

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2387/2013

MA No.1824/2013

Reserved on: 04.01.2016

Pronounced on: 28.01.2016

Hon'ble Dr. B.K. Sinha, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

J.B. Sharma s/o Sh. Chandgi Ram,
UDC, R/o V&PO Ismaila,
Distt. Rohtak.

...Applicant

(By Advocate: Sh. Shrigopal Aggarwal)

Versus

Kendriya Vidyalaya Sangthan through
Joint Commissioner (Admn.)
Kendriya Vidyalaya Sangathan
18, Institutional Area,
S.J.S. Mart, New Delhi-16.

...Respondent

(By Advocate: Sh. K.M. Singh)

O R D E R

By Dr. B.K. Sinha, Member (A):

In the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved with the impugned order dated 14.03.2011 whereby the offer of appointment to the post of Assistant on promotion for the year 2010-11 has been withdrawn on the ground that the date of actual appointment of the applicant to the post of UDC is 02.04.1992 and not 30.09.1986, which has been erroneously considered. The applicant also challenges the Memo dated 09.08.2011 whereby his representation dated 20.07.2011 on the subject has been rejected.

2. The applicant has prayed for the following relief(s):

- “(i) to set aside the impugned orders which are marked as Annexure A-1 Colly.*
- (ii) to direct the respondents to grant benefits of continuous service from Sept. 13-09-1986 to 1-4-1992 as UDC, as held by numerous Courts in catena of judgments.*
- (iii) To direct the respondents to re-constitute DPC to consider the case of the applicant for promotion to the post of Assistant from the date he was due for promotion (i.e. Refer respondents’ Memo dated 11-1-2011).*
- (iv) To direct the respondents to grant the applicant all consequential reliefs (i.e. arrears of salary from the date of his promotion plus interest at market rates thereon).*
- v) To allow any other relief which this Hon’ble Tribunal deem fit under the facts and circumstances of the case.”*

3. The case of the applicant, in brief, is that he joined the respondent-organization as Chowkidar on 30.11.1977 and earned promotion as LDC on 04.09.1982. He was subsequently promoted as Accounts Clerk, vide letter dated 12.08.1986, in the scale of UDC on purely temporary and ad hoc basis, which was later regularized in the UDC scale vide respondent’s communication dated 02.04.1992. On 11.01.2011, the applicant was issued an offer of promotion to the post of Assistant from that of the UDC subject to his unconditional acceptance of the offer, and in case he failed to get relieved by 07.02.2011, the offer would be treated as withdrawn and he would stand debarred for a period of one year. The applicant was never relieved to take up the new assignment. The case of the applicant is that he met his superior officers on several occasions and who verbally assured him that his grievances would be redressed.

4. The learned counsel for the applicant fairly admitted that the applicant did not file any written representations in face of such assurances. However, when the impugned order was issued, the applicant filed a representation which was rejected by the respondents vide impugned order dated 09.08.2011. He further fairly admitted that his case was delayed for a period of 10 months 28 days for which he has filed MA No.1824/2013 seeking condonation of the same. The applicant also submits that the rules of limitation are not meant to destroy the rights of the parties. The purpose of limitation is to ensure that the parties do not resort to dilatory tactics but seek their remedy promptly by keeping every legal remedy alive for a legislatively fixed period of time. There is no presumption that delay in approaching the Court is always deliberate and the courts are well aware that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. It was also submitted by the applicant that power to condone the delay is within the competence of the courts which is required to be taken the circumstances involved in the case into consideration.

5. The second ground urged by the applicant is that he was appointed as Accounts Clerk in the scale of UDC on ad hoc basis on 12.08.1986 and thereafter continuously functioned as UDC till his regularization w.e.f. 02.04.1992. The applicant accused the respondents for not acting fairly so much so that he had to take recourse of the RTI Act for obtaining the requisite information/copies

of recruitment rules on 10.05.2013 and 17.05.2013. The applicant has also raised the issue of natural justice having been violated in his case.

6. The applicant has relied upon the following decisions:-

- (i) *Delhi Water Supply & Sewage Disposal Committee & Ors. Vs. R.K. Kashyap* [AIR 1989 SC 278];
- (ii) *Piara Lal Garg Vs. State of Haryana* [SLR 290 (P&H)(DB)]
- (iii) *Usha Kapoor Vs. State of Punjab* [1988 (1) SLR 395]
- (iv) *A. Kraipak Vs. UOI* [1969 (2) SCC 262].
- (v) *Management of M/s. M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar & Ors* [1990 (2) SCC 48]
- (vi) *Prakash Ratan Sinha Vs. State of Bihar* [2010 (1) SCC (L&S) 443]
- (vii) *Bhavnagar University V.s. Palitana Sugar Mills Pvt. Ltd.* [2003 (2) SCC 111]

7. Per contra, the learned counsel for the respondents has submitted that the delay involved in this case is not of 10 months 28 days, as claimed by the applicant, but it is almost 19 years since the cause of action had arisen to the applicant in the year 1992 when his *ad hoc* services were regularized w.e.f. 02.04.1992 and he could have challenged the decision at that time. Instead, he has chosen to wait for all these years. The learned counsel further submitted that it is quite incorrect to state that he had been submitting his case before the superior officers orally. There is nothing on record to show that the applicant had filed any representation prior to passing of the impugned order.

8. Learned counsel for the respondents while questioning the averment of the applicant that he had been seeking copies of

the recruitment rules which had not been provided to him and he had to take recourse to Right to Information Act in order to obtain these documents, submitted that the applicant was himself the custodian of the recruitment rules for different schools which had been framed differently in case of each school and, hence, question of getting the copies whereof through RTI by him does not arise at all. It is also submitted that as per the Office Order dated 08.09.1986, the applicant had been promoted as Accounts Clerk (UDC) on purely temporary and ad hoc basis w.e.f. 13.08.1986 (forenoon) and his services were regularized w.e.f. 02.04.1992 on recommendation of the DPC held on 14.03.1992. The claim of the applicant for promotion to the post of Assistant was, therefore, reconsidered based upon the date of his regularization and his name, which had erroneously been included in the list, was excluded on account of correction of this error. Learned counsel for the respondents further submits that the cases cited by the applicant are distinguishable in facts and, therefore, not applicable to the present case.

9. In the rejoinder, the applicant has contradicted the averments of the respondents raised in their counter affidavit.

10. We have carefully gone through the pleadings as also the documents so adduced by the rival parties. We have also patiently heard the arguments advanced by the learned counsel for both the parties. The issues that emerge for our consideration are as under:-

(i) *Whether the case is barred by limitation?*

- (ii) *Whether the period spent on ad hoc promotion should have reckoned while deciding his promotion to the post of Assistant as was rightly done in the first instance but later withdrawn deeming it to be a mistake?*
- (iii) *What relief, if any, could be granted to the applicant?*

11. In so far as first of the issues is concerned, we have already taken note of the arguments advanced by the rival parties. It is well accepted that the decisions of the Hon'ble Apex Court swing from one string to another. It has been held that requirement of condonation of delay is extremely stringent where each day's delay has to be explained.

12. In *Union of India & Others Vs. M.K. Sarkar* [2010 (2) SCC 59], the Hon'ble Supreme Court has taken the Tribunal to task for directing the respondents in that case to consider applicant's representation without taking a note of the issue of limitation. In this regard, relevant portion of the decision is being extracted below:-

"15. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

This position has also been reiterated in *Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Anr. V/s. K. Thangappan and Anr.* [2006 (4) SCC 322] holding that mere making of representations to the authorities concerned cannot justify belated approach. Relevant portion is being extracted hereunder for the sake of greater clarity:-

“5. The factual position as noted above clearly shows that for nearly 2 decades the respondent No.1-workman had remained silent. As rightly pointed out by learned counsel for the appellants even in the representations made in 1997 and 1998 there was no reference to the representations claimed to have been made in 1982 and/or 1989. Even if that would have been made, there was considerable delay even in making the representations. There is no dispute that mere making of representations cannot justify a belated approach.

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10. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in K.V. Raja Lakshmiah v. State of Mysore (AIR 1967 SC 973). This was re-iterated in R.N. Bose's case (supra) by stating that there is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In State of Orissa v. P. Samantaraj (AIR 1976 SC 1617) making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See State of Orissa v. Arun Kumar (AIR 1976 SC 1639 also).”

13. In yet another recent judgment in *D.C.S. Negi Vs. U.O.I. & Others* (SLP (Civil) No.7956/2011 CC No.3709/2011 decided on 11.3.2011), the Apex Court held as under:-

“Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21, which reads as under:-

‘21. Limitation -

(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in

connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where –

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period’.

A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3).

In the present case, the Tribunal entertained and decided the application without even adverting to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicates its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant”.

14. In *State of Uttranchal & Anr. Vs. Sri Shiv Charan Singh Bhandari & Ors.* [2013 (6) SLR 629 (SC)], the Hon'ble Supreme Court held as under:-

"11. The centripodal issue that really warrants to be dwelled upon is whether the respondents could have been allowed to maintain a claim petition before the tribunal after a lapse of almost two decades inasmuch as the said Madhav Singh Tadagi, a junior employee, was conferred the benefit of ad hoc promotion from 15.11.1983. It is not in dispute that the respondents were aware of the same. There is no cavil over the fact that they were senior to Madhav Singh Tadagi in the SAS Group III and all of them were considered for regular promotion in the year 1989 and after their regular promotion their seniority position had been maintained. We have stated so as their inter-se seniority in the promotional cadre has not been affected. Therefore, the grievance in singularity is non-conferment of promotional benefit from the date when the junior was promoted on ad hoc basis on 15.11.1983.

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26. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in *P.S. Sadasivasway v. State of Tamil Nadu*(1975) 1 SCC 152, wherein it has been laid down that

"2...A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters."

This has been further supported by the Tribunal in the case of *Shri Rajesh Ranjan Vs. Secretary, Ministry of External Affairs & Ors.* [OA No.2357/2012 decided on 30.07.2014] where the Court could not entertain the OA on merits because of being hopelessly time barred. On the other hand, as mentioned earlier, the courts have taken the

view that it is a matter which rests within the discretion of the courts and would depend upon particular circumstances governing the cases.

15. In the instant case, we find that the cause of action had arisen in the year 1992 when ad hoc promotion of the applicant was regularized w.e.f. 02.04.1992, thereafter it was not exercised. However, a fresh cause of action arose in the year 2011 when the applicant was issued an offer of promotion and the same was withdrawn vide the impugned order dated 09.08.2011.

16. It is in the context of the second cause of action that the applicant has challenged non-reckoning of the period of his ad hoc promotion. We have also taken the submission of the learned counsel for the respondents that the period from which the regularization would take effect was duly considered in the DPC which had rejected the same and that it ought to have been challenged at that point of time. Thus, under the circumstances, it appears that the challenge to the decision of the DPC is belated. However, we are also to consider as to whether there is a question of justice versus law, the scale should tilt in favour of justice. Hence, we are also considering the case on its merit.

17. Insofar as the second issue is concerned, the applicant has relied upon the decision in *Management of M/s. M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar & Ors* (supra) wherein the Hon'ble Supreme Court has held as under:-

"13. What is thus important in the modern administration is the fairness of procedure with elimination of element of

arbitrariness. The State functionaries must act fairly and reasonably. That is, however, not the same thing to state that they must act judicially or quasi-judicially. In Keshav Mills Co. Ltd. v. Union of India 9 Mukherjea, J. said

"The administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly."

This is an established principle of law and there can be no departure from the same. However, in the facts of the instant case, the issue is limited one as to whether the period spent on ad hoc promotion should have reckoned while deciding his promotion to the post of Assistant as was rightly done in the first instance but later withdrawn deeming it to be a mistake? The case relied upon by the applicant is applicable to all government actions.

18. Another decision relied upon by the applicant is that of *Bhavnagar University V.s. Palitana Sugar Mills Pvt. Ltd.* (supra) wherein the Supreme Court has held as under:-

"49. A decision, as is well-known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well-settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See Smt. Ram Rakhi v. Union of India & Ors., Delhi Administration (NCT of Delhi) v. Manoharlal, Haryana Financial Corporation and Anr. v. M/s Jagdamba Oil Mills & Anr. and Dr. Nalini Mahajan etc. v. Director of Income Tax (Investigation) & Ors.]"

19. We find that the above cited case relates to land acquisition and not to the issue involved in this case and, therefore, it would be of no help to the case of the applicant.

20. In *M.K. Shanmugam & Anr. Vs. Union of India & Ors.* [2000 (4) SCC 476], the Hon'ble Supreme Court held that where ad hoc promotions

were made de hors the rules it would not inure any benefit for the purpose of determination of seniority to the applicant. The relevant portion of the same is reproduced as under:-

“7...As stated earlier, the appellants were regularly found fit for promotion only in the year 1977 and if that period is reckoned their cases could not be considered as found by the Tribunal. The view expressed by this Court in these cases have been again considered in the decision in Dr. Anuradha Bodi v. Municipal Corporation of Delhi, (1998) 5 SCC 293 : (1998 AIR SCW 1971 : AIR 1998 SC 2093 : 1998 Lab IC 1911); Keshav Deo v. State of U.P., (1999) 1 SCC 280 : (1998 AIR SCW 3365 : AIR 1999 SC 44 : 1998 Lab IC 3554 : 1998 All LJ 2582); Major Yogendra Narain Yadav v. Bindeshwar Prasad, (1997) 2 SCC 150; I.K. Sukhija v. Union of India, 1997 (6) SCC 406 : (1997 AIR SCW 2684 : AIR 1997 SC 2714); Government of A.P. v. Y. Sagareshwara Rao, 1995 Supp (1) SCC 16, but all these decisions do not point out that in case the promotions had been made ad hoc and they are subsequently regularised in the service in all the cases, ad hoc service should be reckoned for the purpose of seniority. It is only in those cases where initially they had been recruited even though they have been appointed ad hoc the recruitment was subject to the same process as it had been done in the case of regular appointment and that the same was not a stop gap arrangement. That is not the position in the present cases at all. Therefore, we are of the view that conclusions reached by the Tribunal appear to us to be correct and call for no interference. However, we make it clear, as noticed earlier, that while amending the rules of recruitment in the 1984 all those who are already in service will be borne in mind in adjusting the seniority amongst the promotees inter se and suitable adjustments could be made and so far as the direct recruits are concerned, their cases will go by their quota rule and the view taken by the Tribunal in this regard cannot be taken exception of.”

21. In *State of Haryana & Ors. vs. Vijay Singh & Ors.* [2012(8) SCC 633], the Hon’ble Supreme Court has held that persons appointed on purely ad hoc basis or for a fixed period, the authority shall not be entitled to have the ad hoc service counted for the purpose of fixation of seniority. Relevant portion of the decision is reproduced hereunder:-

“24. In Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & others (supra), the Constitution Bench considered the dispute of seniority

between the direct recruits and the promotees in the light of the provisions contained in the Bombay Service of Engineers (Class I and Class II) Recruitment Rules, 1960, the Bombay Service of Engineers (Class I and Class II) Recruitment Rules, 1970, the Reorganised Bombay State Overseers and Deputy Engineers Seniority Lists Rules, 1978, the Reorganised Bombay State Assistant Engineers and Executive Engineers Seniority Lists Rules, 1981, the Maharashtra Service of Engineers (Regulation of Seniority and Preparation and Revision of Seniority Lists for Specified Period) Rules, 1982, etc.”

22. In *R.K. Mobisana Singh Vs. Kh. Temba Singh & Ors.* [2008 (1) SCC 747], the Hon’ble Supreme Court has held that where there is no provision for regularization of ad hoc seniority with back date the incumbent cannot stake claim for the same. Retrospective regularization can only be granted when there exists a rule to that effect. This position further stands corroborated in *Uttaranchal Forest Rangers Assn. (Direct Recruit) & Ors. Vs. State of U.P. & Ors.* [2007 (1) SCC (L&S) 116] wherein the Hon’ble Supreme Court has held that no retrospective promotion could be given unless the rules recognize the same and any ad hoc promotion de hors the rules cannot be reckoned for the purpose of future promotion. It is an admitted fact that the applicant had been promoted on ad hoc basis w.e.f. 13.08.1986, vide order dated 08.09.1986, which reads as under:-

“In continuation of this office order No.F.1-20/86-KVS(ESSt.I) dated 12.8.1986, Shri J.B. Sharma, L.D.C. is promoted as Accounts Clerk on purely temporary and ad hoc basis .w.e.f. 13.08.1986 (forenoon) in the pay scale of Rs.330-560 till further orders”

The applicant was subsequently regularized vide order dated 02.04.1992 which reads as under:-

“On recommendation of the Departmental Promotion Committee in its meeting held on 14.3.1992 the services of Shri JB Sharma

working as LDC on ad hoc basis are hereby regularized as UDC in the pay scale of Rs.1200-2040/- with immediate effect."

23. It is clear from perusal of the contents of the above order of regularization that the applicant had been regularized with immediate effect i.e. from 02.04.1992 and not from the year 1986, as the applicant alleges. The respondents submit that the applicant had been promoted on purely temporary and ad hoc and was regularized only when vacancies were available for the same. His promotion to the post of Assistant had been re-considered based upon on the date of regularization as UDC and his name had been excluded from the panel, which is strictly as per the Government of India instructions.

24. Here, we have to consider what is 'ad hoc' promotion? As per Chapter 21 of Swamy's Complete Manual on Establishment & Administrative, ad hoc promotions are normally given when the posts are temporary; when due to the exigency of work it is not possible to resort to the process of promotion; when the vacancies are short term upto maximum period of one year; or when there is no time to fulfil all the procedures required for making regular promotions.

25. Here, the claim of the applicant is that he was continued on ad hoc basis for a period of 5 years. Counter claim of the respondent is that the services of the applicant were regularized w.e.f. 02.04.1992 when the vacancy became available on regular basis. In this regard, the amended and existing rule position qua promotion to the post of

Assistant in terms of the recruitment rules as provided to the applicant under RTI Act read thus:-

<i>Assistant</i>	<i>Existing Recruitment Rules</i>	<i>Proposed Recruitment Rules</i>
	<p>50% by promotion on the basis of seniority-cum-fitness from UDCs at HQ/ROs who have rendered at least 6 years service as UDC in the Sangathan.</p> <p>50% by Deptt. Examination open to all UDCs/Accounts Clerks/Jr. Steno/Audit Asstts. Of HQ/ROs/KVs who have rendered at least 5 years service as UDC/Accounts Clerk/Jr. Steno and above.</p> <p>NOTE:-</p> <p><u>Appointing authority may decide at any time to fill in the fresh vacancy by taking Employees on deputation from the Govt. of India Offices/by open advertisement.</u></p>	<p>60% by promotion on the basis of seniority-cum-fitness from UDCs at HQ/ROs who have rendered at least 5 years regular service in the Sangathan, failing which by direct recruitment.</p> <p>40% by Deptt. Examination open to all UDCs/Accounts Clerks/Jr. Stenographer of HQ/ROs/KVs who have rendered at least 4 years regular service as UDC/Accounts Clerk/Jr. Steno failing which by direct recruitment, with the following qualifications:</p> <ol style="list-style-type: none"> 1. Graduate with 4 yrs experience as UDC in Central/State Govt./Autonomous bodies/public sector undertaking. OR 2. Post Graduate with 2 years experience as UDC in Central/State Govt. Autonomous bodies/public sector undertaking.

However, “the method of recruitment pertaining to the post of Assistant as per the recruitment rules furnished by the respondents, vide their letter dated 27.08.2003 [page 33 of the paper book] is as follows:-

“66 2/3% by promotion failing which by direct recruitment through limited departmental examination
33 1/3% by direct recruitment through open competition.

By promotion: From amongst UDCs of KVS who have rendered at least 5 years regular service in the aforesaid grade in the Sangathan.

By Limited Deptt. Exam:

Open to all UDCs/Jr. Stenos of KVS(HQ)/ROs/KVs with four years regular service in the KVS.

Direct Recruitment

33-1/3% by direct recruitment through open competition."

26. It is apparent from perusal of the above recruitment rules that there are conditions prescribed for promotion. However, the applicant has stated in his rejoinder that as per the recruitment rules, five years of service as Accounts Clerk/UDC was required for promotion to the post of Assistant and that he had completed this period w.e.f. 13.08.1986. Here, we are swayed by the two facts, namely, the applicant has not shown any rule which provides for regularization with back date. The second fact is that the earlier promotion made was purely on ad hoc basis and it was continued for a period of five years without break. However, at the time of regularization, the DPC had considered these issues and made his promotion w.e.f. 02.04.1992. Therefore, at this stage, we cannot upset the settled position.

27. In consideration of the above facts, we arrive at the conclusion that the issue relates to the year 1992 and the respondents committed a mistake in making the offer to the applicant taking into account his service from the year 1986, when he was holding the post on ad hoc basis but before offer could be implemented, the mistake was realised and corrected the same by the respondents. It is settled position that the Government has the power to correct its mistake. We see that the power to correct one's mistake is an inherent power as held by the Hon'ble Supreme Court in *National Institute of Technology Vs.*

U.Dinakar & Ors. [2015 (1) SCC (L&S) 266]. Relevant portion of the decision is reproduced as under:-

“26. In the present case, the authority had given notice to respondent no.1 and brought to his notice that there is a genuine mistake in his letter of appointment and he has been wrongly given a higher pay of scale of Rs.3000-4500. Respondent no.1 submitted his reply and not taken any plea that he has not applied pursuant to the notification of direct recruitment but his case was considered by way of promotion. In that view of the matter we hold that the competent authority has inherent power to correct the mistake if any committed in the order of appointment after giving proper opportunity to the concerned employee/officer.

27. In view of the aforesaid finding we hold that the appellant had committed no error in correcting the letter of appointment by replacing the correct scale of pay to which respondent no.1 was entitled i.e. Rs.2375-75- 2900-100-3700-125-4450 as provided in the advertisement/notification dated 29th July, 1994.”

28. In view of the above facts, we find that the claim of the applicant is not sustainable on merits for the reasons discussed above and, therefore, the instant OA is accordingly dismissed.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Dr. B.K. Sinha)
Member (A)

/Ahuja/