional

Director General of Health Services with two years regular service in the grade failing which with five years combined regular service in the grade of Rs. 7300-7600 and Rs. 5900-6700.

The respondents are interpreting this Rule to mean that the post of DGHS is to be filled by promotion of an Additional DGHS and since the applicant is not holding the post of Additional DGHS, though he is in a scale equivalent to that of Additional DGHS, he is not eligible for consideration for the post of DGHS. The argument of the counsel is that the doctors like the applicant who were holding posts equivalent to those of Additional DGHS are being made ineligible for promotion as DGHS and this is discriminatory and violative of provisions of Article 14 and 16 of the Constitution.

(ii) When the CHS Rules, 1982 were framed, there were no posts in the scale of pay identical to that of the post of Additional DGHS. A few posts in super-time scale of the services were upgraded to the scale of Rs. 7300-7600 through an amendment of CHS Rules, notified on 23.1.1989. A few more posts

were upgraded subsequently. Though Rule 4(9) (Supra) was incorporated by amendment of CHS Rules 1982 to provide for method of appointment to the upgraded posts in the scale of Rs. 7300-7600, Schedule III of the CHS Rules, 1982 was not changed to include the upgraded post, in the feeder cadre of the post of DGHS, thereby leading to discrimination amongst doctors holding equivalent scales of pay.

(iii) An anomalous situation would arise if a doctor in the supertime scale of Rs.5900-6700 is selected under the provisions of the existing recruitment rules for promotion to the post of Additional DGHS and the applicant who is already holding a post in the higher administrative grade (Rs. 7300-7600) is not treated as equivalent to the post of Additional DGHS since the former would be eligible for consideration for promotion to the post of DGHS and the applicant would be denied the right of consideration for such promotion even though he has been holding a higher post than that of supertime grade (Rs 5900-6700).

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6. The Learned Counsel for the applicant, therefore, pleaded that the existing provisions of the recruitment rules in so far as they relate to promotion of doctors for the post of DGHS and Additional DGHS are anomalous, inconsistent with the realities of the present set-up of service and need appropriate amendment to avoid any discrimination and arbitrariness.

7. The Learned Counsel for the applicant further argued that the recommendation for creation of post in the pay scale of Rs 7300 (fixed) by the Fourth Central Pay Commission and consequent creation of the post with a pay scale of Rs. 7300-7600 by upgradation of the corresponding number of super-time grade posts were measures for cadre restructuring and providing better promotion prospects to the officers of the service. In this connection he quoted an extract from the recommendations of the Fourth Central Pay Commission. In para 10.234 of their recommendations, the Pay Commission observed that ' keeping in view the number of officers in the CHS and to provide a proper cadre structure, we recommend that four consultants/professors

who have done outstanding work may be considered for the grant of Rs. 7300 (fixed). Consequently, four posts in the scale of Rs. 7300-7600 were created keeping in view the recommendations of Tikku Committee. The Tikku Committee had recommended that 'taking into account the need for creation of sufficient number of posts in the grade of Rs. 7300-7600 and above in the CHS, we feel that the Ministry of Health may identify existing posts which can be operated in the HAG'.

The Ministry of Health and Family Welfare by their letter of 14th November 1991 decided, after taking into consideration the recommendations in the Report of the Tikku Committee, that four additional posts in the scale of Rs. 7300-7600 shall be operated under rule 4(9) of the Central Health Service Rules, 1982 (Supra) by upgradation of four posts in the super time scale of Rs. 5900-6700. The Learned Counsel thus stressed the point that the creation of four posts in Rs. 7300-7600 was clearly a measure of cadre re-structuring and it was after upgrading four posts that incumbents were selected on merit from a wide zone of super-time grade officers (5900-6700) with atleast three years regular service in the grade. The selection was done by a High Powered

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Committee which consisted of five members whereas for the post of Additional Director, Health Services only three out of the five members of the Expert Committee constituted the DPC. This would be evident from Rule 4(9) of the CHS Rules (Supra) read with Schedule IV of the said Rules.

8. The Learned Counsel for the respondents raised a preliminary objection that the application was bad in law for non-joinder of necessary parties/senior officers adversely affected by the prayer of the applicant.

9. The Learned Counsel for the respondents further contended that in the Central Health Services there was one post of Director General of Health Services in the pay scale of Rs. 8,000/- (fixed) and four posts of Additional Director General of Health Services in the scale of Rs. 7300-7600. Of the four posts of Additional Director General of Health Services, two posts have been created recently and are required to be filled as per provisions in the Central Health Services Rules. These two posts were created after considering the recommendations of the report of the High Powered Committee (Tikku

Committee) by abolishing two existing common posts in the senior administrative grade (super time grade) Rs 5900-6700. Apart from these posts, four posts of super-time grade (5900-6700) have been upgraded to the scale of Rs. 7300-7600 and given to officers who have done outstanding work in their fields as per rule 4(9) of the CHS Rules, 1982.

10. The Learned Counsel for the respondents added that in the eligibility list for promotion to the two posts of Additional Director General of Health Services, officers who have been given the scale of Rs. 7300-7600 under Rule 4(9) of the CHS Rules along with those officers in the super time grade (5900-6700) with three years regular service in the grade are being included for consideration.

11. The Learned Counsel for the respondents kept emphasising that appointment to the upgraded post in the payscale of Rs. 7300-7600 under CHS Rule 4(9) in the CHS was on personal basis i.e. it was not a regular promotion post. All officers in the super time grade with three years regular service were considered without any prescribed zone of consideration and those who were adjudged by the Committee of

Expert to have done outstanding work in their own field were recommended for appointment to upgraded scale on personal basis. She added that a particular specialist might not always be the most suitable person to hold a higher post which involves greater management/administrative skill, capability and experience. The persons recommended for appointment to the personally upgraded post continue to work at the same place with the same designation and were not given a different designation or higher administrative responsibility whereas the post of Additional Director General of Health Service are regular promotion post with higher designation/high administrative responsibilities/managerial functions. The composition of DPC for personally upgraded posts under Rule 4(9) was different from the composition of DPC for considering promotion as <sup>Addl</sup> Director General of Health Service. She went on to say that persons appointed to the personally upgraded post would be eligible for consideration for promotion to the grade of Additional Director General of Health Services whereas the persons holding the post of Additional Director General were not eligible for

(31)

consideration for appointment to the personally upgraded post. Therefore, she contended that officers holding personally upgraded posts were not eligible for promotion as Director General under the CHS Rules. If they were equated with Additional Director General of Health Service for consideration for promotion to the post of Director General of Health Services, it would result in total disregard of seniority and even merit (because merit in general for higher post is different from outstanding contribution in ones own particular field). The post of Additional Director General of Health Services and the upgraded post in the scale of Rs. 7300-7600 under CHS Rule 4(9), which the applicant was holding on personal basis were not identical. The two posts were identical only in scale of pay but different in nature, in nomenclature, in duty, in method of selection in zone of consideration for promotion and function etc. The provisions of recruitment rules are framed keeping in view the larger interest and not in the interest of one or two particular persons.

12. We shall first deal with the preliminary objection of non-joinder of necessary parties.

Counsel for the respondents quoted case laws to support her contention. She said that the applicant's claim was bound to affect several persons

who were working as Additional Director General of Health Service or who may be promoted as Addl.

Director General of Health Service. Such persons

have not been impleaded. She cited the case of

G.K. Sahai v/s UOI & Ors. [SLJ 1987 Vol.I Pat 599]

where it has been held that non-joinder of affected parties is a reason enough to refuse the relief.

She also cited the case of M. Chokalingam & Ors.

v/s Commissioner of Income Tax, Madras & Another

[AIR 1963 SC 1456] where it was held that before

levying penal interest the affected person is

entitled to notice and reasonable opportunity.

She cited profusely from the case of UOI & Ors.

v/s Tulsi Ram Patel [AIR 1985 SC 1416] to stress

upon the principles of natural justice.

It was held therein that the principles of natural justice were not the creation of Article 14. Article 14 is not their begetter but their Constitutional guardian. Principles of natural justice trace their ancestry to ancient civilisation and centuries long past. Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process. The first rule is 'nemo judex in causa sua' that is 'no man shall be a judge in his own cause' and the second rule is 'audi alteram partem' that is 'hear the other side'. In short the Learned Counsel for the respondents said that non-joinder of parties was a serious defect in the application which cannot be entertained.

15. We find, however, that in this application the applicant is not claiming his promotion over another or his seniority over another particular individual. He is challenging the vires of the recruitment rules on ground of unconstitutionality. He is pressing for consideration of his eligibility also

for the post of Director General Health Service and for treating his post as equivalent or similar to that of ADGHS. Necessary parties are impleaded against whom the relief is sought. That being not the case, the objection of the respondents regarding impleading of necessary parties is kept aside and we proceed to examine the case on merit. We are supported in this view by the observation of the Apex Court in para 36 of A. Janardhana vs. Union of India [AIR 1983 S. C. 785] cited by the Learned Counsel for the respondents.

16. Let us analyse the issues involved in this case in the light of the aforesaid facts and contentions. The recruitment rules for promotion to the post of Director General Health Service and Additional DGHS have been challenged. We shall first deal with the rules in regard to promotion to the post of DGHS. The rules have been challenged inasmuch as the doctors holding the post equivalent to those of Addl. DGHS are excluded from consideration from promotion to the post of DGHS. These doctors were given the scale of Rs 7300-7600 (same as that of Addl. DGHS) under

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rule 4(9) of the CHS Rules on the recommendations of a High Powered Expert Committee which consisted of five members out of which only three members constituted the DPC for promotion to the post of Addl. DGHS. The feeder post for Addl. DGHS and for promotion under Rule 4(9) are the same i.e. officers holding posts in level I of super-time grade with three years regular service. These officers in super-time grade belong to any of the sub-cadres and speciality of the sub-cadres (GDO, Teaching, Non-teaching and Public Health). Therefore, the contention of the Learned Counsel for the applicant was that the applicant being in equivalent scale, having been selected by an Expert Committee from feeder post similar to those of Addl. DGHS, <sup>or in fact same as</sup> and from a wider zone rather than a limited zone should be treated as similarly situated. He quoted the case of Mohd. Sujat Ali v/s Union of India [AIR 1974 SC 1631] wherein it was held that the legislature might classify for the purpose of legislation but the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in

treating similarly those similarly situated. A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another if as regards the subject matter of the legislation their position is substantially the same. This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike. But the basic principle underlying the doctrine is that the legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so that all persons or things similarly situated are treated alike by law.

17. The test for reasonableness of a classification

is that it must be rational and that it must not only

be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled namely -

(i) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others; and

(ii) that differentia must have a rational relation to the object sought to be achieved by the Act.

18. The Learned Counsel for the respondents contended that the mere circumstance that the two posts carried the same scale of pay is not enough to treat the same as equivalent. In support of this contention she quoted the case of Vice Chancellor Lalit Narain Mithila University v/s Daya Nand Jha [VI 1986 (2) AISLD 142]. It was held therein that although the two posts of Principal and Reader carried the same scale of pay, the post of Principal

undoubtedly has higher duties and responsibilities.

19. In this case while Additional DGHS is in the feeder post for promotion, the doctors in the same scale appointed under Rule 4(9) of the CHS Rules are not included. The question to ask is whether there is an intelligible differentia and whether the differentia has a rational relation to the object sought to be achieved and whether the post of Addl. DGHS and that of a doctor in the same scale appointed under Rule 4(9) carries the same duties and responsibilities.

20. Recruitment Rules are framed under Article 309 of the Constitution. It is the Act of the appropriate legislature that may regulate the recruitment and conditions of service of persons appointed to public services. It shall, however, be competent for the President or such person as he may direct in the case of services and post in connection with the affairs of the Union to make rules regulating the recruitment and conditions of service. It is not for the judiciary to direct in what manner the recruitment should be regulated.

However, if the recruitment rules contravenes any of the provisions of the Constitution, the rule should be void.

21. In the case of Sushma Sharma v/s State of Rajasthan [AIR 1985 Vol. 72 SC 1378] it was observed that the problems of Government were practical ones and might justify, if they did not require, rough accommodations, illogical, it might be, and unscientific. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. It is only its palpably arbitrary exercises which can be declared void.

22. Here in this case the respondents in their wisdom have made only the post of Additional DGHS a feeder post for DGHS. The classification is intelligible. It is for the respondents to decide the nature of duties and responsibilities attached to a post. Under a judicial review one cannot direct that all posts carrying the same scale of pay should be included in the feeder cadre. It cannot be said that two categories of posts, Addl. DGHS and officers appointed under Rule 4(9) are exactly similar or equivalent. That two posts carry the

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same scale of pay is not enough to treat the same as equivalent (Vice Chancellor Lalit Narain Mithila University v/s Daya Nand Jha [VI 1986 (2) AISLJ 142].

The Learned Counsel for the respondents said that there were only two incumbents against the post of Additional DGHS and both had done two years service in the grade of Rs. 7300-7600. Therefore, only those two were eligible for consideration for the post of DGHS. The applicant was given the scale of Rs. 7300-7600 under Rule 4(9) from 11.11.1991 only, and therefore he is not eligible for consideration for the post of DGHS under the rules. Of course, the Learned Counsel for the applicant contended that if the designation of Additional DGHS is not insisted upon, the applicant is eligible under the 'failing which' clause since he has five years combined service in the grade of Rs 7300-7600 and Rs 5900-6700. She quoted an extreme case that a person with one day's experience as Additional DGHS and the rest of five years of service in 7300-7600 and 5900-6700

would become eligible but the applicant not. We are of the view that the validity of a rule has to be adjudged by assessing its overall effect and not by picking up exceptional cases. In any case the 'failing which' clause is not being invoked presently, since the respondents said they had 2 additional DGHS with two years experience as Additional DGHS and none else was being considered, since none else was Additional DGHS. What the Court has to see is the validity of the rules vis-a-vis Article 14 of the Constitution.

23. We are of the view that the recruitment rules in regard to the filling up of the post of DGHS are not ultra vires of Article 14 of the Constitution, since there is intelligible differentia between the group of persons holding the post of Additional DGHS and the group holding posts in the same scale under Rule 4(9) of the CHS Rules. This has been clarified above. It is for the executive to determine the nature of duties and responsibilities attached to a post. It is not enough to treat the two posts

by the mere fact of two posts carrying the same scale of pay, as equivalent. Therefore, Article 14 of the Constitution would not warrant that posts carrying the same scale of pay irrespective of their designations and nature of duties and responsibilities should be included in the feeder cadre of promotion post. In short, in our opinion, there is no arbitrariness about the recruitment rules for promotion to the post of DGHS. However, it is for the respondents to consider whether they would like to include or not include the upgraded post in the scale of Rs 7300-7600 under Rule 4(9) of the CHS Rules within the feeder cadre for promotion to the post of DGHS. No judicial direction in the matter can be given.

24. As regards the recruitment rules for promotion to the post of Additional DGHS, the Learned Counsel for the respondents said that the applicant was eligible for consideration since he had done three years service in the super-time grade

of Rs.5900-6700. The recruitment rules in regard to filling the post of Additional DGHS provide the method of recruitment as ~~well as~~ <sup>by</sup> promotion failing which by direct recruitment. Having upgraded four posts in the super-time grade in the scale of Rs. 7300-7600 by amendment of CHS Rules and incorporation of Rule 4(9), having put the officers in the super-time grade of Rs. 5900-6700 to a rigorous selection for the post in a scale of Rs 7300-7600 from a wider zone of selection through a High - Power Expert Committee, it is unjust to say that they would be considered for promotion from a post carrying pay scale of Rs. 7300-7600 to a post carrying the same scale of Rs 7300-7600. While two posts carrying the same scale may not be equivalent, yet it is incongruous to think of promotion from one post to another carrying exactly the same scale in the CHS cadre when the four posts were upgraded to Rs. 7300-7600 as a part of cadre restructure. It could be a case of transfer from one post to another but not a case of promotion. Two posts carrying the same scale of pay may be different in nature, in nomenclature, <sup>but</sup> in duty and responsibility and it is not appropriate for

a judicial direction that the two posts should be treated as equal in all respects and the officer selected for the scale 7300-7600 under Rule 4(9) of the CHS Rules be designated as Additional DGHS. These are matters that are better left to the executive to decide, but to say that those in super-time scale promoted under rule 4(9) in the scale of Rs. 7300-7600 through a process no less rigorous than that of an officer of super-time grade promoted as Additional DGHS would be subjected to a consideration for promotion in the same cadre for the post of Additional DGHS when the posts relating to Rule 4(9) were upgraded to improve the cadre structure, would be unjust.

25. Of course, at times, it may become necessary to put a junior and a senior post together in the feeder post. For example, it was held in the case of Mohd. Usman & Another v/s State of Andhra Pradesh [AIR 1971 SC 1801] that the doctrine of seniority is not violated on the ground that the rule treats UDCs and LDCs as equals for promotion to the post of Sub-Registrar even though the position of UDC is superior to that of LDC. But the circumstances of that case cannot be ignored. The Sub-Registrar's was

a State-wise cadre; U.D.Cs. and L.D.Cs. formed district-wise cadre. Chances of promotion from LDCs to UDCs differed materially from one district to another. If the State had treated the UDCs as being superior to the LDCs, it would have resulted in great justice to a large section of clerks. The fortuitous circumstance of an officer in a particular district becoming a U.D.C. would have given him an undue <sup>advantage</sup> ~~circumstance~~ <sup>over</sup> his seniors (if inter-district position was compared) in another district.

26. Is it the case here that officers under Rule 4(9) of CHS had got promotion in the scale of Rs. 7300-7600 through a fortuitous circumstance? Is the position all those being considered by respondents for the post of Additional DGHS substantially the same? Again <sup>let us</sup> ~~lets~~ visualise another situation. A State Civil Service Officer in a particular scale may be promoted to I.A.S. in the same scale or even a lower scale. But here against he is going from a State cadre to a wider All India cadre. Is it the case here that the applicants are going to another

cadre ? The answers to the query<sup>1/2</sup> in this para would obviously be in the negative.

27. But then can under a judicial review it can be said that the applicant should be designated as Additional DGHS. Is the Bench competent to decide that there is no difference in nature, in nomenclature, in duties, functions and responsibilities of the upgraded post under Rule 4(9) and Additional DGHS? The answer here against is in negative.

28. Therefore, here is a case where we cannot direct the respondents to designate the <sup>applicant</sup> person as Additional DGHS with no further consideration at all. But at the same time, we cannot say that they <sup>(applicant or others promoted under Rule 4(9))</sup> be treated as equals with others in the super-time grade for promotion (from the same scale to the same scale in their case in the same CHS cadre) to the post of Additional DGHS.

29. The present rule about promotion to the post of Additional DGHS talks only of super-time grade officers in the feeder grade. Respondents themselves have admitted that the applications <sup>1/2</sup> ~~were~~ being considered for promotion as Additional DGHS along with others in the super-time grade. That being the case, the

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applicant can be considered for appointment by transfer or selection as Additional DGHS by a method and manner of selection laid down by the appropriate authority but not for appointment by promotion as Additional DGHS. It does not lie well in the mouth of the respondents to say that the applicants and the super-time scale officers in 5900-6700 will be taken as equals for promotion to the post of Additional DGHS in 7300-7600, as if the earlier promotion of the applicants in 7300-7600 under Rule 4(9) was fortuitous.

30. We, therefore, direct that the respondents should consider suitable amendments to the CHS Rules regarding the method of recruitment to the post of Additional DGHS and lay down the method and manner of selection, keeping in view that persons already holding upgraded posts in a scale of Rs. 7300-7600 under Rule 4(9) of CHS Rules after proper selection by an Expert Committee cannot be told that they would be considered for promotion as Additional DGHS in a scale of Rs 7300-7600. It is for the respondents then to determine whether promotees under Rule 4(9) would be

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considered for appointment as Additional DGHS by  
transfer <sup>or</sup> otherwise by the method and manner to be  
prescribed or whether they would consider any other  
alternative including the one in para <sup>23</sup> ~~22~~. Obviously,  
we refrain from suggesting any precise amendment which  
is the domain of the legislature/executive. But we  
cannot restrain ourselves from directing that the  
respondent's stand that the applicant would be  
considered for appointment as Additional DGHS by promotion  
is unjust and illegal.

31. With the aforesaid directions and orders, the  
case is disposed of with no order as to costs.

*I.P. Gupta*  
I.P. Gupta  
Member (A) 12/11/92

*Ram Pal Singh*  
Ram Pal Singh  
Vice Chairman (J) 12.11.92