

**Central Administrative Tribunal  
Principal Bench**

**OA No. 1715/2014**

MA No. 1473/2014

MA No. 1079/2015

MA No. 646/2015

Order Reserved on: 14.07.2016

Order Pronounced on: 19.08.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)**

**Hon'ble Dr. B.K. Sinha, Member (A)**

1. Indian Defence Service of Engineers Association  
Room No.173, E-n –C Branch,  
Military Engineer Services,  
Kashmir House, Rajaji Marg,  
New Delhi  
Through its President
2. Veer Singh Yadav, EE,  
S/o Shri R.R. Yadav,  
GE (West), Delhi Cantt. - Applicants

(Shri V.K. Garg, Sr. counsel assisted by Mr. Neeraj Kumar Sharma)

VERSUS

1. Union of India,  
Through the Secretary,  
Ministry of Defence,  
South Block, New Delhi
2. The Engineer-in-Chief,  
Kashmir House,  
Army Headquarters,  
New Delhi -Respondents

(By Advocate: Shri Satish Kumar)

**ORDER**

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

The applicants, in the instant Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, are aggrieved with the non-implementation of the decision of the meeting of the Cadre Review Committee dated 22.09.2011 to convene the next cadre review meeting after one year.

2. The facts of the case, in brief, are that the applicant no.1 is the association of Group-A Civilian Officers of the Indian Defence Service of Engineers (IDSE, for short) having a cadre strength of about 1000 comprising of duty posts with the entry grade in the post of Assistant Executive Engineer up to Additional Director General. The members of the applicant no.1 Association are governed by the IDSE (Recruitment and Conditions of Service) Rules, 2004 (hereinafter referred to as “Rules 2004”) framed under Article 309 of the Constitution. As per the Army Instructions No. 1014 of 1923, it has been decided with the approval of the Secretary of State for India to organize the Engineers Service in India under an Engineer-in-chief borne upon the establishment of Army Headquarter and was to directly responsible to the Commander-in-Chief.

3. In the post-Independence era, the process of bringing the organization under part civilian control had commenced with gazette notification no. 1581 dated 17.09.1949 where some superior posts such as Executive Engineers, Surveyor of Works, General Technical Examiner etc. were provided for the civilian. IDSE (Recruitment & Conditions of Service) Rules 1991 framed under Article 309 of the Constitution envisaged the service as a Group-A civilian service with entry grade in the then post of Assistant Executive Engineer through direct recruitment made through Combined Engineering Services Examination conducted by UPSC. These rules were subsequently replaced by SRO No. 95 of 2004 known as IDSE (Recruitment & Conditions of Service) Rules, 2004 (hereinafter referred to as "IDSE Rules 2004"). As per Rule 3 of IDSE Rules 2004, the service known as IDSE consists of posts specified in Schedule-I according to which the post in the entry grade remains the Assistant Executive Engineer and the highest post in the cadre is of Additional Director General. The first administrative Reforms Commission in its report on personal administration released in the year 1969, brought in the concept of cadre review aimed to strike a healthy balance between the functional requirement and career progression in a service. This cadre review is to take place after every five years.

However, the 3<sup>rd</sup> cadre review could take place on 22.09.2011. It was decided, therefore, that the next cadre review would take place after a period of one year, keeping in view the delay that had already occurred. The grievance of the applicants, as already stated, is that no cadre review was made after a period of one year and, therefore, the applicants have approached this Tribunal seeking the relief that the 4<sup>th</sup> cadre review should be held in accordance with the decision dated 22.09.2011 since a period of five years had already lapsed following the decision that the review was required to be ordered with immediate effect. The applicants submitted a representation to this effect on 19.03.2014. The reliefs sought in the OA were subsequently amended vide MA No. 646/2015. The applicants submit that contrary to the clear stipulation that the cadre review should take place after every five years vide OM dated 14.12.2010, the second review had been sanctioned after 15 years in 2000 and third review took further 13 years. Therefore, the applicants prayed for the following reliefs vide MA No. 646/2015:-

- “a) direct the respondents to hold 4<sup>th</sup> cadre review for Group-A officers in Military Engineer Services in IDSE cadre in terms of decision dated 22.09.2011;
- b) quash and set aside order dated 05.02.2015 of respondent; and

- c) pass any such further order or direction as may be deemed fit, proper and necessary.”

4. The applicants have adopted the following grounds for their OA:-

- (a) Despite the fact that the periodic cadre review exercise is to take place after every five years, yet the first cadre review of Group-A officer was held in 1985 and the second after 15 years in 2000, while the third took another 13 years and was ordered vide the OM dated 07.06.2013. Once it has been provided that the cadre review should take place after every five years, this has to be adhered to.
- (b) As per the decision dated 22.09.2011, the 4<sup>th</sup> cadre review was to take place after one year. However, the respondent no.2, vide the order dated 20.01.2013, kept on postponing the cadre review on the pretext of awaiting the implementation of the decision of the 3<sup>rd</sup> cadre review dated 22.09.2011. In absence full implementation of the third cadre review decision, the respondent no.2 has declined to hold 4<sup>th</sup> cadre review vide note dated 22.02.2014.

- (c) Not holding the cadre review has led to severe stagnation in services and officers like applicant no.2 with the service of 29 years, are stagnating at JAG level with no hope to achieve even SAG level, while in service.
- (d) The applicants have submitted that the respondents unilaterally withdrew the decision to hold 4<sup>th</sup> cadre review, which would be held after a period of every years from henceforth. The respondents have also passed order dated 05.02.2015 withdrawing the benefits agreed in favour of the applicants without even given them a show cause.

5. The respondents have filed a counter affidavit denying all the averments in the OA. The main ground adopted by the respondents is that while conceding the frequency of five years, a constructive reading of decision dated 22.09.2011 reveals that no reference date has been formalized for the commencement of the period of 'one year'. The proposal, approval and promulgation of the 3<sup>rd</sup> Cadre Review Committee has itself consumed over two years. A cadre review is an integrated exercise which cannot be undertaken without substantial feedback and simultaneously in every cadre. It is also a time consuming

process with major financial and other implications. Therefore, the cadre review will commence after five years of the date of implementation of the report of the 3<sup>rd</sup> cadre review, i.e., in the year 2018. It should not be undertaken earlier lest it defeats the very purpose of cadre review. The second point adopted by the respondents is that IDSE has two wings: (i) civilians and (ii) other drawn from the Armed Forces. It is necessary to maintain the superiority of the Armed Forces within the service in the interest of the organization. If the 4<sup>th</sup> cadre review were to be held without considering the implications of the 3<sup>rd</sup> cadre review, it may lead to accrual of disproportionate advantage to the applicants and the civilian officers, which would not be in the interest of the organization. Citing the instances of earlier cadre review committee, the respondents state that the reports have led to stagnation prevailing today. This has been addressed to some extent in the 3<sup>rd</sup> cadre review but needs to be followed up. It is only after having carefully studied the consequences of the 3<sup>rd</sup> cadre review for a period of five years, i.e., 2013 to 2018, the 4<sup>th</sup> Cadre Review could be undertaken.

6. Learned counsel for the applicants have filed a rejoinder reiterating their earlier averments. The applicants has also relied upon the case of **Union of India**

**& Anr. vs. Hemraj Singh Chauhan and Ors.** (2010)4 SCC 290 which held that the respondents should not be allowed to reap advantage of their lethargy inaction in disturbing the rights of the applicants for a better organized cadre.

7. The respondents have filed sur-rejoinder stating that the decision that the 4<sup>th</sup> cadre review should take place after one year has already been revised by the Cabinet Secretariat vide DoPT ID No. 11011/1/2008-CRD dated 05.02.2015. Therefore, this is no obligation that the 4<sup>th</sup> Cadre Review should take place after one year. Instead it would be held after five years of the implementation of the 3<sup>rd</sup> cadre review, i.e., in the year 2018. Moreover, the minutes of the Meeting dated 22.09.2011 do not fall within the category of any statute in force or rules promulgated under Article 309 of the Constitution. Learned counsel for the respondents strongly argued for the OA being dismissed.

8. We have carefully examined the pleadings of the parties as also the documents submitted by them and also listened oral submissions made by their respective counsels. The following issues are germane for decision in this case:-

- (i) Whether it is mandatory requirement that the cadre review should take place after every



successive five years or after five years of the implementation of the cadre review?

(ii) Whether disturbance of balance between the engineers joining in the civilian cadre and those drawn from the army is essential for the well being of the service?

(iii) What relief(s), if any, could be provided to the applicants?

9. Insofar as first of the issues is concerned, we have already taken note of the genesis of Military Engineering Service. We have also taken note of the submissions that initially it had been dominated by the Commissioned Military British Officers alone. This Service had been set up under Army Instructions No. 1014 of 1923. The IDSE (Recruitment and Conditions of Service) Rules, 1991 under Article 309 of the Constitution had been framed. These Rules envisaged the service as a Group-A civilian service with entry grade in the then post of Assistant Executive Engineer through direct recruitment by means of Combined Engineering Services Examination conducted by UPSC. These Rules were subsequently replaced by SRO No. 95 of 2004, known as IDSE (Recruitment & Conditions of Service) Rules 2004, which is currently in vogue. This Service is constituted under Rule 3 of the Rules 2004 and

its duty posts consist of posts specified in Schedule-1 of the Rules. The term ‘duty post’ means any post specified in column 2 of the Schedule-1 of the Rules.

10. Rule 4 of the Rules 2004 defines Grades, Authorized Strength and its Review. For the sake of clarity, relevant rule is being reproduced as under:-

“4. Grade, Authorised Strength and it’s Review.-

(1) The duty posts included in various grades of the service, their names, numbers and scales of pay shall be as specified in Schedule 1, annexed to these rules.

(2) The Government may make temporary additions to or reduction from the strength of the duty posts in various grades as it may deem necessary from time to time,.

(3) The Government in consultation with the commission, include in or exclude from the service such posts as may be deemed to be equivalent to the posts included in the service, in status, grade, scale of pay and professional content, other than those included in Schedule 1.

(4) The Government may, in consultation with the Commission appoint an officer whose post is included in the service under sub-rule(3) to the appropriate grade of the service in a temporary capacity or in a substantive capacity, as it may deem fit and fix his seniority in the grade in accordance with the general orders and instructions issued by the Government from time to time in this regard.”

11. For the sake of clarity, Schedule-1 of the Rules 2004 is being reproduced as below:-

“SCHEDULE-I

Sl. No.	Name of the duty post and grades	Number of posts as on 1 <sup>st</sup>	Scale of Pay
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		Jan.,2004	
(1)	(2)	(3)	(4)
1.	Additional Director General	3	Rs.22,400-525-24500
2.	Chief Engineer	27	Rs.18,400-500-22,400
3.	Additional Chief Engineer	32	Rs.16,400-450-20,000
4.	Superintendent Engineer	205	Rs.14,300-400-18,300
5.	Executive Engineer (NFSG)	XX	Rs.12,000-375-16,500
6.	Executive Engineer	530	Rs.10,000-325-15,200
7.	Assistant Executive Engineer	200	Rs.8,000-275-13,500
8.	Assistant Executive Engineer	50	Rs.8,000-275-13,500

50% of the Senior Duty Posts (Executive Engineer and above), subject to the conditions that:-

- (i) there is no increase in overall strength of the cadre,
- (ii) the number of posts to be operated in non-functional grade (Rs.12,00-16,500) does not exceed the total number of posts available in the pay scale of Rs.10,000-15,200.”

12. We also take cognizance of the fact that it was first Administrative Reforms Commission released in the year 1969 which introduced the concept of cadre review to strike a healthy balance between the functional requirement and career progression in a service. The ethos behind the concept being that a satisfied work force leads to its enhanced efficiency and sense of belongingness. The respondent no.1 issued an OM 14.12.2010 consolidating the instructions on cadre review of Central Group-A Services. The instructions, *inter alia*, provided for a periodic

review after every five years. For the sake of clarity, the provisions under Guideline 5 are being reproduced as below:-

“5. Procedure for cadre review

- (i) Every cadre should be reviewed once every five years. The review should be first carried out by the Cadre Controlling Authority, preferably in consultation with the representatives of the service/cadre in question. However, if it is convinced after such a review that no change in the cadre structure is required, the decision should be conveyed, the DoPT with the approval of Ministry in charge.
- (ii) The cadre review proposal would be prepared by the Cadre Controlling Authority in the form of a Note for Committee of Secretaries. DoPT would obtain the approval of Secretary (P) and then refer it to Department of Expenditure for approval of Secretary (Expenditure).
- (iii) The Note would then be placed before the Cadre Review Committee by DoPT.
- (iv) Based on the recommendation of Cadre Review Committee, the proposal would be submitted for MOS (PP)’s approval. It would then be referred to the Department of Expenditure for Finance Minister’s approval.
- (v) The Cadre Controlling Authority would then take approval of Cabinet. The Note for Cabinet should ideally be prepared within a month of the Cadre Review Committee’s approval.”

13. Guideline No. 6 of the afore OM gives a composition of the cadre review as follows:-

“6. Composition of Cadre Review Committee-The Cadre Review Committee would comprise the following functionaries:

- (i) Cabinet Secretary Chairman
- (ii) Secretary to the Ministry controlling  
the cadre Member
- (iii) Secretary, Department of Personnel &

	Training	Member
(iv)	Secretary, Ministry of Finance, Department of Expenditure	Member
(v)	The senior most member of the Service/cadre concerned	Member

14. From the above, it is clearly emerges that OM dated 14.12.2010 has been issued in terms of Rules 2004 framed under Article 309 of the Constitution. Therefore, they have the force of supplementary legislation. Contrary to provisions of OM dated 14.12.2010, the cadre review has not taken place as provided under Guideline No.5 of the said OM after five years and has instead taken place haphazardly. The first cadre review of Group-A was sanctioned in the year 1985, the second after 15 years in the year 2000 and third 13 years later, which was ordered vide OM dated 07.06.2013. For the sake of greater clarity, we reproduce the relevant para of the cadre review:-

Sl. No.	Name of the Posts & Grade	Scale of Pay	Existing Strength	Revised Strength after 3 <sup>rd</sup> Cadre Review
1.	Additional Director General (HAG)	Rs.67000-79000	03	04
2.	Chief Engineer	Rs.37400-67000+GPRs.1000	27	45
3.	JAG (ACE)	Rs.37400-67000+GP 8900	32	00

3.	Superintending Engineer	Rs.37400-6700+GP8700	215	281
4.	Executive Engineer (NFSG)	Rs.15600-39100+GP7600	525	480
5.	Executive Engineer	Rs.15600-39100+GP 6600		
6.	Assistant Executive Engineer	Rs.15600-39100+GP 5400	200	78
7.	Reserves		50	78
	TOTAL		1052	1038

15. The Cadre Review Committee, while considering the proposal of the Ministry of Defence for cadre review of the MES (IDSE, Architect Cadre and Surveyor Cadre) on 22.09.2011, has approved the posts as contained in the afore Table-1 in IDSE.

16. Salient points emerging from the meeting of the Cadre Review Committee are being extracted as below:-

“10. Engineer-in-Chief of MES reiterated that it would not be possible to agree to creation of more posts in the SAG grade in IDSE, as it would disturb the command and control structure of the Army. According to him, the current stagnation is limited to 2-3 batches of IDSE due to a larger intake of engineers in the relevant years. He also mentioned that a decision has been taken in principle that new posts of Chief Construction Engineers would also be divided between both Army and Civilian formations.

X

X

X

12. After discussions, Secretary (Coordination), Cabinet Secretariat, decided to have 45 posts in Chief Engineers Grade (SAG) in IDSE which would factor in the additional posts of Chief Construction Engineers earmarked for civilian officers. It was also decided that the SE Grade may not be bifurcated into two categories of SE(S) and SE. Subject to the above, the

cadre review proposal as proposed by Ministry of Defence for IDSE was approved.

X

X

X

15. Considering the submission made by Engineer-in-Chief, MES that the current phase of stagnation in relation to IDSE cadre is temporary, it was decided to hold the next review of the cadre after one year.

From the above discussion, it appears that there was indeed a decision taken by the Cadre Review Committee on 22.09.2011 to hold the next review of the cadre after a period of one year.

17. We have already taken note of the arguments of the respondents that they have written to the department of Cabinet Secretariat stating that minimum period of five years is lapsed between two Cadre Review Committees. However, as the report of the Cadre Review Committee could only be implemented in the year 2013, the next cadre review committee would only be summed up after a period of five years, i.e., in the year 2018. We do not, however, find this argument tenable for a number of reasons. In the first instance what has been provided has to be carried out. We have noted that contents of the OM dated 22.09.2011 provide for review of cadre after every five years. This implies that the review has to be carried out after every five years irrespective of whatever be the difficulties. It is not for the respondents to adopt the argument that since they

were inefficient in performance of their task, they should be further rewarded by extending the period of review by another five years. One of the basic purposes of cadre review is to remove the stagnation and bottlenecks in promotions. The last cadre review could only be completed in the year 2013. However, if the argument of the respondents were to be attended, the next 4<sup>th</sup> cadre review would be taken up only in the year 2018, a time by which many members of the Service would be retired. The Hon'ble Supreme Court has held in **Association of Management of Private Colleges Vs. All India Council for Technical Education & Ors.** (2013) 8 SCC 271, laying down the ratio as follows:-

"44. So far as point nos.4 and 5 are concerned, the amended Regulation Nos. 8(c) and 8(iv) of 2000 were introduced by the AICTE in exercise of its power under section 10(k) of AICTE Act by adding the MBA and MCA courses within the purview of the provisions of AICTE as it is included in the Regulation as a technical education. It is the case made out by learned counsel for the appellant Mr. Prashant Bhushan that the amended Regulation has not been placed before the Parliament which is mandatory as per the provisions of Section 24 of the AICTE Act, the said contention has not been disputed by the AICTE in these cases. The provision of Section 24 reads thus:

"24. Rules and regulations to be laid before Parliament:- Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and it before the expiry of the session



immediately following the session or the successive sessions, aforesaid, both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation." The position of law is well settled by this Court that if the Statute prescribes a particular procedure to do an act in a particular way, that act must be done in that manner, otherwise it is not at all done. In the case of Babu Verghese v. Bar Council of Kerala[7], after referring to this Court's earlier decisions and Privy Council and Chancellor's Court, it was held as under:

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under:

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of V.P. and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law." In view of the above said decision, not placing the amended Regulations on the floor of the Houses of Parliament as required under Section 24 of the AICTE Act vitiates the amended Regulations in law and hence the submissions made on behalf of the appellants in this regard deserve to be accepted. Accordingly, point Nos. 4 and 5 are answered in favour of the appellants."

18. In this regard , we are also to take note of one of the landmark decisions - **Union of India & Anr. vs. Hemraj Singh Chauhan & Ors.** (supra). In this case, the respondents were members of the State Civil Service and according to them, who had completed eight years of service on 23.07.1985 and 04.06.1985 respectively. Their contention was that in terms of Regulation 5(3) of the IDSE (Appointment by Promotion) Regulations, 1955, a member of SCS, who had attained the age of 54 years on the 1<sup>st</sup> day of January of the year in which the committee met, shall be considered by the Committee, provided he was eligible for such consideration on the 1<sup>st</sup> day of the year or of any of the years immediately preceding the year in which such meeting was held. However, he could not be considered as no meeting of the Committee had been held during such preceding year or years. The case of the respondents was that since the last cadre review of the IAS in Uttar Pradesh cadre had been conducted in the year 1998 and the next cadre review was therefore due in April, 2003., the cadre review conducted in August 2005 should have been given effect from April 2003 so that they could be considered for promotion against the promotion quota. The stand of the State of Uttar Pradesh before CAT was that with the issuance of Notification issued by the Department of

Personnel and Training on 21.10.2000 bifurcating the cadre of undivided Uttar Pradesh to IAS, Uttar Pradesh and IAS, Uttaranchal upon the Uttar Pradesh Reorganisation Act, cadre review had already taken place and as such, the next review had been due in 2005 only. The respondents' stand had been that the review had been due in 2003. However, CAT after hearing the parties upheld the contention of the State of Uttar Pradesh and held that the cadre review carried out in 2005 could not be given retrospective effect. The Tribunal dismissed the OA No. 1097/2006 and partially allowed OA No. 1137/2006, *inter alia*, directing the respondents to convene the meeting of DPC Selection Committee to fill up the posts which had not been filled up in the years 2001, 2002 and 2004 and to consider all eligible SCS officers in the zone of consideration including the officers who had been put in the select list of those years but could not be appointed in the absence of integrity certificate. When the matter went up before the Hon'ble High Court, it was pleased to set aside the decision of this Tribunal dated 15.12.2006 and the Notifications dated 01.02.2006 and 25.08.2005 with directions to the State Government and the Central Government to undertake the cadre review exercise, as if it had taken place on 30.04.2003 with reference to the

vacancy position as on 01.01.2004. The Hon'ble Supreme Court after came to the conclusion held as under:-

“42. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Surely lethargy, in action, an absence of a sense of responsibility cannot fall within the category of just exceptions.”

19. The Hon'ble Supreme Court in the case of **Union of India & Anr. vs. Hemraj Singh Chauhan & Ors.** (supra) has also noted the decisions rendered in **Union of India vs. Vipinchandra Hiralal Shah**, (1996) 6 SCC 721, **Syed Khalik Rizvi vs. Union of India**, 1993 Supp(3) SCC 575 to hold that the insertion of the word “ordinarily” did not make a difference unless there was a very good compelling reason. The Hon'ble Supreme Court further observed that the practice of holding annual meeting should be followed.

20. In **Raj Narain Prasad & Ors. Vs. State of UP & Ors.**, (1998)8 SCC 473, The Hon'ble Supreme Court have held as follows:-

“We have carefully perused the proposed scheme in regard to work-charged employees and we felt that in Clause 'D' which talks of regularisation as per vacancies arising in regular posts on the establishment, a modification is necessary, in that, there should be a review of the cadre strength from year to year and based on the past requirement and

continuity of work-charged employees, the cadre strength should be increased by a certain percentage of the work-charged employees working over a period of time that may be fixed by the Government so that the pace of regularisation is accelerated and is not the same as obtaining in the past. For example, if 100 work-charged employees have been required throughout a period of time it could reasonably be estimated that even if shedding takes place, a certain percentage of those employees would certainly be retained and a part of them could be absorbed by increasing the cadre strength to that extent. An exercise of review in the cadre strength from year to year, thereafter, becomes necessary because while on the one side the financial difficulties of the State have to be kept in view, on the other side the welfare of the workmen who have served the State on different projects has to be balanced. Concern is also to be shown for those who have worked for a number of years and have become ineligible for any other employment anywhere, be that the private sector or the public sector. Therefore, a balance has to be struck between the two competing interests and that can be struck by a periodical revision of the cadre strength from year to year. We must also impress on the State Government that if work-charged employees have been on the establishment for long periods, the State should be liberal in the matter of revision of the cadre strength so that the benefit of regularisation is available to a reasonably good number of work-charged employees who have been associated with the State Departments for long periods. We would, therefore, direct that Clause 'D' should be understood as taking into its fold a periodical year-to-year revision of the cadre strength and besides the estimated vacancies, the additional vacancies on account of the increase in the cadre strength should become available for regularisation. If the figures given in para 6-A are perused, it appears that 25 per cent were engaged on work-charged establishment between 1960-65, 50 per cent between 1965-70, 20 per cent between 1975-80 and 5 per cent between 1980-85. This would show that there are workmen on the work-charged establishment who had joined between 1960-65 and who, we believe, if continuing in service, would certainly be required by the departments concerned and could be considered for regularisation under the Scheme by an increase in the cadre strength. So also one can say that the workmen working between 1965-

75, if still in employment, could be considered for regularisation by an increase in the workforce. Our emphasis is that while the State has to keep in view that financial constraints and the need for allocation of finances for development of projects, it should also show concern for those who are working in different departments of the State so that at the end when they are relieved from service on their attaining the age of superannuation, they may have something to fall back on. Keeping this in mind, we think that a liberal increase in the workforce for the first few years would satisfy the large number of work-charged employees who are working on different projects of each department for a number of years.”

21. Hence in view of the aforesaid arguments, we cannot allow inefficiency of the respondents to be rewarded by extending the period of review by another five years. Therefore, the argument of the applicants that the cadre review should be carried out after every five years as provided irrespective of the difficulty, is sustained. The first issue is answered accordingly.

22. Insofar as the second issue is concerned, it is well admitted that the Government had worked out a scheme in the colonial India which bestowed a certain advantage upon the serving Army Officers in this department. However, from time to time, recruitments have been made according to the cadre strength. It is for the respondent authorities to address the anomalies, if any, arising out of this cadre review. The maintenance of balance between Defence Service Officers and the civilian employees like the

applicants is something which falls within the policy realm of the respondents. They are free to take policy decision in this regard where the courts will have little to say. However, this policy decision should not be taken by holding up the matter and postponing the crises. We are firmly of the opinion that the situation of stagnation has arisen on account of the applicants not holding the Cadre Review Committee in time. Had they held the cadre review committee in time, we are sure that the problem would have been addressed.

23. In view of the discussion above, we find the cadre review has to be mandatorily held after every five years and there is no escape from the same; and that maintaining balance between the different components is a matter of policy that lies within the Government domain. Taking recourse to others subterfuge like not holding the cadre review is only means of postponing the crises and makes the situation worse. It leaves a whole lot of dissatisfied staff behind. Since the decision of holding a cadre review after one year as per the meeting of Cadre Review Committee on 22.09.2011 has lapsed on account of delay by the inaction of the respondents, we quash and set aside the order dated 05.02.2015. Accordingly, we allow the OA with directions to the respondents that the 4<sup>th</sup> Cadre

Review Committee should be notified within a period of three months from the date of production of a certified copy of this order. The MAs also stand disposed of. No costs.

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

**(V. Ajay Kumar)**  
**Member (J)**

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