

**Central Administrative Tribunal  
Principal Bench**

**OA No.2059/2015**

New Delhi, this the 26<sup>th</sup> day of November, 2015

**Hon'ble Mr. A.K. Bhardwaj, Member (J)**  
**Hon'ble Mr. V.N. Gaur, Member (A)**

Dr. R.S. Fonia, Age 57 years,  
S/o Late Shri Bal Singh Fonia,  
R/o House No.D-22, 6<sup>th</sup> Floor,  
DDA HIG Flats,  
Pocket 9A,  
Jasola, New Delhi-25.

Working as Joint Director General,  
At A.S.I. Headquarters, Janpath,  
New Delhi-110001.

...applicant

(By Advocate : Shri A.K. Behera )

**Versus**

1. Union of India,  
Through its Secretary,  
Ministry of Culture,  
Shastri Bhawan,  
New Delhi.
2. Director General,  
Archeological Survey of India,  
A.S.I. Headquarters, Janpath,  
New Delhi.
3. Union Public Service Commission,  
Through its Secretary,  
Shahjahan Road,  
New Delhi.
4. Department of Personnel and Training,  
(DOPT),  
Through its Secretary,  
Lok Nayak Bhawan,  
Khan Market,

New Delhi.

5. Shri P.G. Kaladharan,  
Director (Administration),  
Archeological Survey of India,  
A.S.I. Headquarters, Janpath,  
New Delhi.

...respondents

By Advocate : Shri Ranjan Tyagi for R-1&2  
Shri K.M. Singh for Shri R.V. Sinha for R-3)

### **ORDER (ORAL)**

**Mr. A.K. Bhardwaj, Member (J) :-**

The applicant herein who is working as Joint Director General in Archeological Survey of India (ASI) has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 praying therein :-

- “i) Direct the Respondent No.1 to consider the applicant for appointment to the post ADG (Archeology) in ASI through promotion;
- ii) Direct the Respondent No.1 to fill up the present vacant post of ADG (Archeology) in ASI by way of promotion amongst the eligible departmental candidates as per the Recruitment Rules and the DoPT Guidelines;
- iii) Direct the Respondent No.1 to make necessary amendments, if required, in the Archeological Survey of India, Director General and Additional Director General (Group A), Recruitment Rules 2002 with respect to recruitment to the post of ADG in ASI so that one of the post of ADG is filled up by promotion amongst the departmental candidates;

- iv) Quash the Advertisement No.F.No.2-11/2014 Adm.-1 dated 15.2.2015 issued by the Archeological Survey of India.
- v) May pass such other and further order as may be deemed just and appropriate in the premises of this case.”

2. Shri A.K. Behera, learned counsel for applicant submitted that prior to 2010, there were one post each in the grade of Joint Director General (JDG) and Additional Director General (ADG), thus, respondents were justified in having composite method of recruitment for the post of Additional Director General but now when the post in the grade of Additional Director General and Joint Director General have been increased to 4 and 18 respectively, the composite method is not justified. To buttress his plea, he relied upon the decision taken on 01.11.2010 by the Govt. of India, Ministry of Culture, which reads thus:-

“No.11-13011/21/2008 Estt  
Govt. of India  
Ministry of Culture  
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New Delhi, dated the 1<sup>st</sup> November, 2010

Subject : Creation/ upgradation of some senior level posts in Cultural Organisations under the Ministry of Culture – regarding.

Cabinet has approved, in its meeting held on 12/10/2010, the creation of the following posts

I Archeological Survey of India

- |   |    |
|---|----|
| (i) Additional Director General<br>(PB+GP Rs.10000/-) | 04 |
| (ii) Joint Director General<br>(PB-4+GPRs.8700/-)     | 18 |

II National Museum, New Delhi

- |  |    |
|--|----|
| (i) Joint Secretary/Profewssor<br>(PB-4+GP Rs.10000) | 02 |
| (ii) Director (PB-4+GP Rs.8700)                      | 02 |

III National Gallery of Modern Arts

Up-gradation of post of Director, NGMA to SAG level (Pay Band 4 Grade Pay Rs.10000/-) and its re-designation as Director General

IV National Research Laboratory for Conservation of Culture Properties

- (i) Up-gradation of post of Director NRLC to SAG level (Pay Band 4, Grade Pay Rs.10000/-) and its re-designation as Director General.

It is requested that necessary efforts i.e. framing of RRs, may be made at the organisational level.”

3. He also relied upon the decision of Hon’ble High Court of Delhi in WP(C) No.4959/2014 - **Rajesh Kumar Giri & Ors. Vs. Union of India & Ors.** , the relevant excerpt of which reads thus :-

“6. There exists an office memorandum dated December 31, 2010 issued by DOPT, concerning revision or amendments in the existing Recruitment Rules. Inter-alia, vide para 3.1.3 of the said Office Memorandum, under the heading ‘Retention of Existing Eligibility Service’ it is provided :-

‘RETENTION OF EXISTING ELIGIBILITY SERVICE  
3.1.3 Where the eligibility service for promotion prescribed in the existing rules is being enhanced (to be in conformity with the guidelines issues by this Department) and the change is likely to affect adversely some persons holding the feeder grade posts on regular basis, a note to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on regular basis on the date of notification of the revised rules, could be included in the revised rules.’

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14. Since the decision taken by the Cadre Controlling Ministry is on a wrong appreciation of the legal position we dispose of the writ petition issuing a direction to the Ministry of Home Affairs to process the recommendations made by DG, BSF and take corrective action, in that, accept the proposal to amend the BSF Air Wing Officers (Group A Combatized Posts) Recruitment Rules, 2011 by inserting a note therein to give effect to para 3.1.3 of the DOPT OM dated December 31, 2010, and for which direction we note that the Ministry of Home Affairs is the Cadre Controlling Ministry (The Rules of the year 1999 and the ones promulgated in the year 2011 have been notified by the Ministry of Home Affairs). Thereafter, case of the petitioners qua promotion be considered as per the Rules of 2011 with the note inserted therein.”

4. According to him, the stand taken by the applicant in the present OA is also supported by the UPSC i.e. respondent No.3 in its reply. He read out para 7 and 7.3 of the reply which reads thus :-

“7. That in this regard it humbly submitted that Archeological Survey of India had issued the advertisement No.F.No.2-11/2014 Adm-1 dated 15.2.2015 for filling up the aforesaid post as per existing provision of RRs i.e. under composite method [promotion/deputation (ISTC) basis. As per DOPT guidelines, the Department is required to bring proposal, complete in all respects to the Commission in Single Window for selection by promotion/deputation (ISTC) method. However, no such proposal has been received in the Commission for filling up of the post of Additional Director General (ADG) in ASI and therefore, no action is pending in the Commission.

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7.3. That as per the records submitted by the Ministry of Culture while dealing with the proposal for amendment of RRs for the post of Joint

Director General (Archeology) in May, 2015, it is noticed that there was only one post of Joint Director General (Archeology) prior to 2002 in the feeder category, hence the "Composite Method" as method of recruitment advised by the Commission in 2002 was in order. Now, the number of post have been changed 1 to 8 in 2015. Hence, the method of recruitment needs to be amended. Ministry of Culture has not submitted any proposal for amendment so far."

5. It is not in dispute that the recruitment rules which provided for composite method of appointment to the post of ADG were notified on 01.05.2002 i.e. more than 13 years ago and more than 8 years before the date when the number of posts of JDG and ADG in ASI were increased to 4 and 18.

6. We find from OM No.AB 14017/12/87-Estt.(RR) dated 18.03.1988 produced by the learned counsel for applicant that the Recruitment Rules should be reviewed once in five years with a view to effect such changes as are necessary to bring them in conformity with the changed position, including additions to or reductions in the strength of the lower and higher level posts. The relevant excerpt of the said OM reads thus :-

"3.1.5. The Recruitment Rules should be reviewed once in 5 years with a view to effect such changes as are necessary to bring them in conformity with the changed position, including additions to or reductions in the strength of the lower and higher level posts."

7. In the present case, indubitably there is change in the cadre strength of promotional and feeder posts. Thus the exercise in terms of the aforementioned provisions of OM dated 18.03.1988

was required. During the course of arguments, learned counsel for respondents under instructions from Shri Bhawan Lal, Liaison Assistant, Deptt. Representative, stated that the process for amendment in recruitment rules to the post of ADG is on and would be concluded expeditiously.

8. In view of the aforementioned, particularly the stand taken by the UPSC and the learned counsel for respondent Nos.1&2, the OA is disposed of with a direction to the respondents to finalise the exercise of amendment in the Recruitment Rules for the post of Additional Director General notified on 01.05.2002 with due regard to the provisions of OMs dated 18.03.1988 and 31.12.2010 as expeditiously as possible preferably within six months. Till the amendment in the Recruitment Rules, there should be no further recruitment to the post of ADG in ASI. It goes without saying that the recruitment to the post would be made after the amendment in the recruitment rules and as per amended rules.

( V.N. Gaur )  
Member (A)

( A.K. Bhardwaj )  
Member (J)

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