

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI
CAMP AT NAGPUR**

ORIGINAL APPLICATION No. 663/2013

Dated this Friday, the 5th day of May, 2017

**CORAM: HON'BLE SHRI ARVIND JAYRAM ROHEE,
MEMBER (J)
HON'BLE MS. B. BHAMATHI, MEMBER (A)**

1. Omprakash Banafar,
S/o. Fulchand Banafar,
Age about 56 years,
Occupation-
Superintendent,
O/o. Geological Survey
of India, Nagpur Resident
of Qr.No.1, Type-II,
CPWD Colony,
Katol Road,
Nagpur-440006.
2. Shailendranath Barai,
S/o. Arunchandra Barai,
Age about 55 years,
Occupation-
Superintendent,
O/o. Geological Survey
of India, Nagpur Resident
of 725/A-Hajari Pahad,
Near Vayusena Nagar,
Nagpur-440007.
3. Smt. Bhavna Deshpande,
W/o. Chandrashekhar Deshpande,
Age about 50 years,
Occupation-
Superintendent,
O/o. Geological Survey
of India, Nagpur Resident
of 17, Preeti Housing
Society, Bekrodi Road,
Behind Mahajan Hardware,

Nagpur-440021.

4. Smt. Rashmi Sonwalkar,
W/o. Prakash Sonwalkar,
Age about 50 years,
Occupation-
Superintendent,
O/o. Geological Survey
of India, Nagpur Resident
of 15, Malviya Nagar,
Nagpur-440015.
5. Ramdas Malewar,
S/o. Mahadeo Malewar,
Age about 59 years,
Occupation-
Superintendent,
O/o. Geological Survey
of India, Nagpur Resident
of Qr.No.49, Sugat Nagar,
Jaripatka,
Nagpur-440010. **Applicants**
(By Advocate Shri R.K.Shrivastava)

VERSUS

1. The Union of India, Through
the Secretary,
Ministry of Mines,
Shastri Bhavan,
New Delhi-110001.
2. The Union of India,
Through the Secretary,
Ministry of Personnel,
Public Grievances and Pension,
Department of Personnel and
Training,
South Block,
New Delhi-110001.
3. The Director General,
Geological Survey of India,
27, J.L.Nehru Marg,
Kolkata-700016. **Respondents**
(By Advocate Shri R.G.Agrawal)

Order Reserved on : 20.03.2017
Order Pronounced on : 05.05.2017

ORDER

Per: Arvind J.Rohee, Member (Judicial)

The applicants who are presently working as Superintendent in Geological Survey of India (GSI) under respondent No.3 (R-3) at Nagpur office have approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 by this joint application, seeking for the following reliefs :-

"i) To quash and set aside the Respondent No.1 Order dated 13.2.2013 (Annexure A-1 of O.A.) to the extent of merger of the posts of Superintendent and Assistant and redesignated them as Assistant as has been mentioned in serial No.35 of the order.

ii) To quash and set aside order dt. 25.9.2013 (Annexure-A-2). To direct the Respondents to review, reconsider and adopt the Recruitment Rules for the post of Administrative Officers in the light of D.O.P.T. Model Recruitment Rules for the post of (Annexure A-19 of the O.A.)

iii) To direct the Respondents to merge the post of Assistants in the post of Superintendents as has been done in Indian Bureau of Mines and redesignate it as Superintendents.

iv) To direct the Respondents to fill in the post of Administrative

Officer as per erstwhile Rules and as per Model Recruitment Rules Circulated by D.O.P.T. i.e. by promotion on seniority cum fitness basis.

v) Any other consequential reliefs including the cost of O.A. as may be pleased by the Hon'ble Tribunal".

2. The applicants have a grievance regarding the impugned order dt. 13.2.2013 (Annexure-A-1) issued by respondents by which the post of Superintendent has been merged with the lower post of Assistant and re-designated as Assistant. They have also challenged the new Recruitment Rules (RRs) published under Notification No.GSR-278(E) dt. 1.5.2013 and Circular No.DP/GSI/CSQ/ MISE / 1/2011 dt. 25.9.2013 (Annexure-A-2 collectively) by which the promotion quota for the post of Administrative Officer from the feeder cadre of merged cadre of Assistant has been reduced. The applicants have also challenged the Circular No.02/CIR/CHQ/DQE-AO/2013-14/19-A dated 13.9.2013 and Circular No.32016/2013 dt. 10.10.2013 (Annexure-A-3 collectively) calling the application for

appearing in the departmental examination for promotion to the post of Administrative Officer as per new RRs.

3. The applicants were initially appointed in the office of the R-3 at Nagpur on different dates and thereafter promoted as Assistant and Superintendent as per details given in (Annexure-A-4). The R-3 is Head of the Department of the GSI stationed at Kolkata. It has six Regional Offices viz. Central Region, Eastern Region, Northern Region, North-East Region, Southern Region and Western Region. Nagpur comes under Central Region. The Hierarchical set up of Ministerial Staff in GSI till the new RRs were framed were as under :-

- 1) Lower Division Clerk,
- 2) Upper Division clerk,
- 3) Assistant,
- 4) Superintendent and
- 5) Administrative Officer.

4. As per the old RRs for Assistant vide Annexure-A-5, 80% posts are to be filled in by promotion of UDC with 5 years regular service and 20% by departmental competitive

examination. Similarly, the post of Superintendent which is the promotion post was to be filled up from the feeder cadre of Assistants, who have rendered 3 years of regular service. Further, the Superintendents were eligible for the promotion to the post of Administrative Officer to the extent of 75% by promotion on seniority-cum-fitness basis and 25% by direct recruitment. Further Superintendents with 3 years of regular service were eligible for the said promotion. The RRs are at (Annexure-A-5 to A-7 respectively).

5. It is stated that on issuance of the order dt. 13.2.2013 (Annexure-A-1) by which the post of Superintendent was merged with the lower post of Assistant and re-designated as Assistant, the applicant submitted a representation dt. 1.4.2013 (Annexure-A-8) to the R-3 raising protest against the merger and re-designation of the cadre.

6. On considering the representation pointing out discrepancies in the RRs, the R-3

set up a committee under office order dt. 23.4.2013 (Annexure-A-9) to go through the new RRs and to submit a report by 7.5.2013 indicating the discrepancies, suggestions/solutions etc. R-3 by another office order on the same date (Annexure-A-10) by which six stream-wise committees were constituted to go through the various provisions of new RRs i.e. DPC ratio vis-a-vis number of sanctioned posts in each of the promotional and feeder cadre and to give suggestions/proposals for cadre review. In pursuance of above order the R-3 by another order dt. 24.5.2013 (Annexure-A-11) appointed Chairmen on six Cadre Review Committees and directed them to submit their proposals on priority basis. The report of Cadre Review Committee of Administration and Personnel and Finance was circulated by R-3 under his letter dt. 6.8.2013 (Annexure-A-12). The committee in its report proposed creation of the post of Section Officer instead of Administrative Officer and has also suggested to increase the

number of posts from 96 to 120. No other changes were suggested by the Committee. The respondent No.3 vide office order dt. 27.8.2013 (Annexure-A-13) issued final order merging the post of Superintendent with Assistant and re-designated as Assistant.

7. Again the applicant submitted representation dt. 13.9.2013 (Annexure-A-4) against the aforesaid decision. However, the R-3 without considering the report of cadre review committee and the representation of the applicant issued circular dt. 13.9.2013 (Annexure-A-3) calling the applications for appearing in the departmental qualifying examination for the post of Administrative Officer. The applicants again vide representation dt. 20.9.2013 (Annexure-A-15) raised protest against conduct of the examination and requested to drop it and consider the report of the Cadre Review Committee, but there was no response. The applicants have filed the regional seniority list of merged post of Superintendent and

Assistant and re-designated as Assistant at Annexure-A-16. It is stated that on account of merger and re-designation, the prospects of existing superintendents are jeopardised.

8. It is stated that as per old RRs there were 153 posts of Superintendents and 425 posts of Assistants totalling 578 posts. However, after merger total number of posts have been reduced to 550. These posts were reduced to the disadvantage of the erstwhile superintendent who were eligible for promotion to 96 posts of Administrative Officers. Further, there is no corresponding increase in the promotion post of Administrative Officer for which earlier 153 Superintendents were eligible to get the promotion. However, now it has been reduced to 550 persons working as Assistants in merged posts.

9. The reliefs sought are based on the following grounds as mentioned in paragraph No.5 of the O.A. The same are reproduced here for ready reference in verbatim :-

- a) It is submitted that in the new

Recruitment Rules the post of Superintendent which is a supervisory post has been merged with a lower post of Assistant which was a subordinate post and redesignated as Assistant. As a result of this merger the Supervisory post of Superintendent has been down graded thereby adversely affecting the existing superintendents in terms of their status, quality of work and promotion prospect. As per the nature of duties/ responsibilities attached to the work of Superintendent is supervisory work of respective Ministerial staff, whereas the Assistants were assigned the original work of dealing with important and complicated cases. After the merger of the post the existing superintendents like the Applicants will be required to do original instead of Supervisory work. Thus their seniority, long years of experience are ignored in this merger. The copy of nature of duties/ Responsibilities are filed herewith as Annexure A-17.

(b) It is further submitted that

Respondent No.1 has adopted a discriminatory attitude towards the Applicants. The Respondent No.1 in one of the Subordinate office "Indian Bureau of Mines" has merged the post of Assistant with the supervisory post of Superintendent and redesignated them as Superintendent, however, in the case of the Applicants, they have merged the Supervisory post with lower subordinate post. It amounts to discrimination and violative of Article 14 and 16 of the Constitution of India. The copy of Order No.1 A-20012/1/1/06-ENG, dated 12.11.2012 (filed herewith as Annexure-A-18.

(c) As per new Recruitment Rules the post of Administrative Officer (Annexure A-2 of O.A.) is a selection post. It is to be filled in 25% by direct Recruitment and 75% by promotion in the following manner :

37.5% by Promotion

37.5% Through Departmental Qualifying Examination

Whereas as per old Recruitment Rules the 25% posts of Administrative Officer were to be filled in by Direct Recruitment and 75%

on the basis of Seniority Cum fitness from the Superintendents with 3 years regular service. Thus according to new Recruitment Rules the Direct Recruitment quota has been retained at 25% but promotion quota is reduced by prescribing Departmental qualifying Examination quota to the extent of 37.5%. Thus the seniority cum fitness promotion quota has been reduced from 75% to 37.5%. Thus the promotion prospects of the Applicants have been adversely affected.

(d) The Ministry of Personnel, Public Grievances and Pensions under O.M. No.A-B-14017/18/2012-Estt(RR), dt. 16.8.2013 (filed herewith as annexure A-19) has circulated the Model Recruitment Rules for the post of Administrative Offices. As per the Model Recruitment Rules the post of Administrative Officer is fully Selection post, i.e. there is no element of Direct Recruitment or Departmental Examination for promotion. The D.O.P.T. is the nodal Mijnistry so far as service Rules and conditions are concerned.

But the Respondents have framed the Recruitment Rules in contravention of these Model Rules by introducing the element of Direct Recruitment and Departmental qualified Examination quota.

(e) Though the Respondents have merged the post of Superintendent and Assistant and redesignated as Assistant. But they have neither indicated the hierarchical set up of the Ministerial staff nor laid down Rules/Procedure/Instructions about the person who will supervise the works of Assistant/UDC/LDC. The local head of office has issued office order No.1345/A-110131/1/Dist/Gr.B(NG)Cpost/2012/Estt(M) dated 14.10.2012 (filed herewith as Annexure A-20), wherein it has been ordered that senior most Assistant in the section will supervise the work of all other person. It is arbitrary and ad-hocism. It amounts to musical chair game; every time a person posted in the section will occupy the chair of supervisor with no fixed responsibilities. There is no clear cut

demarcation of duties; who will discharge the duties of erstwhile superintendent is not clearly laid down. This exhibit the necessity of the post of Superintendents for proper and smooth functioning of the office.

(f) As per the Circular letter dated 13.9.2013 (Annexure A-3 of O.A.) is holding the Examination for filling up the post of 15 Administrative Officer for DQE which are vacant upto 2013-2014. The eligibility for appearing in the examination has been mentioned as 3 years of regular service as Assistant. Thus the Service conditions of the Applicant are altered retrospectively to their disadvantage and prejudice. The Hon'ble Principal Bench of the C.A.T. in the case of **G. Suresh v. National Highway Authority of India (AISLJ 2008(3) 110)** (filed herewith as Annexure A-21) has held that service conditions cannot be altered retrospectively to the disadvantage and prejudice of an employee. The ratio of above order is applicable in Applicants case.

(g) As submitted in Para 4(9) above that before the introduction of New Recruitment Rules 96 posts of Administrative Officers were available to 75% of Superintendents out of total posts of 153 for promotion on seniority cum fitness basis. But after the introduction of new Recruitment Rules and merger of Superintendents and Assistants the feeder grade merged posts of Assistant has been increased to 550 who become eligible for promotion to 75% posts of Administrative Officer (37.5% on seniority cum fitness 37.5% by examination). There is no corresponding increase in the promotion posts. Thus the superintendents like the Applicants have been put to disadvantageous position. The prospect of seniority/ promotion was reduced to 37.5% from 75% and even in Examination quota also 550 persons will compete with erstwhile Superintendents.

10. Interim Order to stay the examination to be held on 23-24/11/2013 till the final decision of the O.A. is also sought. While

issuing notice to the respondents vide order dt. 29.10.2013 this Tribunal has directed that any steps taken in the meantime pursuant to the examination under new RRs will abide by the result of this O.A.

11. In pursuance of the notice, the respondents appeared and filed common reply dt. 14.7.2014 and denied all the adverse averments, contentions and grounds raised therein. It is stated that as per the new RRs the hierarchical set up of Ministerial staff is as under :-

- 1) Lower Division Clerk,
- 2) Upper Division clerk,
- 3) Assistant and
- 4) Administrative Officer.

It is stated that as per the new RRs the 50% post of Assistants are to be filled in by promotion from the grade of UDC with 10 years regular service, failing which by direct recruitment and 50% by direct recruitment. Similarly, as per the new RRs 37.5% posts of Administrative Officers are to be filled up by promotion from the grade of Assistants with 5

years regular service and 37.5% of posts are to be filled up by departmental qualifying examination from the grade of Assistants with 3 years regular service. It is stated that the representations submitted by the applicants was properly considered by the Competent Authority and rejected it. The impugned orders are perfectly correct which calls for no interference.

12. The respondent No.3 has received representations from the employees of the grade of Assistants with a request to hold the departmental qualifying examination at the earliest vide (Annexure-R-2).

13. It is denied that the prospects of the existing Superintendents are jeopardised on account of merger of cadre and its redesignation as Assistant. The applicants were promoted to the post of Superintendent in terms of the then existing RRs. The post of Superintendent was carrying the revised pay scale of Rs.5,500-9,000 and the same has been provided as the replacement pay scales of PB-

II with GP of Rs.4,200/- under VIth Central Pay Commission, which was accepted by the Government of India. Hence, there is no ground for grievance of downgrading when the post of Superintendent and Assistant merged in accordance with the recommendations of the VIth Pay Commission. Further, as per DOPT's guidelines the incumbents holding the post of Superintendents shall be en-bloc seniors to the incumbent holding the post of Assistant at the time of merger. In the process, there will be no change in their inter se seniority. Hence, there cannot be any grievance on the ground of seniority list.

14. It was stated that as per the new RRs for promotion to the post of Administrative Officer (erstwhile Administrative Officer Gr.II) in PB-II with GP of Rs.4,600/- through departmental qualifying examination, the requisite qualifying service is 3 years. Hence, there is no dispute or grievance on the part of the applicants for taking up departmental examination for promotion to the

post of Administrative Officer prescribed as new category as per RRs notified on 1.5.2013. Hence, the applicants should not have any grievance.

15. It is stated that the post of Assistants and Superintendents were both falling under Group 'B' cadre vide DOPT guidelines/O.M. dt. 9.4.2009. Hence, the question of higher status with Group 'B' Non-Gazetted cadre does not arise as the post of Superintendents and Assistants were supervised by the Administrative Officer, particularly on merger of pre-revised pay scale as per the recommendations of VIth Central Pay Commission. The amendments to the RRs are ongoing process in every department according to its needs. Hence, the employees cannot claim to amend the RRs according to their suitability and convenience. The RRs are framed taking into account the interests in several aspects. Further the RRs are amended in consultation with Department of Personnel and Training (DOPT), UPSC and Ministry of Law

and Justice etc. Therefore, the applicants should have no grievance on this count.

16. It is denied that as a result of merger, the post of Superintendent has been down-graded thereby adversely affecting the existing Superintendents in terms of their status, equity of work and promotional prospects. It is denied that the respondents have adopted discriminatory attitude over the applicants.

17. It is stated that 75% promotion quota for the post of Administrative Officers still exists. However, mode of promotion differed in the sense 37.5% on seniority-cum-fitness and 37.5% through departmental qualifying examination.

18. It is stated that Administrative Officer is a selection post (Group 'B' Gazetted). Hence, introduction of promotion by 37.5% quota through departmental qualifying examination has been rightly introduced to make a way to the promising talented personnel in the feeder grade for advancement

of their career prospects and it will give a momentum to the personnel in the feeder grade.

19. It is denied that the respondents have framed the RRs in contravention of modal rules by introducing the element of direct recruitment and departmental qualifying examination quota. It is stated that while revising the RRs necessary advise of Ministry of Mines (The Administrative Ministry), DOPT, UPSC and Law Ministry was taken into account by the authorities of GSI and Rules were accordingly modified based on department's specific requirement and guidelines from the Government.

20. It is denied that no instructions were issued about supervision of work on merger of cadre. On the contrary, the applicants themselves have indicated in the OA that the instructions for supervision of work have been issued by the Competent Authority. Hence, it cannot be said to be arbitrary as alleged.

21. It is denied that the service conditions of the applicants are altered

retrospectively to their disadvantage and the same are prejudicial to them. It is stated that since policy decision was taken by High Power Committee (HPC), the sanctioned strength of the cadre has been recommended which has been approved by the Cabinet. Hence, there is no substance on the grounds raised by the applicants for challenging the impugned orders. The O.A. is therefore, liable to be dismissed.

22. The applicants then filed rejoinder to the reply on 25.8.2014 denying the averments made in the reply and reiterated the grounds stated in the OA. Reliance was placed on the decision rendered by the Hon'ble High Court of Punjab and Haryana in **Brig. Satya Dev v. State of Haryana and Ors.** {2002 (2) AISLJ 12}, in which a retired Brigadier was appointed as Secretary after due selection. However, after some time his services were terminated on the ground that appointment should have been on tenure basis and not on continuous basis. It is held that the appointment was made after

conscious decisions taken by the authorities and service conditions cannot be changed to the dis-advantage after appointment. Hence, termination was held to be bad and quashed. Other official communications was also relied upon.

23. The respondents then filed additional reply to the O.A. on 28.10.2014 clarifying certain facts.

24. The respondents have also filed sur-rejoinder on 23.3.2015 denying the contents made in the rejoinder and reiterated the grounds stated in the reply.

25. A decision rendered by this Tribunal in **O.A. No.675/2009 dt. 28.3.2014** in **B.K.Taneja v. Union of India and Ors.** was also relied upon in which grievance was made by the applicants who were working as UDC/ Assistants in the GSI at Raipur, Pune and Nagpur made a grievance regarding inaction of the respondents to apply post-based roster to the post of Assistant to be filled by the departmental competitive examination conducted

by the GSI pursuant to the amended rules. However, the facts of the said case are distinct and the ratio therein is not applicable to the present case. Other official documents concerning the examination held is produced on record.

26. The respondents again filed additional reply on 1.4.2015 making some clarifications. The applicants again filed rejoinder to the additional reply denying the facts stated therein.

27. The respondents again filed additional sur-rejoinder on 22.1.2016 denying the facts and grounds stated in the additional rejoinder.

28. On 23.3.2017 when the matter was called out for final hearing during the circuit bench sitting at Nagpur, we have heard Shri R.K.Shrivastava, learned Advocate for the applicants and the reply arguments of Shri R.G.Agrawal, learned Advocate for the respondents.

29. We have carefully perused the entire

case record including pleadings of the parties and various documents relied upon by them in support of their rival contentions. We have also gone through the written notes of arguments submitted by the applicant.

Findings

30. The only controversy involved for decision of this Tribunal in the present O.A. is whether the impugned order passed by the respondents are liable to be set aside on the grounds raised by the applicant in the O.A. and the applicants are entitled to the reliefs.

31. The main grievance of the applicants in the present O.A. is regarding merger of post of Superintendent and Assistant and its re-designation as Assistant. Admittedly, as per the old RRs prior to merger Superintendent was the promotion post from the feeder cadre of Assistant. As per the old RRs for Superintendent dt. 3.11.2006 known as Geological Survey of India (Superintendents) Recruitment Rules, 2006, it is stated to be

Group 'B' Non-Gazetted post and mode of recruitment is by selection. When those rules were published there were 153 sanctioned posts of Superintendent. The method of recruitment was 100% by promotion from the Assistants with three years regular service.

32. The learned Advocate for the applicants submitted that prior to merger, the nature of duties of Superintendent which was a promotion post from Assistant was different than of Assistant and Superintendent was the supervising authority. The duty list is produced on record as Annexure-A-17. However, according to learned Advocate for the applicant in view of the merger of two posts and its re-designation as Assistant (and not as Superintendent), there is unrest/heart burn amongst the Superintendents who are in the zone of consideration for promotion to the higher post of Administrative Officer Gr.II since they will be required to work as Assistants. It is however obvious from record that on introduction of new Recruitment Rules dt. 1.5.2013 styled as Ministry of Mines, Geological Survey of India, Group A, B and C Administrative Stream

Recruitment Rules, 2013, the posts of Administrative Officers are to be filled up 25% by direct recruitment and 75% by promotion. This promotion quota of 75% is further crystalized by prescribing 37.5% by promotion and remaining 37.5% through departmental qualifying examination and hence the rights of majority of superintendents affected to some extent, since after merger the Assistants who have completed 3 years of regular service can also appear for the promotion post of Administrative Officer under 37.5% quota for departmental qualifying examination. It is thus obvious that the initial 75% promotion quota for departmental candidates on seniority-cum-fitness basis was substantially reduced to 37.5% as stated earlier, thereby curtailing prospects of many Superintendents to become the Administrative Officer by promotion on the basis of seniority-cum-fitness.

33. So far as this aspect of the case is concerned, it is obvious that although nature

of duty of Superintendent and Assistant are different and on account of merger, Superintendents would be designated as Assistants (which was the lower post prior to merger), it is provided by office order dt. 14.10.2013 (Annexure-A-20) issued by Government of India GSI Central Region which is self-explanatory. The same is reproduced here for ready reference :-

"No.1345/A-11013/1/Dist/
Gr.B(NG) &C Post/2012/
Estt (M) Dt.14.10.13

OFFICE ORDER

In pursuance to the Government of India Notification No.3/1/2013/M.II, dated 13.02.2013 read with GSI, CHQ Circular No.NIL/ A-12018/1/93-15A, dated 14.08.2013, the posts of erstwhile Superintendent and Assistant in GSI on merger of posts have been redesignated as Assistant.

In terms of circular dated 14.08.2013 referred to above the relevant changes in the designation should be entered in records in respect of all officers/officials wherever required under proper attestation.

In order to have proper supervision of a particular section where a number of Assistants are posted, the senior most Assistant will act as Assistant in charge and will be

responsible for monitoring of a particular section. All the dealing assistants i.e. LDCs, UDCs and Assistants will accordingly submit their files through the Assistant in charge of the section who will keep proper coordination amongst the dealing assistants for smooth functioning of the section and take necessary action for effective monitoring of the work.

The Section in charge shall also allocate the job to each and every staff working in the respective section.

Hindi version follows.

Sd/-
(S.K.SINHA)
For Dy. Director General"

34. It is thus obvious that due care is taken by the Department to ensure that seniors in the re-designated grade of Assistant will be assigned with the duty of supervision on the dealing assistants viz. LDCs, UDCs and Assistants junior in rank so that there should be no difficulty in performing the office work. It is also provided that whosoever is the senior most Assistant posted in particular section/division will be the Supervising Authority there for the work of his dealing

Assistants. This being so, we do not find any force in the submission of the learned Advocate for the applicants that on account of merger the Superintendents will be required to do the routine dealing work which was previously done by the Assistants. The record further shows that it is provided that on merger the existing Superintendents will be en-bloc senior to the existing Assistants, meaning thereby that the Superintendents although are re-designated as Assistants should not feel that they are on par with Assistants, who will be placed as junior to them in the seniority list.

35. It is also obvious from record that before merger the un-revised pay scale of Superintendent was Rs.5500-9000 and on revision of pay scale under VIth Central Pay Commission it was revised to Rs.9300-34800 with GP of Rs.4200/-. Whereas, the un-revised pay scale of Assistants was Rs.5000-8000 and the revised pay scale under VIth Central Pay Commission was Rs.9300-34800 with GP of

Rs.4200/-.

36. It is thus obvious that although cadre of Assistants was junior to the cadre of Superintendent on recommendation of VIth Central Pay Commission they were placed in the same pay band and GP. The merger was effected by virtue of recommendations of VIth Central Pay Commission. It is thus obvious that although Superintendents are re-designated as Assistants on merger their pay will not be reduced and they will continue to get the same pay scale which they were drawing at the time of merger. Similarly, there will be no change in the pay scale of Assistants who will continue to get the same revised pay even after merger. This being so, we do not find any force in the contention of the learned Advocate for the applicants that on merger the position enjoyed by Superintendents prior to merger was lowered down. It is needless to say that the existing Superintendents will be placed above the existing Assistants in the seniority list on merger of the posts as

stated earlier. It, therefore, cannot be said that on account of merger rights, duties and the liabilities of the Superintendents will be affected or that they will be required to perform the work of a lower post. Thus although they will be designated as Assistants, they will always be seniors to the existing Assistants as stated earlier with the risk of repetition.

37. It is obvious that initially for the promotion post of Administrative Officer Gr.II vide RRs dt. 26.9.2002 the mode of recruitment was by selection and method of recruitment was by promotion from erstwhile Superintendent with 3 years service. It was treated as Group 'B' Gazetted Ministerial post. As per RRs 75% posts of Administrative Officer Gr.II were to be filled up by promotion failing which by deputation and the remaining 25% by direct recruitment. As per the new RRs this 75% quota by promotion is retained, but it has been divided in two categories viz. 37.5% by promotion on seniority-cum-fitness basis and

remaining 37.5% to be filled up by the candidates who qualifying the departmental examination. This was done with a view to ensure that more talented officials from the merged cadre of Assistants are available to shoulder higher responsibilities of the post of Administrative Officer. Inspite of this, for the erstwhile respondents 37.5% quota is left to try their luck for the post of Administrative Officer by way of promotion on the basis of their seniority. It is needless to say that whenever vacancies are to be filled up the RRs and the instructions issued by the department are to be followed. Same analogy will be applicable when posts are to be filled up by promotion. The zone of consideration is prescribed which has to be followed meaning thereby candidates who come in zone of consideration alone will be considered for promotion based on seniority-cum-fitness. For instance if there are 10 vacancies to be filled up by promotion and zone of consideration is 1:4 then first 40

Assistants from the seniority list (after merger) will be considered for the said promotion. However, for filling 37.5% quota through departmental qualifying examination, even the juniormost Assistant from the common seniority list of redesignated post of Assistant can be allowed to participate in examination, provided they complete 3 years of regular service as Assistant. Thus all eligible Assistants will be entitled to participate in examination irrespective of number of posts to be filled up under said 37.5% quota.

38. From the above discussion, it is obvious that no prejudice or harm is likely to be caused to the erstwhile Superintendents in the matter of their promotion to the post of Administrative Officer, since after merger two modes of promotion are available to them as stated and discussed above viz. by promotion from 37.5% quota and by facing the departmental qualifying examination in the remaining 37.5% quota. As stated earlier the

main object of prescribing departmental competitive examination is to ensure that the creamy layer officials occupy the higher posts, so that their intelligence and talent can better be utilised for running administration more efficiently and promptly. In such circumstances of the case, it cannot be said that the decision taken by the respondents for merger of two posts, and for prescribing two modes of promotion for the post of Administrative Officer in the new RRs is in any manner illegal, improper or unjust.

39. It is true that as pointed out by learned Advocate for the applicant, initially before merger of the posts there were 153 sanctioned posts of Superintendents and 96 sanctioned post of Administrative Officers. Hence, the chances of appointment to the higher post was more since competition was meagre. However, since after merger, the Assistants who have completed 3 years of servie can also lay their claim for the promotion post of Administrative Officer

through the departmental qualifying examination. Hence chances of erstwhile Superintendents for being promoted have been minimised to some extent. There is some truth in this submission. It is also obvious that although 153 posts of Superintendents and 425 posts of Assistants were merged, the sanctioned strength of Assistants on merger was reduced to 450 instead of 578 before merger of both the posts. However, sanctioned posts of Administrative Officer remained unchanged. This being so, to some extent there will be more competition between the departmental candidates through 37.5% promotion quota and the remaining 37.5% quota by departmental qualifying examination. However, this is bound to occur in the event of merger. Hence, for this reason alone it cannot be said that the decision taken by the respondents is illogical or unacceptable. Hence, it cannot be said that the impugned order dt. 13.2.2013 (Annexure-A-1) by which the Government of India, Ministry of Mines has

decided to re-designate Group 'A' 'B' and 'C' posts of GSI without any change in the pay structure, so far as Superintenents and Assistants are concerned as mentioned at Sl.No.35 in it, is in any manner illegal or improper which calls for interference by this Tribunal to set aside the same.

40. It is submitted by learned Advocate for the applicants that the respondents have not followed the DOPTs Model RRs while effecting merger and while framing new RRs and hence it should be reviewed and a direction be issued to the respondents to adopt the same Model RRs framed by DOPT which are at Annexure-A-19. It is true that GSI comes under the Administrative control of Ministry of Mines and the Department of Personnel and Training. However, so far as merger and framing of new RRs is concerned, the record shows that due care is taken by GSI to secure approval of all concerned including UPSC and Ministry of Law and Justice beside the parent department i.e. Ministry of Mines. This being

so, although the Model RRs are not strictly followed by GSI, the Rules have been framed to suit the need of the department in a better manner. Hence, on this count the action taken by the respondents cannot be held to be improper and hence liable to be quashed.

41. It is also submitted that in the Indian Bureau of Mines which also comes under the Administrative control of Ministry of Mines and DOPT on merger of cadre of Superintendent and Assistants, if were redesignated as Superintendent instead of Assistant, as is done in the present case and hence discriminatory mode was adopted by GSI it is stated. It is, therefore, claimed that a direction should be issued to the respondents to re-designate Superintendent and Assistant on merger as Superintendent. We do not find any force in this contention since it is for the department to consider what should be the nomenclature of re-designated post after merger. In the present case, it was thought proper to re-designate it as Assistant

instead of Superintendent. As stated and discussed earlier, due care is taken by the department while re-designating posts of Superintendent as Assistant on merger, since the existing Superintendents will always be senior to Assistants and their nature of work will also be that of supervising authority over the junior Assistants. Hence, we are of the view that for redesignated post on merger, its nomenclature has hardly any relevance or it is immaterial. Even if on merger the post is redesignated as Superintendent it hardly makes any difference. We, therefore, reject this contention of the applicant.

42. The learned Advocate for the applicants placed reliance on the decision rendered by the Hon'ble Principal Bench, CAT, New Delhi in **G.Suresh** (supra) decided on 29.10.2007 and submitted that it is not open for the Government to change service conditions with retrospective effect to the dis-advantage and prejudice of an employee as civil consequences have been ensued. We have

carefully gone through the said decision. However, it is obvious that the facts are totally different, in which the issue regarding deputation and absorption was involved and not of merger of posts. It cannot be said from record that on merger of two posts and re-designating them as Assistants it has resulted in change of service conditions retrospectively to the disadvantage and prejudice of the applicants and all other similarly placed employees. We, therefore, reject this contention of the learned Advocate for the applicant.

43. Lastly, the applicants have challenged the circular dt. 13.9.2013 (Annexure-A-3) issued by GSI Kolkata initiating process to fill up 42 vacancies in the grade of Administrative Officer. Out of which 10 vacancies are to be filled up by direct recruitment, 17 vacancies by promotion through seniority-cum-fitness method and 15 vacancies by promotion through departmental qualifying examination. Applications were therefore

invited from the eligible candidates. As stated and discussed above, since we have held that the steps taken by the respondents in the matter of merger of posts and adoption of new RRs are perfectly legal and valid, it cannot be said that the said circular is liable to be quashed, since it has been issued fully in conformity with the new RRs.

44. In the result, we do not find any merit in the present OA, since the applicants have failed to establish any of the grounds for challenging the decision of merger of post of Superintendent and Assistant and redesignating it as Assistant and to fill up promotion post of Administrative Officer by all the 3 modes viz. 25% by direct recruitment, 37.5% by promotion on the basis of seniority-cum-fitness and 37.5% by departmental qualifying examination. In view of this, the O.A. is liable to be dismissed and the same is accordingly dismissed.

45. In view of dismissal of the OA, the interim order passed earlier automatically

stands vacated.

46. In the facts and circumstances of the case, parties are, however, directed to bear their respective costs of this O.A.

(MS .B .BHAMATHI)
MEMBER (A)

(A .J .ROHEE)
MEMBER (J)

B.