

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**O.A.No.3405/2014
M.A.No.3864/2014**

Reserved on: 21.03.2016.

Pronounced on: 12.05.2016.

**Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)**

1. Pankaj Nayan, aged about 37 years
Working as Inspector (Central Excise)
S/o Late Siya Sharan Prasad
R/o F-1/C-164, Shalimar Garden Ex-2
Shahibabad, Ghaziabad.
2. Mritunjay Kumar Patel, aged about 33 years
Working as Inspector (Central Excise)
S/o Shri Sudhir Kumar
R/o E-290, Mukherjee Nagar, New Delhi-9.
3. Deepak Gaba, aged about 34 years
Working as Inspector (Central Excise)
S/o Late Shri Darshan Lal
R/o 33/14, Ashok Nagar
Near Tilak Nagar
New Delhi-18.
4. Satender Kumar Antil, aged about 26 years
Working as Inspector (Central Excise)
S/o Sh. A.S.Antil
R/o 13, Naveen Apartment, Pitampura
New Delhi-34.
5. Sunita Rai, aged about 33 years
Working as Inspector (Central Excise)
D/o Shri Rohitashwa Kumar
R/o Shri Rohitashwa Kumar
R/o G-20, SGM Nagar, Faridabad.
6. Anita Singh, aged about 37 years
Working as Inspector (Central Excise)
D/o Shri Ashok Kumar Singh

R/o 240, Shree Gopal Nagar, Jaipur.

7. Poonam Goggal, aged about 33 years
Working as Inspector (Central Excise)
D/o Shri Ved Prakash
R/o House No.151, Sector-7
Malviya Nagar
Jaipur (Rajasthan).
8. Vinay Rawat, aged about 34 years
Working as Inspector (Central Excise)
S/o Shri Uttam Singh Rawat
R/o Flat No.466, DDA MIG
Sector-13A, Phase-II, Dwarka, New Delhi.
9. Yashoda, aged about 36 years
Working as Inspector (Central Excise)
D/o Shri Ram Gopal
R/o F-8, Kaka Nagar
Customs Flats
New Delhi.
10. Mamta Meena, aged about 34 years
Working as Inspector (Central Excise)
D/o Shri M.C.Meena
R/o Q-148, South City, Gurgaon.
11. Raman Kumar, aged about 34 years
Working as Inspector (Central Excise)
S/o Shri Rajinder Singh
R/o T-403/AE, Village-Munirka
New Delhi - 67.
12. Aseem Kumar, aged about 32 years
Working as Inspector (Central Excise)
S/o Shri Ranbir Singh
R/o I-5/45, Sector-16, Rohini, Delhi.
13. Virender Kumar Sagar, aged about 35 years
Working as Inspector (Central Excise)
S/o Shri Madan Mohan Sagar
R/o H.No.4/2822, Street No.2
Bihari Colony, Shahdara, Delhi-32.
14. Vinod Kumar, aged about 34 years
Working as Inspector (Central Excise)

S/o Shri Triveni Saw
R/o 34, Kaveri Tower, Vaishali, U.P.

15. Rohit Yadav, aged about 37 years
Working as Inspector (Central Excise)
S/o Balwant Singh Yadav
R/o VPO Murlipur
Distt. Rewari, Haryana.

16. Geeta Kumari Prasad, aged about 33 years
Working as Inspector (Central Excise)
D/o Late Shri S.K.Prasad
R/o – 6174, Block No.1, Street No.4,
Karol Bagh, New Delhi-5.

17. Prarthna Maurya, aged about 31 years
Working as Inspector (Central Excise)
D/o Sh. Bir Singh,
R/o RZD-44A, Syndicate Enclave
Dabri, New Delhi.

18. Suresh, aged about 33 years
Working as Inspector (Central Excise)
S/o Shri Bir Singh
R/o H.No.29, Vishal Nagar
Mill Gate, Hissar, Haryana.

19. Anita Kumari, aged about 33 years
Working as Inspector (Central Excise)
D/o Nand Lal Meena, Plot No.36, Raman Vihar
Near New Ajmer Bypass, Macheda, Jaipur. ... Applicants

(through Shri M.K.Bhardwaj, Advocate)

Versus

UOI & Ors. & through

1. The Secretary
Ministry of Finance
North Block,
New Delhi.
2. The Chairman
CBEC, North Block,
New Delhi.

3. The Chief Commissioner of Central Excise
Delhi Zone, CR Building, IP Estate
New Delhi.
4. Rakesh Gupta
S/o Sh. Ram Swaroop Gupta
R/o Sector-2, 6/137, Rajendra Nagar
Ghaziabad, UP.
5. Shambhu Dayal Meena
S/o Sh. Jagnath Meena
R/o C-3/901, SRS Residency, Sector-88
Greater Faridabad.
6. Ram Kishore
S/o Sh. Jai Ram
R/o B-45, Shish Ram Park, Uttam Nagar
New Delhi.
7. Amit Arora
S/o Sh. S.K.Arora
R/o F-531, Sarita Vihar, Delhi.
8. Narender Singh
S/o Sh. Satbir Singh
R/o 2239, Mandir Lane, West Patel Nagar
New Delhi.
9. Ashutosh Singh
S/o Sh. Hari Shankar Singh
R/o B-20, Ashoka Enclave, Faridabad.
10. Satyendra Kumar Verma
S/o Sh. Ramraj Singh
R/o F-1, Plot No.755, Sector-5, Vaishali
Ghaziabad.
11. Girish Kumar
S/o Sh. Purushottam
R/o F-14, Street No.4, Mahavir Enclave
New Delhi-45.
12. Nikhil Shukla
S/o Late Sh. Vidyadhar Shukla
R/o F-9, Kaka Nagar, New Delhi.

13. Anand Kumar Verma
S/o Sh. Nehru Lal
R/o Type-III/69, NACEN Complex, Sector-29
Faridabad.
14. Bansh Raj Yadav
S/o Sh. Tilak Dhari Yadav
R/o S-2, 5/175, Vaishali, Ghaziabad.
15. Purushottam Kumar
S/o Sh. Arvind Kumar Arun
R/o S-2, Plot No.727, Vaishali Ghaziabad.
16. Sanjeev Kumar
S/o Sh. Mahender Kumar
R/o Jat Colony, Gali No.2, BMT Road
Bhiwani
Haryana.
17. Kishan Lal Jeph
S/o Sh. Sharwan Lal Jeph
R/o 735, Pocket-B, Sector-14, Om Apartment
Dwarka, New Delhi.
18. Sanjeev Kumar
S/o Late Sh. R.K.Dhankar
R/o A-157, Meera Bagh
New Delhi.
19. Jarnail Singh
S/o Sh. Om Prakash
R/o 405, Sector-12A, Pachkula, Haryana.
20. Sanjeev Dahiya
Sh. Virender Kumar
R/o C-24, Milap Nagar, Uttam Nagar
New Delhi.
21. Swaraj Singh Negi
S/o Sh. Balwant Singh Negi
R/o 186-A, LGF, Gautam Nagar, New Delhi.
22. Loknath Kukraja
R/o F-47, Old Double Storey,
Lajpat Nagar-IV, New Delhi.

23. Vipul Sharma
R/o D-196, Raj Nagar-II, Palam Colony
New Delhi.

24. Kiranjeet Dacoliya
R/o C-1841, 2nd Floor, Sushant Lok-I
Gurgaon, Haryana.

25. Dhananjay Kumar
Serving as Inspector (Central Excise)
Kolkata Zone, Kolkata.

26. Shailendra Kumar
Serving as Inspector (Central Excise)
Kolkata Zone, Kolkata.

27. Ajay Kumar
Serving as Inspector (Central Excise)
Kolkata Zone, Kolkata.

28. Kislay
Serving as Inspector (Central Excise)
Kolkata Zone, Kolkata. ... Respondents

(through Mr. R.N.Singh for official respondents and Mr. R.V.Sinha with Sh. Amit Sinha for Rs 4-17, Mr. Saurabh Ahuja for Rs-18, 19, 20 and 22, Mr. Krishan Kumar for Rs-23-25 and Mr. Mritunjay Kumar for Rs-26 to 28, Advocates)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicants, 19 in number and who are working as Inspectors of Central Excise and Customs, as on the date of filing of the OA, in the 3rd Respondent-Delhi Zone, filed the same, seeking the following relief(s): -

- “i) To direct the respondents to consider the applicants for promotion to the post of Superintendent, Central Excise with all consequential benefits.
- ii) To declare the action of respondents in not including the name of applicants in the eligibility list prepared for promotion to the post of Superintendent Central Excise, as illegal and

unjustified and issue appropriate directions for promoting the applicants to the said post of Superintendent, Central Excise with all consequential benefits including arrears of pay.

- iii) To direct the respondents to consider the applicants for promotion as Superintendent, Central Excise by relaxing two years of service as per DOP&T OM no. AB-14017/12/88-Estt.(RR) dated 25.03.1996 and the law on the subject.
- iv) To allow the OA with costs.
- v) Any other relief's as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case to meet the ends of justice."

2. They have also sought for the following interim relief:

"Pending final adjudication of the OA, it is humbly prayed that this Hon'ble Tribunal may be pleased to direct the respondents to consider the applicants' name for promotion in the DPCs which are being held during 22nd September, 2014 to 29th September, 2014 for promotion post of Superintendent, Central Excise."

3. This Tribunal, on 23.09.2014, while issuing notices in the OA, as an interim measure, passed the following order:

"6. In our considered view, if the aforesaid interim order is not granted, it will frustrate the applicants' case. However, at the same time, we do not intend to disturb the alleged eligibility list till this matter is finally decided. We, therefore, direct the respondents to consider the applicants in this OA as a separate block and the DPCs may make appropriate recommendations in their cases for promotion to the aforesaid post. However, the entire recommendations of the DPCs shall be kept in sealed cover and it shall not be given effect to without the leave of this Court. In other words, no appointments shall be made on the basis of the recommendations of the DPCs."

4. The OA was initially filed against the official respondents only. Later the private respondents had been impleaded in the OA, by way of various miscellaneous applications.

5. In MA No.3008/2014 filed by certain Private Respondents-Inspectors (Central Excise) and whose cases were included in the eligibility list for promotion to the post of Superintendants, this Tribunal on 30.09.2014 modified the interim order dated 23.09.2014 by clarifying that the miscellaneous applicants who are seniors to the applicants in the OA may be promoted to the post of Superintendent (Central Excise) as per rules. This Tribunal, by order dated 13.10.2014, in MA No.3012/2014 and batch, further modified the order dated 23.09.2014 by allowing the official respondents to act upon the recommendations of the DPC held on 30.09.2014, with liberty to consider the original applicants also for promotion to the post of Superintendent in accordance with the recommendations of the DPC, as per rules. When this OA is finally taken up for hearing, it is informed that all the applicants were also promoted as Superintendents of Central Excise, on completion of the required 8 years service as Inspectors of Central Excise, as per rules.

6. Heard Shri M.K.Bhardwaj, the learned counsel for the applicants and Shri R.N.Singh, learned counsel for the official respondents 1 to 3, Shri R.V.Sinha, learned counsel for private respondents 4 to 17, Shri Sourabh Ahuja, learned counsel for respondents 18 to 20 and 22 and Shri Krishan Kumar, learned counsel for respondents 23 to 25 and Shri Mritunjay Kumar, learned counsel for Respondents 26 to 28, and perused the pleadings on record.

7. The facts, as on the date of filing of the OA, as submitted by the applicants are that, all of them were appointed as Inspectors of Central Excise and Customs, pursuant to CGLE-2004 and joined as such during the period from November, 2006 to February, 2007. As per the notified draft seniority list of Inspectors as on 31.12.2011 [as was further corrected upto 07.08.2012], all the private respondents were juniors to the applicants in the category of Inspectors.

Some of the private respondents were transferred to the 3rd Respondent-Delhi Zone by way of Inter Commissionerate Transfers (ICT) and some were originally appointed as Senior Tax Assistants and promoted as Inspectors after the applicants' appointment as Inspectors.

8. It is further submitted by the applicants that the post of Superintendent (Central Excise) is to be filled up by promotion amongst Inspectors posted in the respective zone, as per the Superintendents of Central Excise Recruitment Rules, 1986, issued under Article 309 of the Constitution of India. Among other things, the said Rules require 8 years regular service as Inspector of Central Excise to become eligible for consideration for promotion to the post of Superintendent.

9. It is the case of the applicants that though they have not completed the said required 8 years regular service as Inspectors, as on the date of preparation of list of Inspectors eligible for promotion to the post of Superintendent, but they are entitled for inclusion of their names in the eligibility list as per DoPT OM No.14017/12/88-Estt.(RR) dated 25.03.1996, and also as per the law declared by a Full Bench of this Tribunal in **Ms. Garima Singh & Others v. Union of India & Others** [OA No.3278/2010 and batch dated 09.05.2011], as the private respondents, who are juniors to them, were considered for promotion.

10. Per contra, the respective learned counsel for the respondents while not disputing the existence of the DoPT OM dated 25.03.1996, however, would contend that unless the statutory Recruitment Rules for the post of Superintendent (Central Excise) issued under Article 309 of the Constitution of India, are amended by incorporating the instructions of the OM, the same has no force and cannot be made applicable to the applicants. They have further submitted that though the Writ Petitions filed by the official respondents against the decision of the Full Bench of this Tribunal in **Ms. Garima Singh** (supra) were

withdrawn, but with an observation that all the legal issues as raised by Union of India and UPSC in those Writ Petitions shall remain open to be decided in an appropriate case and the Writ Petition No.7619/2011, filed by some of the affected parties, is still pending on the file of the Hon'ble High Court of Delhi. It is further contended on their behalf that since the Full Bench Judgement in **Ms. Garima Singh** is against to the law declared by the Hon'ble Apex Court in various decisions, the said judgement is not binding. They also contended that the OA is liable to be dismissed on the ground of non-joinder of necessary parties, as the applicants have not made all the persons who are going to be affected in the event of allowing the OA, as party respondents to the OA.

11. In the backdrop of the aforesaid factual scenario, it is necessary to reproduce the relevant Recruitment Rules and the DoPT OM dated 25.03.1996 and the same are as under:

Rules:

"To be published in part-II, Section-3, Sub-Section(i) of the Gazette of India

F.No.A-12018/7/85-Ad.IIB
 Government of India
 Ministry of Finance
 Department of Wealth

New Delhi, The 17.12.1986

Notification

G.S.C. ____ In exercise of the powers considered by the proviso to article 309 of the Constitution, the President hereby makes the following rules for regulating the method of recruitment to the post of Superintendent of Central Excise, namely:-

1. Short Title (1) These rules may be called the Superintendents of Central Excise Recruitment Rules, 1986.
2. They shall come into force on the date of their publication in the Official Gazette.
2. Number of Post, Classification

The number of the said post, its classification and the scale of pay attached thereto shall be as specified in columns 2 to 4 of the Schedule annexed to these rules.

3. Method of Recruitment, age limit and other qualifications: The method of recruitment, age limit, qualifications and other matters relating to the said post shall be as specified in column 5 to 14 of the said schedule.

4. Persons holding post at the commencement of the Rules:

Persons holding the post of Superintendent of Central Excise on a regular basis at the commencement of these rules shall be deemed to have been appointed at the initial constitution to that post in the cadre for which the said post is allocated.

5. Disqualifications: No person.

(a) who was entered into or contacted a marriage with a person having a spouse living, or

(b) who having a spouse living, has entered into or contracted a marriage with any person.,

shall be eligible for appointment to the said post:

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.

6. Power to Relax: Where the Central Government is of opinion that it is necessary or expedient so to do, it may, by order and for reasons to be recorded in writing and in consulting with the Union Public Service Commission, relax any of the provisions of these rules with respect to any class or category of persons.

7. Saving:- Nothing in these rules shall affect reservations, relaxation in the age limit and other concessions required to be provided for the candidates belonging to the Scheduled Castes, the Scheduled Tribes and other special categories in accordance with the orders issued by the Central Government from time to time in this regard.

Sd/-

(S.P.Kundu)

Under Secretary to the Govt. of India

Notification No.7/86"

Schedule:

Name of the post	No. of post	Classification	Scale of pay	Whether selection post or non selection post
1	2	3	4	5

Supeinten- dent	3101* (1986) ** * Subject to variation dependent on workload. ** Cadrewise distribution of the posts are given in the Appendix I.	General Service Gazetted Group 'B' Non- Ministerial	Central Group 'B' Non- Ministerial Rs.2000- 60-2300- EB-75- 3200-100- 3500	Selection
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Age for direct recruits	Whether benefit of added years of service admissible under Rule 30 of CCS (Pension) Rules, 1972	Educational and other qualification required for direct recruits.	Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotes	Period or probation if any.
6	7	8	9	10
Not exceeding 30 years. (Relaxation for Govt. servants upto 5 years in accordance with the instructions or orders issued by the Central Government) Note: The crucial date for determining the age limit shall be the	No Note1: The qualifications are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified.	As specified in the Appendix II. Note2: The	No	2 years.

<p>closing date for receipt of applications from candidates in India (other than those in the Andaman and the Nicobar Islands and Lakshdweep).</p>	<p>qualifications regarding experience are relaxable at the discretion of the Union public Service Commission in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes if, at any stage of selection; the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.</p>		
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<p>Method of recruitment whether by direct recruitment or by deputation/</p>	<p>In case of recruitment by promotion/ deputation/ transfer/ grade from</p>	<p>If a departmental promotion Committee exists, what is its composition.</p>	<p>Circumstances in which the Public Service Commission is to be consulted in making</p>
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transfer and percentage of the vacancies to be filled by various methods.	which promotion/ deputation/ transfer to be made.		appointment
11	12	13	14
By promotion. Provided that not more than 5% of the total posts (subject to maximum number specified in Appendix-II) may be filled by direct recruitment as and when considered necessary.	Promotion Inspector of Central Excise (ordinary Grade) with 8 years regular service in the grade, if any, rendered in the grade of Inspectors (Senior Grade).	Group 'B' Departmental Promotion (1) Jurisdictional Principal Collector of Customs on Central Excise of in his absence Director General of Inspection (Customs and Central Excise) – Chairman. (2) Collector concerned – Member (3) Any other Collector/ Director under the Central Board of Excise and Customs where the cadre comprises of one Collectorate only-Member (4) Deputy Collector (Personnel and Establishment)	Constitution with Union Public Service Commission is necessary while making direct recruitment.

	<p>of the Cadre Controlling Collecotrate- Member.</p> <p>Departmental Promotion Committee for confirmation and crossing of Efficiency Bar.</p> <p>(1) Collector concerned with the cadre-Senior post Collector will be Chairman of Departmental Promotion Committee.</p> <p>(2) Any other Collector at the same station or if there is no such Collector, the Collector of neighboring Collectorate, where cadre controlling Collectorate.</p> <p>(3) Deputy Collector of the cadre controlling Collectorate.</p> <p>Note:- The proceedings of the Departmental Promotion Committee relating to confirmation in the case of Superintendents of Central Excise directly recruited shall</p>	
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		<p>be sent to the Commission for approval. If, necessary, these are not approved by the Commission, a fresh meeting of the Departmental Promotion Committee to be presided over by the Chairman or Member of the U.P.S.C. shall be held.</p>	
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OM dated 25.03.1996:

“No.AB/14017/12/88-Estt(RR)
 Government of India
 Min. Of Personnel, P.G. & Pension
 (Department of Personnel & Training)

New Delhi, the 25th March, 96

Office Memorandum

Subject: Revision of Guidelines for framing/amendment/ relaxation of recruitment rules – consideration of seniors in cases where juniors are considered.

The undersigned is directed to refer to para 3.1.2 of part.III in this Department in OM No.AB/14017/12/87-Estt(RR) dated 18th March, 1988 wherein it was suggested that a suitable “Note” may be inserted in the Recruitment Rules to the effect that seniors who have completed the probation period may also be considered for promotion when their juniors who have completed the requisite service are being considered.

2. In the light of the Supreme Court judgement in R.Prabha Devi and others versus Government of India and Others in Civil Appeals No.2040-42 of 1987 decided on March 8, 1988 on the judgment and order dated Feb.11, 1986 of the Central Administrative Tribunal, New Delhi and in continuation of OM of even No.dated 23.10.1989 Government have decided to amend para 3.1.2 of Part-III in this Department's OM No.AB/14017/12/87-Estt(RR) dated 18th March, 1988.

Accordingly, the last sentence of para 3.1.2 will stand amended to read as under:-

"To avoid such a situation the following note may be inserted below the relevant service rules/column in the schedule to the Recruitment Rules:-

"Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service"

2. Consequently para 3.1.2 of this Department AB/14017/12/87-Estt)RR) dated 18th March, 1988 will also be amended with in addition of the following sentence after 3rd sentence of para 1.1.2 ibid.

"The administrative Ministries/ Departments are also empowered to amend all the service rules/recruitment rules to incorporate the "Note" as amended above."

Sd/-
(T.O.Thomas)
Under Secretary to the Government of India

12. Shri M.K.Bhardwaj, the learned counsel for the applicants placed reliance on the following decisions, in support of his submissions:

- i) **Govt. of NCT of Delhi & Ors. V. Sh. Rakesh Beniwal and Ors.**, WP(C) No.7423/2013 dated 04.08.20914 of Hon'ble High Court of Delhi.
- ii) **Mrs. Garima Singh v. Union of India & Others**, O.A.No.3278/2010 decided on 09.05.2011 by the Full Bench of the Central Administrative Tribunal, Principal Bench.
- iii) **Manoj Kumar & Others v. Union of India**, OA No.1106/2014 of CAT, PB.
- iv) **Satish Kumar v. Union of India**, OA No.4313/2014 of CAT, PB
- v) **A. Janardhan v. Union of India**, Civil Appeal No.350/1980, decided on 26.04.1983 by the Hon'ble Supreme Court of India.
- vi) **Narottam Rath v. Union of India**, OA No.646/1997 of Cuttack Bench of this Tribunal.

vii) **Narottam Rath v. Union of India**, OJC No.18143/1998 passed by Hon'ble Cuttack High Court.

viii) **Narottam Rath v. Union of India** in Civil Appeal No.5357/2008 passed by Hon'ble Supreme Court of India.

13. Shri R.N.Singh, the learned counsel appearing for the official respondents 1 to 3, placed reliance on the following:

- i) **K.Kuppusamy & Anr. v. State of Tamil Nadu & Ors.**, (1998) 8 SCC 469 [Paras 3 and 4].
- ii) **Punjab Water Supply & Sewerage Board v. Ranjodh Singh and Others**, (2007) 2 SCC 491 [Paras 8,10, and 19].
- iii) **Food Corporation of India & Ors. Vs. Bhanu Loh & Ors.**, (2005) 3 SCC 618 [Paras 13, 14 and 21]
- iv) **Kendriya Vidyalaya Sangathan & Ors. V. Sajal Kumar Roy & Ors.** (2006) 8 SCC 671 [Paras 10 and 11].

14. Shri R.V.Sinha, the learned counsel for the respondents placed reliance on the following decisions, in support of his submissions:

- i) **Bharat Petroleum Corp. Ltd. and Another v. N.R.Vairamani and Anr.** (2004) 8 SCC 579 [Paras 9 to 12].
- ii) **Punjab National Bank v. R.L.Vaid and Ors.** (2004) 7 SCC 698 [Para 5].
- iii) **Director of Settlements, A.P and Ors. V. M.R.Apparao and Anr.** (2002) 4 SCC 638 [Para 7].
- iv) **Official Liquidator v. Dayanand and Ors.** (2008) 10 SCC 1 [Paras 75, 78, 90, 91]
- v) **R.Prabha Devi and Ors. V. Government of India, through Secretary Ministry of Personnel and Training** (1988) 2 SCC 233 [Paras 15 and 16].
- vi) **T.N.Housing Board v. N.Balasubramaniam and Ors.** (2004) 6 SCC 85 [Para 6].
- vii) **R.S.Sharad & Anr. v. Union of India & Ors.**, 152(2008) DLT 427 (DB) [Para 12].
- viii) **G.J.Fernandez v. State of Mysore and Ors.**, AIR 1967 SC 1753 [Paras 11 and 12].

- ix) **Chief Commercial Manager, South Central Railway, Secunderabad and Ors. V. G.Ratnam and Ors.** (2007) 8 SCC 212 [Para 20].
- x) **Shanti Sports Club & Anr. v. Union of India & Ors.**, AIR 2010 SC 433. [Para 37].
- xi) **Government of Orissa and Anr. v. Hanichal Roy and Anr.** (1998) 6 SCC 626 [Paras 3 and 4].
- xii) **Ekta Shakti Foundation v. Govt. of NCT of Delhi**, (2006) 10 SCC 337 [Paras 11, 12, 16, 17 & 19].
- xiii) **Mallikharjuna Rao and Ors. V. State of Andhra Pradesh and Others**, (1990) 2 SCC 707, [Paras 11 and 12].
- xiv) **P.U.Joshi and others v. Accountant General, Ahmedabad and Others**, (2003) 2 SCC 632 [Para 10].
- xv) **Col. B.J.Akkara (Retd.) v. Government of India & Others**, (2006) 11 SCC 709 [Para 26].

15. Shri Sourabh Ahuja, the learned counsel for the respondents placed reliance on the following decisions, in support of his submissions:

- i) **Ghasi Ram Meena & Others v. Union of India & Others**, OA 2475/2002, decided on 11.11.2003 of CAT, PB.

16. Shri Krishan Kumar, the learned counsel for the respondents placed reliance on the following decisions, in support of his submissions:

- i) **Suraj Parkash Gupta & Others v. State of J&K & Others**, JT 2000 (5) SC 413 [Para 77].

17. Shri Mritynjay Kumar Singh, the learned counsel for the respondents placed reliance on the following decisions, in support of his submissions:

- i) **Radhey Shyam Singh & Ors. V. Union of India & Ors.**, (1997) 1 SCC 60.

18. It is admitted by all the counsels that the Recruitment Rules for the post of Superintendent (Central Excise) requires an Inspector of Central Excise to render 8 years of regular service in that grade to make him eligible for consideration for promotion to the post of Superintendent. It is also an admitted fact that even as

on today, the said rule, issued under Article 309 of the Constitution, has not been amended. It is also admitted that the Government of India, Department of Personnel & Training, in the light of a Judgement of the Hon'ble Apex Court in **R.**

Prabha Devi & Others v. Government of India, (1988) 2 SCC 233, issued OM No.14017/12/88-Estt.(RR) dated 25.03.1996 empowering all the administrative ministries/departments to amend all the service rules/recruitment rules, by incorporating a Note that “Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service”, so that the seniors, who have completed the probation period, may also be considered for promotion when their juniors who have completed the requisite service are being considered.

19. In view of the heavy reliance placed on by the learned counsel for the applicants on the Judgement of the Full Bench of this Tribunal in **Ms. Garima Singh** (supra) and the fact that though Writ Petitions were filed against the same but no stay is granted by the Hon'ble High Court of Delhi, it is relevant to quote the said Judgement extensively as under:

“5. Challenge in the OA filed by Garima Singh under Section 19 of the Administrative Tribunals Act, 1985 is to the decision of Department of Personnel & Training, the 1st respondent herein, communicated vide office memorandum dated 25.8.2009 relating to the Select List for the year 2003 of the officers of the Central Secretariat Service (CSS) for appointment to Grade-I (Under Secretary) of the Service by incorporating the newly created posts in the panel of Under Secretaries of 2003, which had not come into existence on 1.7.2003 and which were not included in the Approved Permanent Strength (APS) of the Grade-I as on 1.7.2003. The case of the applicant is that in fact these posts were notified on

27.2.2009 vide gazette notification following a decision of the Cabinet of October, 2003, and that by arbitrarily increasing the number of vacancies the 1st and 2nd respondents have included junior officers in the Section Officers grade of the CSS and excluded the applicant in the Select List of Grade-I for the year 2003, ignoring the recommendations of the Committee of Secretaries (CoS) headed by the Cabinet Secretary dated 10.9.2003 to resolve the direct recruit CSS officers seniority in the light of court judgments and based on the principles of equity to avoid possible litigation, and also the Minister of State (Personnel)s decision to grant relaxation of eligibility condition to the direct recruit CSS officers. Following prayers have been made in the OA:

- "a) Quash the select list of Under Secretaries of 2003 issued by Respondent No.1 in gross violation of substantive Rules governing the CSS.
- b) Call the records relating to the relaxation of the eligibility condition for the 1995 and 1996 batch of Direct Recruit Officers, whereby the applicants batch of officers was considered for relaxation and quash the subsequent decision of the Respondent No.1 not to grant relaxation in the eligibility condition.
- c) Quash the consequential decision of Respondent No.2 not to consider the name of the applicant in the Select List of Grade 1 for the year 2003, on the ground that the eligibility condition for promotion to the Selection Grade was not met by the applicant.
- d) Quash the proposal of the Respondent No.1 relating to finalization of the Select List of Grade 1 for the year 2003 whereby the applicants name though forwarded to the Respondent No.2, were not subsequently considered for relaxation of the service condition.
- e) Direct the Respondent No.1 to implement the case of one time relaxation as has been done in other services of the Government of India in order to keep the Common Seniority List (CSL) intact.
- f) In the alternative, this Honble tribunal may be pleased to consider the applicant and other similarly situated Direct Recruit Officers be placed in the Select List of Grade 1 for the year 2003, in which their juniors had been placed by relaxing the eligibility criteria, as provided for in the CSS Rules and along with OM No.AB.14017/12/88-ESTT(RR) dated 25.03.1996 with all consequential benefits including promotion to higher grade be given to the Applicant and where necessary, the Respondent No.1 may be directed to create the requisite number of supernumerary posts at appropriate level to accommodate the applicant and other similarly placed Direct Recruit Officers.
- g) Pass such other or further order as this Honble Court may deem fit and proper in the facts and circumstances of the case."

Vide memorandum dated 25.3.1996, again issued by the DOP&T, a revision came about in the guidelines for framing/amendment/ relaxation of recruitment rules as regards consideration of seniors in cases where juniors are considered. While referring to para 3.1.2 of Part-II of OM dated 18.3.1988, mention came to be made of the judgment of the Honble Supreme Court in R. Prabha Devi (supra) and that of this Tribunal dated 11.2.1986, and OM of even number dated 23.10.1989, and it was decided to amend para 3.1.2 of OM dated 18.3.1988, and accordingly, the last sentence of para 3.1.2 was to be amended as under:

To avoid such a situation the following note may be inserted below the relevant service rules/column in the schedule to the Recruitment Rules:

Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service.

In para 3 of the OM aforesaid, it has been mentioned that the administrative Ministries/Departments are also empowered to amend all the service rules/recruitment rules to incorporate the note as mentioned above. Whereas, earlier a senior had to be considered for promotion when juniors were being considered and promoted, irrespective of the shortage in the eligibility criteria by any number of years, vide OM dated 25.3.1996 it was stipulated that seniors were also to be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service, or two years, whichever is less, but the condition was that they ought to have completed the probation period successfully.

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18..... DOP&T OMs dated 18.3.1988, 19.7.1989, 25.3.1996 and 24.9.1997 can well be considered as if issued by the executive of the Union in the legislative powers conferred upon it by Article 73 of the Constitution. They deal with uncovered issues, i.e., a situation where a junior may be considered for promotion over and above his seniors, and where a senior may not have the eligibility criteria. Such a situation is not covered under the Rules of 1962. The OMs may not specifically make a mention of Article 73, but it is too well settled a proposition of law that non-mentioning of the provision or making mention of wrong provision would not make any difference. The real test is that there should be a power to do what has been done by the legislature or the executive. There is a mandate in the OMs that all cadre controlling authorities should insert a Note in the respective recruitment rules to the effect that whenever a junior who has completed the requisite eligibility service is considered for promotion, then all his seniors should also be considered. The directive issued by the DOP&T has admittedly been complied with by many cadre controlling authorities by inserting the Note in the respective recruitment rules, and wherever such Note has not been incorporated,

the Government has been freely making resort to exemption or relaxation in the rules as regards eligibility. While dealing with the subject of relaxation involved in the present case, we will make a detailed mention as regards the consistent stand of the Government in that regard. At this stage, we may only refer to the note dated 14.11.2008 available on records, wherein it is clearly recorded that DOP&T has been adopting a consistent policy of allowing up to a maximum of two years relaxation in qualifying service in promotions in all services, and that UPSC too has been accepting this from time to time in accordance with DOP&T OM dated 25.3.1996. It has also been mentioned that OM dated 24.9.1997 has been issued by way of clarification on the basis of judgment of the Apex Court in R. Prabhadevis case (supra), and that from a perusal of the judgment of the Supreme Court and OM aforesaid, it would be clear that it is neither a direction of the Supreme Court nor the intent of the DOP&T to supersede its earlier circular dated 25.3.1996, and that in fact, DOP&T has consistently adopted the policy of allowing relaxation of up to two years of service as qualifying service in case of promotions in all services. The applicant has indeed brought on record rules of at least two services where the note as ordained above in the OM aforesaid has been inserted. The applicant has also brought on record some orders giving relaxation in rules as regards eligibility where juniors were to supersede seniors. Article 73 of the Constitution reads as follows:

73. (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws; and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

Perusal or provisions contained in Article 73 would manifest that the power of the Union shall extend to matters with respect to which Parliament has power to make laws. By virtue of clause (1)(a), the executive power is co-extensive with the legislative power of the Union Parliament. It has been held by the Supreme Court that under the Constitution the functions of the executive are not confined to the execution of laws made by the legislature already in existence. Articles 73 and 162 indicate that the powers of executive of the Union and of a State are co-extensive with the legislative power of the Union and of a State, as the case may be. While the executive cannot act against the provisions of a law, it does not follow that in order to enable the executive to function relating to a particular subject, there must be a law already in existence, authorizing such action. Reference in this connection may be made to judgments of the Honble Supreme Court in *Naraindas Indurkhy v State of Madhya*

Pradesh & others [AIR 1974 SC 1232] and M/s Bishamber Dayal Chandra Mohan, etc. v State of Uttar Pradesh & others [AIR 1982 SC 32]. Whereas, the first judgment deals with Article 162 of the Constitution, which is as regards the extent of executive power of State, the second judgment referred to above deals with Article 73, which is as regards the extent of executive power of the Union. In M/s Bishamber Dayal (supra) it has been held that the State in exercise of its executive power is charged with the duty and responsibility of carrying on the general administration of the State, and so long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed, and further that if there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. This Tribunal in the matter of Sadhana Khanna (supra) has already held that the OMs which are directives, have to be read with the rules, and the judgment, as mentioned above, has been confirmed by the highest Court of the land. This Tribunal, in view of the very instructions subject matter of dispute which, it was held by the Tribunal, are to be read along with the recruitment rules, so confirmed by the Apex Court, may not have much choice but for to follow the said precedence. We may, however, give additional reasons as to why the instructions relied upon have to be read along with the rules. In addition to that these OMs are directives and even though Article 73 of the Constitution may not have been specifically mentioned, the same can be treated to have come into existence by powers exercised by the executive under Article 73, the first DOP&T OM dated 18.3.1988, it may be recalled, came into being immediately after the decision of the Honble Supreme Court in R. Prahaddevi case (supra). The same came into being to take care of seniors so that they may not be superseded by their juniors because they were not having the requisite eligibility criteria provided under the rules. The said criteria vide OM dated 25.3.1996 is to be reduced only by two years. The Government has slept over the matter insofar as, the very department, i.e., DOP&T, which is the nodal agency for all Government employees, for a period of almost two decades. Meanwhile, as mentioned above, the Note came to be inserted in some other services, whereas in other services relaxation in rules has been given. In the circumstances as mentioned above, if, therefore, the applicant was to seek a writ in the nature of mandamus directing the respondents to insert the Note in the service rules, could there be any meaningful resistance to such a writ by the Government? We are conscious that to make laws is in the exclusive domain of the legislature, but the present case is not where the applicant may have sought directions to be issued to the Government to amend the rules. It would have been simple case to act upon the decision already taken by the Government so as to amend the rules. The decision to amend the rules having already been taken, the applicant would have been well within her right to seek a mandamus directing the respondents to insert the Note in the Rules of 1962.

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20. What clearly emerges is that if the OMs are not to be read as exemption under rule 25(a) of the Rules of 1962, although not so specifically stated, as surely they are applicable to all services under the

Central Government, the fundamental right of a senior for even consideration for promotion would be thwarted. It would be a case of complete discrimination between Central Government employees of different departments. Note as regards consideration of seniors without their even having the eligibility period, has been inserted in number of services, including the Indian Revenue Service and the Indian Ordnance Factories Service. The exemptions have been granted to members of the Central government services in other departments. If, therefore, the OMs are not treated as exemptions to the limited period mentioned therein, which would be, as per the OM dated 25.3.1996, only two years, which is also subject to the incumbent having completed the probation successfully, it would be discrimination which is frowned upon by Article 14 of the Constitution of India. Thirdly, OM dated 25.3.1996 clearly states that if the note is not inserted, the matter may have to be taken up for exemption each time. Fourthly, as regards other services and in particular, the Indian Statistical Service, exemption has indeed been granted. Lastly, the circulars having been issued more than two decades ago, which are in nature of directives and cannot be treated as a dead inert affair or a waste paper. The Government, in any case, cannot be permitted to turn around and say that simply because its slackness, it has been unable to carry out the necessary amendments in the rules, and, therefore, the OMs shall not be binding upon it. Such a stand, particularly when the note envisaged under the OMs for amendment has been added in other services of the Government, cannot be countenanced. On one hand, the OMs having not been inserted in the rules, it may legally be submitted that the same would be of no use and consequence, whereas, on the other hand, the Government cannot be permitted to deny their existence, nor backtrack from it, particularly in the manner as mentioned above, when such note has been inserted in other service rules, and where not so inserted, the relaxation has been granted. The only harmonious way to reconcile this situation is to treat the OMs as relaxation. The OMs being directions across the board relating to all services under the Government of India, have to be treated as general directions and not as if orders passed under the rules relating to relaxation.

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24. In view of the discussion as made above, while allowing the main and the connected Original Applications, we would direct the respondents to prepare a fresh Select List for 2003 for promotion of Section Officers to the grade of Under Secretary by considering such of the direct recruits who may be short of eligibility service by up to two years as per the approved seniority list of Section Officers, and make promotions accordingly. We reiterate that the eligibility criteria as regards direct recruits shall be reduced only by a period of two years, and only such of the direct recruits would be benefited who may be falling short of the eligibility criteria by two years, and not others. Vide interim orders passed from time to time, as fully detailed above, the Government was permitted to make promotions as per the Select List prepared by it, but the last six candidates, it was ordered, would not be promoted. It was further ordered that in all promotion orders it would be mentioned that the same would be subject to outcome of the Original Applications. That being the position, no hearing shall now be involved in the case from those who

might have already been promoted and who may, by virtue of the orders passed by us, may have to be reverted. The issue is hanging fire for a very long time and, therefore, we direct the exercise as ordained above to be done as expeditiously as possible, but not later than eight weeks from today. In the peculiar facts and circumstances of the case, costs of the litigation are made easy."

20. In **Manoj Kumar & Others v. Union of India**, O.A.1106/2014, a Coordinate Bench of this Tribunal (one of us, Shri Shekhar Agarwal is a member), when the respondent-Railway Board therein though in pursuance of DoPT Office Memorandum dated 25.03.1996, initially inserted the Note that "*if a junior was being considered for promotion than a senior, who has rendered not less than 6 years approved service in that grade, shall also be considered even if he does not have the requisite 8 years of service*" but deleted the same with retrospective effect on 07.02.2000, in view of the facts therein and after considering **Ms. Garima Singh** (supra) and **R. Prabha Devi** (supra), allowed the OA.

21. In **Satish Kumar & Others v. Union of India**, O.A.No.4313/2012, a Coordinate Bench of this Tribunal examined the issue whether the amendment made, in pursuance of the DoPT OM dated 25.03.1996, to the recruitment rules therein would take effect from the date of amendment of the rules or from the date of DoPT OM of 25.03.1996, and held that the inordinate delay in amending the rules cannot deprive the applicants therein from considering their cases for promotion from the date from which their juniors have been promoted.

22. In **Narottam Rath v. Union of India**, O.A.No.646/1997 of another Coordinate Bench of this Tribunal at Cuttack Bench, the sole question which was considered was whether the applicants therein are entitled to be promoted to the upgraded posts of Superintendent of Central Excise on the basis of their total period of service in the Department or, as has been urged by the respondents for the purpose of promotion to the upgraded posts services rendered by the applicants in Bhubaneshwar Commissionerate can only be taken into account.

Since the subject matter is entirely different and that the DoPT OM dated 25.03.1996 was not under consideration, the said decision which has upheld upto the Hon'ble Apex Court, has no application to the facts of the present case.

23. In **A. Janardhana** (supra), it was held that

“36.In this case, appellant does not claim seniority over particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing-up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents.”

24. We have given our thoughtful consideration to the arguments advanced by both the sides. The first ground taken by the respondents was that this O.A. was not maintainable due to misjoinder of parties inasmuch as all the persons, who were likely to be affected, in case this O.A. was allowed, have not been impleaded as respondents. To counter this argument, learned counsel for the applicants stated that several private respondents have been impleaded as party in this case in representative capacity. He also relied on the Apex Court judgment in the case of **A. Janardhana** (supra) in this regard, which has been extracted above. In our opinion, in the instant case also as in the case of **A. Janardhana** (supra), the relief claimed by the applicants was against the Union Government and not against any particular individual. Therefore, as laid down in the above cited judgment, all concerned individuals were not required to be impleaded. Hence, we reject this contention of the respondents that this O.A. is not maintainable due to misjoinder of parties.

25. Learned counsel for the applicants had argued that this case was squarely covered by the judgment of Full Bench in the case of **Garima Singh** (supra). He also submitted that the same judgment has been followed by a Co-ordinate Bench of this Tribunal in the case of **Manoj Kumar** (supra). Respondents, however, seriously disputed that **Garima Singh's** judgment can be followed. They have cited several judgments mentioned in earlier part of this order to say that **Garima Singh's** judgment was against the law laid down by Hon'ble Supreme Court in a catena of cases that Statutory Rules cannot be overridden by Executive Instructions. They argued that while Statutory Rules prescribed 08 years of service for promotion, taking advantage of DoP&T's O.M. dated 25.03.1996, the applicants were seeking relaxation in eligible service by upto 02 years. This would amount to changing the rule on the strength of Executive Instructions.

26. After giving consideration to this argument of the respondents, we do not find much merit in the same. This is because from the judgment in **Garima Singh's** case, we find that Full Bench had taken note of the law laid down by Hon'ble Supreme Court that Executive Instructions cannot override Statutory Rules. In fact, they had accepted this as a law on the subject and had even observed that there was no need to refer to all the judgments on this subject as there cannot be any dispute that Executive Instructions, particularly when they are against the Rules, cannot be applied and have to be ignored. This is evident from Para-18 of the judgment wherein the following has been held:-

".....In R.S. Sharad & another v Union of India & others [WP(C) No. 2178 of 1996, decided on 8.5.2008, reported as 152 (2008) Delhi Law Times 427(DB), a Division Bench of the High Court of Delhi held that administrative instructions issued by the Government could not supersede the rules unless the instructions are incorporated in the rules. There would be no need to refer to all the judgments relied upon by the respondents, as there cannot be any dispute that the executive instructions, particularly

when the same may be against the rules, cannot be applied; the same have to be ignored."

Thus, **Garima Singh's** judgment is not *per incuriam* of the law laid down by Hon'ble Supreme Court.

27. However, Full Bench has given reasons as to why in their opinion the DoP&T OMs dated 18.03.1988, 19.07.1989, 25.03.1996 and 24.09.1997 would not be covered by this law. According to them, these OMs can well be considered to have been issued by the Executive of the Union in the Legislative power conferred upon by Article 73 of the Constitution. They deal with uncovered issues i.e. a situation where a junior is being considered for promotion even though his senior was not being so considered owing to the fact that he does not have the prescribed eligibility service. Full Bench has held that such a situation had not been covered by the relevant Service Rules. Further, they have gone on to hold that in the aforesaid OMs there was a mandate that all cadre controlling authorities should insert a note in their respective Rules to the effect that when a junior was being considered for promotion then his seniors should also be considered by giving relaxation in the eligible service. Full Bench has observed that the directive issued by DoP&T has admittedly been complied with by many cadre controlling authorities by inserting such a note in the Recruitment Rules. Moreover, in cases where such a note has not been incorporated, Government has been freely resorting to taking relaxation in the rules as regards eligibility.

28. Further, they have observed that in **Sadhna Khanna Vs. Union of India & Ors.** (OA No. 1271/1993 decided on 24.09.1999) this Tribunal has already held that OMs which are directives have to be read with the rules and this judgment has been affirmed by the highest Court of the Land. Further, they have stated

that if a Member of the service in whose case such a note has not been inserted in the Recruitment Rules, were to seek a writ in the nature of mandamus directing the respondents to insert such a note in the service rules, there cannot be any meaningful resistance to such a writ by the Government. Finally, they have stated that if relaxation is given in some service where such note has been incorporated in the service rules and not given in services where such incorporation has not been done, it would amount to invidious discrimination and be violative of the provisions of the Article 14 of the Constitution. They have gone on to state that the directives of DoP&T issued through OMs are applicable across the board i.e. all services of the Government of India and for that reason have to be taken as if they are legislation by the executive under Article 73 of the Constitution.

29. Thus, Full Bench has given ample justification as to why O.M. dated 25.03.1996 has to be read along with the service rules and why this is not against the law laid down by Hon'ble Supreme Court that executive instructions cannot override statutory rules. As stated earlier, this O.M. prescribing relaxation in eligibility service for seniors by maximum of 02 years in situation when their juniors are being considered for promotion will operate in areas uncovered by service rules.

30. It may be mentioned that the judgment of Full Bench in **Garima Singh's** case was challenged by UPSC in Writ Petition(C) No. 7619/2011 and by the Union in Writ Petitions (C) No. 2176/2012, 5642-45/2012, 1448/2013 and 3308/2014. However, both Union of India and UPSC have subsequently withdrawn their petitions on the advice given by learned Additional Solicitor General even though Petitions of some private respondents are still under consideration. Hon'ble High Court has permitted such withdrawal vide their

order dated 29.05.2015. Further, DoP&T in consolidated Instructions issued on 31.12.2010 on the subject of guidelines for framing/amendment/relaxation of recruitment rules have reiterated the aforesaid O.M. dated 25.03.1996.

31. Thus, in our opinion, the judgment of Full Bench in **Garima Singh's** case needs to be applied in the instant case as well. When we do so, we find that this case is squarely covered by the same. Consequently, the O.A. is allowed to the extent that the applicants herein deserve to be considered for promotion by granting them relaxation upto 02 years in eligibility service as laid down in O.M. dated 25.03.1996. The eligibility list needs to be redrawn accordingly. In case DPC has already been held and juniors to the applicants promoted then a review DPC needs to be convened and applicants need to be considered for grant of promotion from the date/dates of their immediate junior with consequential benefits of pay fixation and seniority. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member(J)

/Vinita/