

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00239/2017

DATED THIS THE 02ND DAY OF APRIL, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

N.L. Sateesha,
Son of late T.H. Laxmappa,
Aged about 43 years,
Working as Section Supervisor,
Regional PF Organization Office,
Rajaram Mohan Roy Road,
Bangalore – 560 025 Applicant
(By Advocate Shri B. S. Venkatesh Kumar)

Vs.

1. Union of India represented by its
Secretary to the Government,
Ministry of Labour,
Shram Shakti Bhavan,
New Delhi – 110 011
2. The Central Provident Fund Commissioner,
Employees Provident Fund
Organization, Head Office,

Bhavishya Nidhi Bhawan,
No. 14, Bhikaji Cama Place,
New Delhi – 110 066

3. Additional Chief Provident Fund Commissioner-II
(HRM) Employees Provident Fund Organization,
Head Office, Bhavishya Nidhi Bhawan,
No. 14, Bhikaji Cama Place,
New Delhi – 110 066

4. The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organization,
Regional Office, Bangalore Region,
No. 13, Rajaram Mohan Roy Road,
Bangalore – 560 025.

5. The Assistant Provident
Fund Commissioner (ADM),
Karnataka and Goa Political State,
Employees Provident Fund Organization,
No. 13, Rajaram Mohan Roy Road,
Bangalore – 560 025

6. Shri C.J Muralidhar
Father's name not known
Aged about 48 years,
Working as Section Supervisor,
Regional Office,
Bangalore Region,
Bangalore – 560 025

....Respondents

(By Smt. Shwetha Anand, Counsel for Respondent No. 2 to 5)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The matter is in a very small compass. Applicant and several others appeared and passed a departmental test which maybe owing to the limited time of less than a month between the notification and the examination and as a result some of those who were not willing to participate in the examination at short notice challenged the result of the

examination before the Tribunal at Ahmedabad. The Tribunal at Ahmedabad had heard the matter and passed an order but then apparently since all those who are affected were not heard, the matter was remitted back to the court and in OA No. 263/2010 and connected cases vide order dated 13.03.2015 (Annexure-A13), the Tribunal passed an order declaring certain aspects which we quote:

“O R D E R

Per : Ms. Minnie Mathew, Administrative Member

O.A.No.263/2010

OA No.263/2010 has been remanded back to the Tribunal vide order of the Hon'ble High Court of Gujarat in SCA No. 13224/2012 dated 11-1-2013 on the following grounds :

7. *This Court is of the considered opinion that the submissions made by learned Senior Advocate Mr. Trivedi for the petitioners warrant acceptance for the simple reason that relief sought in any form if is going to affect a person, that person is a necessary and proper party, to be impleaded as a party. In absence of that, the judgment and order of the Central Administrative Tribunal, Ahmedabad Bench cannot be allowed to stand.*

8. *In the result, the petition succeeds and the same is allowed. The judgment and order dated 09-5-2012 passed by the Central Administrative Tribunal, Ahmedabad Bench in Original Application No. 263 of 2010 is quashed and set aside. The matter is remitted back to the Tribunal, with liberty to the applicant before the Tribunal to implead the affected parties and proceed with the matter.*

9. *At the request of the learned Senior Advocate for the petitioner, it is clarified that the matter be decided after the present petitioner and other similarly situated persons are impleaded as party respondents, after giving them full opportunity and without being influenced by the fact that the petition was allowed at their behest. The Tribunal is expected to give full opportunity to all the affected persons before deciding the matter on merits.*

Accordingly, MA No.99/2013 for reviving of the OA and MA No.100/2013 for joinder of the Respondent Nos.36 to 106 were allowed on 12-3-2013 and notice was issued to the party respondents.

O.A.No.279/2012.

2. OA No.279/2012 has been filed by the persons impleaded as private respondent Nos.42, 43, 46, 63, 79, 80, 82, 83, 102 & 104 in OA No.263/2010. The prayer of the applicants in this OA (and party respondents in OA No. 263/2010) is to issue direction to the official respondents to proceed further in accordance with the 2002 Scheme of the examination and to operate the Select list dated 9-1-2009 qua the applicants herein for promotion to the post of Section Supervisor in Gujarat Region and grant regular promotion with all consequential benefits. As this OA is connected to OA No. 263/2010 and the subject matter is one and the same, both the OAs are heard together and disposed of by this common order.

3. The applicants in OA No.263/2010 are working as Social Security Assistant (in short S.S.A.) under the respondent department. They submit that the method of recruitment to the next higher post of Section Supervisor (in short S.S.) is 66 2/3rd % by way of promotion of S.S.A with three years service on the basis of the seniority list, subject to the rejection of unfit and 33 1/3rd % on the basis of a departmental examination restricted to those who have rendered not less than three years of service as S.S.A. including Stenographers, Grade-III failing which by direct recruitment.

4. The grievance of the applicants, herein, is that the respondents are treating the departmental examination as a qualifying examination without any reference to the number of vacancies available on the date of examination. Further, the select list prepared on the basis of the departmental examination is being continued till the entire list is exhausted. It is the contention of the applicants that the departmental examination is a competitive examination where weightage has to be given to merit. They also submit that as against the availability of five vacancies, a select list of 101 candidates with 15 more shown in the reserve list has been prepared by the respondents and the respondents are considering the select list as a perpetual list for filling up vacancies as and when they occur. It is the grievance of the applicants that the select list of 101 candidates would continue for years to come till the last candidate is promoted and till such time, no further departmental examination would be conducted. Thus, employees who thereafter complete three years qualifying service as S.S.A. would not get a chance to appear and compete for promotion through the departmental examination. The applicants also urge that the recruitment rules envisage the Departmental examination to be a competitive examination. But the respondents have misinterpreted the rules and are treating the same as a qualifying examination. It is the case of the applicants that in a qualifying examination, the list remains in force till the last candidate in the said list is promoted whereas in a competitive examination, the list is exhausted after the number of vacancies notified in the examination is filled up or after the lapse of

the stipulated time period. After having prepared the select list on the basis of the merit of the candidates in the departmental examination, the respondents are estopped from claiming that the examination is a qualifying examination. It is also pointed out that on the date of examination, seven candidates who have appeared in 2002 and have given ad hoc promotion, are yet to be regularized. Thus, in spite of seven ad hoc promotees being available, the department granted promotion to 38 persons without first regularising the ad hoc promotees, who qualified in the earlier examination. Thus, the authorities have granted ad hoc promotion to a large number of persons without any vacancy to accommodate such persons.

5. *The applicants have thus sought for a declaration that the departmental examination for promotion to the post of SS is a competitive examination to be held with reference to the number of vacancies available or at least anticipated vacancies. They have also sought for a direction to set aside the select list dated 09-1-2009 and the ad hoc promotion which are beyond the number of vacancies available on the date of examination.*

6. *The applicants further submit that they filed the OA well within the limitation as select list dated 9-1-2009 will continue to remain in force till the last candidate in the said list is promoted and also in view of the ad hoc promotions being issued intermittently by the respondent authorities. However, they also submit that in case the Tribunal of the opinion that there is delay in filing the OA, the Tribunal may be pleased to condone the same.*

7. *In their reply statement, the respondents submit that the OA is barred by limitation, estoppel, delay and laches. As per the provision of Section 5 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, as amended from time to time, Central Board of Trustees is the competent body to frame the Rules for recruitment of staff and officers. The examination scheme for the post of SS was circulated vide letter dated 18-12-2002. In the aforesaid scheme, the departmental examination is a qualifying examination and the practice of keeping the select list in force till the last candidate has been appointed is legal and valid. Further, in the feeder cadre of SSA, the present applicants have enjoyed the benefit of this scheme of qualifying examination. Hence, having enjoyed such benefits, they are estopped from challenging the same. Further, changing the qualifying examination to vacancy based examination would create huge administrative problems because a large number of promotions have been given on the basis of the scheme. It has also been argued that the validity of the select list cannot be challenged because there is no provision for cancellation of the merit list. It is also their contention that even in the year 2003, the departmental examination for promotion to the post of UDC was conducted as a qualifying examination. Further, it is contended that as the examination is a*

qualifying examination, the same can be held periodically and as per the department's convenience even in absence of the vacancies. Therefore, the respondents have refuted the contention that the qualifying examination is to be limited to actual vacancies. It is also stated that even if there were five regular vacancies in the higher cadre, it does not mean that more number of candidates cannot appear in the examination. The respondents have pointed out that the applicants ought to be sure that the Original Application is within limitation and not submit that the Tribunal should condone the same if there is any delay in preferring the OA. The respondents also submit that when ad hoc vacancies are available, ad hoc promotions can be given in the absence of regular vacancies. The continuance of merit list till it is exhausted is just and valid. In their further reply statement, they have stated that in case any official with higher rank in merit refuses to accept promotional post or is disqualified, then administration can select the candidate in order of merit which will reduce the cost of examination and also fill up the vacancies under examination quota without any delay.

8. *In pursuance of the direction of the Hon'ble High Court of Gujarat, the applicants have impleaded the Respondent Nos. 36 to 106.*

9. *The private respondent Nos. 36, 40, 42 to 46, 48, 49, 51 to 54, 57, 58 to 62, 73, 76 to 85, 87 to 90, 93 to 95, 97, 98, 100 and 106 have filed their reply statement. They have taken preliminary objection that the OA is barred by limitation. It is their contention that the applicants have challenged, the merit list dated 9-1-2009 after the expiry of statutory period of one year to be reckoned from 10-1-2009 with a plea that if there is any delay in filing of the OA, the same may be condoned by this Tribunal. They have failed to file a formal Miscellaneous Application under Rule 8(4) for condonation of delay. It is a settled principle of law that if any formal application for condonation of delay is not filed, this Tribunal has no jurisdiction to entertain the OA. The private respondents have relied upon the Hon'ble Supreme Court judgment in Secretary to Government of India v. Shivram Mahadu Gaikwad reported in 1995 SCC (Suppl.3) 231 in support of their objection that an application which is barred by limitation under Section 21 of the Administrative Tribunals Act deserves to be dismissed. Further, it is contended that the original applicants have concealed material facts before this Tribunal. They have not challenged the EPFO's Policy and also DoPT's O.M. dated 8-2-1982 and have failed to implead necessary and proper parties such as the Central Board of Trustees and the Department of Personnel and Training. They have also approached this Tribunal before exhausting the alternative remedy of making a formal representation to the official respondents.*

10. *The private respondents have stated that in terms of the*

Employees' Provident Fund (Staff and Conditions of service) Regulations, 1962, recruitment and selection for the post of Section Supervisor (erstwhile Head Clerk) used to be made on the basis of a Departmental Competitive Examination. However, in the year 1981, Central Board have amended the said 1962 Regulation vide GSR No. Admn (R.II)/14/(5)/80-14647 dated 27-5-1981, by which, the word 'Competitive' came to be substituted by the word 'qualifying'. Thus, the decision to make the examination in question a 'qualifying one' w.e.f. 27-5-1981 was a conscious policy decision of the Central Board with due approval of the Central Government. In 1987, when the Central Board came out with a scheme called 'Employees' Provident Fund Services Examination Scheme' the Central Board had incorporated an unambiguous and specific provision to the effect that the panel of the candidates who have qualified in both Part-I and II of the examination, which is a qualifying one and have been recommended for promotion by the Departmental Promotion Committee, will remain operative till it is exhausted. This still remains in force and has not been superseded by any amendatory regulation of the Central Board.

11. *The private respondents have also pointed out that Government of India, Department of Personnel & Administrative Reforms, Ministry of Home Affairs vide Office Memorandum No.22011/2/73-Estt.(D) dated 8-2-1982 issued the following instructions :-*

Once a person is declared successful according to the merit list of selected candidate which is based on the declared number of vacancies, the appointing authority has the reason to appoint him even if the number of vacancies undergoes a change after his name has been included in the list of selected candidates. Thus, where the selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment and the candidates awaiting appointment should be given appointment first, before starting appointment from a fresh list from subsequent recruitment or examination.

It is also submitted by the private respondents that the policy for treating the departmental examination as a qualifying examination has been consistently followed in the respondents organization as is evident from the Annexure R-5 letters dated 16-11-2000 and 31-1-2013 and also Amended Regulations of 1982 and the Handbook on conducting the departmental examinations of 1994. It is also submitted that there was no ambiguity whatsoever in the declared policy that the Select List showing candidates, who qualified in the written examination, and were recommended for promotion by the Departmental Promotion Committee, will remain operative till the list is exhausted. They have pointed out that if the applicants are aggrieved

by the said policy, it was open for them to challenge the legality and constitutional validity of the said policy before the departmental examination was held. The relief sought for by the applicants cannot be granted as there is no challenge to the Amendatory Regulations of 1981 reiterated by the department in the Handbook for conducting the departmental examinations of 1994 and DoPT's Office Memorandum dated 8-5-1982. They have also cited the order of the Principal Bench of Central Administrative Tribunal vide its order dated 4-3-2011 in Annexure R-7, which held that the select panel, in question, should be operative till the last person in the said selection list is promoted. They have strongly argued that the applicants were beneficiaries of the aforesaid Amendatory Regulations of 1981 when they got promotion to the post of SSA from the Grade of LDC. The private respondents have also averred that the applicants herein have no locus standi to file the present OA as they were not at all eligible to take part in the departmental examination conducted in the year 2007 as they were not having minimum three years of regular service in the feeder cadre of SSA. It is also the case of the private respondents that when the examination notification dated 11-10-2007 was issued, no vacancies were notified. Vacancies were notified only in respect of those departmental examination declared to be competitive and not in respect of those departmental examination which are qualifying in nature. According to them, the reason for aforesaid action on the part of the official respondents is that in the case of the departmental examination which is qualifying in nature, the select list is invariably operated till the last select person is promoted in conformity with the DoPT's O.M. dated 8-5-1982. They have also added insofar as the notification dated 11-10-2007 was concerned, there was no such statement of notified vacancies for the post of Section Supervisor. This was because regularization in the cadre of Section Supervisor was done only after 31-3-2002 and further regularization was pending with the Head Office.

12. Heard the learned counsel for the applicant, official respondents and private respondents.

13. The applicant relied on the judgment of the Apex Court in *Surinder Singh & Ors. v. State of Punjab & Ors.*, 1997 (8) SCC 488 in support of their contention that the action of the respondents in making promotion over and above, reported vacancies was improper and erroneous. They also pointed out that the Apex Court held that waiting list cannot be used as a perennial source of recruitment for filling up the vacancies which were not advertised. They have also cited the judgment of the Apex Court in *Rakhi Ray & Ors. v. High Court of Delhi & Ors.* reported in 2010 (2) SCC 637 in support of their contentions that any appointment made beyond the number of vacancies advertised is without jurisdiction and violative of Articles 14 and 16 (1) of the Constitution of India. Appearance of the name of a person in the select list does not create an indefeasible or vested right

to employment. Empanelment at best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or a vested right for appointment. Learned counsel for the applicant also argues that the word qualifying has been used deceptively by the respondents to ensure that the select list continues till the last candidate in the said list is appointed. He forcefully argued that the select list cannot be operated beyond the number of vacancies available. As per the material on record, only five vacancies were reported in Gujarat and hence, there was no justification in preparing a list of 110 candidates.

14. *Per contra, Shri M.S.Rao, learned counsel for the private respondents reiterated the preliminary objection raised by him in his pleadings and argued that policy can be written policy and also policy which is discernible by practice. The Official respondents have been consistently following the same practice and treating the examination as a qualifying examination and operating the select list till the entire list is exhausted. It is settled law that Courts should not interfere with consistent practices. He relied on the O.M of the Department of Personnel & Administrative Reforms, Ministry of Home Affairs, annexed as Annexure R-4 in support of his contention and submitted that the select list shall be operated till the last candidate in the said list is appointed/ promoted.*

15. *Shri Joy Mathew, counsel for the official respondents argued that the Respondent organization has been consistently following the practice of operating the select list till the entire list is exhausted. Further, the applicants themselves have benefited from the said policy when they got their promotion from LDC to SSA. This has been not been refuted by the applicants. He relied on the judgment of the Apex Court in Union of India Vs. Alok Kumar, reported in 2010 (5) 349 in support of his contentions that a practice which is uniformly applied and is in the larger public interest may introduce an element of fairness. It is a settled principle of law that a practice which was followed in the past and is within the knowledge of the public at large, can legitimately be treated as a good practice acceptable in law. He also submitted that there is no express Rule or Law prohibiting the respondents from operating the Select List till the same is exhausted. Therefore, the action of the Respondents is not contrary to any Rule or violative of any provision of law.*

16. *The issues arising for consideration in this OA are as under :*
(i) *whether the OA is barred by limitation;*
(ii) *whether there has been non-joinder of the necessary and proper parties;*
(iii) *whether the applicants have locus standi to file OA;*
(iv) *whether the departmental examination is a qualifying examination or a competitive examination; and*
(v) *whether the select list of 9-1-2009 can be operated till the list is*

exhausted.

(i) *Whether the OA is barred by limitation :* The official and private respondents have argued that the OA is barred by limitation and not maintainable as the applicants have not filed petition for condonation of delay. It is their stand that the applicants have not challenged the examination notified on 11-10-2007 or the select list dated 9-1-2009 within one year from the date of its issuance. The ground taken by the applicants is that they got information of the vacancies existing at the time of conducting departmental examination in 2007 only in response to their application under RTI Act. It was only on 19-5-2010 that they came to know that numbers of vacancies in the cadre of the SS in Gujarat Region was only five. It is also their case that it is only after the receipt of the reply dated 13-5-2010 that the applicants came to know that the Select List would be operated till it is exhausted. We have perused the materials on record and noted that list dated 9-1-2009 was not only given to the individuals, but was also published in the Office Notice Board and given to the Union. Thus, we are of the view that knowledge of the publication of the select list was available in January 2009 itself. The fact that the respondents have been operating the select list till the list was exhausted, was also known to the applicants as respondents have admittedly and undisputedly been following the same policy for promotion of the applicants as SSA to which category they now belong. However, information regarding number of vacancies notified forms the basis of this OA as it is the contention of the applicants that the respondents are filling up more than the notified vacancies and this information became available to the applicants only in reply to their RTI application. It is pertinent to mention that even in the communication dated 11-10-2007 addressed to all Regional Provident Fund Commissioner regarding the conduct of departmental examination for promotion to the post of SS under examination quota, there is no mention at all of the number of vacancies. Thus, we are satisfied that this information was available to the applicant only in May, 2010 and they have filed this OA within two months of such knowledge. It is therefore held that the OA is within limitation.

(ii) *Whether there has been non-joinder of the necessary and proper party :*

The counsel for the private respondents contends that the authority and power for framing rules is solely vested in the Central Board of Trustees (CBT). CBT has not been impleaded in the OA. Therefore, on account of non-joinder of the Central Board of Trustees and DoPT, which issued the OM No. 22011/2/73-Estt.(D) dated 08-2-1982, the OA is not maintainable. On perusal of the records, it is evident that the 2nd respondent, in this OA, is the Employees Provident Fund Organization represented by Central Provident Fund Commissioner and the Secretary, Central Board of Trustees. Section 5 (D) of the EPF & MP Act, 1952 states as follows :

5(D) Appointment of Officers : (i) The Central Government shall appoint a Central Provident Fund Commissioner who shall be the Chief Executive Officer of the Central Board and shall be subject to the general control and superintendence of that Board.

Having regard to the fact that the Central Provident Fund Commissioner is Chief Executive Officer of the Central Board of Trustees, and that he is the 2nd respondent, we hold that the Central Board of Trustee represented by its Chief Executive Officer namely Central Provident Fund Commissioner has been impleaded and that the Central Board of Trustee has been put on notice. Further, the terms and conditions of the recruitment of Section Supervisor is governed by the Employees Provident Fund Organization (Section Supervisor) Head Clerk/Regional Office, Recruitment Rules 1992 and as amended from time to time. We are therefore, unable to agree with the contention that DoPT is a necessary party. Hence, the contention of non-joinder of necessary and proper parties fails.

(iii). Whether the applicants have locus standi to file the OA. It is the contention of the private respondents that when the notification for holding the departmental examination for promotion to the post of Section Supervisor under the examination quota was issued in 2007, the applicants in the present OA were not at all eligible to take part in the same since they did not possess minimum three years regular qualifying service in the cadre of SSA. Thus, the applicants have no locus standi to challenge the said examination and the consequent merit list on any ground whatsoever.

Admittedly, the applicants have not appeared for the examination conducted on 18-12-2007 and 19-12-2007 in pursuance of the notification dated 11-10-2007. However, their grievance is that the respondent department is operating the select list in perpetuity without giving actual numbers of the vacancies to be notified. On account of this, the applicants are being denied the right for being considered against the vacancies arising after the date of notification. By filling up the vacancies from the impugned select list, they are deprived of their legitimate right for consideration for promotion. In view of the force of this argument, we hold that applicants have locus standi. Further, we have also considered Para 12 of the judgment of the Hon'ble Supreme Court in Prem Singh v. Haryana State Electricity Board reported in 1996 (0) GLHEL -SC 21483, which reads as follows :

12. In our opinion, there is no substance in the objection raised with respect to locus standi of the original writ petitioners. The candidates could not have anticipated when they appeared for the interview that the Selection Committee would recommend candidates and the Board would make appointments for in excess of the advertised posts. The petitioner who was not eligible had a just grievance that due to appointments of candidates in excess of the posts advertised he was deprived of the right of consideration for appointment against the posts which would have become vacant after he acquired eligibility.

(iv) Whether the departmental examination is a qualifying examination or a competitive examination.

Employees Provident Fund Organization Promotion Examination Scheme, 2002 governs the conduct of examination for filling up the vacant post of Section Supervisor under examination quota as prescribed in the relevant rules. The relevant portion of Para 6 of Scheme annexed at Annexure R-1 reads as follows :

The examination is a qualifying examination. The successful candidates in the departmental examination for the post of Section Supervisor/Assistant (Head Office), Upper Division Clerk and Lower Division Clerk will be arranged in order of merit with reference to the marks obtained by them in the examination.

Further, the Employees Provident Fund Organisation (Staff and Condition of Service) Regulations amended in 1981 also clearly mention that against Sr. No.4 relating to the posts of Head Clerk (Regional Offices) to be promoted against 25% examination quota, for the word 'Competitive' the word 'qualifying' shall be substituted. No doubt, this regulation has undergone several amendments in 1992 and in 2006. Under the 1992 amendment, the quota for promotion of employees on the basis of the departmental examination has been enhanced to 33 1/3rd %. Similarly, the amendment notification in 2006 also substitutes the word 'Social Security Assistant' for Upper Division Clerks. But, it has to be observed that there is no change in the nature of the qualifying examination. To make this more explicit, we reproduce para 4.2.1 and 4.2.2 of the Handbook on the Departmental Examinations issued by the respondents in 1994, which states as follows :

4.2.1. The examinations are conducted in two types i.e.

- (i) Competitive Examination**
- (ii) Qualifying Examination**

The examination is conducted on competitive basis in respect of the following :

- (i) Examination for appointment as Hindi Translator (Gr.II) (Direct Recruitment Quota & D.P. Quota)*
- (ii) Examination for promotion to the post of Enforcement Officer/ Asstt. Accounts Officer/ Superintendent. (iii) Examination for recruitment as Stenographer (Gr.III) (for Direct recruits).*

4.2.2. THE EXAMINATION IS CONDUCTED ON QUALIFYING (*) BASIS IN RESPECT OF THE FOLLOWING :

- (i) LDC (35% quota) from Group 'D' (including Group 'C' posts for which the scale of pay is equivalent or lower to that of LDC)*
- (ii) U.D.C*
- (iii) Head Clerk (Region)*
- (iv) Assistant (Hqrs.)*

(v) Probationary examination for Direct recruit APFC/ EO/AAO/Supdt./ LDC.

In the light of the material that has been produced before us, we are of the view that the departmental examination for Section Supervisor has been categorically declared as a qualifying examination. The scheme of the examination also makes it clear that it is a qualifying examination. The Scheme also states that inter-se seniority of the qualified candidates shall be reckoned with reference to the marks obtained by them in the departmental examination. We, therefore, hold that the departmental examination for the post of the Section Supervisor is a qualifying examination and that qualified candidates will be arranged in order of merit for the purpose of reckoning their interse seniority.

(v) Whether the operation of the select list dated 9-1-2009 can be operated only with reference to number of vacancies available on the date of examination or reasonable period thereafter. To decide this matter, we have considered the EPFO (Staff and Condition of Services) of 1962 and the amendments made thereafter. We have also considered the scheme of the examination and the instructions governing the conduct of the examination. The scheme in force today is the scheme which was issued in 2002. This scheme states as following :

(ii) The examination under this scheme shall be held for filling up of vacant posts Section Supervisor / Assistant (Head Office), Upper Division Clerk and Lower Division Clerk in the Regions as well as in the Head Office, falling under Examination Quota, as prescribed in the relevant Recruitment Rules.

Further, Section 3 reads as follows :

Determination of vacancies : The vacancies in the cadre of Section Supervisor / Assistant (Head Office), Upper Division Clerk and Lower Division Clerk in each Region as well as Head Office should be determined by the respective RPFCs.

17. *From this, it is sufficiently clear that the Departmental Examination is with reference to the vacant posts in the Region as well as in Head office.*

18. *The private respondents have, however, relied upon an earlier scheme annexed, as Annexure A/6-3. Para 7 of this scheme states as follows :*

The panel of the candidates who have qualified in Part I & II examination and have been recommended for promotion by the Departmental Promotion Committee will remain operative till it is

exhausted.

19. *This provision does not figure at all in the latest examination scheme of 2002. When the earlier scheme has been replaced by the Examination Scheme of 2002, and when the Examination Scheme of 2002 does not contain any such guidelines, the reliance of the private respondents on a provision in an earlier scheme is misplaced. It is a fact that the examination notified on 11-10-2007 does not indicate the vacancies available. The applicants have accessed this information under the RTI Act and have contended that only five vacancies were available in Gujarat Region and that the action of the respondents in granting ad hoc promotion over and above available vacancies is untenable.*

20. *The applicant's have relied upon Surinder Singh & Ors. v. State of Punjab 1997 (8) SCC 488 in which it has been categorically held that the waiting list cannot be used as perennial source of recruitment for filling up the vacancies not advertised. They have also relied on the Apex Courts judgment in Vijay Singh Charak v. Union of India & Ors., 2007(9) SCC 743 in which it has been held that select list can only be prepared for a particular year and only those selected in that year can be considered for selection.*

21. *Learned counsel for the respondents argued that there is no express prohibition against operating the select list until the same is exhausted and that this was a practice that has been consistently followed by the respondents and therefore there is no discrimination against the applicants. It is also their contention that examination is not vacancy based. In support of their stand that respondents have consistently followed the same practice of operating the Select List till it is exhausted and that such consistent practice is entirely permissible the respondents have cited, paras 66 & 67 of the Apex Court's Judgment in Union of India v. Alok Kumar, (2010) 5 SCC 349, which is extracted below : 66. A practice adopted for a considerable time, which is not violative of the Constitution or otherwise bad in law or against public policy can be termed good in law as well. It is a settled principle of law, that practice adopted and followed in the past and within the knowledge of the public at large, can legitimately be treated as good practice acceptable in law. What has been part of the general functioning of the authority concerned can safely be adopted as good practice, particularly, when such practices are clarificatory in nature and have been consistently implemented by the concerned authority, unless it is in conflict with the statutory provisions or principal document. A practice which is uniformly applied and is in the larger public interest may introduce an element of fairness. A good practice of the past can even provide good guidance for future. This accepted principle can safely be applied to a case where the need so arises, keeping in view the facts of that case. This view has been taken by different High Courts and one also finds glimpse of the same in a judgment of this Court in the case of Deputy Commissioner of*

Police & Ors. Vs. Mohd. Khaja Ali (2000 (2) SLR 49). 67. There can be hardly any doubt that the practice of appointing former employees had been implemented for quite some time in the Department. We are unable to see how this practice is opposed to any statutory provision or even public policy. To bar such a practice, there has to be a specific prohibition under the statutory provisions, then alone the argument raised on behalf of the respondents could have some merit.

22. *We are not able to agree with the respondents that there is no express prohibition for operating the Select List until the same is exhausted. While there may be no express prohibition, the respondents have not been able to point out any enabling provision of law or Rules which confers power on the Respondents to operate the Select List till it is exhausted. On the other hand, the Examination Scheme of 2002, which is in force today, itself declares that the examination shall be held for filling up vacant posts. It is necessary to underline that even Annexure R-4 states that the examination in 2003 shall be held in all Regional Offices except Goa, Karnataka and Orissa where the vacancies were not available. This clearly draws attention to the fact that examinations are held with reference to vacancies. For this reason, we are unable to accept their contention that Select List can be operated without reference to the numbers of the vacancies notified.*

23. *Further, even if we were to accept that it was the policy of the Respondent Department, it is held that policies should be reasonably fair and in conformity with the Scheme promulgated by the respondents themselves. Since the practice followed by the respondents is in conflict with the notified Examination Scheme 2002, we hold that the judgment of the Hon'ble Supreme Court in Union of India Vs Alok Kumar will not apply in this case.*

24. *Mr.M.S.Rao, the learned Counsel for the Private Respondents has heavily relied on Annexure-R.4 Office Memorandum that the Select List shall be operated till the last candidate in the said list is appointed/promoted. However, on close scrutiny, we note that the aforesaid memorandum clearly states that when the merit list of selected candidates is based on the declared number of vacancies and where selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated, or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment and the candidates awaiting appointment should be given appointments, before starting appointment from a fresh list from subsequent recruitment or examination. From this, it is clear that the Select List can be operated till it is exhausted, only when it is prepared based on declared number of vacancies. In the instant case, vacancies have not been notified and hence the Select List cannot be said to have been prepared with reference to the number of vacancies*

under the Examination Quota for SS. Thus, this OM is not of help to the private respondents.

25. *Having regarding to the above facts and circumstances, we hold that the select list can be operated only with reference to the vacancies available. It is, however, necessary to observe that in view of the statement filed by the respondents on 19-1-2012 to the effect that 49 more posts of SSA were sanctioned for Gujarat Region, vide Head Office letter dated 26-12-2008, we hold that the select list can be operated with reference to the vacancies available on the date of notification plus the Examination Quota posts in the new posts that have been sanctioned for Gujarat Region prior to the publication of the impugned Select List.*

26. *In the result, issue Nos. (i), (ii), (iii) and (v) are decided in favour of the applicants. Issue No. (iv) is decided in favour of the respondents.*

27. *Thus, the OA is partly allowed as above. The respondents are directed to operate the impugned Select List dated 9-1-2009 up to the extent of five reported vacancies and for filling up the Examination Quota, if any, in the 49 vacancies that have been additionally sanctioned in Head Office letter dated 26-12-2008 annexed to the additional reply filed by the counsel for the respondents on 19-1-2012 as these vacancies are available before the finalisation of Select List of 9-1-2009.*

28. *Having regard to the orders passed in OA Nos. 263/2010 and 279/2012, MA/215/2013 in O.A.No.279/2012 stands closed. No order as to costs.*

2. The Ahmedabad Bench had partly allowed the OA and held that in respect of the Ahmedabad region the impugned select list dated 09.01.2009 was directed to be operated up to the extent of five reported vacancies and for filling up the Examination Quota, if any, in the 49 vacancies that have been additionally sanctioned in Head Office letter dated 26.12.2008 annexed to the additional reply filed by the counsel for the respondents on 19.01.2012 as these vacancies were available before the finalization of select list of 09.01.2009.

3. The impact of this judgment is that all those people who had become eligible before 19.01.2012 as a cut off for obtainment which was necessitated by filing of the response by the respondents was taken as the date till when the vacancies should be calculated. Apparently this matter was taken up to the Hon'ble High Court of Gujarat and the Hon'ble High Court in Special Civil Application No. 5231 of 2015 and other cases passed an order dated 08.10.2015. The operative portion is quoted herewith:

"7.10. At this stage, it is required to be noted that as observed hereinabove, as and when departmental examinations are conducted, there shall be different departmental examinations and examiners also shall be different and therefore, unequal shall be treated equally. As observed hereinabove, so far as 33 1/3rd % quota is concerned, merit is the only criteria. Under the circumstances also, merit list prepared on the basis of earlier departmental examinations cannot be permitted to be operated in perpetuity and/or till it is exhausted and the same shall be restricted to only those notified declared vacancies at the time of taking departmental examinations and the same cannot be permitted to be operated for subsequent vacant notified / declared vacancies in the particular region. Under the circumstances, the learned tribunal has not committed any error in allowing the O.A. and in granting the reliefs restricting the merit list / select list dated 9/1/2009 for the declared / notified vacancies. At this stage, it is required to be noted that even the learned tribunal has directed to operate the said merit list even with respect to the posts which were declared subsequent to conducting of the departmental examination, but prior to preparation of the merit list / select list dated 9/1/2009, however, the same is not under challenge and therefore, we are not observing anything with respect to the same."

4. Regarding the position obtained before 09.01.2009, the same was not under challenge and, therefore, the Hon'ble High Court specifically declined to pass any orders in this respect.

5. The matter went upto the Hon'ble Apex Court and the Hon'ble Apex Court having confirmed the Gujarat High Court judgment it has now become

final. In Annexure-A12 the matter was taken up in a similar and tangential basis in the Hon'ble Tribunal at Delhi concerning the Delhi region in OA No. 2615/2010 dated 28.01.2013 which we quote:

"O R D E R (ORAL)

Mr. Jog Singh, Member (J):

MA-2060/2010 filed by the two applicants under Rule 4 (5) (a) of Central Administrative Tribunal (Procedure) Rules, 1987 is allowed in the interest of justice and to avoid multiplicity of litigation.

2. *There are two applicants in the present OA, who are working on the posts of Social Security Assistant (pre-revised pay scale of Rs.1200-2090) with the respondent-organization, i.e. Office of the Regional Provident Fund Commissioner, New Delhi. Their case is that after working for three years in the cadre of Social Security Assistant they became eligible to be considered and promoted to the posts of Section Supervisor/Head Clerk. It is an admitted position that the said post of Section Supervisor in the pre-revised scale of pay of Rs.1400-2300 was earlier called as UDC. The nomenclature was, however, changed on 05.09.2006. The two applicants submitted that they became eligible to be considered and promoted to the posts of Section Supervisor on 1.1.2009 and 1.1.2010 respectively.*

3. *The main grievance raised by the applicants in the present OA is relating to the respondents Notification dated 30.09.2006 vide which a limited departmental competitive examination (LDCE) was held on 18-19/12/2007 and the result was declared on 12.05.2008. 66 candidates from general category qualified in the said examination and 09 candidates were declared qualified in the reservation quota meant for SCs/STs. The case of the applicants is that the respondents could not have promoted more than 16 candidates as that was the number of vacant posts of Section Supervisor available as on the date the result was declared or the examination was held. For the sake of convenience the applicants have stated March, 2008 as the relevant cut off date in this regard. Applicants further submit that the respondents have in a discriminatory manner went ahead with the promotions from the said list of 66+9 candidates on 20.08.2009, 06.11.2009 and 15.05.2010, thereby depriving the candidates, who had become eligible in the year 2009 and 2010, an equal opportunity to be considered for promotion against the 1/3rd quota meant for LDCE. This is stated to be against the provisions of Articles 14 and 16 of the Constitution of India as well as opposed to the law laid down by the Honble Apex Court in the case of Rakhi Ray & Ors. v. High Court of Delhi & Ors., reported in 2010 (2) AISLJ SC 189 . The applicants also relied upon the law laid down by the Hon'ble Apex Court in the case of Union of India & Ors. v. B. Valluvan and others, reported in*

(2007) 1 SCC (L&S) 28.

4. *On the other hand, the official respondents have filed their reply through Shri Satpal Singh, learned counsel and have contended that the examination for the purpose of promotion of Section Supervisor is a qualifying examination only. The successful candidates in the said LDCE are appointed in the order of merit with reference to the marks obtained by them in the LDCE. Therefore, the respondents can prepare a larger panel/select list of candidates qualifying the said departmental examination and can fill up subsequent vacancies occurring after the notification and examination etc. as well. Learned counsel for the private respondents Shri V.S.R. Krishna and Shri M.K. Bhardwaj have also appeared and made similar submissions. Shri V.S.R. Krishna submits that the respondents have been following this practice of preparing larger panel, i.e. larger than available vacant posts at a given point of time, meant for 1/3rd quota since 1996 and they have been doing it as such. The submission is that as long as the panel or select list is not exhausted, respondents can go ahead with filling up of vacancies from such panel/select list. It is also submitted by the learned counsel for the official respondents that they have never exceeded the 1/3rd quota but have only evolved a method by which the panel/select list prepared pursuant to a LDCE is kept operative for future years indefinitely till the selected candidates are adjusted against the vacancies becoming available in future too.*

5. *All the learned counsel for the parties have been heard at length and the pleadings and documents have been perused minutely. At the outset, it is noted that the post of Section Supervisor is to be filled up as per the Employees Provident Fund Organization Section Supervisor (Head Clerk) (Regional Office) Recruitment Rules, 1992. Para-1 of the said Recruitment Rules mentions the name of the post as Section Supervisor/Head Clerk (Regional Office). It is a Group C ministerial post in the erstwhile pay scale of Rs.1400-2300. 2/3rd quota is to be filled up by promotion on the basis of seniority, subject to fitness and remaining 1/3rd quota is also to be filled up by promotion albeit based on departmental examination, failing which by direct recruitment. It is also evident that the post of Section Supervisor/Head Clerk is to be filled up 100% by promotion in the prescribed quota as mentioned hereinabove. In the present case we are concerned only with 1/3rd quota meant for LDCE. In this regard it is pertinent to note that the candidates having 03 years service in the feeder category of Social Security Assistant are eligible to appear in the qualifying examination to be conducted by the respondents from time to time on the basis of marks/merit in the said examination. This is made clear in para-12 of the said Recruitment Rules of 1992.*

6. *In this context it is further noted that the respondents have prescribed a Scheme of Examination, known as Employees Provident Fund Departmental Promotion Examination Scheme 2002. As per para-1 (ii) it is provided in the said Scheme that the examination, i.e.,*

Limited Departmental Competitive Examination shall be held for filling up the vacant posts of Section Supervisor/Assistant (Head Office), Upper Division Clerk and LDCs in the Regions as well as in the Head Offices falling under the examination quota as prescribed in the relevant Rules. Para-3 of the said Scheme deals with determination of vacancies and provides that vacancies in the cadre of Section Supervisor etc. should be determined by the respective RPFCs. Para-4 deals with the eligibility and states that eligibility for appearing in the examination shall be determined with reference to the relevant recruitment rules. The cut off date for determination of such eligibility for the candidates who aspire to appear in the said examination shall be 1st January of the preceding year. The method for preparation of merit list etc. has also been enshrined in the said Scheme of examination.

7. *A con-joint reading of the said Scheme of examination read with relevant recruitment rules would make it abundantly clear that the examination has to be conducted with reference to the vacancies which arise and are available on the 1st January of the preceding year when the examination is to be held. Undoubtedly, such vacancies should be within 1/3rd quota meant for LDCE. Thus, on a harmonious construction of the recruitment rules and the said Scheme and also keeping in view the law laid down by the Hon'ble Supreme Court in the abovesaid two mentioned cases of Rakhi Ray and B. Valluvan, we note that the respondents are precluded from filling up the unlimited/excessive number of vacancies pursuant to one examination alone. In the present case notice was issued on 30.09.2006 and the respondents after conducting the examination on 18/19-12-2007 declared the result on 12.05.2008, declaring in all 75 candidates as qualified, including general and reserved categories candidates. Respondents have themselves annexed a statement showing vacancy position in the cadre of Section Supervisor under the Examination quota as on 31.03.2008. This document is dated 27.02.2007 and is issued by the office of the EPF, Ministry of Labour, Government of India and has been annexed by the official respondents. It clearly discloses that there were only 16 anticipated vacancies as on 31.03.2008 to be filled under the examination quota of 1/3rd as per the recruitment rules in question. Out of such 16 vacancies two were reserved for SC and one for ST. In view of this factual position we have no hesitation in holding that the respondents could have only filled up 16 posts pursuant to notification dated 30.09.2006 and subsequent vacancies were to be filled up on yearly basis, giving an equal opportunity to all the candidates becoming eligible in the subsequent years. If the contention of the respondents in the present case is upheld, a select list or panel prepared for the LDCE quota would go on indefinitely till all the candidates qualifying are exhausted. This is neither the spirit of the recruitment rules for the post in question nor the underline objective/idea of the Examination Scheme, 2002, as promulgated by the respondents themselves. Here,*

we note it with concern that certainty in the services is of utmost importance and if it is divorced or replaced by arbitrariness or vagueness, the same may lend to create insecurity in the mind of officials apart from violating their fundamental rights and legitimate expectation.

8. *Further, as to the contention of the respondents that as a policy decision the respondents have been filling up 1/3rd quota from the list of all qualified candidates in perpetuity, which means that till that panel is exhausted, we have not been shown any rule/regulation or statutory provision, empowering the respondents to do so. In fact, Shri M.K. Bhardwaj has pointed out a judgment of this Tribunal dated 04.03.2011 in TA No.679/2011 etc. We have perused a copy of that judgment delivered by a Bench of this Tribunal. That judgment pertains to the post of Junior Accountant in Delhi Jal Board, now Delhi Water Supply and Sewage Disposal Undertaking. Dealing with the limited competitive examination held in that case, the Tribunal found that there could be no limit to the validity of list of selected candidates and it would continue to remain in operation till the last person selected was appointed. In fact, this finding was given by the Tribunal in the peculiar facts and circumstances of that case. In that case, it is evident from the reading of the judgment that a clarification was given by the Government of NCT of Delhi that there would be no limit to the validity and list of selected candidates. In the present case no such clarification/notification was issued by the competent authority to declare that the select panel would be operated in perpetuity. Hence, that case is distinguishable and does not help the case of the private respondents.*

9. Shri M.K. Bhardwaj has also pointed out a judgment of the Hon'ble High Court of Gujarat in Special Civil Application No.13224 of 2012 in the case of Anish Kumar v. Union of India. We note that in that case the Tribunal as well as the Hon'ble High Court was basically dealing with an issue of impleadment and that is not the case in the present matter before us. In the present case we have noted that almost all the candidates who have been appointed after the 16 available vacancies and against the subsequent vacancies have been duly inducted as respondents as they are being represented by the learned Advocates. In fact, applicants moved MA-2254/2010 for impleadment of all the affected parties and that MA was allowed on 06.09.2010 and the promotion of all the candidates beyond 16, during the pendency of the OA, were made subject to the outcome of the present OA.

10. Next, it is held by the Hon'ble Apex Court based on various Office Memoranda issued by the Department of Personnel and Training that normal life of a panel or selection should be one year only, unless extendable under the statutory rules. In the present case

nothing is shown by the respondents to prove that they have actually extended the life of a panel beyond one year. Respondents have also not shown us any difficulty in holding the examination from time to time by giving equal opportunity to all eligible candidates, who may be becoming eligible in future years. In this connection we refer to the observations of the Hon'ble Apex Court, as reflected in paras 9 & 10 of the Rakhi Ray's case (supra) mentioned hereinabove:

9. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. (Vide Union of India & Ors. v. Ishwar Singh Khatri & Ors. (1992) Supp 3 SCC 84; Gujarat State Deputy Executive Engineers' Association v. State of Gujarat & Ors. (1994) Supp 2 SCC 591; State of Bihar & Ors. v. The Secretariat Assistant S.E. Union 1986 & Ors AIR 1994 SC 736; Prem Singh & Ors. v. Haryana State Electricity Board & Ors. (1996) 4 SCC 319; and Ashok Kumar & Ors. v. Chairman, Banking Service Recruitment Board & Ors. AIR 1996 SC 976).

10. In Surinder Singh & Ors. v. State of Punjab & Ors. AIR 1998 SC 18, this Court held as under:

"A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointment, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline

requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.....Exercise of such power has to be tested on the touchstone of reasonableness....It is not a matter of course that the authority can fill up more posts than advertised."

(Emphasis added)

11. *Similarly, the Hon'ble Apex Court in the case of B. Valluvan (supra) has clearly held that recruitment process must be commensurate with the statutory rules operating in a field and that the life of a panel, as is well known, must be for a limited period and it is further specifically held by the Hon'ble Apex Court that ordinarily the life of the panel should be for one year and not unduly inflated, of course unless the statutory rules prescribe and empower the respondents to extend the same. Paras 10, 12 and 17 of the said judgment are relevant for the present purpose and are hereby reproduced for the sake of convenience:*

10. *Recruitment process, as is well known, must be commensurate with the statute or the statutory rule operating in the field. We have noticed hereinbefore, advertisement was made for three posts. It was not indicated therein that another panel for filling up of the future vacancies was to be prepared by the Selection Committee. In the select list prepared by the Selection Committee, the name of 1st Respondent was at Serial No.4. Recommendations were made containing the names of 19 persons for future vacancies. Only because a panel has been prepared by the Selection Committee, the same by itself, in our opinion, would not mean that the same should be given effect to irrespective of the fact that there was no such rule operating in the field. The Selection Committee was bound to comply with the selection process only in terms of the extant rules. It was bound to follow the stipulations made in the advertisement itself. Even in the advertisement it was not indicated that a select list would be prepared for filling up future vacancies. The Selection Committee, having been appointed only for recommending the names of suitable candidates, who were fit to be appointed, could not have embarked upon the question as regards likelihood of future vacancy.*

xxx xxx xxx xxx

12. *Life of a panel, as is well known, must be for a limited period. It is governed by the statutory rules. From the circular letter dated 26.6.1992 it is evident that ordinarily the life of the panel should be for one year. What had been indicated therein was that the panel prepared for recruitment should not be unduly inflated. Vacancies should ordinarily be notified keeping in view the immediate future need. It has categorically been stated that only upto a maximum of 10*

additional persons were kept in a panel against the existing vacancies which were likely to occur in future. The said circular letter was meant to be applied in a case where, thus, more than 10 vacancies were notified. It did not have any universal application. By reason of the said circular letter, the ordinary life of the panel was not to be extended. Thereby no new practice or rule was brought into force.

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17. The life of a panel ordinarily is one year. The same can be extended only by the State and that too if the statutory rule permits it to do it. The High Court ordinarily would not extend the life of a panel. Once a panel stands exhausted upon filling up of all the posts, the question of enforcing a future panel would not arise. It was for the State to accept the said recommendations of the Selection Committee or reject the same. As has been noticed hereinbefore, all notified vacancies as also the vacancy which arose in 2000 had also been filled up. As the future vacancy had already been filled up in the year 2000, the question of referring back to the panel prepared in the year 1999 did not arise. The impugned judgment, therefore, cannot be sustained.

12. In view of the above discussion of law and fact, the OA stands allowed with a direction to the respondents to again hold the examination for subsequent vacancies, which have arisen from 1.4.2008 onwards and give an equal opportunity to all eligible candidates to appear in the same by declaring specific number of vacancies, which have become available till today, within a period of 4 months from the date of receipt of a copy of this order. Respondents would also keep in view the principle of holding year-wise examination in this case while determining the eligibility of various candidates. Lastly, we may also pertinently note that we are not unsettling any selection/promotion made by the respondents under the 1/3rd quota in question for the post of Section Supervisor (Head Office) prior to the examination held on 30.09.2006. That settled position is not intended to be unsettled at this stage. Similarly, without making it as a precedent for future purposes, we note that only about 10 to 12 candidates have been appointed subsequently during the pendency of the OA, over and above the number of 16 vacancies. Keeping in view the totality of facts and circumstances of the cases, ends of justice would be duly met with if we direct respondents not to disturb these 10 or 12 candidates also, who have been appointed over and above 16. Ordered accordingly. No costs."

6. In paragraph 8, a distinction had been made between two elemental questions as to the validity of the list. Following the earlier judgment, the Tribunal dealing with the limited competitive examination thought it fit to

mention that there could not be any limit to the validity of the list of the selected candidates and it will continue to remain in operation till the last person selected was appointed. But then it was also found that this was in the peculiar circumstances of that case and probably may not have universal application. But at the same time it is stipulated that the same will have an operation in this case because applicant had been a selectee in a competitive process and those who challenge him somehow or other declined to appear for that examination on whatever ground. The ground raised was that a time less than a month was granted for this examination and their preparation. **But then, it was a universal application and it applies to everybody. If those persons were not willing to take the burden of competitiveness on their shoulders, there cannot be any doubt that, under such circumstances, they may not enure any particular consequential relief. The competitive merit and its consequences must rest with those who are willing to compete and not for any others who for some ridiculous reasons of not having enough time refused to participate in it.** However, the Delhi Bench held “**Keeping in view the totality of facts and circumstances of the cases, ends of justice would be duly met with if we direct respondents not to disturb these 10 or 12 candidates also, who have been appointed over and above.**”

7. This seems to be the crux of the issue. Applicant and others were appointed following a competitive examination. He had held that post for 5 long years before becoming regularized in the post. Now he is sought to be

removed from that post to provide a way for a person who had not chosen to participate in the examination. Without any doubt, that cannot be done. Those who had not appeared for the examination cannot be held to acquire any right as the reason given was not sufficient enough to warrant any such interference. The reason given by them was that there was no sufficient time for them to participate. But then it equally applies to all others who participated and passed that examination. Therefore, without any doubt, those people who have not participated acquire no right at all and in the circumstances of the orders passed by the Tribunal at Ahmedabad and Delhi, the respective Hon'ble High Courts and the Hon'ble Apex Court those who have been already promoted before the 2012 cut off date following the list made in 2009 cannot be disturbed at all as then the principle of prospective overruling will come into play. This principle operates that only those who will come in the ambit of the order will only be affected and not those who have been accommodated earlier on the earlier system of law which was then in vogue. As applicant had been rightly selected under competitive process and rightly appointed following the due pattern which has been regularly followed and it also means that there is no arbitrariness in such appointment, it cannot be said that his appointment is coloured or vitiated in any manner as the appointment has taken effect from earlier point of time and has continued for 5 long years and therefore concretized in legality and under law. Applicant cannot be disturbed. All processes are hereby quashed. A declaration is issued that he is eligible and entitled to continue to the post which he has been occupying till now.

8. The OA is allowed. No order as to costs.

(C.V. SANKAR)

(DR.K.B.SURESH)

MEMBER (A)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00239/2017

Annexure-A1: Copy of the office order dated 12.05.2008
Annexure-A2: Copy of the office order dated 17.04.2012
Annexure-A3: Copy of the seniority list dated 04.07.2016
Annexure-A4: Copy of the letter dated 13.04.2017
Annexure-A5: Copy of the show cause notice dated 27.04.2017
Annexure-A6: Copy of the applicant's letter dated 02.05.2017
Annexure-A7: Copy of the note dated 5/8.05.2017
Annexure-A8: Copy of the applicant's letter dated 02.05.2017
Annexure-A9: Copy of the OM dated 03.05.2017
Annexure-A10: Copy of the reply of the applicant dated 15.05.2017
Annexure-A11: Copy of the order dated 02.05.2017 in OA No. 276/2017 passed by Cuttack Bench of Central Administrative Tribunal.
Annexure-A12: Copy of the order dated 28.01.2013 in OA No. 2615/2010 passed by Principal Bench of Central Administrative Tribunal.
Annexure-A13: Copy of the order dated 13.03.2015 in OA No. 263/2010 passed by Ahmedabad Bench of Central Administrative Tribunal.

Annexures referred in reply

Exhibit No.1: Copy of the office order dated 11.06.2013
Exhibit No.2: Copy of the EPFO letter dated 27.01.2006
Exhibit No.3: Copy of the office order dated 12.05.2008
Exhibit No.4: Copy of the office order dated 03.07.2008
Exhibit No.5: Copy of the office order dated 17.04.2012

Annexures referred in written argument of the applicant

Enclosure 1: Copy of the final seniority list of Section Supervisors of Karnataka Region

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