

Central Administrative Tribunal
Calcutta Bench, Calcutta

Original Application No. 149/96 &
Miscellaneous Application 130/02 in OA 149/96
This the 18th day of January, 2005.

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CORAM :

Hon'ble Mr. A.V. Haridasan, Vice Chairman

Hon'ble Mr. G.R. Patwardhan, Administrative Member

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1. Coal Controller's Organisation Karmachari Sangh (Regn. No. 20746), affiliated to Bhartiya Mazdoor Sangh and Govt. Employees' National Confederation, having registered office at No. 10, K.S. Roy Road, Calcutta and represented by Sh. Saileswar Sinha, Roy S/o Late Pannalal Sinha Roy, President and working as Junior Computer in the Office of the Coal Controller, Ministry of Coal, Government of India, 1, Council House Street, Calcutta resident of 46, Cripser Road, Konnagar, Distt. Hooghly.
2. Sh. Rathindra Ranjan Sikdar, S/o Late Ramesh Chandra Sikdar, working as Jr. Computer in the same office, R/o 77/11 Bade Raipur Road, Calcutta.
3. Sh. Ashit Kundu, S/o Late Upendra Nath Kundu, working as Jr. Computer in the same office, R/o 17/2 Ulradanga Main Road, Calcutta.
4. Sh. Sukumar Saha S/o Late Tulsi Saha, working as Punching and Verifying Operator in the same office, R/o No. 12/2A, Ganendra Mitra Lane, Calcutta.
5. Sh. Biswanath Sen S/o Shri J.N. Sen, working as Punching and Verifying Operator in the same office, R/o 89B Ekdalia Road, Calcutta.
6. Smt. Swastika Roy Chowdhury, Wife of Sh. Harain Roy Chowdhury, working as Punching and Verifying Operator in the same office, R/o No. 4/1 Maharaj Nanda Kumar Road, Calcutta.
7. Smt. Jamuna Saha (Nee-Podder), wife of Shri Sukumar Saha, working as Punching & Verifying Operator in the same office R/o No. 12/2A, Ganendra Mitra Lane, Calcutta.
8. Smt. Dalia Mukhuty (Nee Chaktraborty) wife of Sh. Shambhu Nath Mukhuti, working as Punching & Verifying Operator in the same office R/o 30, Prince Anwar Shah Road, Calcutta.
9. Sh. Priyatosh Sanyal S/o Late Ashutosh Sanyal working as Statistical Assistant in the same office R/o No. 21, Purbachal Link Road, Calcutta.

10. Sh. Bimal Chandra Das S/o Late Anant Kumar Das working as Stenographer in the same office, R/o Barendra Lane, PO Halisahar, Distt. 24 Parganas (North).
11. Sh. Jagdish Chandra Chakraborty S/o Late Dwijaraj Chakraborty, working as Stenographer in the same office R/o No. 47 K.B.M., P.O. Chakdaha, District Nadia.
12. Sh. Subhendu Das S/o Late Krishna Govinda Das working as Stenographer in the same office, R/o KB Block, Quarter No. 815, Salt Lake City, Calcutta.
13. Sh. Shyam Sunder Pramanick S/o Sh. Lakshmi Kanta Pramanick, working as P.S. to Coal Controller in the same office, R/o Vill. Chaksi baramati, PO Balarambati, Distt. Hooghly.
14. Smt. Anita Sarkar, W/o Sh. Dwijen Sarkar working as Sr. Stenographer in the same office, R/o A-48 East Rajapur, Santoshpur, Calcutta.

..... Applicants.

(By Mr. P.K. Munshi, Advocate, for the applicants)

Versus

1. Union of India through the Secretary, Ministry of Coal, Government of India, Shastri Bhawan, New Delhi.
2. Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, Government of India, Sardar Patel Bhawan, New Delhi.
3. Coal Controller, Ministry of Coal, Government of India, 1, Council House Street, Calcutta.
4. Coal Controller (Hqrs. Office), Employees Assoc. having its registered office at 1, Council House Street Calcutta - 1, represented by Partha Bandyopad Havay, S/o Sh. N.N. Banerjee, working for gain as UDC in the office of the Coal controller Govt. of India, 1, Council House, - Street, Calcutta - 1 residential add. 71, South End Garden, Garia, Calcutta 84, being the Secretary of Coal Controllers (Hqrs. Office) Employees' Association.
5. Sandananda Mukherjee S/o Late Sh. P.C. Mukherjee working for gain as UDC in the office of Coal Controller, Govt. of India, 1, Council House Street, Calcutta - 1, R/o 14/7/15/2 Olabibitala Lane, Shibpur, Howrah-2.

6. Sujit Das S/o Sh. S.C.Das working for gain as Head Clerk in the office of Coal Controller, Govt. of India, 1, Council House Street, Calcutta -1, R/o Block no. 24, Flat No. 255, Govt. quarter, Lake View Road, Calcutta – 29.

.....Respondents.

(By Mr. R.N.Das and Mr. A. Ganguly, Advocates, for respondents)

ORDER
[PER G.R.PATWARDHAN]

O.A. 149/1996 has been filed by M/s Coal Controller's Organisation Karamchari Sangh affiliated to Bhartiya Mazdoor Sangh through Shri Saileswar Slinha Roy, working as Junior Computer in the office of Coal Controller, Ministry of Coal, Government of India, Calcutta, along with 13 other individuals working as Junior Computers, Punching and Verifying Operator, Statistical Assistant and Stenographers in the said organization. Originally, there were only three respondents – Secretary, Ministry of Coal, Secretary, DOPT and Coal Controller. However, by orders dated 26.4.1996 in MA No. 83 of 1996, three more respondents were added. The application was filed on 31.1.1996. Its reply on behalf of the original respondents – three in number, was filed on 13.2.1997. Rejoinder to the same was filed on 8.1.1998. M.A. No. 130/2002 was filed on 7.3.2002 with the prayer to pass an interim order not to give effect to a new set of Recruitment Rules of 2001 or any such other Recruitment Rule, if made thereafter. The O.A. and M.A. both have been heard together on 5.1.2005.

2. The O.A. is admittedly filed against 'introduction of revised recruitment rules called as Coal Controllers Organisation – Group 'C' and

'D' – Technical and Non-Technical Course – Recruitment Rules, 1995 (for short 'the Rules of 1995'), as issued on 1.2.1995 and published in the official gazette on 25.2.1995 by way of replacing the earlier Recruitment Rules called as Coal Controllers Organisation – Class III and Class IV Posts – Recruitment Rules, 1963 (for short 'the Rules of 1963'), whereby, certain promotional aspects and pecuniary benefits thereof to the applicants have been affected.

3. Briefly stated the facts are that some of the applicants holding posts of Stenographers were covered by the Rules of 1963 which allowed them promotion to the post of not only the Private Secretary to Coal Controller but also to the post of Head Clerk and Superintendent. This phenomenon also allowed some of their colleagues to reach these posts. It is further their case that though Junior Computer, Statistical Assistant and Punching and Verifying Operator, were not covered by these rules but, even then, the posts of Head Clerk and Superintendent were being considered as promotional posts for them. However, it is alleged that the clerical staff (meaning thereby people holding posts of LDCs, UDCs and the like), exerted pressure on the Coal Controller whereby, they wanted to corner the posts of Head Clerk and Superintendent to themselves, thus, depriving others like Stenographers and Junior Computers from reaching the post of Head Clerks and Superintendents. An O.A. No. 355 of 1989, was preferred by some of the employees wherein, the Tribunal observed that though there are two cadres of Stenographers and Clerks yet, they have been treated as inter-changeable for promotion and that the applicants would also be considered for promotion with other staff. However, it is alleged that despite this order and despite availability of the

vacancies of Superintendents and UDCs, promotion was not given to other staff and the Coal Controller promoted only the LDCs and Head Clerks to these posts. Further, it alleged that the Coal Controller took recourse to framing of a new set of recruitment rules to deprive the Stenographers and Private Secretaries of their promotional chances to the posts of Head Clerk and Superintendent. It is said that number of O.As were filed by different persons in the Tribunal and all these were decided in favour of Stenographers (at Annex. 'C' are enclosed copies of orders of O.A.s No. 482/97, 736/94, 322/89 and 1172/93). All these applications have been disposed of with directions to official respondents to either convene a D.P.C. or to consider the case of applicants therein or dispose of the representation of the applicants by a particular date. Nothing more can be read in that.

4. Following grounds have been taken to support the relief claimed :-

- (i) the applicants joined in the service in the office of the Coal Controller on the basis of the Coal Controller's Organisation (Class III and Class IV posts) Recruitment Rules, 1963 as well as implied benefits arising out of the said Rules and decided by the Tribunal;
- (ii) during the period of continuation of the said Recruitment Rules, 1963, upto January 1995 some similarly circumstanced employees viz. P.S. to Coal Controller, Stenographers etc. have got benefit of promotion in the main channel on the basis of the said Rules of 1963;
- (iii) although, the posts of the Statistical Assistant, Junior Computers, Punching and Verifying Operator were created in 1973; but these categories of employees have also been covered by the said Recruitment Rules of 1963, as per judgement dated 26.11.1991 (annexure 'B') in OA No. 355/89 in respect of their promotion in the main clerical channel viz. U.D.C./Head Clerk/Superintendent;

(iv) that the applicants are apprehending that the erring respondents may further amend the existing Recruitment Rules of 1963 in respect of Head Clerk and Superintendent causing serious dis-advantage to the concerned applicants in respect of their promotion to the said posts;

(v) that the revised Recruitment Rules viz. "Coal Controller's Organisation (Group 'C' and 'D' Technical and Non Technical Posts) Recruitment Rules, 1995, have curtailed the existing benefits of the applicants;

(vi) that the alternative channel of promotion of Stenographer/P.S. to Coal Controller cannot be taken and

(vii) under the revised Recruitment Rules of 1995, the existing clerical staff being L.D.C. have favoured with an additional chance of promotion to the post of Stenographer (Grade III).

5. In paragraph (5) of the O.A., the applicants have highlighted some letters of Hon'ble Members of Parliament and that of the then Labour Minister Shri P.A. Sangama, which we do not consider necessary to refer to.

6. Detailed reply as aforesaid, has been filed by the respondents. The important points made out are as follows :-

(a) The staff structure of the Coal Controller's (HQ) Office consists of three cadres. They are (i) clerical cadre, Stenographers' cadre and (iii) Technical cadre. As per the Coal Controller's Organisation (Class III and Class IV posts), Recruitment Rules, 1963, the promotional channel of a Clerk in the clerical cadre is from his initial appointment as LDC to the post of UDC and from the post of UDC to that of Head Clerk and from the post of Head Clerk to that of Superintendent and from the post of Superintendent to that of DACC. This is the only promotional channel of the clerical cadre in the Coal Controller's Organisation.

(b) As per the said Recruitment Rules the promotional channel of a Stenographer is from his initial appointment as Stenographer to the post of P.S. to Coal Controller and/or to the post of Head Clerk (Clerical Cadre) and from the post of P.S. to Coal Controller and/or Head Clerk to that of Superintendent (Clerical Cadre) and from the post of Superintendent to that of DACC (Gazetted post). Besides, the P.S. to Coal Controller also enjoy the promotion to the post of Senior Stenographer which was created after the said Recruitment Rules had come into force. The post of Sr. Stenographer has not yet been incorporated in the said rules. Thus the Stenographer's cadre, as per the said rules, has double channels of promotion, one is their own channel and the other is the channel of clerical cadre with the facility of two ways for entering therein.

(c) The said Recruitment Rules does not include the technical cadre in it. The Technical cadre consists of mainly Punching and Verifying Operators, Junior Computers, Computers, Statistical Assistant, Senior Investigator, Draughtsman and Surveyor. Some of the technical posts were created in 1969 and some in 1972 for the purpose of conducting the annual surveys of the Coal Industry in order to meet the data requirement of Central Statistical Organisation for computation of National Income. These posts were temporary and on a routine procedure they used to be extended from year to year until they were converted into permanent posts by the then Ministry of Energy, Department of Coal in 1983. Subsequently in 1984, the Staff who were working in these technical posts were confirmed in their respective post. The post of Senior Investigator, Draughtsman and Surveyor were created in 1969 and the new Recruitment Rules cover them.

(d) Prior to confirmation of their service the Coal Controller forwarded a draft Recruitment Rule for these technical post in 1978 and due to not having any Recruitment Rule for these technical posts the Coal Controller could not offer any regular

promotion to them. They used to be given only ad hoc promotion in their promotional channel.

The respondents, therefore, pray that there is no justification for quashing the Rules of 1995 since the old Rules of 1963 were not able to cope with the new situation whereby, number of new categories of personnel got appointed and which were not sure of likely channels of promotion.

7. The rejoinder filed by the applicants reiterates the grounds in the O.A. with some light thrown on the promotional prospects of Statistical Assistants under new system and how the earlier system of informal apportionment of posts between the three wings was more convenient. They further maintained that if any rule leads to unjust and unequal distribution of posts then it is violation of Articles 14 and 16 of the Constitution. It is also their stand that if any right has accrued to Stenographers under the earlier rules of 1963 then it cannot be taken away by any subsequent rules.

8. Along with the O.A. is enclosed a copy of the Rules of 1963 at Annex. 'A'. It lists only the following posts – Superintendent, Senior Investigator, Head Clerk, U.D.C., L.D.C., Private Secretary, Draftsmen, Telephone Operator, Staff Car Driver, Machine Operator and Gestetnor Operator. On the other hand, the new Recruitment Rules of 1995 are applicable to Statistical Assistant, Mines Surveyor, Draftsmen, Stenographer Grade II, Computer, Legal Assistant, U.D.C., L.D.C., Junior Computer Operator, Punching and Verifying Operator, Senior Gestetnor Operator, Junior Gestetnor Operator, Staff Car Driver, Record Keeper,

Daftari, Jamadar, Peon, Farash and Night Guard. Thus, admittedly, the new Rules of 1995 cover more categories of staff. In any dynamic organization especially belonging to the Government where any action of this nature involves consultation with number of Ministries like, the Ministry of Personnel and the Ministry of Finance, it is but natural that some time is consumed in putting forward a scheme that is comprehensive and takes into account different policy directions of the Government. It is, therefore, but natural that compared to situation where because of lack of Recruitment Rules certain sections of employees benefit or hope of getting benefited by promotion to higher posts (as happened post 1963) they are likely to suffer to some extent, the moment a new defined system is put in place. That seems to have happened in the case before us. However, in order to ensure certainty and fair treatment to all sections, some amount of inconvenience has to be endured. In the instant case, as has been described above, the expectations were only because of non existence of a set of rules and that cannot be called a very ideal situation. The new rules, therefore, cannot be faulted simply because they do not allow such informal system to last.

9. The applicants have referred to two cases decided by Hon'ble the Supreme Court of India in support of their cause. The first case Y.V. Rangesh and Ors. Vs. J. Sreenivasa Rao and Ors. was decided on 24.3.1983 and is reported in 1983 (3) SCC 284. In this case, the question before the Hon'ble Supreme Court was if the rights that accrued to a group of persons under an existing rule got automatically extinguished when a new rule came into being. The grievance made out was that the panel for promotion under the old rules was not made for long and in the meantime,

a new set of rules was introduced whereby, the Government decided to prepare panels according to the amended rule thereby, effectively debarring those who were expecting promotion under the old system. The Court decided that the post which fell vacant prior to the amended rules, would be governed by the old rules and not by the new rules. The applicants have cited another case of P.D. Aggarwal and Ors. Vs. State of U.P. decided on 8.6.1987 and reported in 1987 (3) SCC 622. This case essentially dealt with the issue of Engineers appointed by promotion and those recruited directly in substantive capacity against temporary vacancies in consultation with the Public Service Commission. The Court, after discussing the merits of the promotees and the direct recruits, came to the conclusion that a particular seniority list needs to be quashed as also the rules through which, certain qualifications were attached for promotion to the post of Superintending Engineer. We are unable to appreciate how this helps the case of the applicants. In so far as Stenographers are concerned we find that among the applicants, there are four Stenographers and one Private Secretary, who perhaps feel encouraged to assail the new set of Recruitment Rules on the ground that under the 1963 Rules, they could be considered for promotion to the post of Head Clerk and Superintendent. However, the respondents in their reply paragraph 4 H, have categorically stated that the new Rules of 1995 take care of only some part of their establishment - promotional channel of Stenographer from his initial appointment as Stenographer Grade III to the Stenographer Grade II has been defined as also the promotional channel of L.D.C. to that of U.D.C. but, the remaining part of the proposed Recruitment Rules is still pending with the Government. In that back ground when the respondents have not so far given final shape to the

future pattern of promotions to the post of say, Superintendent and Head Clerk, the grievance of the Stenographer applicants seems to be premature.

10. The M.A. which has as its Annexure a copy of Coal Controller's Organisation, Assistant Group 'C' posts Recruitment Rules 2001, is with a prayer that the operation of this particular rule should be stayed. These rules contain an explanatory note towards the end saying that the earlier Recruitment Rules of 1995, did not contain provisions about the Head Clerks and as the name of that post has been changed to the Assistant, it had become necessary to incorporate 'initial constitution clause'. The Rules have only seven clauses and apart from saying that the incumbents of the post of Head Clerk on regular basis, would be deemed to have been appointed under the new rules and that they would be known as Assistants prescribe method of appointment. The method of recruitment to this post is exclusively by promotion of U.D.Cs with five years regular service in the grade and the criteria is selection-cum-seniority. In support of the prayer in M.A., it is said that the applicants who were recruited under the Rules of 1963, had acquired particular rights for promotion and those rights cannot be extinguished adversely through amendment of the same rules. We find from the old Recruitment Rules as appended to the O.A. that for the posts of Head Clerk falling vacant, the vacancies had been 'reserved for U.D.Cs and Stenographers in the ratio of 4:1 i.e. a Stenographer was to be considered for promotion for every fifth vacancy and if no one was found suitable then it had to be filled by a U.D.C. The applicants have not shown through either pleadings or by arguments the number of vacancies that were available to them in particular years i.e.

before 1995 and to which they had a right to be considered by way of promotion. It would have been much easier for them to point out the vacancies which under the old stipulation would have become available to them and to which they could lay claim subject to Government policy relating to reservation pertaining to S.Cs and S.Ts.

11. The pleadings do not make it clear if the Stenographers and the L.D.Cs who both are eligible to be considered for the post of Head Clerk and Superintendent under the Rules of 1963, had any vacancy to aspire for before the promulgation of the revised Recruitment Rules of 1995 and 2001. If there were posts which were lying vacant and which under those rules were to be filled up by promotion from one of these categories then natural justice demands that they should have been filled-up under the old rules. In an ideal situation, the respondents are expected to know candidates from both the categories who are likely to get promotion subject to their fulfilling other requisites like experience, clean record and absence of any departmental proceeding or prosecution and it should be possible for the Head of the Office to select the right person either before the vacancy arises or immediately thereafter. But experience shows that this is seldom the case in an organization and there is often a long gap between occurrence of a vacancy and some one getting posted to it. Even then, it should not be difficult to ascertain clearly the vacancies that were to be filled up under the old scheme. In case such vacancies existed prior to 1995 then equity and justice demand that these should be filled up under the old rules as there is nothing to infer from the new Recruitment Rules of 1995 that they have been made applicable retrospectively. We

have no hesitation in holding that the vacancies occurring prior to 1.2.1995 need to be filled up on the basis of old Recruitment Rules of 1963. To that extent, applicant No. 10, 11, 12, 13 and 14 have been able to establish their case. The official respondent no. 4, the Coal Controller is, therefore directed to proceed accordingly and take decision within next 90 days about eligibility and suitability of these applicants for promotion.

Applicant no. 1, 2, 3, 4, 5, 6, 7, 8 and 9 are holding posts not enumerated in the Rules of 1963. They therefore cannot be deemed to have acquired any right under these rules. Rather, they find mention only in the Rules of 1995. Therefore, they cannot have a case of continuance of the 1963 Rules or their protection. Their case has no merit.

O.A. accordingly disposed of.

12. These (Supplementary) Rules 2001 (in the sense that they attempted to cover some of the left out categories of 1995 rules), still seem to be incomplete. They are also prospective in nature and can have application only from the date of their publication in the official gazette i.e. 19.12.2001. The vacancies occurring before this date, naturally, will have to be filled up on the basis of Rules of 1963 and 1995 to the extent they are not contradictory to each other. The M.A. prays that an interim order be passed restraining respondents from giving effect to the Recruitment Rules of 2001 and any such other Rule to be made in future. But, they have not been able to show how these rules are unconstitutional