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24 / 7 / 2006

14.

MA 1152/2006  
OA 627/2003

Present: Sh. Gyan Prakash, counsel for the applicant  
Sh. R.V. Sinha, counsel for the respondents.

**MA No. 1152/2006**

M.A., filed by the respondents, seeks clarifications to our order passed on 05.07.2004 in OA No. 627/2003

2 Sh. Gyan Prakash's, learned counsel for the applicants objection has been heard

3. The applicants have sought recalculation of departmental promotion quota under 40 % of promotion. We directed respondents by holding that recalculation is not according to law and to recalculate the vacancy to IES Rules 1961 in accordance with law and as per the rules. In the event, the applicants as per their eligibility are found suitable subject to rules be considered for promotion and in that event they would be given appointment against the vacancies of the year to which he is entitled to with all consequential benefits.

4. Learned counsel for the respondents in OA contended that the aforesaid order has been complied with by an order passed on 18.01.2006 wherein DPC considered the applicants for promotion and promoted them from immediate effect. However, it is stated that as per rule 9 C (b) of the IES Rules, 1961 in case of promoted officer to any grade post the date on which he is included in the select list would be the date of his substantive appointment and in the present case the DPC which has been held on

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recalculation of vacancies, the select list having been prepared in 2005-06, the applicants are rightly accorded promotion.

5 The learned counsel would rely upon the decision of the Apex Court in **Vinod Nandé Yadav Vs. State of Bihar** 1994 Supp(2) SCC 44 to contend that when for seniority criteria is length of service retrospective appointment of persons who were not in the cadre is not tenable. The learned counsel would also rely upon the decision of the Apex Court in **Tele communication Engineering Services Association Vs. Union of India** 1994 SLR SC 15 to contend that on promotion with retrospective date denial of backwages is on the principle of 'no work no pay'.

6 The aforesaid view was also substantiated in the light of the decision of the Apex Court in **PK Krishna Vs. Union of India** 1989 (2) SLR 202 S.C. The scope of MA for clarification by the Tribunal is very limited. It is only when the directions issued are so unambiguous and difficult to be interpreted in its implementation only then the clarification has to be accorded. We directed the respondents to recalculate the vacancies and prepare year wise panel under the Rules of ICS, 1961. If the applicants on consideration have been found fit would be entitled to all consequential benefits, however, any direction issued can never be dehors the rule or law.

7 In the light of the above, when specifically Rule 9 C (b) of the IES Rules ibid provides formation of the select lists, the effective date of appointment is the inclusion in the select lists forming year wise panel was directed only with a view that the persons who had been deprived of their considerations in yesteryears would not be prejudiced and suffer adversely in

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their upgradation by virtue of promotion As such the select lists now drawn on year wise penal has to be given effect as per the rules ibid. Moreover, in the matter of consequential benefits, law shall take its own course We find that the decision rendered by us in no manner is ambiguous or prone to any clarification. Accordingly, MA stands rejected No costs.



(V.K. Agnihotri)  
Member (A)

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(Shanker Raju)  
Member (J)

Recd ms 1402/00  
ms for supplement