

(RESERVED ON 23.08.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

This the **04th** day of **OCTOBER, 2018**.

ORIGINAL APPLICATION NO. 330/1183/2016

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Sanjay Kumar Srivastava, S/o Sri Yashwant Kumar Srivastava, R/o Q. No. 22 (T-II), Colony No. 2, Opium Factory Colony, Mahuwabagh, Ghazipur.
2. Sushil Kumar Saroj, S/o Chhotey Lal Saroj, R/o Q. No. 11, (T-ii), Colony No. 2, Opium Factory Colony, Mahuwabagh, Ghazipur.
3. Rajeev Ranjan Sharan, S/o Chandra Vilas Sharan, R/o Q. No. 45, Colony No. 2, Opium Factory Colony, Mahuwabagh, Ghazipur.
4. Madan Mohan Dutta, S/o Nani Gopal Dutta, R/o Q. No. 45, (T-II), Colony No. 2, Opium Factory Colony, Mahuwabagh, Ghazipur.
5. Satish Kumar, S/o Phul Chandra, R/o Q. No. 09, (T-ii), Colony No. 2, Opium Factory Colony, Mahuwabagh, Ghazipur.
6. Sunil Kumar, S/o Phul Chandra, R/o Q. No. 09, (T-ii), Colony No. 2, Opium Factory, Colony, Mahuwabagh, Ghazipur.
7. Rabindra Nath Viswas, S/o Late Haran Chandra Vishwas working as Upper Division Clerk in the office of Government Opium and Alkaloid Works, Ghazipur.
8. Shyamlal Ravidas, S/o Late Ram Saran Ram, working as Upper Division Clerk in the office of Government Opium and Alkaloid Works, Ghazipur.
9. Mahesh Kumar Bhartiya, S/o Ram Prasad, working as Upper Division Clerk in the office of Government Opium and Alkaloid Works, Ghazipur.
10. Shiv Shankar Vishwakarma, S/o Late Prabhu Dayal, working as Upper Division Clerk in the office of Government Opium and Alkaloid Works, Ghazipur.

.....Applicant.

VERSUS

1. Union of India, through the Narcotics Commissioner, Central Bureau of Narcotics, Mall Road, Gwalior.
2. The Central Board of Excise and Customs, New Delhi.
3. Janardan Kumar Gupta, S/o Late R.C. Gupta, R/o 645A/852, Janki Vihar Colony, Jankipuram, Lucknow. Presently working on the post of Sub Inspector in the office of the Deputy Narcotics Commissioner, Central Bureau of Narcotics, B-4, Mandir Marg, Lucknow.
4. Lalit Kumar Jha, S/o Sri R.K. Jha, R/o type-II/21, Sanjeevani Colony, Neemuch (M.P.) Presently working on the post of Sub inspector in the office of the District Opium Officer, Central Bureau of Narcotics, Neemuch-II Division, Neemuch.

5. R.K. Agarwal, S/o O.P. Agarwal, R/o type-II/V-2, Narcotics Colony, Neemuch (M.P.), presently working on the post of Sub Inspector in the office of District Opium Officer, Central Bureau of Narcotics, Neemuch-II Division, Neemuch.
6. K.C. Nautiyal, S/o Sri V.D. Nautiyal, R/o type-III/F-2, Narcotics Colony, Neemuch (M.P.) Presently working on the post of Sub Inspector in the office of the District Opium Officer, Central Bureau of Narcotics, Neemuch-II Division, Neemuch.
7. Ravi Ranjan, S/o Sri Gopal Prasad Sharma, R/o C/o Shri Jawahar Lal Anjana, Pagati Nagar, Nai Abadi, Prataphgarh (Rajasthan). Presently working on the post of Sub Inspector in the office of the District Opium Officer, Central Bureau of Narcotics, Mandasaur Road, Rajasthan.
8. Pankaj Kumar Gupta, S/o Sri P.P. Gupta, R/o D-61, Shivani Vihar, Kalyanpur, Lucknow. Presently working on the post of Sub Inspector in the office of the District Opium Officer, Central Bureau of Narcotics, Barabank Division, Barabanki (UP).
9. Anil Kumar Shukla, S/o Sri S.N. Shukla, R/o Type-II/143, Akansha Colony, Jankipuram, Lucknow. Presently working on the post of Sub Inspector in the office of the District Opium Officer, Central Bureau of Narcotics, Mandasaur-II Division, Mandasaur.
10. Avinash Kumar Mishra, S/o D.K. Mishra, R/o N.T. 2/11, Narcotics Colony, Mahaveer agar-III Kota, Rajasthan. Presently working on the post of Sub Inspector in the office of the District Opium Officer, Central Bureau of Narcotics, Jawra-II Division, Macchi Bhawan, Jawra Ratlam (MP).
11. Rajeev Kumar, S/o Sri M.P. Srivastava, R/o 288/220C, Arya Nagar, Lucknow. Presently working on the post of Sub Inspector in the office of the District Opium Officer, Central Bureau of Narcotics, Neemuch-II Division, Neemuch.
12. Malay Nath, S/o Sri Makkhan Chandra Nath, R/o F/1, Type-III, Narcotics Colony, Neemuch (M.P.) Presently working on the post of Sub Inspector in the office of the District Opium Officer, Central Bureau of Narcotics, Neemuch-I Division, Neemuch.

.....Respondents

Advocate for the Applicant : Shri Anil Kumar Singh

Advocate for the Respondents : Shri P Pandey
Shri S Narain.

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

By way of this original application (in short OA) filed under the section 19 of the Administrative Act, 1985, following reliefs have been sought by the applicants:-

- "(i) *This Hon'ble Tribunal may graciously be pleased to direct the respondents as per recruitment rule to place the name of the applicants before departmental Promotion Committee for consideration of their promotion to the post of Inspector in DPC year 2016.*
- (ii) *Direct the respondents to permit the applicants to appear in the forthcoming meeting of the Departmental Promotion Committee for promotion to the post of Inspector in DPC year 2016.*
- (iii) *Direct the respondents to promote the applicants on the post of Inspector in accordance with law.*
- (iv) *To pass any order which this Hon'ble Tribunal deems fit under the circumstances of the same.*
- (v) *To award cost in favour of the applicant."*

2. There are 10 applicants in this OA which has been filed with the MA No. 3399/2017 under the rule 4(5) of the CAT (Procedure) Rules, 1987 which is pending. The applicants are working as upper division clerks (in short UDC) under the Railways and they are aggrieved since the official respondents had proposed to convene the departmental promotion committee (in short DPC) for promotion to the post of Inspector for the year 2016 through only the sub-inspectors, leaving out the applicants although as per the rules, both UDCs and Sub-Inspectors are to be considered. It is clear that the applicants have a common cause of action and reliefs sought, for which the MA No. 3399/2017 under the rule 4(5) of the CAT (Procedure) Rules, 1987 is allowed.

3. While considering the prayer for interim relief, the Tribunal vide order dated 15.9.2016, had directed the respondents not to proceed with the DPC. Then the private respondents, who are working as Sub-Inspectors and were proposed by the official respondents for promotion to the post of Inspector, moved an application for impleadment in the OA. this impleadment application was allowed vide order dated 3.10.2016 and 10 private respondents were impleaded in the OA. the official respondents

filed a short counter affidavit (in short SCA) on 4.10.2017 alongwith an application for vacation of stay order dated 15.9.2016.

4. The counsels for the parties were heard on the application for stay vacation in detail by this Tribunal on 18.9.2017 and the order was reserved. The Tribunal pronounced the detailed order on 12.10.2017 by which the interim order was modified as under:-

"17. Accordingly, Stay vacation application is disposed of with certain modification in the order dated 15.9.2016 which are as under:-

- i) That the official respondents will fill up the vacancies of Inspector leaving 10 vacancies as unfilled;*
- ii) Any promotion made shall remain subject to final outcome of this O.A.*
- iii) Promotion order should be issued to the selected candidates in which it should be specifically mentioned that their promotions shall be subject to final outcome of this O.A."*

5. To appreciate the facts and the issues involved in this case, we note the following observations as mentioned in the order of this Tribunal dated 12.10.2017 as under:-

"9. Counsel for respondents stated that present O.A. has been filed by the applicants before this Tribunal suppressing the material fact and without impleading the persons whose names were sent for promotion to the grade of Inspector from Sub Inspectors. Hence they are adversely affected by the interim order.

9.1 It is further submitted that the controversy involved in the O.A. is that respondents issued a letter dated 26.8.2016 for holding of DPC to the grade of Inspectors only from Sub Inspectors ignoring the name of applicants who are upper Division Clerks and according to them, they are eligible for promotion.

9.2 It is submitted that promotion to the grade of Inspectors is required to be made in accordance with Narcotics Department (Group C) Recruitment Rules (In short RRs) 2004 effective from 19th January, 2002. The RRs at the material time provided that the post of Inspectors shall be filled up in the ratio of 1:1:1 from the direct recruitment and by promotion from the grade of Sub Inspectors and UDC/Stenographer Grade III. In other words, the ratio of the direct recruited inspectors and those promoted from the grade of Sub Inspectors and Steno Grade III/UDC was 1:1:1 and the said ratio was later on amended to 7:5:9 vide notification number GSR 56 (E) dated 2.2.1010. The strength of Inspectors in the common grade of Central Bureau of Narcotics and Chief Controller of Factories is 187 and according to this

strength, keeping in view the ratio in the grade of Inspectors the number of posts for each cadre is computed as under:-

a)	<i>Director Inspectors</i>	:	62
b)	<i>Those who were promoted from the Grade of UDC/Steno Grade III</i>	:	45
c)	<i>Those who were promoted from the Grade of Sub Inspectors</i>	:	80

9.3 Against these posts, the present strength of Inspectors who were promoted from the grade of UDC/Steno Grade III stands at 50 i.e. the representation of officers promoted from the grade of UDC/Steno Grade III in the cadre of Inspectors is more than the strength fixed under the RR.

9.4 It is further submitted that the over promotion from the grade of UDC/Stenographer Grade III has taken place on account of the fact that vacancy based roster was maintained instead of maintaining post based roster as required as per DOP&T O.M. dated 2nd July,1997 whenever the vacancy arose, the available vacancy has to be distributed in the ratio of 7:5:9 ."

6. The applicants in their pleadings have taken the following main contentions:-

- (i) The official respondents in the past years like 2014 and 2015 had filled up the promotion quota to the post of Inspector both from the UDCs and Sub-Inspectors. But for the year 2016, it is proposed to promote only the eligible Sub-Inspectors after considering their case in the DPC, which is a violation of the Recruitment Rules, which was amended vide notification dated 2.10.2010 (Annexure A-3) changing the ratio for filling up the post of Inspectors by Direct recruitment (in short DR), by promotion from the grade of UDC/Steno-III (in short PUS) and by promotion from the grade of Sub-Inspector (in short PSI) respectively from 1:1:1 to 7:5:9. The interpretation of the respondents that this ratio will apply on total sanctioned strength of the post of Inspector, is not acceptable as per rules.
- (ii) The applicants filed a representation dated 5.9.2016 against the order dated 26.8.2016 (Annexure A-6) by which the respondents had decided to consider only the Sub-Inspectors.
- (iii) The applicants have prayed for their consideration for promotion as per the extant rules.
- (iv) The applicants are not aware of the position about the existing vacancy position of inspectors and how these are proposed to be filled up. As per the case law decided by Hon'ble Apex Court in the

case of Vijay Singh Charak vs. Union of India SCC 2007 (9) page 743, previous vacancies cannot be taken into consideration for promotion in the current year vacancy.

(v) During previous years, the official respondents were applying the ratio to the vacancy based roster for promotion to the post of Inspector, but for 2016, they are applying the ratio to the post based roster, which is arbitrary.

7. Main contentions of the official respondents as well as the applicants as stated in the para 9.5 and para 11 of the order dated 12.10.2017 are as under:-

"9.5 The present strength of Inspectors promoted from the grade of Sub Inspectors is 46 which is 34 less than the sanctioned strength and therefore it was decided to conduct the DPC only from the grade of Sub Inspectors to Inspectors. As such all the action taken by the respondents are in conformity with rules and instructions issued in this regard. The applicants have failed to come forth with any cogent ground for filing the present O.A.

11. Counsel for applicants filed short Rejoinder Affidavit through which it is stated that in previous years the respondents have adopted the policy of promotion on vacancy based roster due to which the strength of UDCs exceeded in previous years DPCs. It is further stated that the respondents have committed manifest error of law by adopting the vacancy based roster in the previous year's promotions. If the post based roster had been adopted in accordance with the DOPTs OM dated 02.07.1997, no anomalies have been created in the later years promotions. It is required from the respondents that on the basis of which circular or office OM the respondents have adopted the vacancy based roster in promotion and disobeyed the provisions of OM dated 02.07.1997. It is further stated that the respondents were directed to promote the UDCs and Sub-inspectors in the ratio of 7:5:9 in compliance with the order dated 08.01.2009 passed by the CAT Principal Bench, New Delhi in OA No.2120/2007, P.K. Dixit and others vs. Union of India & Ors vide order dated 06.11.2009. It is further required from the respondents to clarify that on which basis the respondents were adopting the promotion on the basis of vacancy based roster in previous years DPCs since 2010 to 2015 and why they are adopting the policy for promotion on the post based roster. Had the respondents adopted the post based roster in promotion of UDC in previous years DPCs, the post of inspectors for promotion through UDCs would have not been filled up. Even if the post of UDCs are not available for promotion in current year of 2016 then also the applicant are entitled to be promoted in view of the Hon'ble Apex Court's

order in Vijay Singh Charak vs. Union of India which provides as under:-

A. Service law – recruitment process – panel/select list/reserve list/waiting list/merit list/rank list – select list – validity period – operates only for a particular year and only those selected in that year can be listed – even if list is prepared in the subsequent year for the selectees of the previous year it will relate back to the previous year – vacancies of several year cannot be clubbed together so as to prepare a common select list – Indian Forest Services (Initial Recruitment) Regulations, 1966. REgn.5.

In view of the aforesaid pronouncements the applicants are entitled to be considered in the DPC for promotion on the post of Inspectors and non inclusion of the names of the applicants in the proposed DPC is bad in law."

8. Subsequent to passing of the order dated 12.10.2017, the official respondents filed a Supplementary affidavit on 30.11.2017. Para 4 of this affidavit states as under:-

"4. That while passing the order dated 12.10.2007, Hon'ble Tribunal observed "it is also not disputed that the respondents department has not disclosed total vacancies." In pursuance to the aforesaid observation, applicants have sought information under Right to Information Act, 2005, wherein respondents vide letter dated 23.09.2016 has disclosed 48 posts of Inspector for year 2016-17, out of which 14 posts are to be filled to direct recruitment and 34 posts are to be filled by promotion among Sub-Inspector. For kind perusal of this Hon'ble Tribunal, a true copy of the information dated 23.09.2016 provided by the respondents is being filed herewith and marked as Annexure No. SA-1 to this Affidavit."

9. The private respondents have not filed any counter reply in the case. But at the time of hearing on the stay vacation application, their counsel had by and large supported the stand of the official respondents. Their main stand is that as per the notification dated 2.10.2010 (Annexure A-3), the ratio of 7:5:9 will apply to total posts as the words in the notification would show. Since there is deficiency in the number of sub-inspectors promoted to the post of Inspector and there is excess number of UDC/Steno-III promoted as Inspector, the decision of the official

respondents to consider only the sub-inspectors for the DPC in 2016, is correct.

10. We have heard the learned counsel for all the parties on 23.8.2018. The key issue to be decided in this case is whether the ratio of 7:5:9 would apply to the total sanctioned post of inspectors as argued by the respondents, or it would apply to the vacancy arising every year, as averred by the applicants. The background to the dispute was that prior to 2010, the aforesaid ratio was 1:1:1 respectively for direct recruit, promotion for UDC/Steno and promotion from sub-inspectors. The share of the UDCs in the quota for promotion to the post of inspector to be filled up was 33.33% when the ratio was 1:1:1. This share was reduced to about 23.8% after the ratio was changed to 7:5:9. On the other hand, the share of the sub-inspectors has been increased from 33.33% to 42.86%, effectively increasing promotional prospects for the sub-inspectors compared to the UDC/steno-III. As stated in para 9 of the order dated 12.10.2017, the number of UDC/Steno-III in the cadre of Inspector was 50 against 45 in accordance with the ratio 7:5:9 and the number of sub-inspectors was 46 against 80 according to above ratio. Hence, there is a shortfall of 34 of sub-inspectors and excess of 5 UDC/Steno-III, if the ratio is applied on the total number of sanctioned posts. The respondents have pointed out this justification for the decision to hold DPC in 2016 for the post of inspectors by filling up 34 posts by promotion only, so that the entire short fall in promotion of the sub-inspectors would be made good.

11. Regarding the issue of application of the ratio to total sanctioned strength or to the vacancy in a year, Shri R.K. Rai and Shri A.K. Singh, learned counsels for the applicants cited the document on Frequently

Asked Questions (in short FAQ) on Recruitment rules, which refers to method of recruitment or percentage of vacancies to be filled up by various methods. He argued that the notification dated 2.10.2010 states that the ratio for filling up the post of Inspectors through direct recruitment, promotion of UDC/Steno-III and promotion of sub-inspectors will respectively be in the ratio of 7:5:9. It was argued that since filling up of the post will depend on the vacancy, the ratio of 7:5:9 will apply on the vacancy of post to be filled up and this interpretation finds support from the FAQ on Recruitment Rules of the DOPT. The applicants' counsel also furnished copy of the following judgments in support of his case:-

- (i) Prabodh Verma and Ors, Etc Vs State of Uttar Pradesh and Ors decided on 27.07.1984 by the Hon'ble Supreme Court
- (ii) Ksh. Lakshaheb Singh and Ors Vs State of Manipur and Ors decided on 02.09.2015 by the Hon'ble Supreme Court.
- (iii) Vijay Singh Charak Vs Union of India and ors (2007) 9 SCC 743.
- (iv) Udit Narain Singh Malpaharia, vs Additional Member Board of Revenue, Bihar and another dated 19.10.1962- AIR 1963 Supreme Court 786 (V 50 C 118)

12. On the other hand, Shri S. Narain, learned counsel for the private respondents argued that the notification dated 2.10.2010 refers to the post of Inspectors, which would imply that the ratio will apply to total number of sanctioned posts of inspectors. He further argued that if we accept the argument of the applicants to apply the ratio on the vacancy, then the present deficiency in the number of sub-inspectors promoted will take a much longer time to be made good, which will adversely affect promotion prospects of the cadre of sub-inspectors.

13. The notification dated 2.10.2010 states as under:-

"G.S.R. 56 (E) – In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President hereby makes the following rules to amend the Narcotics Department (Group 'C' Post) Recruitment Rules, 2002, namely –

1. (1) These rules, may be called the Narcotics Department (Group 'C' Post) Recruitment (Amendment) Rules, 2010.
- (2) These rules shall come into force on the date of their publication in the Official Gazette.
2. In the Narcotics Department (Group 'C' Post) Recruitment Rules, 2002, in the Schedule, in column 1 relating to the post of Inspector under heading "Method of Recruitment whether by direct recruitment or by promotion or by deputation and percentage of the posts to be filled by various methods" for the existing entry the following entry shall be substitutes namely:-
 - " The ratio for filling up the post of Inspectors in Narcotics Commissionerate by direct recruitment, by promotion from the Grade of UDC/Steno Grade-III and by promotion from the Grade of Sub-Inspector, shall respectively be 7:5:9."

From the reading of the said notification, although the ratio will apply to the filling up of the post of inspectors, its implication has interpreted differently by both the applicants' and respondents' counsel. The language used in the said notification is not very clear as to whether the ratio will apply on the vacancy or total posts. It is seen that by applying the ratio to the vacancy, will create a situation where total representation of the personnel from different feeder cadres to the post of inspectors may vary year to year. For example, if due to higher average age of one feeder cadre, the rate of their retirement or attrition is higher than the other cadre due to higher age at the time of promotion or otherwise, then higher vacancy will arise for promotion of that cadre from the prospective of total representation. If ratio is applied to vacancy, then the total number of personnel with higher rate of retirement/attrition, will reduce over a period of time. On the other hand, if the ratio is applied to the total sanctioned posts, then the vacancy arising due to higher attrition/retirement will result in higher vacancy of that category of personnel to be filled up as per the rules. For the category of personnel with lower rate of attrition/retirement, there will be less vacancy, which will be filled up as per the rules. Thus, the total number of promotional

posts for the category of personnel will not change over time. If the objective of the cadre controlling authorities is to keep overall promotion prospects stable, then, it is desirable that the ratio should apply on the total sanctioned post, which will result on a relatively constant overall promotional avenues on account of the promotional posts for the employees from different feeder cadres. But it is the settled law that that the recruitment rules should determine the procedure for filling up the posts whether on the basis of annual vacancy or keeping in view the overall sanctioned posts. As observed earlier, the notification dated 02.10.2010 is not very clear on this issue.

14. We take note of the various judgments submitted by the applicants' counsel. In the case of Vijay Singh Charak, the decision of Hon'ble Apex Court that the vacancies of different years cannot be clubbed together is applicable with reference to the rules/regulations applicable for IFS under which it is mandatory to hold selection committee every year. The applicants have not demonstrated that a similar provision exists in the recruitment rules for the post of inspectors. Further, how the decision will be helpful to the applicants has not been shown. The revised ratio is applicable from the year 2010. There is nothing on record to show that vacant posts prior to 2010 have been included for the DPC in 2016, since admittedly, such promotions were also held in the year 2014 and 2015, which would have normally filled up all vacancies available as on 2014 and 2015. The judgment in the case of Prabodh Verma (supra) is inapplicable to the present OA before us, since the case is factually distinguishable. Similarly, the judgment in the case of Udit Narain Singh (supra) relates to impleadment of necessary parties, which has been done in this case after impleadment of the private respondents. Although the applicants objected

to their impleadment, but it was allowed by the Tribunal vide order dated 03.10.2016.

15. We have also gone through the order dated 8.1.2009 of the Principal Bench of the Tribunal in the case of P.K. Dixit vs. Union of India (copy of which is enclosed at Annexure RA-2 to the Rejoinder filed by the applicant). Subsequent to the order dated 8.1.2009, the respondents modified the ratio of promotion between the UDC/Steno-III and sub-inspectors. The claim in that OA before Principal Bench was that the ratio of 1:1 for promotion to inspector has been arbitrarily fixed without examining the existing promotion prospects of both category of employees. It was argued that total strength of UDC/Steno-III was 87 for whom 92 promotional posts were available. In case of sub-inspectors, total strength was 160 for whom only 57 promotional posts were available. The OA was disposed of vide order dated 08.01.2009 with following directions:-

"12. With the above view though a statutory rule and the percentage fixed by the Government in its prerogative has to pass the test of reasonableness and is to be in consonance with the principles of equality enshrined under Article 14 of the Constitution of India. No doubt, the feeder category may have another avenue of promotion in their own hierarchy like ministerial staff of UDC and Stenographers, yet the same has not been provided to a Sub Inspector, seeking promotion as Inspector in 33-1/3% fixed for them. Moreover, in 1993 the cadre strength on reorganization was raised, yet there is imbalance and inequality as to the quota fixed for various feeder categories for the post of Inspectors. The cadre strength in feeder quota was never considered for promotion as Inspector except on 6.6.1975 where 50% quota was fixed for Sub Inspector, seeking promotion as Inspector. As a result thereof, whereas 92 promotional posts are available for LDC and Stenographer Grade-III against their total strength of 87. However, for Sub Inspectors when their total strength is 160, only 57 promotional posts are available. Though chances of promotion is not a legal right but a valid consideration with all fairness and equality would not be possible if against number of posts in a feeder category are less in promotional avenues but their cadre total strength is more. This aspect has to be considered, failing which the applicants would be deprived of promotion and consideration thereof as a fundamental right.

13. Any policy decision if we find an infirmity and inequality, violative of principles of equality enshrined under Article 14 of the Constitution of India, the way out is to send back the case to the Government for reexamination, as ruled by the Apex Court in Basic Education Board, UP v. Upendra Rai, 2008 (3) SCC 432.

14. In the result, for the foregoing reasons, this OA stands disposed of with a direction to the respondents to reconsider fixing appropriate quota for applicants in the present case for promotion as Inspectors, strictly in consonance with their total strength and the promotional posts available to them. The methodology approved by law shall be adopted. The reconsideration would culminate into a reasoned order to be passed within a period of three months from the date of receipt of a copy of this order. No costs."

16. In accordance with the order dated 8.1.2009, the respondents modified the ratio of recruitment to the post of inspector from different sources from 1:1:1 to 7:5:9 respectively for direct recruitment, promotion from among the UDC/Steno-III and promotion from among the sub-inspectors and the notification dated 2.10.2010 was issued by the official respondents after considering total promotional posts available for UDC/Steno-III and sub-inspectors in view of the directions of this Tribunal to fix appropriate quota for promotion as inspectors in consonance with their total strength and promotional posts available for them. Hence, it is clear that the ratio was fixed keeping in view the total strength and total promotional posts available. This would imply that such ratio is considered on total strength. To keep the promotion prospects constant for both UDC/Steno-III and sub-inspectors on account of promotion to the post of Inspectors, it would be desirable to apply the ratio on the total posts as per the discussions in para 13 of this order. If the ratio is applied on yearly vacancy, then the number of promotional post of inspectors available for sub-inspectors and UDC/Steno-III will keep on changing depending on the rate of retirement/attrition for the employees of the feeder cadres promoted to the post of inspector. Hence, we are of the opinion that the background of the decision to issue the notification dated 02.10.2010 would imply that

the ratio of 7:5:9 will apply to total sanctioned post of inspectors at least till such time the criteria for application of the ratio is clearly specified in the rules through suitable amendment.

17. It is seen that for the year 2015, the respondents had listed 25 sub-inspectors and 5 UDCs for consideration of the DPC as per the order dated 14.5.2015 (Annexure A-5). Hence, the ratio of number of employees from two category considered for promotion was not 5:9 and comparatively more sub-inspectors were considered for promotion. It is not clear whether the ratio was applied to the vacancy for 2015. There is no material available before us to show that the lower percentage of participation of UDC/Steno-III in 2015 was protested by the applicants. Apparently, more number of sub-inspectors were considered for promotion to make good the shortfall in their overall representation in the Inspector cadre.

18. We take note of the fact that as per settled law, the Court/Tribunal ordinarily cannot interfere in the policy decisions. The Hon'ble Apex Court, in the case of **CMD/Chairman Bharat Sanchar Nigam Limited Vs Mishri Lal and others 2014 (1) SCC (L&S) 387** has been pleased to observe as under:-

"14. In the present case, a conscious decision was taken in 2005 providing that all the posts in question should be filled up by limited internal competitive examination. This was a policy decision and we cannot see how the High Court could have found fault with it. It is well settled that the Court cannot ordinarily interfere with policy decisions."

In the case of **State of Orissa and others Vs. Bhikari Charan Khuntia and others reported in (2003) 10 SCC 144**, the Hon'ble Apex Court observed as under:-

"8. As was observed by this Court in *Government of Orissa v. Haraprasad Das* whether to fill up or not to fill up a post, is a policy decision and unless it is arbitrary, the High Court or the Tribunal has no jurisdiction to interfere with such decision of the Government and direct it to make further appointments. In the present case, no selection was made and not even any select list was in existence. Even if there had been any such selection or inclusion of any of the names in the select list, same could not have given any right. Therefore, mere sending of name by the employment exchange could not have, and in fact, has not conferred any right. The writ applications were thoroughly misconceived, and the court misdirected itself as to the nature of relief to be granted.

9. It cannot be lost sight of that because of certain circumstances and policy decision which were also brought to the notice of the High Court, appointments could not be made. The reasons which persuaded the Government to absorb those who were rendered surplus on account of abolition of octroi and the decision taken to abolish substantial number of posts to minimize expenditure cannot be said to be either extraneous or irrelevant for the purpose, to be ignored by the Court in according relief to the writ petitioners. But the High Court notwithstanding chose to give directions as quoted above. The appointments made in respect of some who got empanelled on regular selections made by the Recruitment Board pursuant to the selection process undertaken does not give any sustenance to the writ petitioners to claim parity of treatment when their claims cannot be equated to those of such empanelled candidates."

In the case of **Delhi Development Authority, N.D., & another v.**

Joint Action Committee, Allottee of SFS Flats & Ors, 2007 (14) SCALE

507 as to judicial review of administrative law in a policy, the following observation was made:-

"64. An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall lay its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review.

60. Broadly, a policy decision is subject to judicial review on the following grounds :

- (a) if it is unconstitutional;
- (b) if it is dehors the provisions of the Act and the Regulations;
- (c) if the delegatee has acted beyond its power of delegation;
- (d) if the executive policy is contrary to the statutory or a larger policy."

19. In view of the above discussions, we are not inclined to interfere with the decision of the official respondents in this matter, particularly since the applicants have failed to furnish adequate justifications to substantiate their averment that the ratio stipulated in the notification dated 02.10.2010 will apply to the vacancy arising every year. On the other hand, the decision of the respondents for the DPC for 2016 is found to be in accordance with the notification dated 02.10.2010 and the order dated 08.01.2009 of Principal Bench of this Tribunal aiming to reduce the imbalance in the promotional prospects for both category of employees. However, it is necessary that the official respondents should consider suitable amendments to the Recruitment Rules/notification dated 02.10.2010 to clearly specify how the ratio in notification dated 02.10.2010 will be applied in accordance with the policy objectives of the Government. The OA is disposed of accordingly and the interim order dated 12.10.2007 is vacated. There will no order as to costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(GOKUL CHANDRA PATI)
MEMBER-A

Arun..