

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**Original Application No.50/2006
and
Original Application No.63/2006**

Date of Order: 16th January, 2012.

CORAM:

**HON'BLE Dr. K. B. SURESH, JUDICIAL MEMBER
HON'BLE Mr. SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

1. O.A. No.50/2006

1. Onkar Lal Panwar S/o Shri Prabhu Ram, aged about 53 years, working as a Assistant Driller-cum-Mechanic, in the office of the Central Ground Water Board, Jodhpur, R/o 37-Mahadev Nagar, 3rd Polo, Outside Mahamandir, Jodhpur.
2. Chanwar Lal S/o Shri Nathoo, aged about 55 years, working as Assistant-Driller-cum-Mechanic, in the office of Central Ground Water Board, Jodhpur, R/o Bhatiyon ka Bas, Magra Punjala, Jodhpur.
3. Bhanwar Lal Bhati S/o Shri Ram Lal Bhati, aged about 57 years, working as Assistant-Driller-cum-Mechanic, in the office of Central Ground Water Board, Jodhpur, R/o IIInd Polo, Opposite Fire Brigade Office, Jodhpur.

...Applicants.

Mr. Manoj Bhandari, Counsel for Applicants.

Versus

1. The Union of India, through the Secretary, Ministry of Water Resources, New Delhi.
2. The Chairman, Central Ground Water Board, N.H.IV, Faridabad, Haryana.
3. Executive Engineer, Central Ground Water Board, Div.-XI, C-8, Saraswati Nagar, Jodhpur.

...Respondents.

**Mr. Ankur Mathur, proxy Counsel for the
Mr. Vinit Mathur, ASG & Counsel for Respondents.**

2. O.A. No.63/2006

1. Bhanwar Lal Bhati S/o Shri Ram Lal Bhati, aged about 57 years, working as Assistant-Driller-cum-Mechanic, in the office of Central Ground Water Board, Jodhpur, R/o IIInd Polo, Paota, Jodhpur.

2. Onkar Lal Panwar S/o Shri Prabhu Ram, aged about 53 years, working as a Assistant Driller-cum-Mechanic, in the office of the Central Ground Water Board, Jodhpur, R/o 37-Mahadev Nagar, 3rd Polo, Outside Mahamandir, Jodhpur.

...Applicants.

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Versus

1. The Union of India, through the Secretary, Ministry of Water Resources, New Delhi.
2. The Chairman, Central Ground Water Board, N.H.IV, Faridabad, Haryana.
3. Executive Engineer, Central Ground Water Board, Div.-XI, C-8, Saraswati Nagar, Jodhpur.
4. Taj Mohd., working as Welder in the office of Central Ground Water Board, Div.-XI, C-8, Saraswati Nagar, Jodhpur.
5. Mohinder Singh Panwar, working as welder in the office of Central Ground Water Board, Div.-XI, C-8, Saraswati Nagar, Jodhpur.

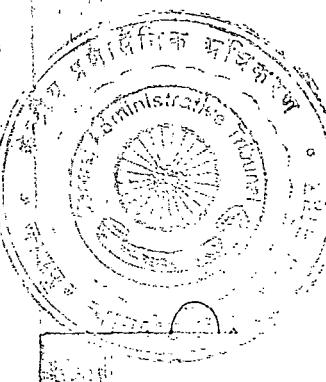
...Respondents.

**Mr. Ankur Mathur, proxy Counsel for the
Mr. Vinit Mathur, ASG & Counsel for Respondents No.1to3.
None present for respondents No.4 &5.**

**ORDER
(Per Sudhir Kumar, Administrative Member)**

These two cases are ~~in~~ similar ⁱⁿ nature, came to be heard and reserved for orders together, and are hence being disposed of through a common order.

2. Both the applicants in the second O.A. No.63/2006 are the same applicants No.1 and 3 of O.A. No.50/2006. In the first case, O.A. No.50/2006, there are no private respondents, but in the second case, O.A.No.63/2006, there are two private respondents R/4 and R/5. The three applicants of these two O.A.s had filed these two cases, when they were working as Assistant Driller-cum-Mechanic (for short ADCM), in the office of Central Ground Water



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Board, Jodhpur. They have been aggrieved by the actions of respondents in having merged some cadres, whereby their seniority has been affected. In the first O.A. No.50/2006, as amended, challenge has been laid to the order dated 12th September, 2005, and the Central Ground Water Board Driller-cum-Mechanic Recruitment Rules, 2004, as amended, vide notification dated 31st March, 2006, and thereby a prayer has been made to set aside the impugned seniority list in so far as it relates to Welders, and for other reliefs and costs. In the second O.A., relief has been sought to quash and set aside the order of promotion dated 21st March, 2006, apart from any other reliefs and costs.

3. Both these OAs came to be decided through separate orders dated 09.08.2010, dismissing the OAs, but the applicants approached the Hon'ble High Court of Rajasthan, and the Hon'ble High Court of Rajasthan held that it was necessary for the Tribunal to have recorded a finding one way or other on the issue of the validity of the Recruitment Rules, and then only the Tribunal should have decided the matter, depending upon the findings so given on the issues relevant to validity of the Recruitment Rules. The Hon'ble High Court of the Rajasthan had a view that since this issue was not examined by the Tribunal, this issue needs to be re-heard by the Tribunal in the light of the reliefs claimed by the Writ Petitioners before it, which included a prayer for the declaration of Recruitment Rules as ultra vires. The matters were remitted back, and the Tribunal was asked to decide the matters in accordance with law, keeping in mind the observations made in the order

dated 05.05.2011 passed in C.W.No.3849/2011 of the Hon'ble High Court. Therefore, as very rightly determined by the Hon'ble High Court, the only issue which now fell for our reconsideration was about the validity of the Recruitment Rules, on which a finding has to be recorded.

4. Heard in detail. The history of these two OAs can be briefly re-told as follows. The total number of pay scales in the Central Government were very large upto the Second and Third Central Pay Commissions, but, after that, every Central Pay Commission has tried to reduce the number of pay scales, as available and prevalent in the Government. The number of pay scales as were approved by the Fourth Central Pay Commission, were reduced later by the Fifth Central Pay Commission, and subsequently, the Sixth Pay Commission has now totally abolished the concept of pay scales, and has introduced the new concept of Pay-Bands, with different rates of grade pay for various grades. The result of these reductions in total number of pay scales of the Central Government, as recommended by the successive Central Pay Commissions' Reports, was that sometimes many cadres had to be merged and accommodated in a single cadre, because their pay scales had become the same. This exercise is within the competence and powers vested in the Union of India under Article 309 of the Constitution of India, in the exercise of its executive power relating to the public services, as was laid down by the Hon'ble Apex Court in the case of making and changing of administrative polices "Sangwan Vs. Union of Indian, AIR 1981 SC 81.

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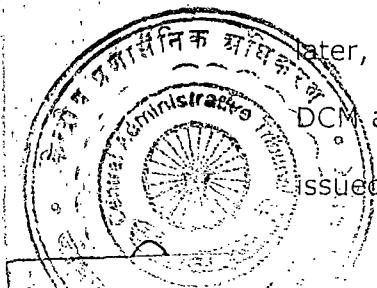
1545: 1980 Supp SCC 559" and "UoI vs. Majji Jangamayya, AIR 1977 SC 757: (1977) 1 SCC 606."

5. When the previous Pay Commission's pay scales of Rs.1150-1800 and Rs.1200-1800 were to be merged into a single pay scale of Rs.4000-6000, the respondent department apparently decided to undertake a resultant merger of the respective cadres also. Till then, there were posts of T.O.(D), Welder, Additional Driller-cum-Mechanic (ADCM in short) and Driller-cum-Mechanic (DCM) in the respondent department. In the process of implementation of the Fifth Pay Commission's recommendations as on 01.01.1996, the department decided to merge the posts of ADCM, carrying the pay scale of Rs.1200-1800, and posts of Welders, carrying the pay scale of Rs.1150-1800, into a single pay scale & cadre. Even though this was given effect to as on 01.01.1996, this decision for such a merger was actually taken in the year 2004, and, thereafter, the revised Recruitment Rules for the posts of ADCM, and the promotional posts of DCM, were framed and circulated.

6. A combined seniority list of Welders and ADCM was drawn up as on 01.01.1996, in the new combined cadre of ADCM, which had now become the only source for filling up the vacant posts of DCM. Before merger of the pay scales, the posts of Welders, in pay-scale Rs.1150-1800, were the feeder posts for the then promotional posts of ADCM, in pay scale Rs.1200-1800, which distinction disappeared with the merger of the two pay-scales, the feeder post pay-scale and the promotional post pay-scale, into the same pay scale. An anomaly had thereby arisen, and to remove the anomaly, a proposal was sent to the Government for revision of

the Recruitment Rules, which Rules were ultimately revised through Ministry letter dated 23rd April, 2004, and Gazette notified on 08th May 2004 (Annexure-A/8 of O.A. No.50/2006).

7. Somehow, while merging the pay-scales of the two cadres, the cadre of Welders was not taken to have been abolished altogether, and while the distinction was done away with, while amending the Rules of Recruitment of ADCM, in the Rules of Recruitment for DCM, 30% of the DCM posts continued to be shown as reserved for being filled up by promotion from Welders, with five years' regular service in the grade, and one year working experience in operation and maintenance of drilling field etc. This gave rise to another further anomaly, and then only the decision of abolition of their separate cadre, and formally merging the posts of Welders into the cadre of ADCM was taken, and approval of the competent authority, the Ministry of Water Resources, was issued through letter dated 12.09.2005, to take effect from 01.01.1996. With this, the then existing 102 sanctioned posts of Welders stood merged with the 250 sanctioned posts of Assistant Driller-cum-Mechanic, with their re-designation as ADCM in the Central Ground Water Board, subsequent to the placement of the posts of Welders in the identical scale, and taking the total sanctioned cadre strength of the posts of ADCM as 352, (Annexure-A/11 & R/1), and later, in order to remove the anomaly in the rules for promotions to DCM also, the Driller-cum Mechanic Recruitment Rules, 2006, were issued on 31st March, 2006 (Annexure-R/2).



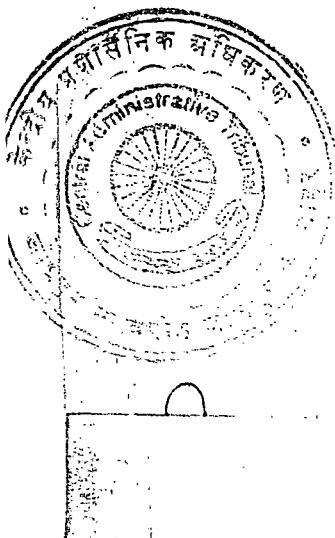
8. After the issuance of Annexure-A/11 and R/1, dated 12.09.2005, sanctioning the combined cadre strength of ADCM to be 352, by merger of two earlier existing separate cadres of ADCM and Welders, a combined seniority list was published vide letter dated 10th February, 2006, which has been produced as Annexure-A/1 in the O.A.No.50/2006. It has been stated by the respondents that when the merged list of ADCM was prepared as on 01.01.1996, the earlier existing 250 sanctioned posts of ADCM were treated to be senior to the existing 102 sanctioned posts of Welders, because of the difference in their pay scales maintained till the previous Pay Commission, and also since ADCM, till then, was only a promotional post, with 15% of promotions from the cadre of Welders itself, 10% from the Computer Operators, and 75% from the cadre of TOD (Technical Operator Drilling). This act of the respondents of merger of the cadres of ADCM and welders w.e.f. 01.01.1996 ordered on 12.09.2005 is the root cause of these two cases.

9. In support of his contention, the learned counsel for the applicants cited the case of **Harla vs. The State of Rajasthan, AIR (38) 1951 SC 467**, in which the Hon'ble Supreme Court, speaking through Justice Vivian Bose, had held that natural justice requires that before a law can become operative, it must be promulgated or published. It must be broadcast in some recognizable way, so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. In the absence thereof, any law, rule,

regulation, or custom, cannot come into being, by merely passing a resolution, without promulgation or publication in the Gazette, or by other means: Promulgation or publication of some reasonable sort is essential. In this respect, the difference between an Order and an Act is obvious. Acts of the Parliament are publicly enacted. The debates are open to the public, and the Acts are passed by the accredited representatives of the people, who, in theory, can be trusted to see that their constituents know what has been done. They also receive wide publicity in papers and, now, over the wireless also. Not so Proclamations and Orders of appropriate authorities. There must, therefore, be proper promulgation and publication in their case. The mode of publication can however vary. But reasonable publication of some sort there must be. The case before the Hon'ble Apex Court had related to a case of passing of certain resolution by the Council of Ministers of Jaipur State, regarding limits imposed on possession of opium, which resolution had not at all been made public, and had not been notified in any manner whatsoever. Therefore, the Hon'ble Apex Court, speaking through Justice Vivian Bose, had held that because of the absence of a proper notification, the resolution could not have obtained the force of law, rules and regulations, without the public having been notified about it.

10. But the present case is not a case of a resolution being passed in a closed room, and not being made known to anybody for many years, as was the case in **Harla vs. The State of Rajasthan** (Supra). In this particular case, the fact that the two cadres of Welders and ADCM have to be merged, because the Pay

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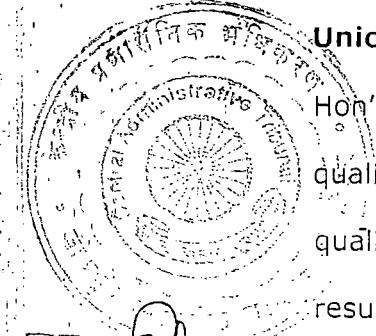
Commission has abolished the two different pay scales prevalent upto then, and that a merger had been given effect to, was well known to all the concerned employees who fell in the merged cadre. Therefore, the case of **Harla vs. The State of Rajasthan** (Supra) does not come to the rescue of the applicant in the present cases.

11. The learned counsel for the applicant then cited the case of **Chandra Kishore Jha vs. Mahavir Prasad and others, (1999) 8 SCC 266**, in which the Hon'ble Supreme Court has pointed out that under the latin maxim "*expressio unius est exclusio alterius*" if a statute provides for a thing to be done in a particular manner, then it has to be done only in that manner, and in no other manner. Not only this, it was further submitted that there are many judgments of the Hon'ble Supreme Court on this issue, where it has been laid down that the procedures as prescribed for a particular thing to be done in a particular manner must be followed scrupulously as stipulated. To our mind, the facts of this cited case, and the averments, also do not come to the rescue of the applicants of the present cases, since the authorities concerned had considered that the merger of two pay scales was the only way possible to give effect to the recommendations of the Pay Commission, and thereafter the authorities have, though belatedly, followed that decision as per procedure, and have not followed any procedure unknown to law. Even the Rules of Recruitment, when they had been amended, had been notified, even though there was a time gap in amending the Rules of Recruitment for the posts of ADCM, and for the posts of DCM, while the two Recruitment Rules could

perhaps have been modified and notified together. However, this deviation is not hit by the Latin maxim of "*expressio unius est exclusio alterius*", and, therefore, the findings of the Hon'ble Apex Court in this case are also not available to the rescue of the applicants.

12. The third case cited by the learned counsel for the applicants was of **Accountant General and Another vs. S. Doraiswamy and Others**, (1981) 4 SCC 93; 1981 SCC (L&S) 574, which deals with the services under the Indian Audit and Accounts Department being a single service, concerned with both Union and States, and in the context of which, it was mentioned by the Hon'ble Supreme Court that Rules framed under Article 148 (5) in Chapter V of the Constitution, dealing with the Comptroller and Audit General and its officers, cannot have retrospective operation. Whether, in the face of existence of other case law on this matter, a judgment passed in the exclusive context of Chapter V of the Constitution of India would be applicable, is a matter of opinion, and, to our minds, the facts of the two cases are not parallel, for the applicants to be allowed to derive any benefit from the finding arrived at by the Hon'ble Apex Court in this case.

13. The fourth case cited by the learned counsel for the applicants was of **Chandraprakash Madhavrao Dadwa and others vs. Union of India and Others**, AIR 1999 SC 59, in which the Hon'ble Supreme Court had held that any change in recruitment qualification, with a retrospective effective, imposing the changed qualification on those who had already been recruited, and as a result shifting them from the posts to which they were originally

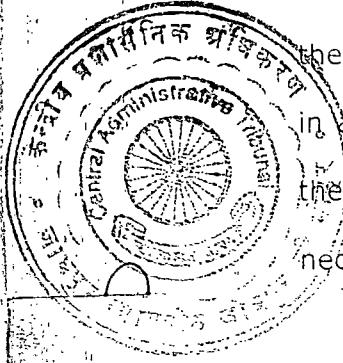


recruited into a different stream, and in a lesser scale of pay, is arbitrary and illegal. The Hon'ble Supreme Court had held that the recruitment qualifications could not be altered or applied with retrospective effect, so as to deprive the recruits of their right to the posts to which they were recruited, nor could it affect their confirmation. It is respectfully submitted that the facts of this case also do not come to the rescue of the applicant herein, since nothing of that kind has been involved in the merger of the cadres of ADCM and Welders to be in a single stream, and nobody was left with a lesser pay scale than he was in earlier, due to any change in the recruitment qualifications.

14. The fifth case cited by the learned counsel for the applicants was of **A.Janardhana vs. Union of India & others, (1983) 3 SCC 601**, in which the Hon'ble Apex Court had considered retrospective operation of the revised rules, and had held that if such retrospective operation does not affect any vested right, then giving such a retrospective effect to the revised rules is valid. It was further held that where revised seniority list is based on an invalid principle, and is made applicable retrospectively, adversely affecting persons already recruited and promoted validly in accordance with existing seniority lists earlier prepared under statutory rules, the new seniority list was held by the Hon'ble Apex Court to be liable to be quashed. In the instant case before us, all the 250 ADCMs remained as ADCMs as on 01.01.1996, but the 102 Welders were upgraded, and posted in the merged cadre of ADCM w.e.f. 01.01.1996, though below the existing 250 ADCMs. Therefore, retrospective operation of the Rules, merging the cadre

of ADCM and the cadre of Welders, by upgrading the Welders to the cadre of ADCM, and placing all the erstwhile Welders just below the existing ADCMs, did not affect any vested right of the pre-existing 250 posts of ADCMs, and, therefore, retrospective operation of this Rule cannot be held to be invalid in any manner whatsoever. Since the revised seniority list has been based and has been made applicable on a valid principle, and all the 250 ADCMs as on 01.01.1996 have been placed above all the 102 Welders as on 01.01.1996, in the same cadre, the retrospective operation of a combined seniority list in the pay scale of Rs.4000-6000 for ADCMs, is not hit at all by the principle laid down by the Hon'ble Supreme Court in this cited judgment.

15. The law as laid down by the Hon'ble Supreme Court in case of **State of Punjab vs. Labhu Ram, AIR 1986 SC 98; Bevin Katti, M.T. vs. Karnataka Public Service Commission, AIR 1990 SC 1233, Mahendran P. vs. State of Karnataka, AIR 1990 SC 405, Rangaiah Y.V. vs. Sreenivas Rao J., AIR 1983 SC 852**, is that a Rule operates prospectively, unless its operation is made retrospective by an express provision, or by necessary intendment. Here, in the instant case, there was an express provision to make the rules regarding merger of cadre retrospectively operative as on 01.01.1996, the date of implementation of the recommendations of the Fifth Pay Commission, and this intention was clearly expressed in as many words. Therefore, there is no illegality whatsoever in the Rule being made operative with retrospective effect, with the necessary intendment having been stated so.



16. Further, in the cases of **Vadera B.S. vs. Union of India**, AIR 1969 SC 118, and **Raj Kumar vs. Union of India**, (1975) 4 SCC 3 : AIR 1975SC 1116, it was stated that like the Legislature, the Rule-making Executive Authority, acting under Article 309 of the Constitution of India, also has the power to give retrospective effect to Rules made by it, or to change them with retrospective effect. These two general Rules have been framed by the Hon'ble Supreme Court, with a number of exceptions being made by way of distinction made on the basis of the facts of the individual cases in different judgments. One of the basic principles of Service/Administrative Law is that the benefits as acquired by a Government servant under the existing Rules cannot be taken away by the Executive Authorities by amending the Rules retrospectively. However, in the instant case, the retrospective operation of the merger of the cadre of ADCMs and Welders as on 01.01.1996, had not affected the seniority of anyone of the 250 ADCMs as had existed prior to that date, and nor have the rights of the 102 Welders ~~have~~ been affected adversely, since they have all been placed in a higher pay scale w.e.f. 01.01.1996. Therefore, the exception made by the Hon'ble Supreme Court in the cases of **T.R. Kapur vs. State of Haryana**, AIR 1987 SC 415; and **K.C. Arora vs. State of Haryana**, (1984) 3 SCC 281: AIR 1987 SC 1858, cannot be made applicable to the instant case.

17. It has already been held in the case of **B.S. Yadav vs. State of Haryana**, AIR 1981 SC 561: 1980 Supp SCC 524, that giving retrospective operation will have to be held to be arbitrary and unconstitutional, if the date from which the retrospective effect has

been ordered to be given has no reasonable nexus with the provisions contained in the amending Rules. However, since, in the instant case, the date 01.01.1996 was the date fixed for giving effect to the recommendations of the Fifth Pay Commission, there was more than reasonable nexus for retrospectivity to the merger of the cadres of ADCMs with the lower cadres of Welders being given effect to from that date. Therefore, the instant rules are not hit by that finding of the Hon'ble Supreme Court also.

18. It has been further held by the Hon'ble Apex Court in **J. Kumar vs. Union of India**, AIR 1982 SC 1064; and **Ashok Kumar Sawhney vs. Union of India**, AIR 1982 SC 795, that a Service Rule relating to seniority can be amended, and, when so amended, it would govern the seniority and future promotion prospects of all the persons, subject to the limitation that the change in the Rules would not adversely affect promotions which had already been earned under the Rules prior to the amendment. In the instant case before us, none of the parties had attained promotion to the post of DCM, which was the common promotional post for both the merged cadres, both from ADCM and from Welders, upto 31.12.1995, and which still remained the only promotional post from the merged single feeder cadre of ADCM w.e.f. 01.01.1996 onwards. Therefore, the retrospectivity given to the Rules is not affected by the findings of the Hon'ble Supreme Court in **J. Kumar** (supra) and **Ashok Kumar Sawhney** (supra) also.



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19. Lastly, it has been held in the case of **State of Gujarat vs. Raman Lal Keshav Lal Soni**, AIR 1984 SC 161, that rights or benefits which have been already earned or acquired under the existing rules, cannot be taken away by changing the Rules with retrospective effect, and it cannot affect the seniority as held in **K.C. Arora** (Supra), and the right to be considered for promotion as held in **T.R. Kapur** (Supra). In the instant case, if the respondents correctly work out the eligibility of promotions of all the people who were placed in the combined cadre of 352 ADCM posts w.e.f. 01.01.1996, it can be seen that the rights of and the benefits or seniority of anybody cannot be affected at all. Therefore, this retrospective amendment of the Recruitment Rules cannot be held to be illegal, or improper, or unjustified, in any manner whatsoever, and the issue framed by the Hon'ble High Court of Rajasthan is replied accordingly, and the rules giving retrospective effect to the combined seniority, and retrospective effect to the single channel for promotions based upon the combined seniority list drawn as on 01.01.1996, are, therefore, valid and are upheld.

20. The question/issue framed by the Hon'ble High Court of Rajasthan having been answered, both the Q.A.s are dismissed in view of the concurrent findings of the then Bench vide its order dated 09.08.2010. There shall be no order as to costs.

COMPARED &
CHECKED

(SUDHIR KUMAR) (Dr. K.B. SURESH)
ADMINISTRATIVE MEMBER JUDICIAL MEMBER
CERTIFIED TRUE COPY

Dated...18.1.12.

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Sudhir Kumar
सुद्धीर कुमारी (नाम.)
Section Officer (Judl.)
जूर्नल एकाउटेंट अधिकारी
Central Administrative Tribunal
सेंट्रल एडमिनिस्ट्रेटिव ट्रिब्यूनल
Sector-1, New Delhi-110001