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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

O.A.398/86

Shri V.S.Thomas,  
Assistant Accountant,  
Tarapur Atomic Power Station,  
PO:TAPP,  
Dist.THANE.

.. Applicant

vs.

1. Union of India,  
through  
The Under Secretary,  
Department of Atomic Energy,  
C.S.M. Marg,  
Bombay - 400 039.
2. Shri P.Ganapathy,  
Asstt.Personnel Officer,  
Tarapur Atomic Power Station,  
PO:TAPP,  
Dist.THANE.
3. Shri R.K.Chopra,  
Assistant Personnel Officer,  
Rajasthan Atomic Power Station,  
PO:Aryabhatta, Kota,  
RAJASTHAN.

.. Respondents.

Coram: Hon'ble Member(A)J.G.Rajadhyaksha  
Hon'ble Member(J)M.B.Mujumdar

Appearances:

1. Mr.R.G.Menon,  
Advocate, for  
the applicant.
2. Mr.M.I.Sethna,  
Advocate for the  
Respondents.

JUDGMENT

Date:

(Per M.B.Mujumdar, Member(J))

The applicant Shri V.S.Thomas has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for directing Respondent No.1 to promote him to the post of Assistant Personnel Officer retrospectively, with effect from the date on which a vacancy arose in the cadre on completion of one year after his refusal of promotion, with all consequential benefits including seniority.

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2. The essential facts for the purpose of this judgment are as follows: The applicant was working as Assistant Accountant since December, 1982 with respondent No.1. Before that he <sup>was</sup> working as Upper Division Clerk(UDC). The Department of Atomic Energy is conducting centralised written examinations for selecting candidates for the post of Asstt. Personnel Officer(APO) in the grade of Rs.650 - 960. Accordingly, the sixth centralised examination for the post of APO was conducted in various centres. The applicant submitted his application for the post and appeared for the written examination on 8th and 9th of January, 1983. The applicant was successful in that examination. The interviews were held in April, 1983 and the applicant was successful in the interview also. The Departmental Promotion Committee consisting of 7 senior officers prepared a panel of 33 persons after assessing the performance of the candidates in the written examination, interviews and ~~their~~ record of service. In that panel the name of the applicant was at Sr.No.24. By an office order dtd. 13-11-1984 four persons were promoted and posted as APOs and the promotions were to take effect from the dates they would take over charge of the post. The applicant was posted as APO in the Atomic Minerals Division at Shillong. As the applicant is from Kerala State he thought that the weather at Shillong may not suit him and his family members. Hence, by a letter dtd. 20-11-1984 he requested the authorities to reconsider his case sympathetically and post him to any other place where the weather might be more or less similar to Bombay. However, he was informed by letter dtd. 17-12-1984 that it was not

administratively possible to change his posting unless he refuses the promotion. Hence by his letter dtd. 18-12-1984 he informed the authorities that he was not interested in proceeding to Shillong on promotion and he may be deemed to have refused the promotion <sup>and</sup> his case may be processed according to the existing rules.

3. In reply to the letter he was informed by letter dtd. 22-1-1985 that he would be ineligible for being considered for promotion to the post of APO for a period of one year from 18-12-1984. He was further informed that the department had already announced the next APOs examination to be held in March, 1985 and ~~in~~ pursuant to it a fresh panel would be prepared soon and with its coming into force, the panel in which he stood selected would become inoperative. In the light of this he would have to requalify in the ensuing selection for becoming eligible for appointment to the post of APO. The applicant sent a letter dtd. 8-2-1985 protesting against the direction. He submitted that the requirement of appearing for a second interview in the event of the existing panel becoming inoperative was not heard of earlier. If any provision to that effect was made recently it would be applicable to the panels formed thereafter and not to the existing panel. ~~Hence~~ He requested for clarifications on some other points. By another letter dtd. 26-3-1985 he requested the authorities to waive the direction in the letter dtd. 22-1-1985 that he would be ineligible for promotion for a period of one year in view of his difficulties explained earlier. However, by a letter dtd. 29-6-1985 that request was rejected and

he was informed that a fresh panel for the post of APOs would be drawn up shortly and when the new panel would come into force the earlier panel in which he was included would become inoperative and it would be necessary for him to requalify himself for the next panel. According to the applicant as he was not aware of the relevant rules and regulations he appeared for the interview for the new panel on 30-9-1985. According to the rules as he <sup>had</sup> passed in the written examination held earlier it was not necessary for him to appear for the written examination though it was necessary for him to appear for the interview. He was not successful in the interview and hence the DPC did not include his name in the panel of 22 persons declared on 11-10-1985.

4. On 16-12-1985 the applicant sent a letter informing that he had completed the one year period on 17-12-1985 and requested that his case for promotion may please be reconsidered. As there was no reply to that letter he sent another letter dtd. 20-1-1986 requesting for personal interview with the Additional Secretary who was the highest authority, for explaining his grievance. That request was not granted. Hence he sent another letter dtd. 1-3-1986 requesting that his case should be reopened and he should be promoted as the period of one year had already expired. As there was no response he sent another letter dtd. 8-7-1986 explaining the relevant provisions and requesting that he should be promoted to the post of APO which fell vacant after the expiry of bar

of one year. To that letter the applicant received a reply dtd. 3-10-1986 and it deserves to be quoted here:

"Shri V.S.Thomas cannot be considered for promotion to the grade of Assistant Personnel Officer for the following reasons:

Shri Thomas was offered the post of Assistant Personnel Officer at AMD, Shillong vide this Department's order dated 13-11-1984. His representation dated 20-11-1984 was examined and vide this Department's ID dated 17-12-1984 TAPS was informed that it was not administratively possible to effect a change in the place of his posting and that Shri Thomas be relieved immediately. Vide his letter dtd. 18-12-1984 Shri Thomas informed the Department that his promotion order dated 13-11-1984 might be treated as refused and processed under the existing rules. However, vide this Department's ID dated 15-1-85, TAPS was informed that Shri Thomas would not be considered for promotion for one year from 18-12-1984 and that he would have to requalify himself for the ensuing selection to become eligible for appointment as Asstt. Personnel Officer as the panel in which he finds the place would be scrapped shortly.

The interview for selection to the post of Asstt. Personnel Officer was held during September, 1985 and Shri Thomas was also called to attend the interview and he did so. However, DPC did not recommend his name for empanelment.

Such being the case, Shri Thomas cannot be considered for promotion to the post of Asstt. Personnel Officer, as he does not find a place in the panel.

Shri Thomas may be informed accordingly."

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5. It is the case of the applicant that in view of the existing rules and regulations he was entitled to be promoted and posted to the first vacancy of APO which arose after the expiry of the period of one year i.e. after 17-12-1985. According to him the view taken by the respondents i.e. the first panel prepared on 7/8 of April, 1983 stood scrapped ~~when~~ <sup>will</sup> ~~when~~ the new panel comes into force is incorrect and contrary to the existing rules and regulations. It is further the case of the applicant that though it was not necessary for him to appear for the interview on 30-9-1985, he had to appear for the interview because of the threatening letters sent by the respondents and because he was not knowing the rules and regulations thoroughly at that time.

6. The respondents have filed a detailed affidavit of Shri T.S. Sridhar, Under Secretary to the Government of India, Department of Atomic Energy, and challenged the above position. According to the respondents the first panel was exhausted because the applicant had refused the promotion and all the 32 remaining persons in the panel were promoted and posted as APOs. Hence for appointing persons to the new vacancies it was necessary for them to declare a new panel on 11-10-1985. After the declaration of that panel the previous panel stood scrapped and as the applicant's name was not included in the new panel he was rightly not promoted as APO.

7. The above facts are stated on the basis of the documents on record and there was no scope for disputing them. They were not disputed also

before us. However, both the sides have relied on a number of circulars and provisions regarding promotions. Hence it is necessary to ~~consider~~ refer to the relevant circulars and provisions for deciding the points in this case.

8. The first circular which deserves to be noted is dated 22-3-1979. It is in fact an O.M. issued by the Director(Shri P.B.Desai) on behalf of the Department of Atomic Energy. The subject mentioned is period of validity of select panels prepared by Departmental Promotion Committees.

The first para of the memorandum reads as follows:

"Attention is invited to this Department's O.M.No.7/21/75-CCS dated August,18,1977 prescribing the minimum standards for qualifying in the written examinations conducted for selection of candidates for promotion to the post of UDC, Stenographer(Jr.), Senior Stenographer, Personal Assistant etc. A doubt has been raised as to whether the select panels prepared by the DPCs after interviewing the successful candidates in the written examination would normally be valid for one year or the panel could be operated indefinitely. The matter has been carefully considered and it is considered that select panels prepared on the basis of written examination and interview can be operated without any time limit, i.e. till the same is exhausted. If a stage comes when all those who still remain on the panel are the ones who have refused promotion on whatever ground, then the panel may be scrapped at that stage."

Mr.Sethna, the learned Counsel, for the respondents mainly relied on the last sentence in the above quoted paragraph.

9. The next office memorandum relevant in this case is issued by the Director, Govt. of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms on 8-2-1982. The subject of the memorandum is validity period of list of selected candidates prepared on the basis of direct recruitment/Departmental Competitive Examination. The memorandum deserves to be quoted as it is and it reads as follows :

"The undersigned is directed to say that references are being received from time to time from Ministries/Departments enquiring as to what should be the validity period of a list of selected candidates prepared on the basis of direct recruitment or Departmental Competitive Examination.

2. Normally, in the case of direct recruitment a list of selected candidates is prepared to the extent of the number of vacancies (other persons found suitable being put on a reserve list, in case some of the persons on the list of selected candidates do not become available for appointment). Similarly, in the case of Departmental Competitive Examinations, the list of selected candidates has to be based on the number of vacancies on the date of declaration of results, as the examination is competitive and selection is based on merit. A problem may arise when there is a fluctuation in the vacancies after the list of selected candidates is announced.

3. The matter has been carefully considered. Normally, recruitment whether from the open market or through a Departmental Competitive Examination should take place only when there are no candidates available from an earlier list of selected candidates. However, there is a likelihood of vacancies arising in future;



in case, names of selected candidates are already available, there should either be no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number of persons already on the list of selected candidates awaiting appointment. Thus there would be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies, either by the method of direct recruitment or through a Departmental Competitive Examination.

4. Once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change, after his name has been included in the list of selected candidates. Thus, where selected candidates are awaiting appointment recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment should be given appointments first, before starting appointments from a fresh list from a subsequent recruitment or examination"

Para 5 is not quoted as it is not material.

10. The third circular which is relevant in this case is issued by the Additional Secretary of the Department of Atomic Energy on 26-3-1984. The subject of the circular is validity and length of panels for recruitment and promotion. The first para of the circular is not relevant. The remaining portion of the circular is as follows :

"2. Guidelines indicating precautions to be taken in assessment of vacancies while drawing up panels based on written examinations were circulated vide this Department's Circular No.2/14/82-Adm.II dated May 29,1982. After careful consideration of the observations received from various Units after review of existing panels drawn by them for appointment/promotion based on instructions issued earlier following instructions are issued for future guidance and compliance.

A. Validity of panels:

As per Ministry of Home Affairs(DP&AR) O.M. No.22011/2/79-Est(D) dated 8.2.1982, panels prepared on the basis of written examination for direct recruitment and departmental competitive examinations will not lapse until all the selected candidates on the panel have been considered for appointment. In the light of the views expressed by various recruiting agencies in the DAE Units based on their experience over the years, it has been decided that:

- (i) Panels for direct recruitment through written examination.  
Panels drawn for direct recruitment based on written examination will remain valid till they are exhausted;
- (ii) Panels for promotions through Limited Competitive Examination  
Same as at '1 above.
- (iii) Panels drawn for promotion through DPC based on seniority-cum-merit.  
Panels drawn by DPC based on seniority-cum-fitness will be valid for a period of one year which may be further extended by another six months in special circumstances with the approval of the appointing authority.

B. Length of Panels

- (i) Panels for direct recruitment based on written examination

Panels for direct recruitment, based on

written examination, should be restricted to the number of vacancies anticipated during a period of one year from the date of the examination. Following formula is suggested for computing anticipated vacancies: .

- a) Average of vacancies in the cadre due to resignations in the past three years.
- b) Vacancies anticipated due to retirement during the next 12 months.
- c) Vacancies anticipated due to creation of new posts, during the same period.
- d) Add 15% of the aggregate of (a), (b) and (c) above.

Total No. of anticipated vacancies  $\frac{(a) + (b) + (c) + (d)}{4}$

(ii) Panels for promotion through Limited Competitive Examination

Panels drawn through Limited Competitive Examination for promotion of departmental candidates should not be too long, as it is in the interest of the Department to continue to draw the best from the available candidates including those from the succeeding generations based on the element of competitive selection. Hence such panels should be based on the anticipated vacancies. For computation of anticipated vacancies, same formula as in (i) above restricted to proportional quota as per norms out of total number of vacancies computed may be adopted.

(iii) Panels drawn against 12½% quota based on seniority-cum-merit.

Such panels also should be drawn based on the anticipated vacancies in the cadre during the next 18 months and should not exceed the proportionate number required to fill up the quota.

3. This order will be effective from the date of issue and will also be applicable to all the valid panels in operation on that date".

11. Another provision on which the applicant's advocate <sup>has</sup> ~~is~~ heavily relied is para ~~14~~ <sup>XIV</sup> of the Appendix 29 of CSR. That para reads as follows:

"XIV. When a Government employee does not want to accept a promotion which is offered to him he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises during the period of validity of the panel, no afresh offer of appointment on promotion shall be made in such cases for a period of six months from the date of refusal of first promotion or till a next vacancy arises whichever is later. (This period of six months was changed to one year with effect from 1-10-1981) On the eventual promotion to the higher grade, such Government servant will lose seniority vis-a-vis his erstwhile juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mentioned policy will not apply where adhoc promotions against short-term vacancies are refused."

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12. Having stated the facts and relevant circulars and provisions I will state the points that I am required to decide in this case and my findings thereon:

	<u>POINTS</u>	<u>FINDINGS</u>
(1)	What was the validity of period of the panel prepared by the DPC on 7/8 of April, 1983 ?	The panel was valid till all the persons in the panel were actually promoted and posted.
(2)	Whether it was necessary for the applicant according to the rules to appear for the interview held on 30th September, 1985 ?	NO
(3)	Whether on declaration of fresh panel on 11-12-1985 the previous panel of 7/8th April, 1985 can be said to have been scrapped ?	NO
(4)	Whether there is any legal bar to two panels being in operation simultaneously in case the first panel is not exhausted by promoting and posting all the persons in that panel?	NO
(5)	Whether the respondents were bound to promote the applicant to the post of APO after the expiry of period of one year from 18-12-1984?	YES
(6)	Does the Doctrine of Promissory Estoppel help the applicant in this case ?	NO
(7)	Whether the applicant is entitled to be promoted and posted as APO against the first vacancy which arose after 18-12-1985 as claimed by him ?	YES

Hereafter I will give my reasons for these findings.

13. I have already quoted 8th April, 1982 circular. It is made specifically clear in the last sentence of para three of that circular that there would be no limit on the period of validity of the list of selected candidates prepared to the extent of the declared vacancy either through a departmental competitive examination or by the method of direct recruitment. This very circular is discussed by the Supreme Court in Prem Prakash vs. Union of India, AIR 1984 SC 1831. After quoting the circular as it is the Supreme Court has observed in para 15 :

"It is clear from this notification that if selected candidates are available from the previous list there should either be no further recruitment until those candidates are absorbed or in the alternative vacancies which are declared for the subsequent years should take into account the number of persons who are already in the list of selected candidates who are still awaiting appointment. The notification further shows that there should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies. Once a person is declared successful according to the merit list of selected candidates the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name is included in the list of selected candidates".

14. The same position is reiterated in another circular dated 26-3-1984. The relevant portion of that circular is already quoted earlier. It is clear from

para 2(a)(i)(ii) that the panels of promotion through limited competitive examination will remain valid till they are exhausted. Neither this position nor the circular of 1982 was disputed by Mr. Sethna, the learned advocate for the respondents. He, however, wanted me to hold that the previous panel of April, 1983 stood exhausted because the applicant had refused his promotion though it was offered to him. It is not possible to accept that interpretation of the word "exhausted" in view of the fact that 1982 circular clearly lays down that there would be no limit on the period of validity of selected candidates and the fact that the same circular imposes a duty on the appointing authority to appoint all the persons in the panel even if the number of vacancies undergoes a change.

15. In this connection Mr. Sethna laid stress on the last sentence in the first paragraph of the office memorandum dtd. 22nd March, 1979. That sentence no doubt states that if a stage comes when all those still remaining on the panel are the ones who have refused promotion on whatever grounds, that panel may be scrapped at that stage. In the first place this Office Memorandum was issued by the Director of Atomic Energy about three years before the O.M dtd. 8-2-1982 was issued by the same department. Moreover the position in that sentence is not supported by any circular provision as such.

16. Not only this, but the position in that sentence is contrary or at least irreconcilable with the provisions laid down in para ~~IX~~<sup>XIV</sup> of the Appendix 29. I have already quoted that paragraph earlier. In this case the applicant had refused promotion on certain grounds and after accepting these grounds he was allowed to refuse that promotion. The effect of that refusal has to be considered with reference

to para XIV. According to the provisions in that para, no fresh offer of appointment was to be made to the applicant for a period of one year from the date of refusal of first promotion or till the next vacancy arise, whichever is later. He was bound to lose his seniority to some extent, but that is not material in this case. In no case, in view of the provisions in para XIV, refusal of promotion would deprive an employee of his promotion on the basis of his selection, permanently. The only effect will be that he will not be entitled for promotion for one year from the date of refusal.

17. It may be noted that the last sentence in para 1 of the O.M. dtd. 22nd March, 1979 is contrary to the provisions of para XIV of the Appendix 29 of CSR. What that sentence says in effect is that when some persons from the panel are promoted while remaining have refused promotion, the panel may be scrapped at that stage. If this provision is implemented the persons who had refused promotion will lose their chance of promotion on the basis of their names being included in the panel. This is contrary to the provisions of Rule XIV of Appendix 29 referred to above. O.M. dated 23rd March, 1979<sup>15</sup> issued by the Director of Atomic Energy and in my opinion the last sentence in the first paragraph is in the form of his opinion. As it is contrary to the provisions of Para XIV of the Appendix 29 which is applicable to all the departments, it cannot be said to be valid and binding.

18. Moreover even assuming that the said provision is valid the authority should have taken some positive steps for scrapping the previous panel.



It was not disputed that no order was passed for scrapping the previous panel. According to the wording of the sentence, as it is, some overtact was necessary before treating the previous panel as scrapped because the effect thereof was to deprive the applicant of his legitimate promotion as APO on the basis of his selection.

19. It was submitted on behalf of the respondents that no specific order for scrapping the first panel was necessary because the respondents had indicated in their letter dtd. 22-1-1985 to the applicant that fresh panel was being drawn up soon and the applicant would have to requalify himself in the next selection to become eligible for promotion. But as that part of the communication is contrary to para XIV of the Appendix 29 of CSR that by itself cannot be said to have the effect of scrapping the first panel.

20. It was urged before us by Mr. Sethna as to what the department should do when all the persons in the panel refuse their promotion because they do not like their postings on one ground or the other ? The answer to this question is that if the authorities find that the grounds given for refusing the promotion are not genuine and proper then they are entitled not to allow the promotee to refuse the promotion. The position is clarified by O.Ms. dtd. 1-3-1969, 22-11-1975 and 1-10-1985 given at page 268 of Swamy's Hand Book, 1986 under the heading "Declining promotion - Consequences".

The consequences as stated thereunder are these:

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"When a Government servant does not want to accept promotion to a higher grade when offered to him, he has to make a written request to the appointing authority declining the same setting out reasons for such refusal. Refusal of promotion would entail no fresh offer of promotion being made to him for one year from the date of refusal.

This does not apply where ad hoc promotions against short-term vacancies are refused.

A Government servant who had earlier declined promotion, on eventual promotion to the higher grade will lose seniority vis-a-vis his erstwhile juniors promoted to the higher grade earlier, irrespective whether the posts in question are filled by selection or seniority.

If the reasons adduced by the official for his refusal of promotion are not acceptable to the appointing authority, the promotion may be enforced. If the officer still refuses he exposes himself to disciplinary action for disobedience and lawful orders."

From the above it is clear that the authorities had wide powers to take proper action against the promotees if the grounds given by them for refusal of promotion are not acceptable to the ~~authorities~~ <sup>authorities</sup>.

21. In the present case the applicant had requested for posting him anywhere else than Shillong because of the weather conditions prevailing at Shillong and health of his wife. The respondents did not doubt the grounds and hence allowed him to refuse or to postpone his promotion for one year. The effect of the refusal shall have to be considered in view of the provisions of para XIV of the Appendix 29 of CSR.

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22. A question was raised by Mr. Sethna as to what would happen if some persons from the first panel refuse promotion and the administration wants to fill up the vacant posts. The answer to this is if the grounds for refusing promotion given by the persons in the first panel are acceptable they may be allowed to refuse promotion and the administration may prepare a second panel for promotions in due course. No difficulty should arise when the grounds given for refusing promotions are frivolous or not genuine because in that case the administration can straightaway reject permission to refuse promotion and insist upon the promotees to join the new postings. If they still refuse, the department can take disciplinary action against them.

23. However, an important question that arises is whether two panels can be in operation simultaneously when the persons from the first panel are allowed to refuse promotion on one ground or the other and ~~if~~ the department prepares a second panel. In my opinion there is no rule or provision which prohibits two panels being in operation simultaneously. In fact the instructions given in para 4 of the O.D. dated 8-2-1982 support the view that two panels may be in force simultaneously. The first part of that paragraph categorically states that the appointing authority has the responsibility to appoint the person once he is declared successful according to the merit list of selected candidates. The appointing authority has to do this even if the number of vacancies undergoes a change subsequently. According to the second part of the paragraph when selected candidates are awaiting appointment, recruitment should either be postponed till

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all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment ~~and~~ the candidates awaiting appointment should be given appointment first before starting appointment from the fresh list from a subsequent recruitment or examination. The second part clearly shows that there is ~~nothing~~ <sup>nothing</sup> wrong in two lists remaining valid and in operation simultaneously.

24. To illustrate: suppose there were 10 persons in a select list prepared on 1-1-1984. All the persons were offered postings on promotion - before 1-1-1985. 8 of them joined their new postings but two could not do so because of their genuine difficulties. The department allowed them to refuse promotion. According to paragraph XIV of Appendix 29 of CSR the department need not offer appointments to these two persons for a period of one year from the date of refusal of their promotion or till the next vacancy arises, whichever is later. If the department finds that 15 more vacancies are likely to occur from 1-1-1985 it can prepare a fresh panel of 13 persons before 1-1-1985 or even thereafter as the two persons who were allowed to refuse promotion cannot be offered fresh appointments during the one year from the refusal. During that period the department can offer appointments on promotion to the persons from the next panel and it may offer promotions to the two persons from the first panel after the expiry of period of one year from the date of their refusal. Thus it can be seen that there is nothing wrong and in fact it is essential in peculiar circumstances to operate two panels simultaneously.

25. From the examples of P.Ganapati and R.K.Chopra given by the applicant in the application it appears that the respondents were operating two panels simultaneously. Both were promoted as APOs on the basis of their selection by the Departmental Promotion Committee. The relevant dates given in the affidavit of Shri T.S.Sridhar, Under Secretary, to the Govt. of India, Department of Atomic Energy are as follows:

		<u>P.Ganapati</u>	<u>R.K.Chopra</u>
1)	Date of panel by which selected.	19-10-78	29-12-81
2)	Date of offer	8-7-81	10-5-82
3)	Date of refusal	8-8-81	14-6-82
4)	Bar period	6 months	1 year (due to amendment of para XIV of Appendix 29)
5)	Date of re offer	11-2-82	6-6-83
6)	Next Panel created on	29-12-81	April, 1983
7)	Date of appointment as APO.	6-4-82	1-7-1983

From the above dates it is very clear that the next panels had come into existence when these two persons were actually promoted as APOs. It is the case of the respondents, as can be seen from the affidavits of Shri Sridhar, that Ganapati and Chopra were promoted prior to the issue of departmental circular 26-3-1984. But that circular does not say anything about the scrapping of the previous panel. As already pointed out, in that circular the circular of 1982 is only clarified. According to the 1982 circular as well as the 1984 circular panels drawn for promotion for direct recruitment as well as through

limited competitive examination are to remain valid till they are exhausted. A panel can be said to have been exhausted only when all <sup>therein promoted</sup> ~~are appointed~~ and posted. Merely by offering promotion the panel cannot be said to have been exhausted. A person to whom the promotion is offered may refuse it for valid and genuine reasons. Till such persons are promoted the panel cannot be said to have been exhausted. In this case the respondents are relying <sup>on the</sup> 22-3-1979 circular, but that was in existence when Ganapati and Chopra were promoted and even after the next panels were prepared. This shows that the department was not treating the previous panel as exhausted merely because the next panel had come into existence.

26. The next question is what was the effect of the applicant's appearance for the interview held on 30-9-1985 ? The correspondence shows that the applicant was required to appear for the interview because of the directions given by the respondents in their letters to him. The replies were based on wrong interpretations of the relevant provisions. Hence the applicant should not be made to suffer for appearing for the interview.

27. Now Mr. Menon, the learned advocate for the applicant relied on the Doctrine of Promissory Estoppel in support of the applicant's case. The doctrine is explained by the Supreme Court in M/s. Motilal Padampat Sugar Mills Co. Ltd. vs. State of U.P. and Others, AIR 1979 SC 621 as follows:


"The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Govt. would be held bound by the promise and the promise would be

enforceable against the Govt. at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Art.299 of the Constitution."

According to Mr.Menon, the Government had given certain promise to the applicant to promote him as APO in view of the empanelment in April,1983 and in view of the circulars in question. But the main question in this case is about the interpretation of the circulars. As already pointed out the circulars would help the applicant and it is in view of the circulars that he would be entitled to be promoted though he had refused ~~the~~ <sup>the</sup> promotion once. But there is nothing to show that acting on the empanelment or the circulars the position of the applicant was altered in any way. Hence the doctrine of Promissory Estoppel does not come into play in this case.

28. For all the above reasons I have answered the points accordingly.

29. In result I pass the following order:  
The application is allowed. The respondents are directed to promote the applicant to the post of Assistant Personnel Officer retrospectively, with effect from the date on which <sup>a</sup>the vacancy in the cadre first arose after 18-12-1985, with all consequential benefits including arrears of salary and seniority. Parties to bear their own costs.

  
(M.B. MUJUMDAR)  
Member(J)

3-2-1988