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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

M.A.1670/94

MA 169/95, RA 338/93 in

CCP 152/93 in OA 2193/91

With CCP 224/93, MPs 262 & 432/93,

MP 3911/92, MA 448/94 in OA 3199/92, and OA 1329/93.

~~XXXXXX~~ /19

Decided on: 17th July, 1996.

Technical Executive (Anti Pollution) Welfare. APPLICANT(S)
Association through its Gen. Secretary.
(By Shri Mukhoti along with Shri C. Advocate)
Khan.

VERSUS

P.M. Singh, Commr. TPT, Deptt. Delhi... RESPONDENTS

Admn. & Anr.

(By Shri Amresh Mathur for _____ Advocate)

Official respondents; Shri G.D. Gupta for private respondents.

CO RAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A).

THE HON'BLE ~~SHRI~~/SMT./~~DR~~ lakshmi SWAMINATHAN, MEMBER (J).

1. To be referred to the Reporter or not? yes.
2. Whether to be circulated to other Benches of the Tribunal? yes.

S.R. Adige
(S.R. ADIGE)
MEMBER (A).

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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New Delhi this the 17th Day of July 1996.

Hon'ble Shri S.R. Adige, Member (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

M.A. No. 1670/94

M.A. No. 169/95

R.A. 338/93

in

CCP 152/93

in

O.A. No. 2193/91

Technical Executive (Anti Pollution)
Welfare Association (Regd.) through its
General Secretary,

VS

Shri P.M. Singh,
Commr.,
TPT,
Deptt. Delhi Admn. & Anr.

CCP 224/93

M.P. No. 262/93

M.P. No. 432/93 and

M.P. No. 3911/92 and

M.A. No. 448/94

in

O.A. No. 3199/92

Technical Executive (Anti Pollution)
Welfare Association (Regd.) through its
General Secretary,

VS

Shri P.M. Singh,
Commr.,
TPT,
Deptt. Delhi Admn. & Anr.

O.A. No. 1329/93

Technical Executive (Anti Pollution)
Welfare Association (Regd.) through its
General Secretary,

VS

Shri P.M. Singh,
Commr.,
TPT,
Deptt. Delhi Admn. & Anr.

(Shri Mukhoti, along with Shri C.Khan.
Advocates for the Applicants)

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for
 Shri Amresh Mathur / the Official Respondents)
 Shri G.D. Gupta for Private Respondents)

J U D G M E N T

Hon'ble Shri S.R. Adige, Member (A)

1. The Technical Executive (Anti Pollution) Welfare Association (Registered) through its General Secretary had initially filed O.A. No. 2193 of 1991 seeking a direction to the respondents (Lt. Governor, Delhi and Commissioner, Transport Department, Delhi Administration) to:

(i) to open a channel of promotions in the existing technical cadre/posts in the department.

(ii) Create additional posts in the existing technical cadre in the higher scale in proportion to the posts of Pollution Level Test Inspector (PLTI).

(iii) Provide selection grade.

2. In the O.A., the case of the applicant Association was that the Transport Department of N.C.T. of Delhi consisted of 2 categories of Inspectorate staff, the Motor Vehicle Inspectors (MVIs) and the Pollution Level Test Inspectors (PLTIs). The applicant - Association, who represent 46 PLTIs state that these PLTIs were recruited through the Employment Exchange and in response to a News

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Paper advertisement in August 1987 in the pay scale of Rs. 1640-2900 against the sanctioned strength under a Scheme for Control of Air pollution from Exhaust of Vehicles. It was asserted that they were discharging various duties including taking of driving test, inspection and verification of vehicles as to their fitness; pollution level tests of vehicles under Section 213 Motor Vehicles Act read with Rule 116 of the Motor Vehicles Rules etc. It was further asserted that the members of the Association were performing similar duties/responsibilities as other MVIs in the department, and that apart the PLTIs had higher qualifications and had a higher seniority than the MVIs, but MVIs had a channel of promotion available to them, while none was available to PLTIs. It was further contended that the Association members would be completing 4 years of service in August 1991 and were eligible to be considered for promotion to the next higher post, but so far the respondents had not initiated any steps to formulate a promotion policy for them, despite several representations. It was also submitted that the MVIs, who not only had lesser qualification but were also junior and drew lesser pay would be considered for promotion earlier than the PLTIs, which would result in violation of Article 14 and 16 of the Constitution. It was also stated that the Government of India had repeatedly clarified that no temporary posts could be created beyond one year from the date of appointment as per Notification dated 26.4.1988 without future benefits as otherwise it would lead to frustration. It was also stated that the applicants had filed Civil Writ Petition No.2186

of 1991 before the Delhi High Court, which had been dismissed due to lack of jurisdiction, and consequently this O.A. had been filed.

3. It is important to note that nowhere in paragraph 4 of the O.A. relating to the facts of the case was there a single categorical averment that the MVIs and PLTIs belonged to a single unified cadre, although in paragraph 5(D) one of the grounds taken is that "junior inspector who are in the existing feeder cadre whereas senior persons (members of the Association) have no channel of promotion till now. It is a clear violation of Article 14 of the Constitution" and in paragraph 5(H) it ~~was~~^{is} stated "because the respondents have adopted the biased attitude towards the members of the Association by leaving them nowhere in respect of their future prospects whereas similarly situated Inspectors are placed in an existing feeder cadre and the applicants do not have any idea of the next higher rank of promotion."

4. The respondents in their reply stated that the question of creating promotion channels for PLTIs was under their consideration and was likely to take sometime. In paragraph 4.3 of their reply, there was a clear and categorical averment that the cadre of PLTIs was quite distinct and separate from the cadre of MVIs and hence PLTIs could not claim any seniority with the MVIs, and merely because the PLTIs were performing certain routine duties of MVIs did not mean that there had been any merger of cadres.

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5. In the rejoinder, there was no categorical denial by the applicants to the respondents assertion that the cadre of PLTIs was quite distinct and separate from that of the MVIs. What was stated in the rejoinder was that the PLTIs were recruited by the Transport Department and fulfilled the eligibility criteria prescribed in the Motor Vehicles Act and discharged the same duties as Motor Vehicle Inspectors and hence there was no question of any separate cadre. It was further asserted that the PLTIs were senior to the MVIs and had, therefore, a rightful claim of seniority over MVIs.

6. After hearing both parties, O.A. No.2193 of 1991 was disposed of by judgment dated 24.4.1992. In that judgment, there was no finding that the PLTIs and MVIs belonged to a single unified cadre. The judgment noticed the respondents averments that the creation of promotional opportunities for PLTIs was separately under their consideration and in the light of certain Supreme Court rulings that reasonable promotional opportunities should be available in the interest of proper morale and motivation, the O.A. was disposed of with the following operative paragraph in that judgment:

" In the light of these observations we have also observed that the applicants are engaged in performing serious duty and fighting the problem of pollution which is a killer disease of society. In view of this, we are of the opinion that it would be appropriate to direct the respondents to frame a set of appropriate rules inter-alia providing suitable

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promotional avenues to the applicants within a reasonable period, preferably within six months from the date of receipt of a copy of this judgment. In view of this and in view of the admission by the respondents, we would also direct that additional posts be created in the existing Technical Cadre in the higher scale in proportion to the posts of PLTI. This O.A. is thus finally stands disposed of in the terms indicated hereinabove. Needless to say, parties shall bear their own costs".

7. On 23.10.1992 the official respondents moved an application seeking extension of 3 months time to implement the direction contained in the judgment dated 24.4.1992, and the Tribunal by order dated ¹⁷⁻¹²⁻⁹² gave 1 month and 11 days further time to implement the judgment which expired on 28.1.1993 (Annexure C to C.P. No. 152 of 1993).

8. Meanwhile, on 9.12.1992, the applicant - Association filed O.A. No. 3199 of 1992 and M.A. No. 3911 of 1992 seeking a direction to stay the DPC which was to be convened on 10.12.1992 for promotion of MVIs to posts of Motor Vehicle Officers. In that O.A. it was contended that after the pronouncement of the judgement dated 24.4.92, the applicants were entitled for promotion to the posts of Motor Licencing Officer and Chief Motor Vehicle Inspectors in the existing cadre of the department, but the respondents had initiated two files for promotion of the applicants in compliance of the judgment dated 24.4.92, one for the post of Pollution Control Officer (PCO) and the other for the post of Motor Vehicle Officer (MVO). It was contended that both these promotional posts proposed by the respondents were against the judgment dated 24.4.1992 and were not in

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the existing cadre as these posts never existed in the department. It was stated that the promotional posts in the existing cadre were MLO and CMVI and the applicants were entitled to be promoted to those posts. In this O.A. too, there was no clear and categorical averment on the part of the Association that the MVIs and PLTIs belong to a single unified cadre. An interim direction was sought staying the recommendation of the DPC till the disposal of the O.A.

9. O.A. No. 3199 of 1992 alongwith M.A. No. 3911 of 1992 came up for hearing on admission on 9.12.1992. Notices were directed to be issued, and the applicants counsel was heard on the prayer of interim relief, in which he argued that by judgment dated 24.4.1992, the respondents had been directed to create suitable promotional avenues for the applicants within a period of six months and create additional posts in the existing technical cadre in the higher scale in proportion to the post of PLTIs to facilitate promotion of the applicants. It was contended that neither of the two directions had been complied with and in the meanwhile, respondents were going to hold a DPC in near future for promoting MVIs, although MVIs and PLTIs form a common cadre and were in the same seniority list. Interim direction was issued that if any DPC is held and if any MVI, junior to the applicants is recommended for promotion then the recommendation of the DPC should not be acted upon for a period of 14 days. In their short reply, the official respondents opposed the prayer for interim relief and stated that the members of the applicant-

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Association were not entitled to promotion insofar as the DPC dated 10.12.1992 was concerned, since the said DPC was to be held for a different cadre altogether viz. MVIs, whereas the PLTIs form a separate and independent cadre and as such, could not be considered to the post pertaining to the MVIs cadre.

10. Thereafter official respondents filed their detailed reply in which, it was categorically denied that the members of the applicant Association were eligible for promotion to the post of MLOs for which the DPC dated 10.12.1992 was to be held. It was stated that the duties performed by the PLTIs were different from those performed by the MVIs and it was only temporarily that they had been asked to perform duties of MVIs in addition to their own duties as PLTIs. It was further denied that the applicants were higher in qualifications or were senior to the MVIs, because the cadre of PLTIs and MVIs were altogether different inasmuch as:

(i) The professional qualification required for both the cadres were different from each other, as would be evident from the Notifications at Annexure I and II.

(ii) The Recruitment Rules for the two cadres were also different as would be evident from Annexures III & IV.

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(iii) The pay scales of the two cadres were also different as would be clear from Annexures V & VI.

(iv) The nature of jobs for which PLTIs and MVIs were recruited were also different.

11. It was further stated that MVIs posts were created under the Motor Vehicles Act whereas PLTIs posts were created under the Pollution Control Scheme administered by the Environment Department under the Development Commissioner Delhi which had been entrusted to the Transport Department only for implementation. It was stated that while the promotion channels for MVIs already existed ~~which had been created~~ under the Motor Vehicles Act, promotion channels for PLTIs were in the process of being created, but they could not claim promotion in the MVIs cadre. It was further stated that the additional duties assigned to the PLTIs was a purely temporary arrangement and did not mean any merging of cadres with that of the MVIs. It was further stated that this was the admitted position and was the stand taken by the applicants in O.A. No. 2193 of 1993 which had been disposed of by judgment dated 24.4.1992.

12. The Motor Vehicle Inspectors also, through M.A. No. 209 of 1993, prayed for impleadment in this OA No. 3199/92 and sought a direction to restrain the official respondents from opening any channel of promotion for PLTIs in the cadre of

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MLOs/CMVIs upto the level of Joint Director (Tech.). The prayer for impleadment was allowed on 22.2.93.

13. Meanwhile, on 8.2.93 the official respondents filed M.P. No.432/93 in OA No.3199/92 praying for immediate vacation of the interim orders. Alongwith that M.P., a copy of judgment dated 22.1.93 in OA-2171/91 was annexed; which had been filed by the MVIs praying for quashing of the order dated 12/13-12-90 authorising PLTIs to exercise powers of MVIs as laid down under the Motor Vehicles Act, and for quashing of the orders whereby intertransfers of MVIs and PLTIs had been ordered between the two services concerned. In that O.A., the applicant Association of PLTIs were also made a party, and were represented by the same counsel who had argued the present case before us. The official respondents invited attention to paragraph 18 of the judgment dated 22.1.93, wherein the contention of the applicant Association, who were the respondents in that case that there had been a merger of cadres, was negatived, with the clear finding that there was nothing on record to indicate that there had been a merger of two cadres of MVIs and PLTIs and in the opinion of the Tribunal, therefore, there was no merger of cadres (emphasis supplied). It was held that a decision on this question would be considered only after the private respondents filed their reply.

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14. The applicant Association filed their reply to M.P No. 209/93, opposing the impleadment of the pvt. respondents and also opposing the prayer of the pvt. respondents contained in their M.P. No.262/93 to restrain the respondents from opening any channel of promotion for PLTIs in the MVIs cadre to higher posts of MLOs/CMVIs, upto the level of Joint Director (Tech.).

15. Meanwhile, the pvt. respondents also filed their reply to the O.A., in which it was stated that in the earlier O.A. No.2193/91, the applicant Association's case was that PLTIs had no avenues of promotion whereas MVIs had promotion avenues to the higher posts. The pvt. respondents pointed out that it was not the applicant Association's case in that O.A. that they must have avenues of promotion either to the post of MLOs/CMVis or that they should have promotions to posts to which promotions were made from amongst MVIs. Their only case was that though they and the MVIs were discharging identical duties, and though, according to them, MVIs had lesser qualification, they themselves had no avenues of promotion to higher posts, while MVIs did have such opportunities for promotion. The pvt. respondents pointed out that in the earlier O.A., the official respondents had clearly denied that PLTIs were more qualified than MVIs, and had also specifically pleaded that the PLTIs' cadre was quite distinct and

separate from that of MVIs, and there was no question of any joint seniority and the mere performance of certain routine duties of MVIs by PLTIs did not mean merger of cadres. It was in that context that the Tribunal had delivered its judgment on 24.4.92, in which nowhere had it been held that the cadre of MVIs and PLTIs was one and the same and/or PLTIs, were entitled to be merged with MVIs and were entitled to have promotion avenues to the same post to which the MVIs were entitled. On the other hand, the Tribunal's judgment made it clear that suitable promotion avenues for the applicants should be made available by creating additional posts in the existing technical cadre, i.e., the cadre relating to PLTIs, in the higher scale in proportion to the posts of PLTIs. The pvt. respondents pointed out that at no place in that judgment was there a single finding that the PLTIs should have avenues of promotion to the same post, to which the MVIs were promoted, and under the circumstances, the present O.A. was wholly misconceived. It was further pointed out that the recruitment to the posts of MVIs was governed by Notification dt. 28.3.68 (Annexure I to their reply) which was distinct and separate from that of PLTIs. Referring to the circumstances leading to the creation of PLTIs posts, it was stated that some years back an Anti-Pollution Scheme was introduced

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by the Environment Ministry, Govt. of India and in the Delhi Admn. it was placed under the Development Commissioner. Since initially the Transport Dept. was dealing with motor vehicles for administrative purposes, the Development Commissioner put the PLTIs under the Directorate of Transport, Delhi Admn., but later a new cell for checking pollution of motor vehicles in U.T. of Delhi, was created and put under the Central Pollution Control Board headed by the Development Commissioner. Thus, the PLTIs had their separate existence, separate functions, separate departmental structure and separate Recruitment Rules framed by the Lt. Governor, Delhi under Article 309 of the Constitution, notified on 2.1.87 (Annexure 2 to their reply). It was further pointed out that while the duties of MVIs included, inter alia, powers of granting certificates of fitness and road worthiness of motor vehicles and while they exercise the powers of registering and licencing officers under the Motor Vehicles Act and Rules made thereunder, the PLTIs were exclusively to check vehicles for pollution levels and hence their functions and duties were clearly apart. It was further mentioned that the seniority list of the two cadres was also separate and the names of one did not figure in the seniority

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list of the others (Ann. 3 to their reply). It was further stated that the posts in two cadres were distinct and separate at different stages, but despite ^{that} the official respondents had issued order dated 12/13-12-90 which reads as under:

" PLTI of the Transport Dept. are authorised to exercise all the powers of MVIs as laid down under the Motor Vehicles Act and Rules framed thereunder."

16. The pvt. respondents contended that this order was unauthorised and outside the purview of the M.V. Act and the Rules made thereunder, as would be clearly from the Development Commissioner's letter dated 11.7.91, wherein he had observed that the "Pollution Control Inspectors appointed under the Scheme for Control of Vehicular Air Pollution from Exhaust of Vehicles should be directed to put concerted efforts in this direction", but on the contrary it was being observed that their services were not being utilised for the assigned purpose but, instead were being posted in the various units of the Directorate of Transport for issuing learning/permanent licences, passing of vehicles, registration of vehicles etc. Reference was also made to the letter dated 29.8.91 of the Jt. Secretary, Ministry of Surface Transport in which he had questioned the propriety and authority of the impugned order dated 12/13-12-90 and had specifically pointed out that the two cadres were governed by two different sets of rules with different

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qualifications and duties. It was thus pointed out that the impugned order dated 12/13-12-90 was illegal and void ab initio, as it brought outsiders into the cadre without authority and transferred them out of their own cadre without ascertaining their willingness.

17. The applicant Association in its rejoinder, besides opposing the impleadment of the pvt. respondents also denied the contentions raised by the official as well as pvt. respondents. It was contended by the applicant association that their members were MVIs within the meaning of the M.V. Act and the Rules made thereunder and, therefore, were entitled to be promoted prior to the MVIs as they were senior to them. It was contended that their cadre belong to the same cadre as MVIs, and as the Tribunal in its judgment dt. 24.4.92 had directed the respondents to create additional posts in the existing technical cadre in the higher scale in proportion to the post of PLTIs, they were entitled to promotion to the post of MLOs and CMVIs.

18. Meanwhile the applicant Association filed CCP No. 152/93 on 29.3.93, alleging wilful and deliberate non-compliance of the Tribunal's judgment dated 24.4.1992.

19. The official respondents filed their reply to the CCP denying the allegations of contempt. They stated that the Transport Department of Delhi had two categories of Inspectors - one of ~~which~~ ^{which} was called

MVIs and the other ^{was} called PLTIs each with their separate rules & regulations, pay scales, seniority list etc. which were independent to each other. They denied that there was any common cadre, but stated that due to temporary exigencies of work and because of temporary shortage of MVIs, certain PLTIs were temporarily asked to perform some of the duties of MVIs in addition to their own duties in the public interest. They pointed out that on account of such temporary assignment of work to the PLTIs, an apprehension had arisen amongst the MVIs, that the Delhi Administration may direct merger of cadres which might adversely affect their own channels of promotions and accordingly they had filed OA No. 2171/91. Meanwhile the applicant association had filed the present OA No. 2193/91, wherein their principal grievance was the absence of promotional avenues/channels for them. The official respondents pointed out that in the said OA 2193/91, the PLTIs had basically agreed that there were different requisite qualification for PLTIs and MVIs, they were in different pay scales, in different categories and, therefore, did not form a common cadre. It was under these circumstances that the Tribunal in its judgement dated 24.4.1992 in OA No. 2193/91, had directed the Delhi Administration (official respondents) to create and provide for suitable promotional avenues for PLTIs. The respondents pointed out that in that OA, they had stated that the department was deliberating on the subject, but the procedural formalities would take some time, and the Tribunal had, therefore, consciously not fixed any rigid dead line for

compliance of its judgement. They pointed out that broadly speaking two directions had been given in the said judgement dated 24.4.92, (i) framing a set of appropriate rules providing suitable promotional avenues and (ii) creation of additional posts for promotion of PLTIs. They further pointed out that meanwhile on 22.1.1993 the Tribunal in OA No. 2171/91 had delivered a judgement wherein it had been categorically held that there was no common cadre of MVIs and PLTIs and there was therefore no justification for the apprehension of the MVIs (applicants in that OA) that their promotional prospects would be adversely affected by the impugned orders, as separate seniority list of MVIs and PLTIs had been maintained by the Delhi Administration. Accordingly by that judgement, the respondents (Delhi Administration) had been directed to ensure the seniority and promotional prospects of persons belonging to each category remained unaffected by the assignment of such duties, and it was in those circumstances that the Delhi Administration (respondents) had moved for creation of 10 posts of MLO(PLs) to be filled by promotion out of PLTIs only and in compliance with the Tribunal's direction the posts were ultimately sanctioned by order dated 11.7.1993 (Annexure R/7) It was further stated that the framing of the relevant rules was also in progress, in which sanction of UPSC was also required. It was thus pointed out that no cause for contempt arose.

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20. This CP came up for hearing on 7.9.1993, on which day after hearing counsel for both parties, directions were issued to the respondents to take the following action within a month from that date:-

(i) to prepare draft rules for promotion to the 10 temporary posts of PLOs created in the scale of Rs. 2000-3500/- from the feeder category of PLTIs cadre and forward the same immediately, to the UPSC for their concurrence;

(ii) ad-hoc promotions were to be accorded on the basis of the Draft Rules pending concurrence by the U.P.S.C. to the Draft Rules; and

(iii) the respondents were to file an affidavit regarding compliance of these directions.

21. When this CP 152/93 came up next on 18.10.1993 the Tribunal noticed the affidavit of compliance of the directions/orders dated 7.9.93 filed by the official respondents including the enclosed promotion order dated 15.10.1993 promoting 9 PLTIs to basis with immediate effect for a period of 6 months the posts of PCOs on ad hoc or till the regular incumbents were posted, and the Draft Recruitment Rules for promotion to the post of PCOs. The Tribunal in its order dated 18.10.1993, observed that prima-facie there had been compliance with its judgement dated 24.4.92, but deferred a final decision till a later date.

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22. Thereupon the applicants filed RA No. 388/93 seeking review of the orders dated 7.9.93, on the ground that it was inconsistent with the directions contained in judgement dated 24.4.92 in OA No. 2193/91.

23. Meanwhile, MA No. 1670 /94 was also filed in CP 152/93 seeking impleadment of Chief Secretary, Delhi Administration as contemnor No.2 instead of Shri S.K.Saxena, Deputy Secretary, Delhi Administration.

24. Meanwhile on 14.6.93 the applicant Association also filed OA No. 1329/93 alleging that despite deferment of the DPC dated 10.12.92 indefinitely due to interim stay order dated 9.12.1992 in OA No. 3199/92 the official respondents had convened a DPC again on 12.4.1993 for promotion of MVIs to the post of MLO/CMV, and instead of compliance of the Tribunal's direction dated 24.4.92, 9.12.92 and 12.5.92 the official respondents had recommended promotion of MVIs to the post of MLOs/CMVs who were junior to the applicants. Accordingly, the applicant Association sought quashing of respondents' order dated 19.5.1993 (Annexure D to that OA) promoting 2 MVIs to the post of MLOs (Scale Rs. 2000-3200/-) subject to the outcome of the CAT's decision in OA No. 3199/92, MP No. 1785/93 was also filed praying for joinder of parties.

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25. The official respondents as well as the private respondents filed their reply to this OA challenging the contentions raised therein and reiterating the grounds taken in their replies to the earlier OAs/CCP that the PLTs and MVIs belonged to two separate and distinct cadres and with different qualifications, different seniority lists, different duties & responsibilities etc. The ground of resjudicata was also taken in the light of OA No.3199/92 already filed by the applicant-Association.

26. We have heard Shri Mukhoti along with Shri Kunwar C.Khan counsel for the applicants and Shri Amresh Mathur counsel for the official respondents. We have also heard Shri G.D.Gupta, counsel for the private respondents, and have perused the materials on record, including the written submissions filed by the applicant association as well as the private respondents.

27. In their written submissions the applicant association itself admit that the Transport Department of NCT Delhi has two categories of Inspectorate Staff one of whom is called MVIs and the other PLTs. Posts of PLTs were for the first time created in 1987, and as there were no promotional avenues were available to MVIs, 46 PLTs being aggrieved had filed OA No.2193/91 for providing suitable promotional avenues. Although this channel of promotion was sought in what the

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applicant Association termed the "existing technical cadre/post in the department," there was no clear and categorical averment made by them in OA No.2193/91 that the posts of MVIs and PLTIs, are components of a single cadre. The respondents are, therefore, right when they say that the main thrust of the applicant association was for adequate promotional avenues, and it was not their case that they must have promotional avenues either to posts of MDOs/CMVIs or that they should be promoted to posts to which MVIs were promoted. Furthermore, the official respondents in their reply to O.A. No.2193/91 had specifically pleaded that the cadre of PTIs was quite separate and distinct from the cadre of MVIs and the PLTIs could not, therefore, claim any seniority amongst the MVIs. It was also pleaded that merely because the PLTIs had been called upon to perform certain duties of MVIs in addition to their own duties, did not mean merger of the cadres. In para 4.3 of their reply, the official respondents had categorically stated that the cadre of PLTIs was quite distinct from the cadre of MVIs, to which the only reply of the applicant association in their rejoinder was that the PLTIs were recruited by Transport Department and fulfilled all the eligibility criteria prescribed in the MV Act 1988 and discharged the same duties as MVIs and hence, there was no question of separate cadre, and as the PLTIs were senior to MVIs and had a right to claim seniority over MVIs. There was no clear and categorical denial on the part of the

applicant association to the reply of the official respondents that the cadre of MVIs was separate and distinct from that of PLTs, and their contention that because the PLTs were recruited by the Transport Department and fulfilled the eligibility criteria prescribed in M.V. Act and discharged the same duties as MVIs, even if correct does not imply that the cadres of PLTs/MVIs are one and the same.

28. The respondents are also entirely correct when they say that the Tribunal in its judgment dated 24.4.92 in OA No. 2193/91 no where held that the cadres of MVIs and PLTs were one and the same, and there were no separate cadres and/or that the PLTs were entitled to be merged with the MVIs and were entitled to have promotional avenues to the same post to which MVIs were entitled. The judgment only directed that additional posts be created in the existing technical cadre (i.e. in the cadre relating to PLTs) in the higher scale in proportion to the number of posts of PLTs. The private respondents are, therefore, correct when they say that "existing technical cadre" has to be interpreted to mean the cadre to which the PLTs belong, and if they belong to a cadre which is separate from that of MVIs, the Tribunal would not have had any intention, by using the words "existing technical cadre", to mean the cadre to which MVIs belong.

29. In this connection, the private respondents have also invited our attention in their written submission to paragraph 4.1 to 4.4 of the reply of the official respondents in OA No. 3199/92,

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wherein they had pointed out that the qualifications, recruitment rules, pay scales, seniority list and nature of jobs being performed by the PLTIs were different from those of MVIs. They have also pointed out that the post of MVIs were created under the provisions of MV Act, whereas the posts of PLTIs were created under the Plan Scheme which was given to the Transport Department only for implementation and merely because the PLTIs were called upon to discharge some of the normal duties of MVIs in addition to their own duties in administrative exigencies as a stop gap arrangement in the public interest did not mean that there had been a merger of cadres.

30. What in our opinion clinches the issue is the Tribunal's judgement dated 22.1.1993 in OA No. 2171/91 filed by the MVIs in which the PLTIs, represented by the applicant Association in the present OA, were impleaded as respondents. In that OA's judgement which was delivered after hearing all the parties, there is a categorical finding that there was nothing on record to indicate that there had been any merger of the cadres of MVIs and PLTIs. That judgement had gone on to observe that the only question for consideration was whether, in addition to the MVIs, the PLTIs could also be assigned the duties which were normally assigned to the MVIs. It noted that the order impugned in that OA assigning some work normally performed by the MVIs, to the PLTIs in addition to their own duties was done in the public interest as sufficient numbers of MVIs were not available to cope with the number of cars which were

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increasing year by year, and as there was no merger of cadres, the mere fact that Delhi Administration had given the duties of MVIs to the PLTIs in the public interest, was no justification for the apprehension of the MVIs in that OA that their promotional avenues would be adversely affected by the impugned order as separate seniority list of MVIs and PLTIs were being maintained by the Delhi Administration.

31. The private respondents have stated that a Review application filed against that judgment dated 22.1.93 in OA No.2171/91 was dismissed and the applicant Association at any rate has presented no material to lead us to conclude that the said judgment has not become final and conclusive. We as a coordinate Bench of the Tribunal are bound absolutely by that judgment in which a clear and categorical finding has been recorded that there was nothing on record to indicate that there had been a merger of cadres of MVIs and PLTIs.

32. Applicant's counsel cited a number of rulings including Surinder Singh & Ors. Vs. The State of Uttar Pradesh (1954 SCR 330); Govt. of Andhra Pradesh Vs. MSN Murthy & Ors. (1988 (Suppl) SCC 540); Sundarajas Kanya Lal Bhatija & Ors. Vs. Collector Thane Maharashtra & Ors.-1989(3) SCC 396; Sub-Committee of Judicial accountability Vs. Union of India & Ors.-1992(4) SCC 97; R.N.Gosain Vs. Yashpal Dheer-1992(4) SCC 683; Union of India & Ors. Vs. S.L. Dutta & another-1991(1) SCC 505; and Vinay Kumar

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Verma Vs. State of Bihar & Ors - 1990(2) SSC 647, but in the light of the preceeding analysis, none of these rulings help the case of the applicant Association.

33. Before parting with this matter, we would also like to record that the applicant-Association has not furnished any satisfactory reasons to explain as to why they are seeking promotion to the post of MVDs which is in the pay scale of Rs. 2000-3200 when the official respondents have created the promotion post of PIOs for them which is in the superior pay scale of Rs. 2000-3500.

34. In the facts and circumstances of this case, therefore, we hold as follows:

i) In so far as CCP No. 152/93 is concerned, in the absence of any clear and categorical assertion by the applicant Association themselves in OA No. 2193/91 that the cadres of MVIs and PLTIs are one and the same and in the absence of any categorical denial in rejoinder to the Respondents' reply in that OA, that the cadre of MVIs was distinct and separate from that of PLTIs, the directions contained in judgment dated 24.4.92 in that OA to create promotional channels for PLTIs and additional posts in "the existing technical cadre in the higher scale in proportion to posts of PLTIs cannot be construed to mean that these promotional posts of PLTIs must be created in MVIs cadre, when there

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was no finding in that judgment that the cadres of PLTIs and MVIs are the same, and particularly in the background of judgment dated 22.1.93 in OA No.2171/91 between the same parties, which has become final where there is a clear and categorical finding that there had been no merger of cadres of MVIs and PLTIs and these two cadres are separate and distinct. For this reason, the Tribunal's order dated 18.10.93 which took note of the action taken by the respondents for creating promotional opportunities for PLTIs and held that prima facie there was compliance of judgment dated 24.4.92, is confirmed and CCP No.152/93 is rejected. R.A.No.388/93 seeking review of the order dated 7.9.93 in CCP No.152/93 is likewise rejected, as none of the grounds taken, bring it within the scope and ambit of Order 47 Rule 1 CPC read with Section 22(3)(f) AT Act under which alone any Order/judgment / decision can be reviewed. As CCP No.152/93 stands rejected, MA 1670/94 seeking impleadment of Chief Secretary, Delhi Administration as Contemnor No.2 does not require any separate order, and MA 169/95 in CCP No.152/93 also stands rejected.

ii) In the light of what has been stated above, OA No.3199/92 seeking a direction to stay the DFC which was to be convened on 10.12.92

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also stands dismissed. MA No. 3911/92 filed in that OA is rejected. No separate orders are required in respect of MA 3911/92, filed by MV Inspectors in OA 1209/92 or MP 432/93 in the said OA filed by the official respondents. Similarly CCP No. 224/93 alleging disobedience of the Tribunal's order dated 9.12.92 in OA No. 3199/92 whereby the respondents had been directed that if any DFC is held and if any MVIs junior to the PLIs, was recommended for promotion, then the recommendation of the DFC should not be acted upon, is rejected, because the PLIs and MVIs do not belong to the same cadre.

iii) For the reasons as recorded above, OA No. 1329/93 also stands dismissed.

iv) Interim orders, if any, are hereby vacated.

v) No costs.

(MRS. LAKSHMI SWAMINATHAN) (S.R. ADIGE /)
MEMBER (J) 17/7. MEMBER (A)

Attested
Suresh Kumar

24/7/96
CO c/11

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Section Officer
Administrative Tribunal