CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD

OA/021/00398/2017 with MA 854/2017 & 988/2018

Reserved on : 31.03.2021
Pronounced on: 27.04.2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

OA No. 398/2017

B.Chandra Sekhar S/o B.Prakasa Rao,
Aged 49 years, Occ : Section Supervisor,
O/o The Regional Provident Fund Commissioner,
Regional Office, Employees' Provident Fund
Organisation, (Ministry of Labour and Employment),
Government of India, Nyalkal Road,
Nizamabad-503 001, Telangana.
. ...Applicant

(By Advocate : Mr.KRKV Prasad)

Vs.

1.Union of India Rep by
The Secretary, Ministry of Labour & Employment,
Shram Shakti Bhavan, New Delhi.

2.Employees Provident Fund Organisation,
Rep by the Central Provident Fund Commissioner,
Bhavishya Nidhi Bhavan, 14-Bhikaji Cama Place,
New Delhi – 110 066.

3. The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organisation,
Regional Office,
Nyalkal Raod, Nizamabad-503 001. ....Respondents

(By Advocate : Mr. G.Jayaprakash Babu, SC for EPFO)

OA 988/2018

B.Chandra Sekhar S/o B.Prakasa Rao
Aged 50 years, Occ : Section Supervisor,
(Under the orders of reversion),

O/o The Regional Provident Fund Commissioner,
Regional Office, Employees' Provident Fund
Organisation, (Ministry of Labour and Employment),
Government of India, Nyalkal Road, Nizamabad-503 001, Telangana.
...Applicant

(By Advocate : Mr. KRKV Prasad)

Vs.

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The Secretary, Ministry of Labour & Employment,
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2.Employees Provident Fund Organisation,
Rep by the Central Provident Fund Commissioner,
Bhavishya Nidhi Bhavan, 14-Bhikaji Cama Place,
New Delhi – 110 066.

3. The Additional Central Provident Fund Commissioner,
Zonal Office (Telangana), NAC Complex, Cyberabad,
Hyderabad-500 084.

4. The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organisation,
Regional Office, Nyalkal Road, Nizamabad-
503 001. ....Respondents

(By Advocate : Mr. G. Jayaprakash Babu, SC for EPF)

ORDER (COMMON)
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA 398/217 is filed questioning the impugned show cause notice dt. 03.05.2017 issued by the respondents proposing to revert the applicant who is working in the cadre of Section Supervisor, to his original cadre i.e. Sr. SSA. Pending the said OA, the respondents issued Order dt. 24.09.2018 reverting the applicant to the grade of Sr. SSA in which he worked prior to his promotion as Section Supervisor, w.e.f. 27.12.2010. Challenging the said reversion order dt.24.09.2018, the very same applicant once again filed OA No. 988/2018. Therefore, in both the OAs, a common order is passed.

3. Brief facts of the case are that the applicant while working as Sr. Social Security Assistant (for short "***SSSA***") was promoted as Section Supervisor (for short "***SS***") on adhoc basis on 26.03.2009 and on a regular basis on 24.1.2011 w.e.f. 27.12.2010, pursuant to his passing in the relevant departmental exam in December 2007 as per result declared on 1.5.2008 in terms of the notification dated 15.2.2007 and proceedings dated 29.3.2007. Later, Andhra Pradesh Region was bifurcated into several regions and Hyderabad is one such region. On 3.5.2007 a show cause notice was issued informing that the applicant was promoted in excess of the vacancies and hence, proposed to revert him to the original cadre as per Head Office (HO) letter dated 13.4.2017 (A-7) wherein, a decision to implement the order of the Hon'ble Ahmedabad Bench of this Tribunal in OA No. 263/2010 dated

9.5.2012 was taken on the issue, without reverting those who have been already promoted as Section Supervisors and keeping in view the HO letter dated 26.12.2008 which contains the posts created in Section Supervisor cadre. The Hon'ble Ahmedabad Bench was approached by some employees of the respondents organization who were not promoted as SS in OA 263/2010 for quashing the select list 9.1.2009 which was allowed on 9.5.2012 while making the observation that those promoted need not be disturbed. 2nd Respondent office vide letter dated 20.9.2012 directed implementation of the Tribunal order dated 9.5.2012 in OA 263/2010. However, the Tribunal order when challenged by others, who were not parties to the OA 263/2010, before the Hon'ble High Court of Gujarat in Special Civil Application No. 13224/2014, the order of the Tribunal was set aside while remanding the matter back to the Tribunal to hear the petitioners. Accordingly, Hon'ble Ahmedabad Bench heard the matter and once again, allowed the said OA 263/2012 on 13.3.2015, by directing to operate the select list dated 9.1.2009 to the extent of 5 vacancies reported and fill up exam quota, if any, against the 49 additional vacancies sanctioned before the select list 9.1.2009 was issued. The order of the Tribunal dated 13.3.2015, when challenged by the effected parties of Gujarat Region before the Hon'ble High Court of Gujarat in Special Leave Application 5231/2015, it was upheld by the Hon'ble High Court on 8.10.2015. Respondents also challenged the order of the Tribunal dated 13.3.2015 by filing Special Civil Application No.2534 of 2016, which was dismissed by the Hon'ble High Court on 11.7.2016. The order in Special Civil Application No.5231/2015 of the Hon'ble High court was carried over to the Hon'ble Apex Court and the SLP was dismissed on 6.3.2017.

Consequently, the issue attained finality and the order was implemented in Gujarat Region. Aggrieved that the said judgment has been wrongly applied to the applicant who belongs to a different Region, the OA is filed.

4. The contentions of the applicant are that in his case, the exam for 33 1/3% quota was held in Dec 2007 for one SC vacancy in the erstwhile Andhra Pradesh Region and on passing the exam, he was regularly promoted as Section Supervisor along with other similarly situated employees against the 58 vacancies sanctioned as per HO letter dated 26.12.2008 vide order dated 31.08.2012. The promotion of the applicant was against a single SC vacancy in 2012 as per roster point. 17 SC employees including the applicant from A.P region were qualified. From Hyderabad region no employee raised an objection about the subject exam. HO of the respondents organisation neither circulated any circular to implement the order dated 9.5.2012 of the Ahmedabad Bench nor did the Hyderabad Region employees wanted the implementation of the orders dated 9.5.2012/13.3.2015. The intention of the Head office was clear that the Hon'ble Ahmedabad Bench order is not applicable to previous promotions. Issue of show cause notice is incorrect in the context of the HO letter dated 13.4.2017, wherein it was observed that promotions granted will not be disturbed. Therefore, the Orders dated 9.5.2012/13.3.2015 have been wrongly applied to the applicant, since they apply to the Gujarat Region and not to the promotion of the applicant ordered in 2012. Without indicating the basis for applying the Ahmedabad bench judgment or explaining as to how the filling up of SC vacancy in 2012 was irregular, show cause notice issued is only a ritual to revert the

applicant and that too, without any direction from any court. The Constitutional protection given to SC employees has been disregarded and Articles 14, 16 (A), 16 (B) and 21 of the Constitution have been violated. It is settled law that an order applies only to the facts of a particular case. The exam was conducted in Dec 2007, additional vacancies were declared in Dec-2008 and the applicant was promoted in Dec 2012 ie vacancies were available before the promotion. Although applicant worked for 6 years 4 months as on the date of filing of the OA in the post, asking him to reply to the show cause notice within 3 days, indicates that the respondents have made up their mind to revert. Applicant is eligible for promotion to the next higher grade of Accounts Officer/Enforcement Officer. Therefore, any reversion will not only cause monetary loss, but status too. The Ahmedabad Bench judgment has to be applied not only to the Section Supervisors who were promoted from 1992 including those retired on promotion as SS, but also to all those who were promoted against exam quota as UDC from LDC cadre and without doing so, applying to the applicant is discrimination, arbitrary exercise of power and illegal.

On 26.09.2018, this Tribunal directed the Respondents not to revert the applicant till the disposal of the OA.

The respondents issued the Order dt.24.09.2018 reverting the applicant to the grade of Sr.SSA, as proposed in the show cause notice dt. 03.05.2017, which is subject matter of OA No.398/2017. Thus, challenging the reversion order dt. 24.09.2018, the applicant approached this Tribunal by way of OA No. 988/2018 on 09.10.2018, with more or less similar pleas

as raised in the earlier OA i.e. OA 398/2017. On 10.10.2018, this Tribunal passed an interim order in OA No. 988/2018, as under:

> *"Heard Shri K.R.K.V. Prasad learned counsel appearing for the applicants and Shri G. Jaya Prakash Babu, learned Standing Counsel who took notice on behalf of the respondents.*
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> *2. This Tribunal heard the arguments on either side and reserved the OAs filed by the applicants earlier, on 26.09.2018 for passing orders. While reserving the matters, a direction was issued to the respondents not to revert the applicants till the disposal of the OA.*
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> *3. At the time of submitting arguments in the OAs, the learned counsel appearing for the applicants pointed out that the reversion orders were made ready and at any moment they might be served on the applicants. In any event, reversion orders were served on the applicants on 27.09.2018.*
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> *4. The contention of the learned counsel appearing for the applicants is that even though the respondents were made aware of the order passed by the Tribunal not to revert the applicants, the reversion orders were served on the applicants.*
>
> *5. On the other hand, it is submitted by the learned Standing Counsel for the respondents that even before passing of the interim order, the reversion orders were served on the applicants and the respondents were not aware of passing of the interim order by the Tribunal.*
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> *6. Learned counsel appearing for the applicants filed copies of the documents showing that one of the applicants Shri A.H. Poorna Chander brought to the notice of the respondents at 10.10 am on 27.09.2018 about passing of the interim order. He has also filed a document showing that the reversion order was served on Shri A.H. Poorna Chander on the same day at 5.22 pm.*
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> *7. We are not convinced with the submission made on behalf of the respondents that the respondents were not aware of passing of the interim order by the Tribunal not to revert the applicants pending decision in the OAs. The interim order specifically directs the respondents not to revert the applicants. Therefore, even though the reversion orders were made ready, they should not have been served on the applicants after passing of the order by the Tribunal. Moreover, if the reversion orders dated 24.09.2018 are not suspended, they will create new state of affairs which subject the applicants to multiplicity of litigation. Therefore, the reversion orders dated 24.9.2018 are suspended and the respondents are directed to take applicants on duty to their respective posts which they were holding prior to reversion. However, this order is subject to the result of the final decision in OA/21/394/2017 & batch."*

5. Respondents confirm that the applicant was promoted on adhoc basis as SS on 26.03.2009 and was regularized w.e.f. 27.12.2010, pursuant to his passing the exam held in Dec 2007 and on publishing the select list on 9.1.2009. Show cause notice was issued on 3.5.2017 as per the directions of the HO vide letter 13.4.2017 as to why he should not be reverted since he was promoted under examination quota in excess of the vacancies notified for departmental promotion examination and in response, the applicant informed that he is approaching the Tribunal for justice. The exam was conducted as per the departmental promotion examination scheme framed in 2002 in pursuance of the RR 1992 (Recruitment Rules) of Section Supervisors. In the meanwhile, employees of Gujarat Region, who could not appear in the exam held for selection of SS, approached Hon'ble Ahmedabad Tribunal in OA 263/2010 to quash the select list of 9.1.2009, which was allowed on 9.5.2012 with a proviso that the promotions already granted need not be disturbed. Orders were issued by the HO to implement the judgment on 20.9.2012, Subsequently, when those selected approached the Tribunal in OA 279/2012, an interim order was issued staying the order dtd. 9.5.2012. As a result the HO order dated 20.9.2012 was kept on hold. Thereafter, with the intervention of the Hon'ble Gujarat High Court, the Hon'ble Ahmedabad Bench heard both the OAs and allowed them on 13.3.2015. The order dated 13.3.2015, when challenged by the aggrieved parties in the Hon'ble Gujarat High Court in Special Civil Appeal No.5231/2015 and 6188/2015, it was upheld vide order dated 8.10.2015. As the exam was held at All India level in all the 13 regions of the country and the select list was accordingly drawn up, the order dated 13.3.2015 was contested by respondents in Special Civil

Application No.2534 of 2016 and the Hon'ble High Court dismissed the Special Leave Application on 11.7.2016. The order of the Hon'ble High Court of Gujarat was carried over to the Hon'ble Supreme Court by the respondents and some employees in SLP (Civil) CC Nos.4928-4930/2017 and 4579/2017, which were dismissed on 6.3.2017. Hence, after exhausting the legal remedies available, it was decided to implement the Ahmedabad Bench judgment dated 13.3.2015 and directions were issued vide order dt. 13.04.2017 to issue show cause notice, to all those who were promoted under examination quota in regard to the examination in question and also in respect of previous examinations held for promotion as SS all over India from 1992 in excess of the vacancies as shown in Annexure-I and posts created as shown in HO letter dated 26.12.2008. Simultaneously it was directed to promote those eligible under seniority quota due to cadre restructuring after conducting the DPC. Under cadre restructuring, 18 additional posts of SS, 739 posts of AO/EO and in other cadres were created. Due to promotion of the SS, there will be large number of vacancies available in SS cadre under examination quota apart from the seniority quota. The issue adjudicated by the Ahmedabad Bench pertains to a policy matter relating to an exam conducted at the All India level and hence it applies to all the Regions. Therefore, common instructions to all the regions were issued by the HO on 13.4.2017 to maintain uniformity in implementing the order dated 9.5.2012 of the Hon'ble Ahmedabad Tribunal. Similarly placed official have to be treated similarly. Though the employees may not have any grievance, orders of the court have to be respected. 17 SC candidates including the applicant were declared selected against 1 SC vacancy against the exam held in 2007 for the post of SS.

Therefore, considering only the case of the applicant would be violation of the Principles of Natural Justice. The 58 newly sanctioned posts are meant for UR/ST category and therefore, the SC candidates cannot be selected against the said vacancies. Action has been taken as per the directions of the HO and as per rules. The applicant has been selected in excess of the available vacancies and therefore, is liable to be reverted. The judgment applies to the case of SS promoted under exam quota and not to other cadres. The applicant secured the rank against the SC vacancy but it has to be based on merit.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about issue of show cause notice on 3.5.2017 to the applicant to revert him from the post of Section Supervisor (SS) to his original cadre of SSSA (Sr. Social Security Assistant). The applicant appeared in the exam held in Dec 2007 for promotion to a single SC vacancy in the cadre of SS and on being successful, was promoted w.e.f. 27.12.2010. As per RR 1992 (Recruitment Rules) of Section Supervisors 66 2/3 % of the posts have to be filled on seniority basis and the rest 33 1/3 % by departmental exam in which employees working as SSA with 3 years experience are eligible to appear. Respondents evolved a departmental promotion examination scheme in 2002 which is a qualifying exam and candidates qualified are selected on the basis of merit. The applicant qualified under the 33 1/3% quota fixed for departmental exam. The exam was conducted at all India level for all the 13 regions of the respondents organisation and the result of the exam was hotly contested in the judicial fora, which when perused gives as insight into the dispute in its entirety.

II. To begin with, the Hon'ble Ahmedabad Bench of this Tribunal was approached by some employees of the respondents organization who were not promoted as SS in OA 263/2010 for quashing the select list 9.1.2009 which was allowed on 9.5.2012 while making the observation that those promoted need not be disturbed. R-2 decided to implement the Tribunal order dated 9.5.2012 vide letter dated 20.9.2012, However, the Tribunal order when challenged by others, who were not parties to the OA 263/2010, before the Hon'ble High Court of Gujarat through Special Civil Application No.13224/2014, the order was set aside and the matter was remanded back to the Tribunal to hear them and in compliance, Hon'ble Ahmedabad Bench of this Tribunal heard and allowed the OA No. 263 of 2010 once again on 13.3.2015 by directing to operate the select list dated 9.1.2009 to the extent of 5 vacancies reported and fill up exam quota, if any, against the 49 additional vacancies sanctioned before the select list 9.1.2009 was issued, as under:

> *"26. In the result, issue Nos. (i), (ii), (iii) and (v) are decided in favour of the applicants. Issue No. (iv) is decided in favour of the respondents.*
>
> *27. Thus, the OA is partly allowed as above. The respondents are directed to operate the impugned select list dated 09.01.2009 upto the extent of five reported vacancies and for filling up the Examination quota, if any in the 49 vacancies that have been additionally sanctioned in the Head Office letter dated 26.12.2008 annexed to the additional reply filed by the counsel for the respondents on 19.01.2012 as these vacancies are available before the finalization of Select list of 09.01.2009."*

III. The order of the Tribunal dated 13.3.2015 when challenged before the Hon'ble High Court of Gujarat in Special Civil Application No.5231 of 2015, it was upheld by the Hon'ble High Court on 8.10.2015, as under:

"At this stage, it is required to be noted that as observed hereinabove, as and when departmental examinations are conducted, there shall be different departmental examinations and examiners also shall be different and therefore, unequal shall be treated equally. As observed hereinabove, so far as 33 1/3% quota is concerned, merit is the only criteria.

Under the circumstances also, merit list prepared on the basis of earlier departmental examinations cannot be permitted to be operated in perpetuity and/ or till it is exhausted and the same shall be restricted to only those notified declared vacancies at the time of taking departmental examinations and the same cannot be permitted to be operated for subsequent vacant notified/ declared vacancies in the particular region. Under the circumstances, the learned tribunal has not committed any error in allowing the OA and in granting the reliefs restricting the merit list/ select list dated 09.01.2009 for the declared/ notified vacancies. At this stage, it is required to be noted that even the learned Tribunal has directed to operate the said merit list even with respect to the posts which were declared subsequently to conducting of the departmental examination, but prior to preparation of the merit list/ select dated 09.01.2009, however, the same is not under challenge and therefore, we are not observing anything with respect to the same."

The Hon'ble High Court has made it crystal clear that the merit list prepared for an examination shall be restricted to only those vacancies declared at the time of taking the departmental examination and the same cannot be operated for subsequent vacancies. In the instant case, the vacancy was only one, whereas 17 persons were selected, which is thus not in consonance with the judgment of the Hon'ble High Court. Further, another pertinent observation made by the Hon'ble High Court is that the Hon'ble Ahmedabad Tribunal has directed to operate merit list by including those vacancies which were declared subsequent to the conduct of the examination, but prior to preparation of select list dated 9.1.2009, about which, since there was no challenge, no observation was made. The implication is that the inclusion of vacancies subsequent to the conduct of the exam is liable for challenge.

Respondents also challenged the order of the Tribunal dated 13.3.2015 by filing Special Civil Application No.2534 of 2016, which was dismissed by the Hon'ble High Court on 11.7.2016, with the following observations:

> *"In view of the above facts and circumstances, now when the very impugned judgment and award impugned in the present petition has been confirmed by the Division Bench of this Court vide order dated 08.10.2015 in Special Civil Application No. 5231/2015 and Special Civil Application No.6188/2015, the present Civil Application will also have the same fate. For the reasons stated in the judgment and order passed by the Division Bench of this Court dated 08.10.2015 in Special Civil Application No. 5231/2015 and Special Civil Application No.6188/2015, we dismiss the present petition also. Notice discharged."*

The order in Special Civil Application No.5231 of 2015 of the Hon'ble High Court was challenged before the Hon'ble Apex Court, and the same was dismissed on 6.3.2017. Hence, the matter attained finality. The legal principle confirmed is that the promotions have to be restricted to the number of vacancies notified at the time of the conduct of the exam.

IV. In fact, appointments by promotion are to be confined to the number of vacancies advertised and not beyond, since the promotion of the candidates in excess of the notified vacancies is a dispossession of the Constitutional right guaranteed under Article 14 read with Article 16(1) of the Constitution of India, of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over and above the notified vacancies is a colourable exercise of power and it would tantamount to filling up the future vacancies, which is not permitted under law. At this rate, it is likely that the respondents can keep on promoting the

candidates who appeared and qualified in an exam as infinite stock against posts created after the exam, without holding further exams. The respondents have indulged in such an exercise, which is grossly illegal and arbitrary. The Constitutional discipline requires that the Tribunal should not allow such improper exercise of power otherwise it will give scope for vested interests in allowing candidates of an exam being promoted without giving an opportunity to others who do acquire eligibility subsequently. The selection process comes to an end with the post notified is filled up. Once a post is filled up and if there are candidates who are qualified, they can be considered afresh in the next notification as per its terms and conditions. Any appointment made beyond the number of vacancies advertised being violative of Articles 14 and 16(1) of the Constitution of India, is thus, a nullity, in-executable and unenforceable in law. Our above remarks are based on the observation of the Hon'ble Supreme Court of India in ***Rakhi Ray & Ors vs High Court Of Delhi & Ors*** on 1 February, 2010 in Civil Appeal Nos. 1133-1135 of 2010:

> *9. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. (Vide Union of India & Ors. v. Ishwar Singh Khatri & Ors. (1992) Supp 3 SCC 84; Gujarat State Deputy Executive Engineers' Association v. State of Gujarat & Ors. (1994) Supp 2 SCC 591; State of Bihar & Ors. v. The Secretariat Assistant S.E. Union 1986 & Ors AIR 1994 SC 736; Prem Singh & Ors. v. Haryana State Electricity Board & Ors. (1996) 4 SCC*

319; and Ashok Kumar & Ors. v. Chairman, Banking Service Recruitment Board & Ors. AIR 1996 SC 976).

10. In Surinder Singh & Ors. v. State of Punjab & Ors. AIR 1998 SC 18, this Court held as under:

"A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointment, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.....Exercise of such power has to be tested on the touch-stone of reasonableness....It is not a matter of course that the authority can fill up more posts than advertised."

(Emphasis added)

11. Similar view has been re-iterated in Madan Lal v. State of J & K & Ors. AIR 1995 SC 1088; Kamlesh Kumar Sharma v. Yogesh Kumar Gupta & Ors. AIR 1998 SC 1021; Sri Kant Tripathi v. State of U.P. & Ors. (2001) 10 SCC 237; State of J & K v. Sanjeev Kumar & Ors. (2005) 4 SCC 148; State of U.P. v. Raj Kumar Sharma & Ors. (2006) 3 SCC 330; and Ram Avtar Patwari & Ors. v. State of Haryana & Ors. AIR 2007 SC 3242).

12. In State of Punjab v. Raghbir Chand Sharma & Ors. AIR 2001 SC 2900, this Court examined the case where only one post was advertised and the candidate whose name appeared at Serial No. 1 in the select list joined the post, but subsequently resigned. The Court rejected the contention that post can be filled up offering the appointment to the next candidate in the select list observing as under:-

"With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select list prepared, the panel ceased to exist and has outlived its utility and at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently."

13. In Mukul Saikia & Ors. v. State of Assam & Ors. AIR 2009 SC 747, this Court dealt with a similar issue and held that "if the requisition advertisement was only for 27 posts, the State cannot

appoint more than the number of posts advertised". The Select List "got exhausted when all the 27 posts were filled". Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The "currency of Select List had expired as soon as the number of posts advertised are filled up, therefore, the appointments beyond the number of posts advertised would amount to filling up future vacancies" and said course is impermissible in law.

14. In view of above, the law can be summarised to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up, process of selection comes to an end. Waiting list etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service anymore."

By applying the above legal principles to the case on hand, there was one SC vacancy for which exam was conducted in 2007 and 17 SC candidates were selected, which was not refuted by way of a rejoinder. The vacancies to which the 17 candidates were selected including the applicant was based on the subsequent vacancies declared by the respondents after the exam was held vide vacancies declared as per letter dated 26.12.2008. Thus, any selection beyond the vacancies declared at the time of the conduct of the exam would be invalid.

V. The different contentions of the applicant namely claiming that the Ahmedabad verdict will apply only to Gujarat Region will not hold good since the exam was conducted pan India and the said verdict has attained finality after the Hon'ble Apex Court has dismissed the SLPs filed by the respondents and some other employees in regard to the issue disputed. Besides, applicant claims that from Hyderabad Region, no employee raised an objection about the subject exam nor did the Hyderabad Region employees wanted the implementation of the orders 9.5.2012/

13.3.2015 and hence, should not be applied. Judgments are made applicable not at the will and wish of the employees, but based on the law declared in respect of an aspect disputed. Further, it was contended that the respondents organisation did not circulate any circular to implement the order dated 9.5.2012 of the Hon'ble Ahmedabad Bench. The decisions of the respondents vide orders dated 9.5.2012/ 13.3.2015 are a culmination of the legal battles fought in regard to the dispute at different levels in the judicial fora and seeking further circulation as contended, has no substance to delve upon. One another contention is that the Head Office was clear that the Hon'ble Ahmedabad Bench order is not applicable to previous promotions as made out in its letter dated 13.4.2017. More than the administrative instruction, it is the settled law, which prevails i.e. confining selection to the vacancies declared as brought out above. In addition, the basis for the issue of show cause notice was based on the adjudication of the issue in question by the judicial fora in pursuance of the Principles of Natural justice and therefore, terming it as a ritual by the applicant, lacks a rational basis. Applicant further contends that the exam was conducted in December 2007, additional vacancies were declared in December 2008 and the applicant was promoted in December 2012 i.e. vacancies were available before the promotion and therefore, his promotion should not be disturbed. The law laid down, as per the Hon'ble Supreme Court judgment cited supra, is that the selection shall be confined to the vacancies as have been declared at the time of conduct of the exam as per the notification and not the vacancies available after the exam has been conducted. The other contention that the Constitutional protection given to SC employees has been disregarded does not hold good since it is not that the respondents

dishonored any reservation principle, but the issue under dispute is promotions effected in excess of the vacancies, which is impermissible under law. 17 SC candidates were declared selected against a single SC vacancy and that is the pivot of the dispute. Respondents have made it clear that the Hon'ble Ahmedabad Bench judgment is applied to promotions made under examination quota since 1992 and not just to 2007 exam, by issuing show cause notice to all those concerned across all the regions of the respondents organisation. The Ahmedabad judgment pertains to Section Supervisors and applying it to UDC promotion, as contended by the applicant, without a challenge to the said promotions, if any, is not within the scope of adjudication of the OA on hand. The applicant has rendered 4 years 9 months service and claims that he is due for promotion as AO/EO, for which a DPC was held on 15.02.2018, as pleaded by the applicant in OA 974/2018, but that would be permissible only if his promotion as SS is legally valid. The very foundation of promotion as SS is shaken and therefore, expecting further promotion is not a reasonable expectation. Respondents have also submitted that due to restructuring, 18 SS posts & 739 AO/EO posts have been created and therefore, with many incumbent SS getting promotions, there is ample scope for a large number of employees working as SSSA to be promoted as SS under seniority quota. When the Ld. Respondents counsel was questioned as to whether the applicant was considered under the seniority quota and if so what was the outcome, he had no answer.

VI. Nevertheless, having gone through the entire case in detail, it not under dispute that there was a single SC vacancy in the SS cadre declared while conducting the exam in 2007. It was submitted by the respondents that 17 candidates have been declared selected. Hence, this single SC vacancy is to be filled up as per the examination scheme of 2002 implemented by the respondents. Therefore, we direct the respondents to fill up the said single SC vacancy as per rules framed under the examination scheme cited and in accordance with law from among those who appeared in the cited exam and found eligible, with consequential benefits like notional seniority, pay fixation, etc., but not back-wages for the period they did not work as SS. Time allowed the judgment is 3 months from the date of receipt of this order.

With the above direction, the OAs are disposed of. In view of the above orders passed in the main OAs, MA No. 854/2017 stands disposed. Interim orders passed in both the OAs will hold good till the respondents take a decision as directed within the time stipulated. There shall be no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

evr