IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMABY

O.A. No. 331/86
401/86
441/86
72/87
} GROUP-1

O.A. No. 332/86
400/86
402/86
} GROUP-2

Mr. Sharadchandra D. Deshpande (OA331/86)
C/o. Shri W.W. Waishampayan
Advocate, High Court,
202, Turel Pakhadi, Malad(W)
Bombay 400064.
Mr. Phatu K.P. Bhatia & 5 ors. (OA 401/86)
Mr. Chandrakant S. Desai (OA 441/86)
Mr. Punasur Vyasa Achar (OA 72/87)

Mr. KAMLAKAR B. Ratnakar (OA 332/86)
Mr. Madhukar D. Tabal & 6 ors. (OA 400/86)
Mr. Dattatrey S. Dixit & 8 ors (OA 402/86)

} Applicants

V/s.

1. The Union of India
through Director General
of Employees State Insurance
Corporation, Kotla Road, New Delhi
2. Regional Director
Maharashtra, ESIC,
N M Joshi Marg, Lower Parel
Bombay 400013

} Respondents

CORAM: Hon'ble Vice Chairman B C Gadgil
Hon'ble Member(A) J G Rajadhyaksha

Appearance:

1. Mr. W.W. Waishampayan
Advocate
for the applicants
2. Mr. M.I. Sethna
Counsel
for the Respondents

JUDGMENT DATED: 2.6.1987

(Per: B.C. Gadgil, Vice Chairman)

All these seven matters can be conveniently decided by a common judgment. They can be divided into two groups viz., Original Application Nos. 331/86, 401/86, 441/86 and

72/87 would be one group (hereinafter, wherever necessary, referred to as Group-1); while the remaining three applications viz., Original Application Nos. 332/86, 400/86 and 402/86 would be another group (hereinafter, wherever necessary, referred to as Group-2).

2. All the applicants are employed in the organization known as the Employees' State Insurance Corporation (ESIC). The applicants in Group-1 are working on ad-hoc basis in Group-A posts which are designated either as Deputy Regional Director, or Regional Director Gr.IV, or Deputy Administrative Officer, or Accounts Officer. These posts are interchangeable, Applicants in Group-2 of the applications are working on ad-hoc basis as Assistant Regional Director i.e., Group-B posts. This group-B consists of the posts of Manager Gr.I, or Assistant Regional Director or Section Officers or Deputy Accounts Officer. The four posts are interchangeable.

3. It is not necessary to give the detailed allegations in all these Group-1 and Group-2 applications. Suffice it to mention the pleadings of the respective parties in OA 331/86 (a Group-1 application) and OA 332/86 (a Group-2 application).

4. The applicant in application No. 331/86 Sharadchandra D. Deshpande, joined the service many years back as LDC and in due course he was promoted to various posts. Sometime in 1980, he was selected for the Group-B post i.e., Assistant Regional Director or its equivalent. On 22.8.1985 he was promoted, on ad-hoc basis, to the post of Deputy Director (Group-A post) and since then he has been so working. He has made a number of allegations in the application. We would like to narrate

only those allegations on the basis of which the arguments are advanced before us. Section 17 of the Employees' State Insurance Act (hereinafter referred to as the 'Act') deals with the employment of the staff by the Corporation, Sub-section (1) provides that the Corporation may employ the staff as may be necessary. But for creating any post drawing a maximum monthly salary of more than Rs. 2250, the sanction of the Central Government is necessary. However, it is not relevant for this decision. Sub-section(2)of the Act states that the Corporation may make regulations regarding recruitment, pay, allowance etc. The applicant relies upon sub-section(3) of the Act and it reads as follows:

> "Every appointment to posts corresponding to Group-A and Group-B posts under the Central Government shall be made in consultation with the Union Public Service Commission; Provided that this sub-section shall not apply to an officiating or temporary appointment for an aggregate period not exceeding one year".

5. The applicant contends that he was working in this promotional post on ad-hoc basis for more than one year, and that it is presumed that the Union Public Service Commission has been consulted. Consequently, he is entitled to have his services in the promotional post regularised. Under the recruitment rules, 50 per cent of Group-A posts are to be filled in by promotion and 50 per cent by Direct Recruitment. According to the applicant his service in Group B & A posts has always been to the satisfaction of the superiors and that he is eligible for being regularised in the Group-A post. The Respondent No. 2 on 23.9.86 appointed 14 persons as Deputy Regional Directors by way of direct recruitment. The applicant apprehends that on account of these direct appointments he is likely to be reverted to the lower post of Assistant Regional Director. He contends that the reversion of the applicant (who has continued in the Group-A post for more than

one year) would be illegal as contravening the provision of Section 17. The applicant, therefore, filed the present application with the principal prayer that he should be regularised in the Group-A post of Deputy Director with effect from 22.8.1985, or from such other date that this Tribunal considers just and proper. There are certain incidental reliefs claimed. However, they are not necessary to be stated here as they are consequential to the claim of regularisation.

6. The respondents resisted this application by filing their reply. It was contended that the applicant has no cause of action. The promotion of applicant as Deputy Director on 22.8.1985 was pleaded to be purely temporary and on ad-hoc basis, that too on the basis of local seniority of the applicant at Bombay. It was pleaded that the promotional posts in the cadre of Deputy Director are being filled in on regular basis after the matter is referred to the DPC and in consultation with the UPSC. Similarly, 50 per cent vacancies are required to be filled in by direct recruitment. The respondents denied that Section 17 of the Act or any other provision grants a right to the applicant for claiming regularisation in the post of Deputy Director, though he has been appointed on ad-hoc basis slightly over one year before the application was filed. It was pleaded that the promotion of the applicant was only a fortuitous promotion. The applicant happened to be in Bombay where a large number of short term vacancies arise because of the workload, and the applicant and other persons were promoted on ad-hoc basis pending regular appointments either by promotion or by direct recruitment. It was suggested in the reply that the promotion to the post has to be made on the basis of the All India Seniority in the feeder post viz., Assistant Regional Director

The contention of the respondents is that the applicant's promotion was by way of a local arrangement and other Assistant Regional Directors who are senior to the applicant were not promoted as they were outside Bombay and the promotion of the applicant was on ad-hoc basis. The respondents have filed along with the reply various annexures for the purpose of contending that the ad-hoc promotion of the applicant was made only to meet the local exigencies, although other persons senior to him at various places were available. The applicant has filed a rejoinder re-stating his case as has been made out in the application.

6. During the pendency of this application, by our orders, interim relief maintaining status quo was granted whereunder the contemplated reversion of the applicants was stayed. The respondents filed Miscellaneous Petition No.96/87 with a request that the said order be vacated. The applicant has filed reply to the Miscellaneous Petition. When the matter was fixed for hearing the Miscellaneous Petition it was suggested that the main application itself may be heard. This was convenient to both the parties and accordingly we have heard the main application.

7. This is the position as far as OA 331/86 is concerned. The remaining connected applications viz., OA 401/86; 441/86 and 72/87 have practically similar pleadings, The only difference is about the dates on which the respective applicants have been promoted on ad-hoc basis as Deputy Directors. We would be referring to these various dates at a later stage in the judgment. It is material to note that even in these applications, where stay was granted by us, the respondents have filed Miscellaneous Petitions for vacating the stay and the parties agreed that the Main Applications themselves should be heard.

8. In Group-2 referred to at the outset, the Original Application Nos. 332/86 is filed by K.B. Ratnakar. He also joined the service many years back as a Lower Division Clerk, and thereafter was promoted from time to time to various posts. In 1973, he was promoted to the post of Insurance Inspector/Manager-Gr.II. The next promotional post is that of Assistant Regional Director/Accounts Officer. On 4.1.1983 he was promoted on ad-hoc basis as Assistant Regional Director. In 1985 the Union Public Service Commission advertised some of these Group-B posts for direct recruitment. Thereafter, on 23.9.1986 respondent no. 2 has issued orders of appointment to 14 candidates as Deputy Regional Directors. The applicant apprehends that on account of this selection of direct recruits certain Deputy Regional Directors who were promoted on ad-hoc basis will be reverted. Consequently, after these Deputy Regional Directors (promoted on ad-hoc basis) would be reverted to the lower posts of Assistant Regional Directors, the applicant in his turn is likely to be reverted to his post of Insurance Inspector/Manager Gr.II. He claims regularisation in that post of Assistant Regional Director with effect from 4.1.1983 or from such other date as this Tribunal may consider just and proper.

9. The grounds on which he has based this claim are practically similar to those that have been submitted by Deshpande in original application no. 331/86. The respondents have opposed the application on the grounds similar to those raised in OA 331/86. Thus their main contention is that Section 17 of the Act does not give any right to the applicant for being regularised as A.R.D. They pleaded that the applicant's appointment was made purely on ad-hoc and temporary basis and after taking into account not the

All India Seniority but his seniority in the place where he was for the time being posted and where there was a short-term vacancy. Along with the reply, the respondents have filed various annexures to show that the applicant's promotion to the post of ARD was made when certain other officer who are senior to the applicant but who are woking outside have not been promoted as the applicant's promotion was only a local arrangement. Here also an interim order maintaining status quo was granted and the respondents filed a Miscellaneous Petition No. 107/87 for vacating that order. The applicant has filed a reply to the Miscellaneous Petition and as mentioned above it was decided that instead of hearing the Miscellaneous Petition, the main application should itself be heard.

10 Similar are the pleadings in the connected applications nos. 400/86 and 402/86. The only difference is the dates on which the respective applicants have been promoted on ad-hoc basis as ARDs. We would be referring to these various dates at a later stage in the judgment. As stated above, these applications were also agreed to be heard instead of hearing initially the Miscellaneous Petitions that were filed for vacating the stay.

11. Before considering the various contentions that have been raised before us during the course of the arguments, it would be necessary to mention in a chart the placement of various applicants in the seniority list, the respective continuous ad-hoc appointments, and the number of seniors of each of the apolicants who have not as yet been promoted. This chart is prepared on the basis of the seniority list and other particulars that have been furnished by the respondents along with their reply. It is material to note that

the seniority list given by the respondents has not been challenged before us.

CHART OF GROUP-1 APPLICANTS WOULD BE AS FOLLOWS:

Sr. No.	Application No.	Name of the applicant and his seniority list sr. no.	Number of persons senior to applicant but not promoted (vide Exhibit III, page 2 of reply)	Date from which officiating on promotion on ad-hoc basis
1	2	3	4	5
1.	OA331/86	S.S. Deshpande Seniority No.86	19	22.08.85
2.	OA401/86	P.K. Bhatia Seniority No. 111	33	02.12.85
3.	OA401/86	S.S. Hiranandani Seniority No. 97	27	05.03.86
4.	OA401/86	K.V. Raikar Seniority No. 37	2	30.10.84
5.	OA401/86	V.M. Limaye Seniority No. 25	--	01.12.85
6.	OA441/86	C.S. Desai Seniority No. 125	40	02.12.85
7.	BA 72/87	P.V. Achar	41	01.02.86

CHART (based on the chart in reply to OA 332/86)

OF THE GROUP-2 APPLICANTS IS AS FOLLOWS:

Sr. No.	Application No.	Name of the applicant and his seniority list Sr. No.	Number of persons senior to the applicant but not promoted(vide Exhibit V, page 2 of the reply)	Date from which officiating on promotion on ad-hoc basis
1	2	3	4	5
1	OA332/86	K.B. Ratnakar Seniority no.104	25	04.01.83
2	OA400/86	M.D. Tabib Seniority no.686	26	02.09.85

1	2	3	4	5
3.	OA400/86	S.S. Nair Seniority No.490	26	01.09.83
4.	OA400/86	M.S. Kanetkar Seniority No.683	26	22.07.85
5.	OA400/86	P.D. Khandkar Seniority No.596	26	17.03.83
6.	OA400/86	A.A. Pirjade Seniority No.433	26	31.08.83
7.	OA400/86	P.H. Dabke Seniority No. 594	26	16.02.85
8.	OA402/86	D.S. Dixit Seniority No. 89	20	03.05.82
9.	OA402/86	B.P. Girkar Seniority No. 80	18	15.03.82
10	OA402/86	Smt. U. Puri Seniority No. 82	18	08.10.82
11	OA402/86	B.G. Vadake Seniority No. 88	20	01.04.82
12	OA402/86	S.G. Sane Seniority no. 102	24	03.07.82
13	OA402/86	J.G. Sapre Seniority no. 71	15	12.02.82
14	OA402/86	P.Y. Krishnan Seniority no. 68	13	08.02.82
15	OA402/86	N.U. Goklani Seniority no. 66	13	17.11.81
16	OA402/86	N.M. Mangaonkar Seniority no. 13	3	13.10.81

12 Mr. Waishampayan relied upon provisions of Section 17(3) of the Act, and particularly the proviso thereto for the purpose of contending that all the applicants have put in more than one year of service and consequently they shall be treated as regular promotees. We have already reproduced sub-section 3 in para 4 above. That sub-section states that the appointment shall be made in consultation with the UPSC. Further according to the proviso such consultation

with the UPSC will not be necessary if appointments are officiating and temporary in a grade for an aggregate period not exceeding one year. It is alleged in the applications that presumption may be drawn about the consultation with the UPSC as all the applicants have been allowed to continue for more than one year. It is, however, material to note that the appointment order of each of the applicants specifically states that the appointment is ad-hoc. It is not necessary to give the exact wording. However, suffice it to say that the promotion orders mention that the promotions are on purely temporary and ad-hoc basis and that the promotees are liable to be reverted to their respective lower posts at any time, without notice. It also states that the officiating ad hoc promotions will not confer on the promotees any right to continue in the posts or for regular promotions in future and that the services rendered on such ad-hoc basis will neither be counted for seniority nor for eligibility for promotion.

13 It was urged that the above mentioned nature of the appointment will have no effect and that it should be presumed that each of the applicant is regularly appointed. The respondents have denied in their reply that the UPSC has been consulted. What is urged is that the appointment of each of the applicants is amde as a stop-gap arrangement, on local seniority basis, and that this was done on account of administrative exigencies. Shri Waishampayan relied upon the decision of the Delhi High Court in the case of G.P. Sarabhai V/s. Union of India reported in 1983, Labour and Industrial cases, 910. In order to understand that decision correctly it would be necessary to mention a few facts in that case. The Employees State Insurance Corporation appointed

Junior Medical Officers some years prior to 1979. At the time when the appointments were made, the recruitment regulations of 1979 were not in existence. Some of the applicants were appointed in 1972. All were qualified and had requisite training for the appointment. The selection was done in a manner similar to that which is adopted for making regular appointments. However, the appointment orders mentioned that these would be ad-hoc appointments for a period of one year. The orders also stated that it was contemplated that the selection would be regularised by the UPSC. The appointees were put on a regular scale. In due course they got their annual increments. Some of them even crossed the Efficiency Bar. The UPSC was consulted from time to time, and the said Commission agreed to continue the appointments. This went on till 1979. In that year, the new recruitment rules and regulations were framed. The UPSC invited applications for fresh appointments. The applicants also applied. However, they were not selected. They apprehended that they would be thrown out of service and hence they filed Writ Petitions before the Delhi High Court. The High Court held that those applicants who had put in more than one year service shall be treated as regular appointees under section 17 of the Act. While giving this decision the High Court discussed the facts and legal aspects, in detail, in paragraphs 27, 30 and 34. For example in paragraph 27 it is observed as follows:

> "As it is the case of respondents themselve that the Union Public Service Commission was consulted, it was the fault of the Union Public Service Commission to have omitted to see the effect of the consultation. .... Inasmuch as the Union Public Service Commission agreed to the appointments continuing over the maximum period of one year prescribed by the Section, it was tantamount to making the appointments permanent .... "

In paragraph 30 the High Court has observed as follows:

> "The appointments of the petitioners are, therefore, not thus mere stop-gap arrangements, but due selection made after considering a number of candidates. "

The following are the observations in paragraph 34 of the judgment:

> "When the period of one year initially fixed by the appointment letter expired, the proviso ceased to have any operation. So, it became necessary to consult the Union Public Service Commission. On this consultation being made, the appointment would become one made after consulting the Union Public Service Commission within the meaning of sub-section (3). Clearly, it would not be one for a temporary or officiating purpose....."

14. During the course of the arguments it was stated before us that a special leave petition challenging the said decision was filed in the Supreme Court and it was rejected. Mr. Vaishampayan, therefore, urged that the principle enunciated in the above mentioned decision of the Delhi High Court should be followed in the present litigation. As against this Mr. M.I. Sethna for the respondents contended that the facts in the present set of applications are quite different. He submitted that they are eloquent to show that the appointments in question though continued for one year would be ad-hoc and temporary appointments. He drew our attention to the fact that UPSC was not at all consulted and that therefore this would be a distinguishing factor. Secondly, the selection of the applicants before the Delhi High Court was made in the manner in which the regular appointments are made. The High Court found that they were not stop gap arrangements but the promotions were ordered after due selection, after considering a number of candidates. Mr. Sethna argued that the promotions of the present applicants were not made according to the usual mode of ~~the~~ promotions after considering all eligible can-

didates. We have already mentioned that the case of the respondents is that the applicants have been promoted as local arrangements and not after taking into account the claims of other seniors. Particulars in column 4 of the charts mentioned above in paragraph-11 amply proves this position. That column states as to how a particular applicant has been promoted even when there were a number of other senior employees who ought to have been considered, for example when Deshpande (the applicant in OA 331/86) was promoted, there were 33 other senior officers of the same rank who were eligible for being considered. Mr. M.I. Sethna states that those were not considered as the vacancy was at Bombay. These 33 persons were stationed at other places. It was urged by Mr. Sethna that the promotional post is required to be filled in on recommendations of the DPC and in consultation with the UPSC. He argued that as it was a local arrangement, the DPC did not consider the claim of the applicants along with those of other employees who were senior to each of those applicants. In this background, he submitted that it will be erroneous on the part of these applicants to argue that mere continuing in promotional posts on ad hoc basis for a period of one year should make them eligible for regular ~~ep~~ promotions. He highlighted his submission by drawing our attention to the applicants in OA 441/86 and OA 71/87. There were 40 or 41 employees who were senior to these applicants. They were posted outside Bombay, and hence they were not considered as it was only a local arrangement. The matter can be seen by taking into ~~x~~ account the chart of Group-2 applicants. For example, the applicant Tabib in OA No. 486/86 stands in the seniority list at Sr. No. 686. However, 26 persons who are senior to this applicant are still not promoted.

Similar is the case of applicant Kanitkar and applicant Khandkar in that application. Their placement in the seniority list of the feeder posts is at serial nos. 683 and 596, respectively, and they have been promoted as a local arrangement after ignoring the claims of 26 persons who were posted at a place where the vacancy did not arise.

15. There is much substance in the contention of Mr. Sethna that the decision of the Delhi High Court would not apply in the facts of the present case. We have already observed that the UPSC was not consulted and the promotions in question have not been made on the basis of any recommendations of the DPC. Secondly, while effecting the ad-hoc promotions the other employees who are senior to the applicants have not been considered. These facts would, therefore, show that it will not be possible to consider the promotions of the applicants as those falling under section 17(3) of the Act. In our opinion the decision of the High Court will not in any way help the applicants' claim for regular appointments with effect from the dates of their ad-hoc appointments. If such a prayer is granted, there would be an anomalous situation that the applicants though junior to some other employees in the feeder cadre would get regularised in the promotional post even though those seniors have not been considered. We do not think that such result was contemplated by the decision of the Delhi High Court.

16. It was then submitted that it was the fault of the respondents not to have consulted the UPSC and that the Breach thereof should not have prejudicial effect on the claims of the applicant. Reliance is placed on the decision of the Judicial Commissioner, Goa in the case of J.M.J.S.

Alexandre Gonsalves Pereira V/s. The Administrator of Goa & another reported in 1982(2) All India Service Law Journal, 134. It has been held in that case that ~~MMM~~ non-compliance with provisions of article 320(3) of the Constitution would not vitiate appointments if they are otherwise regular. We have already discussed above that the promotions of the applicants were not at all regular inasmuch as the claims of the employees senior to them have not been considered, there was no DPC. Consequently this decision will not be of any use to the applicants.

17. Mr. Vaishampayan then submitted that apart from provisions of section 17(3) of the Act the applicants would be entitiled to have regularization in the promotional posts on account of their service in that post. He relied upon the decision of the Supreme Court in the case of Narender Chadha V. Union of India reported in AIR 1986 S.C. 638. It was a case about employees of Indian Economic Service. There was a quota for promotions and direct recruitment. Paragraph 10 of the judgment shows that from 1964 onwards many direct recruitment vacancies ~~fell~~ vacant. Till 1968, 113 vacancies were not filled in, Even after 1968, all the vacancies for the direct recruitment were not filledin. The result was that from 1962 onwards promotions have been effected for the posts and some of the promotees were holding the posts for nearly 15 or 20 years. These promotions were made on the recommendations of the DPC. The question then arose as to the seniority of these promotees vis-a-vis the direct recruits. It was contended on behalf of the direct recruits that they should get a seniority of the year in which the vacancy for direct recruitment arose, though the direct recruitment took place actually

many years later. The Supreme Court rejected this contention in paragraph 13. It is observed that there was a violent departure from the rules of recruitment. The direct recruitment was not made and the promotees were allowed to hold the posts continuously over a long period of time. In paragraph 14 the Supreme Court, has held as follows:

> "It would be unjust to hold at this distance of time that on the facts and in the circumstances of this case the petitioner are not holding the posts in Grade IV. The above contention is, therefore, without substance. But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post. But in a case of the kind before us where persons have been allowed to function in high posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts ...."

The Supreme Court also held that the promotions can be treated as made in relaxation of the rules. The matter is considered in para 15 in the following words:

> "Therefore, it can be safely stated that the enormous departure from the quota rule year to year permits an inference that the departure was in exercise of the power of relaxing the quota rule conferred on the controlling authority."

In paragraph 18 and 19 Supreme Court took into account the enormity of the prejudice that is likely to be caused to the promotees when they were working for a long period of nearly 15-20 years in the promotional posts. It cannot be held that such officers are officiating merely on a temporary, local or stop-gap arrangement. In paragraph 23 the Supreme Court has held that after taking into account the peculiar facts of that case, the continuous service of the promotees should be counted for assigning to them seniority in the cadre.

17. It is true that in Narender Chadha's case the Supreme Court has stated that the ad-hoc services should be considered for seniority. However, it is material to note the startling facts in that particular case. The promotees were working in the promotional posts for 15 to 20 years. They were promoted on the recommendations of the DPC. The decision in Narender Chadha's case was considered by the Supreme Court in another recent decision in the case of Ashok Gulati and others V. B.S. Jain and Others 1986(2) 'SCALE' Page 1062 = AIR 1986 SC 424. In this later case there were ad hoc appointments as temporary engineers. Then regular ~~ap~~ recruitment was made. The ad hoc appointees also participated in the selection process. They were selected. However, they were placed far below in the seniority list. While making promotions to the posts of Executive Engineers, the Government did not take into account the said ad hoc service and promoted certain other persons who were otherwise senior. The applicants who had rendered the ad hoc service challenged this action. The High Court accepted their contention and held that their ad hoc service should be counted while fixing the seniority. Then the matter went to the Supreme Court. The Supreme Court took into account the facts that (i) the initial ad hoc appointments were de hors the rules, to meet the exigencies of the service, (ii) the orders themselves showed that the appointments were liable to be terminated without any notice and (iii) they will not be entitled to any seniority on the basis of such service. This is what the Supreme Court has held in paragraph 13 :

> "We are not aware of any principle or rule which lays down that the length of continuous efficiation service is the only relevant criterion in determining seniority in particular cadre or grade, irres-

> pective of any specific rule of seniority to the contrary ...."

After considering the earlier cases the Supreme Court has further observed in that paragraph as follows :

> "... these authorities nowhere lay down that the same principle i.e., the length of continuous officiation must be the sole guiding factor and the only criterion in determining the seniority of such ad hoc employees vis-a-vis direct recruits ....."

In paragraph 23 the Supreme Court has discussed the matter in the following words :

> "It would be repugnant to all accepted concepts of service jurisprudence if the claim of persons like respondents nos. 1 and 2 who were employed as Temporary Engineers on ad hoc basis de hors the rules for six months at a time were extended the benefit of their continuous officiation as such ad hoc employees in reckoning their seniority vis-a-vis direct recruits in considering their eligibility under r.6(b) of the Class I Rules for promotion to a higher grade or post of Executive Engineer ...."

In para 24 the Supreme Court has considered the earlier decision in Narender Chadha's case and has held as follows:

> "No doubt there are certain observations in the two cases of G.P. Daval and Narender Chadha which seem to run counter to the view we have taken, but these decisions turned on their own peculiar facts and are, therefore, clearly distinguishable and they do not lay down any rule of universal application".

It is true that the two decisions of Narender Chadha and Ashok Gulati deal with the seniority of promotees vis-a-vis the direct recruits. However, the principle laid down therein would also be relevant for the purpose of deciding as to whether a promotee can get regularisation from the date of the ad-hoc promotion. As stated above, the Supreme Court in Ashok Gulati's case has stated that the decision in Narender Chadha's case turned on the peculiar facts of its own and that an ad hoc appointment cannot confer benefit of counting this ad-hoc service for any relevant purpose such as regularisation etc.

18. Shri Waishampayan relied upon the decision of the Orissa High Court in the case of Somnath Rath V. Union of India. (Reported in 1975 LLN 439) In that case one Chakravarthy was promoted to a higher post in 1966 and still another higher post in 1968. On account of the decision in a Writ Petition this Chakravarthy was declared junior to the petitioner. The petitioner, therefore, claimed that he should get the two promotional posts with effect from 1966 and 1968 i.e., when his junior was promoted. A plea was raised before the High Court that the promotion of Chakravarthy was ad-hoc and it was a stop gap arrangement. The High Court rejected this contention in the following words :

> "But continuous service in higher post for a period at about five years cannot be regarded as a stop gap arrangement. Neither the order of appointment of Shri Chakravarthy nor any other record has been produced to show that the appointment was made on stop-gap arrangement. Admittedly, Sri Chakravarthy was junior to the petitioner. He was promoted to higher posts without consideration of the claim of the petitioner....."

In view of the aboveposition, the Orissa High Court held that the petitioner was entitled to have promotion from the time Chakravarthy was promoted. This decision is of no use for deciding the controversy before us. The promotions of Chakravarthy did not speak that they were ad hoc appointments or stop gap arrangements. In fact Chakravarthy was promoted on the hypothesis that he was senior to the petitioner. The seniority was altered on account of the decision of the High Court and, therefore, the petitioner was entitled to get the promotion as claimed. In the present case such a contingency does not arise and hence Mr. Waishampayan cannot make any use of this decision. Another decision of the Jabalpur Bench of the Central Administrative

Tribunal reported in 1987(2) ATC 908 was relied upon. The administration had put a particular cut off line of two years for absorption. The court rejected it. This again is not relevant for deciding the dispute before us.

19. As against the above mentioned two decisions Mr. Sethna relied upon Punjab and Haryana High Court, in the case of Ajit Singh Toofan & Others V. State of Haryana and Others reportee in 1987(1) All India Services Law Journal, 227. 51 appointments were made on regular basis, after the selection process was completed. Thereafter, the petitioners were appointed on ad-hoc basis. They claimed that they should be treated as regular. It was held that they were merely on ad hoc basis and have no right to regular service. It is thus clear that the nature of the appointment and its effect on promotion or otherwise will depend on the facts of each case.

20. It was then argued that the provision regarding consultattion with the UPSC ought to have been followed. It is true that the Supreme Court in the case of B.N. Nagarajan V. State of Mysore reported in 1966 S.C., 1942 has held that when the rules have been framed they ought to be followed. The Judicial Commissioner, Goa Daman and Diu in the above mentioned case of J.M.J.S. Alexendre held that mere non-compliance with the provisions of article 320(3) does not necessarily make regular appointment or promotion inoperative. The arguments of Mr. Waishampayan is that non-consultation with UPSC would not be fatal to the claim of the applicant for regularisation. However, what is important is as to whether the applicants are appointed on regular basis or only as stop gap arrangement, Again this decision will not be of any help to the applicant.

Reliance is also sought to be placed on the decision of the Calcutta Bench of the Central Administrative Tribunal in the case of Upendranath Oza V. Union of India wherein it was held that reversion of a temporary and ad hoc promotee after a satisfactory service for a number of years is bad. The distinguishing feature is that though the promotion was termed as an ad hoc one the promotee was found suitable to cross the Efficiency Bar.

21. Another contention of Mr. Vaishampayan is that there was gross violation of the recruitment rules so far as the direct recruitment is concerned and in the background thereof the promotion of the applicants may be treated as regular. As far as the direct recruitment of DRCs is concerned the respondents have filed as Annexure-II to the reply the details about such recruitment. Upto 1983, there have been direct recruitments; in 1984 and 1985 there were 29 and 38 posts respectively available for direct recruitment. This number covers even the balance of the earlier years. There was no direct recruitment in those years. But the recruitment was made in 1986. It was argued that absence of direct recruitment for two years may be termed as a gross violation of the quota rule. In our opinion, it will be very difficult to consider this period of two years as sufficiently long to presume that the department intended to violate quota rule. There is one more factor - in 1984 there was a proposal for amending the recruitment rules. The rules were amended in February, 1985. In April 1985, posts were advertised for direct recruitment and after completing the process the appointments were actually made in 1986. All these details would indicate that there is no gross violation of the rules for direct recruitment.

22. The position is practically similar so far as the direct recruitment of the ARDs are concerned. The respondents have given a statement at Exhibit 3 to their reply in OA No. 332/86 showing how the direct recruitment was processed. In 1981-1982 there were no direct recruitments. But in 1983, 91 recruits were taking up directly. After such recruitment, the vacancies from 1981 to 1983 for direct recruitment were covered. In 1984, there were two direct recruits taken while in 1985 there was no direct recruitment. The reason given by Mr. Sethna is that the recruitment rules for ARDs were also contemplated to be amended. The amdedment came into force in February, 1985 and then the recruitment process began and 33 direct recruits have been appointed.

23. It is true that Mr. Waishampayan made a submission that the Government has, in 1977, issued instructions that the method of ad hoc appointments should not be used when amendment to the recruitment rules are in contemplation. However, these directions do not mean that the ad hoc appointments so made would automatically become regularised. Thus there is no breach of the quota rule as contended by Mr. Waishampayan. Prior to the amendment of 1985, the employees of the organization could seek direct recruitment and there was no maximum age limit for them. In 1985 the rules prescribed age limit of 45 years for the post of DRDs and 40 years for the post of ARDs. This age limit is for the Government employees. It was contended that this amendment has taken away the right of the applicants and other persons in seeking direct recruitment. However, that aspect is not relevant inasmuch as applicants have not in their application made any allegation of that nature. Apart from that, the administration is entitled to amend the direct

recruitment rules unilaterally, and such amendments if valid cannot be attacked only on the ground that they may be prejudicial to some of the aspirents.

24. Another grievance about direct recruitment is that the appointments were made in excess of the advertised posts. Shri Waishampayan relied upon the decision of the Bombay High Court in the case of M.M.C. Fernandes V. Marmugao Port Trust reported in 1985(2) All India Service Law Journal, 439. It is true that in that case only one post was advertised and the selection was made for two posts. It was held that the appointment to the second post is bad. We are not inclined to accept this as good law.

25. Under these circumstances we are not inclined to accept the contention of Mr. Waishampayan that the ad hoc officiation of these applicants should be treated for regularising them in service. This is more so when the promotions have not been made after considering the cases of all eligible candidates. Similarly, they had not been considered by the DPC, but it was a local arrangement worked out by the department to meet the exigencies of the services.

26. For all these reasons, the applicants cannot have any valid claim to the posts which they have been holding on ad-hoc basis. The applications are liable to be dismissed. We, therefore, pass the following order.

ORDER

1) The Original Application Nos. 331/86; 401/86; 441/86; 72/87 (Group-1); 332/86 400/86 and 402/86 (Group-2) are dismissed.

2) Interim orders passed in each of these cases are vacated with immediate effect.

3) Parties to bear their own costs.

(P S Padgil)
Vice Chairman

(J G Rajadhyaksha)
Member (A)