CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

Orders pronounced on: 28.11.2019
(Orders reserved on: 30.10.2019)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MR. PRADEEP KUMAR, MEMBER (A)

(I) **O.A.NO.060/00782/2018**

1. Suresh Kumar Chauhan S/O Sh. Bhim Singh Chauhan, working as Senior Social Security Assistant. Group 'C'.
2. Rachna Dhiman D/O Sh. Ravinder Kumar, working as Senior Social Security Assistant
3. Kanhaiya Kumar S/O Sh. Gauri Shankar Barnwal, working as Senior Social Security Assistant
4. Haradev Sharma S/O Sh. Jawahar Lal Sharma, working as Senior Social Security Assistant
5. Anil Kumar S/O Sh. Budh Singh, working as Senior Social Security Assistant
6. Victor Singh Rana S/O Sh. Sarwan Singh Rana, working as Senior Social Security Assistant
7. Kamal Kishore Sharma S/O Sh. Bal Krishan Sharma, working as Senior Social Security Assistant
8. Anil Kumar S/O Sh. Piar Chand, working as Senior Social Security Assistant
9. Noble Kishore S/O Sh.Piar Chand, working as Senior Social Security Assistant.
10. Sunny Shekhar S/O Sh. B.K. Dass, working as Senior Social Security Assistant
11. Suniti D/O Sh. Dila Ram, working as Senior Social Security Assistant
12. Anil Kumar S/O Sh. Parma Nand, working as Senior Social Security Assistant
13. Renuka Shevani S/O Sh. Dila Ram, working as Senior Social Security Assistant
14. Ravi Ranjan S/O Sh. Radha Raman Prasad, Working As Social Security Assistant
15. Rajesh Paul S/O Sh. Dila Ram, working as Senior Social Security Assistant
16. Dinesh Kumar S/O Sh. Het Ram, working as Senior Social Security Assistant
17. Neha Rani D/O Sh. Gurdev Singh, working as Senior Social Security Assistant
18. Ramji Gupta S/O Sh. Anandi Saw, working as Senior Social Security Assistant

All working in the office of Regional Provident Fund Commissioner, Employees' Provident Fund Organization, Block No. 34, 1st and 2nd Floor, SDA Complex, Kusumpti, Shimla-171009.

…Applicants

Versus

1. Central Board of Trustees through its Chairman, Sharam Shakti Bhawan, Rafi Marg, New Delhi-110001.
2. Employees' Provident Fund Organization, through Central Provident Fund Commissioner, 16, Bhikaji Cama Place, New Delhi-110066
3. Additional Central Provident Fund Commissioner, Employees Provident Fund Organization, Zonal Office, Punjab and H.P. State, S.C.O. No. 4-7, Sector 17-D, Chandigarh-160017.
4. Regional Provident Fund Commissioner, Employees' Provident Fund Organization, Block No. 34, 1st and 2nd Floor, SDA Complex, Kusumpti, Shimla-171009.

…Respondents

(II) **O.A.NO.060/00784/2018**

1. Amit Bansal, S/O Sh. Madan Lal Bansal, working as Senior Social Security Assistant, Group 'C'
2. Rajesh Lamba S/O Sh. Om Parkash Lamba, working as Social Security Assistant, Group 'C'
3. Parveen Kumar S/O Sh. Baljit Singh, working as Social Security Assistant, Group 'C'
4. Deepak Uniyal S/O Sh. Uma Shankar Uniyal, working as Social Security Assistant, Group 'C'
5. Jasveer Kaur W/O Sh. Amreek Singh, working as Social Security Assistant, Group 'C'
6. Raj Kumar S/O Sh. Telu Ram, working as Social Security Assistant, Group 'C'
7. Dalvir Singh S/O Sh. Gurmail Singh, working as Social Security Assistant, Group 'C'
8. Sawraj S/O Sh. Balbir Singh, working as Social Security Assistant, Group 'C'
9. Richa Kamboj D/O Sh. Baldev Krishan, working as Social Security Assistant, Group 'C'
10. Ashwani Roy S/O Sh. Kanshi Ram, working as Social Security Assistant, Group 'C'
11. Naveen Tarika S/O Shj. Chander Bhan Tarika, working as Senior Social Security Assistant, Group 'C'
12. Gaurav Bhardwaj S/O Sh. Nawal Kishore, working as Senior Social Security Assistant, Group 'C'
13. Hitesh Kumar S/O Sh. Radhe Shyam Charaya, working as Senior Social Security Assistant, Group 'C'
14. Pooja Passi W/o Sh. Ajay Kumar, working as Social Security Assistant, Group 'C'
15. Amandeep Singh S/O Sh. Harvinder Singh, working as Social Security Assistant, Group 'C'
16. Amarjeet Singh S/O Sh. Satpal Singh, working as Social Security Assistant, Group 'C'
17. Ajay Singla S/O Sh. Ram Lal Singla, working as Senior Social Security Assistant, Group 'C'
18. Sudha W/O Sh. Vinod Kumar, working as Senior Social Security Assistant, Group 'C'
19. Jatinder Siag S/O Sh. Ramanand Siag, working as Social Security Assistant, Group 'C'
20. Sunil Kumar Gera S/O Sh. Suraj Bhan Gera, working as Senior Social Security Assistant, Group 'C'

21. Sukhvinder Singh S/O Sh.Gurmail Singh, working as Senior Social Security Assistant, Group 'C'
22. Animesh Kumar S/O Sh. Bhagirath Dutta, working as Senior Social Security Assistant, Group 'C'
23. Kamal Singla S/O Sh. Parkash Chand Singla, working as Senior Social Security Assistant, Group 'C'
24. Manish S/O Sh. Kaval Krishan, working as Senior Social Security Assistant, Group 'C'
25. Neha Gadh W/O Sh. Deepak Madan, working as Senior Social Security Assistant, Group 'C'
26. Jiwan Kumar S/o Sh. Kishori Lal, working as Social Security Assistant, Group 'C'.
27. Shammi Rana S/o Sh. Madan Lal Rana, working as Senior Social Security Assistant, Group 'C'.

Applicants No. 1 to 27 are working in the office Regional Provident Fund Commissioner, Zonal Office, Punjab and H.P. State, S.C.O. No. 4-7, Sector 17-D, Chandigarh-160017.

28. Satyander Singh S/O Sh. Satpal Singh, working as Senior Social Security Assistant, Group 'C'
29. Mahendra Singh S/O Sh. Bhairu Singh, working as Senior Social Security Assistant, Group 'C'
30. Arun Banga S/O Sh. Ram Kumar, working as Senior Social Security Assistant, Group 'C'
31. Yogesh Kumar S/O Sh. Lila Dhar Chugh, working as Senior Social Security Assistant, Group 'C'
32. Vipan Kumar S/O Sh. Mohan Lal, working as Senior Social Security Assistant, Group 'C'
33. Jagdish S/O Sh. Bhagwan Dass, working as Senior Social Security Assistant, Group 'C'
34. Deepak Kumar S/O Sh. Om Parkash, working as Senior Social Security Assistant, Group 'C'
35. Kushaldeep S/O Sh. Ram Parkash, working as Senior Social Security Assistant, Group 'C'
36. Dharmender Kumar S/O Sh. Jugal Kishor, working as Senior Social Security Assistant, Group 'C'
37. Gurmeet Kaur W/O Sh. Gurcharan Ram, working as Senior Social Security Assistant, Group 'C'
38. Jony Sharma S/O Sh. Satish Kumar Sharma, working as Senior Social Security Assistant, Group 'C'
39. Kishan Pannu S/O Sh. Arjun Ram, working as Senior Social Security Assistant, Group 'C'
40. Nitin Mehan S/O Sh. Sudarshan Mehan, working as Senior Social Security Assistant, Group 'C'
41. Krishan Lal S/O Sh. Ishar Ram, working as Senior Social Security Assistant, Group 'C'
42. Neeraj Joshi S/O Sh. Vinod Joshi, working as Senior Social Security Assistant, Group 'C'
43. Ravinder Singh S/O Sh. Paramjeet Singh, working as Senior Social Security Assistant, Group 'C'
44. Smt. Jayanti Kumari W/O Sh. Devinder Kumar, working as Senior Social Security Assistant, Group 'C'
45. Manish Kumar S/O Sh. Prem Kumar, working as Senior Social Security Assistant, Group 'C'

46. Manish Aggarwal S/O Sh. Dev Raj Aggarwal, working as Senior Social Security Assistant, Group 'C'
47. Sachin Kumar S/O Sh. Karam Chand, working as Social Security Assistant, Group 'C'
48. Bhupesh Kumar S/O Sh. Raj Kumar working as Senior Social Security Assistant, Group 'C'
49. Dinesh Kumar S/O Sh. Suresh Kumar working as Senior Social Security Assistant, Group 'C'
50. Amit Kumar S/o Sh. Ram Krishan, working as Senior Social Security Assistant, Group 'C'
51. Vikramjit Singh S/o Sh. Gurbachan Singh, working as Senior Social Security Assistant, Group 'C'
52. Manish Dewan S/o Sh. Durshotam Lal Dewan, working as Senior Social Security Assistant, Group 'C'

…Applicants

Versus

1. Central Board of Trustees through its Chairman, Sharam Shakti Bhawan, Rafi Marg, New Delhi-110001.
2. Employees' Provident Fund Organization, through Central Provident Fund Commissioner, 16, Bhikaji Cama Place, New Delhi-110066
3. Additional Central Provident Fund Commissioner, Employees Provident Fund Organization, Zonal Office, Punjab and H.P. State, S.C.O. No. 4-7, Sector 17-D, Chandigarh-160017.
4. Regional Provident Fund Commissioner, Employees Provident Fund Organization, Regional Office, S.C.O. No. 4-7, Sector 17-D, Chandigarh-160017.
5. Regional Provident Fund Commissioner, Employees Provident Fund Organization, Regional Office, Bathinda-151001.

…Respondents

(III) O.A.NO.060/00785/2018

1. Mukesh Kumar Chauhan S/O Sh. Raj Singh Chauhan, working as Senior Social Security Assistant Group 'C'.
2. Bhawna Bareja D/O Sh. Shori Lal W/O Sh. Jagdish Bareja, working as Senior Social Security Assistant, Group 'C'
3. Kamal Madan S/O Sh. Balbir Kumar Madan, working as Senior Social Security Assistant, Group 'C'
4. Sunil Kumar Saini S/O Sh. Parkash Rai Saini, working as Senior Social Security Assistant, Group 'C'
5. Vikas Kumar Sharma S/O Sh. Yash Pal, working as Senior Social Security Assistant, Group 'C'
6. Sharvan S/O Sh. Ajmer Singh, working as Senior Social Security Assistant, Group 'C'
7. Lalit Wadhwa S/O Sh. Gobind Wadhwa, working as Senior Social Security Assistant, Group 'C'
8. Ajay Bhatia S/O Sh. Ashok Kumar Bhatia, working as Senior Social Security Assistant, Group 'C'
9. Sachin Kumar S/O Sh.Mohinder Singh, working as Senior Social Security Assistant, Group 'C'
10. BHAWNA W/O Sh. Naresh Kumar, working as Senior Social Security Assistant, Group 'C'
11. Lakhvinder Kaur D/o Satnam Singh W/o Gurjeet Singh, working as Senior Social Security Assistant, Group 'C'

12. Deepak Rohil S/O Sh. Baljit Rohil, working as Senior Social Security Assistant, Group 'C'
13. Surender Kumar S/O Sh. Mahender Singh, working as Senior Social Security Assistant, Group 'C'
14. Shaila S/O Vinod Gupta, working as Senior Social Security Assistant, Group 'C'
15. Rakesh S/O Sh. Sing Ram, working as Senior Social Security Assistant, Group 'C'
16. Daleep Raj S/O Sh. Jokhu Ram, working as Senior Social Security Assistant, Group 'C'
17. Dhanender S/O Sh. Karam Singh, working as Senior Social Security Assistant, Group 'C'.

Applicants from Sr. No.1 to 17 working in the office of Regional Provident Fund Commissioner, Employees' Provident Fund Organization, Regional Office, Karnal.

18. Kapil Gupta S/O Sh. Shyam Lal Gupta, Working as Senior Social Security Assistant, Group 'C'.
19. Nitin Chopra S/O Sh. Ramesh Chand, Working as Senior Social Security Assistant, Group 'C'.
20. Sunil Kumar S/O Sh. Dharam Pal, Working as Senior Social Security Assistant, Group 'C'.
21. Sombir S/O Sh. Ramphal, Working as Senior Social Security Assistant, Group 'C'.
22. Gurjeet Singh S/O Sh. Arjun Singh, Working as Senior Social Security Assistant, Group 'C'.
23. Ankur Kumar S/O Sh. Ashok Kumar, Working as Senior Social Security Assistant, Group 'C'.
24. Suresh Kumar S/O Sh. Chattar Singh, Working as Senior Social Security Assistant, Group 'C'.
25. Monika W/O Sh. Bushember Das, Working as Senior Social Security Assistant, Group 'C'.
26. Manisha Ahuja D/O Dr. Satish Ahuja, working as Senior Social Security Assistant, Group 'C'
27. Preeti Balhara, D/O Sh. Satbir Singh Balhara, W/O Sh. Dharmender, presently working as Senior Social Security Assistant, Group 'C'

Applicants No.18 to 27 working in the office of Regional Provident Fund Commissioner, Regional Office, Employees' Provident Fund Organisation, Bhavishya Nidhi Bhawan, Regional Office, Sector-3, Institutional Area, Near little Shri school, Rohtak-124001.

28. Vipul Goyal S/O Sh. Prem Chand Goyal, presently working as Senior Social Security Assistant, Group 'C'.
29. Aalha Singh S/O Sh. Parsadi, presently working as Senior Social Security Assistant, Group 'C'.

Applicants No. 28 and 29 working in the Office of Employees Provident Fund Organisation, Zonal Training Institute, (North Zone), in front of Kothi No. 174, Sector 16-A, Faridabad.

30. Hemant S/O Sh.Inderpal, presently working as Senior Social Security Assistant, Group 'C'.
31. Vipin Kumar S/O Sh. Jagdish Rai, presently working as Senior Social Security Assistant, Group 'C'.

32. Sandeep Kumar S/O Sh. Randhir Singh, presently working as Senior Social Security Assistant, Group 'C'.
33. Harish Kumar Yadav S/O Sh. Narender Singh, presently working as Senior Social Security Assistant, Group 'C'.
34. Naved Mohd.Khan S/O Sh. Anwar Mohd. Khan, presently working as Senior Social Security Assistant, Group 'C'.
35. Pankaj Kumar S/O Sh. Mahadev Prasad, presently working as Senior Social Security Assistant, Group 'C'.
36. Laxman S/O Sh. Hari Singh, presently working as Senior Social Security Assistant, Group 'C'.
37. Sandeep Kumar S/O Sh. Karan Singh, presently working as Senior Social Security Assistant, Group 'C'.
38. Manoj Kumar S/O Sh. Om Parkash Verma, presently working as Senior Social Security Assistant, Group 'C'.
39. Suman Saroha D/O Sh. R.M. Saroha, presently working as Senior Social Security Assistant, Group 'C'.
40. Dharmveer Prasad S/O Sh.Krishna Kumar, presently working as Senior Social Security Assistant, Group 'C'.
41. Ekta D/O Sh. Jagdish Arora, presently working as Senior Social Security Assistant, Group 'C'.
42. Mukesh Kumar Meena S/O Sh. Ranjeet Meena, presently working as Senior Social Security Assistant, Group 'C'.
43. Ravinder Dev S/O Sh. Ram Chander, presently working as Senior Social Security Assistant, Group 'C'.
44. Umesh Kumar S/O Sh. Rajendra Prasad, presently working as Senior Social Security Assistant, Group 'C'.
45. Kawar Singh S/O Sh. Jagdev Singh, presently working as Senior Social Security Assistant, Group 'C'.
46. Yugal Kishore Meena S/O Sh. Sarwan Lal Meena, presently working as Senior Social Security Assistant, Group 'C'.
47. Jitendra Kumar S/O Sh. Mahendra Prasad, presently working as Senior Social Security Assistant, Group 'C'.
48. Rakesh Kumar Raju S/O Sh. Basudeo Modi, presently working as Senior Social Security Assistant, Group 'C'.
49. Ranjit Kumar Pandit S/O Sh. Etwar Chand Pandit, presently working as Senior Social Security Assistant, Group 'C'.
50. Sumit Kumar Jha S/O Late Sh. Kamdeo Jha, presently working as Senior Social Security Assistant, Group 'C'.
51. Sushma D/O Sh. Raj Kumar, presently working as Senior Social Security Assistant, Group 'C'.
52. Pratik Anand S/O Sh. Brajendra Prasad Modi, presently working as Senior Social Security Assistant, Group 'C'.
53. Poonam Rani W/O Sh. Ramesh Kumar, presently working as Senior Social Security Assistant, Group 'C'.
54. Yogita W/O Sh. Surinder Madan, presently working as Senior Social Security Assistant, Group 'C'.
55. Rekha W/O Sh. Vipin Yadav, presently working as Senior Social Security Assistant, Group 'C'.
56. Rekha Sambharwal W/O Sh. Gagandeep Ranga, presently working as Senior Social Security Assistant, Group 'C'.
57. Poonam W/O Sh. Ravi, presently working as Senior Social Security Assistant, Group 'C'.
58. Raju Kumar S/O Sh. Bhola Lal Sharma, presently working as Senior Social Security Assistant, Group 'C'.
59. Mantu Singh S/O Late Sh.Muna Singh, presently working as Senior Social Security Assistant, Group 'C'.

60. Sitta Ram Meena S/O Sh. Ghamandee Lal Meena, presently working as Senior Social Security Assistant, Group 'C'.
61. Harkesh Meena S/O Sh. Somnath Meena, presently working as Senior Social Security Assistant, Group 'C'.
62. Kunal Lavatra S/O Sh. Raj Kamal Lavatra, presently working as Senior Social Security Assistant, Group 'C'.
63. Manpreet Singh Sidhu S/O Sh. Prahalad Singh, presently working as Senior Social Security Assistant, Group 'C'.

Applicant Nos. 30 to 63 working in Regional Provident Fund Commissioner, Regional Office, Employees Provident Fund Organisation, Regional Office, Sector-44, Plot No. 43, Gurugram-122003.

…Applicants

Versus

1. Central Board of Trustees through its Chairman, Sharam Shakti Bhawan, Rafi Marg, New Delhi-110001.
2. Employees' Provident Fund Organization, through Central Provident Fund Commissioner, 16, Bhikaji Cama Place, New Delhi-110066
3. Additional Central Provident Fund Commissioner, Employees Provident Fund Organization, Zonal Office, Punjab and H.P. State, S.C.O. No. 4-7, Sector 17-D, Chandigarh-160017.
4. Regional Provident Fund Commissioner, Regional Office, Employees' Provident Fund Organisation, S.C.O. 5-8, Sector 12 (New Secretariat), Karnal-132001.
5. Regional Provident Fund Commissioner, Regional Office, Employees' Provident Fund Organisation, Bhavishya Nidhi Bhawan, Regional Office, Sector-3, Institutional Area, Near little Shri school, Rohtak-124001.
6. Regional Provident Fund Commissioner, Employees' Provident Fund Organisation, Zonal Training Institute, (North Zone), in front of Kothi No. 174, Sector 16-A, Faridabad.
7. Regional Provident Fund Commissioner, Regional Office, Employees Provident Fund Organisation, Regional Office, Sector-44, Plot No. 43, Gurugram-122003.

…Respondents

PRESENT : MR. R.K. SHARMA, ADVOCATE, FOR THE APPLICANTS.
MR. ASEEM RAI, ADVOCATE, FOR THE RESPONDENTS.

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The factual scenario and the question of law being common, and as agreed to by the learned counsel for the parties, these three Original

Applications (O.A), have been taken up for disposal by a common order. For facility of reference, facts are being taken from O.A.No. 060/782/2018 – **SURESH KUMAR CHAUHAN & OTHERS VS. CENTRAL BOARD OF TRUSTEES ETC**.

2. The applicants have filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of Employees' Provident Fund Organisation, Section Supervisor, Recruitment Regulations, 2017, to the extent $33^{1/3}$% posts of Section Supervisors are sought to be filled on the basis of Limited Departmental Competitive Examination (LDCE) held for employees, "with not less than five years' service as Senior Social Security Assistants in Level-6 (Rs.35400-112400)" as against "3 (three years) service as such" thereby making category of applicants ineligible, under the amended Rules; Notification dated 21.06.2018 (Annexure A-2) vide which, vacancies of Section Supervisors, as on 31.03.2017, i.e. prior to amended rules, are sought to be filled in as per new criteria and issue direction to the respondents to fill in old vacancies of Section Supervisors, according to the old Criteria/old Recruitment Rules of 2006 etc.

3. The facts of the case, which led to filing of the O.A., and as projected by the applicants, are that all the applicants are working as Social Security Assistants (SSA) and Senior Social Security Assistants (Sr. SSA) in the respondent Employees' Provident Fund Organization (EPFO). The next promotion for category of applicants (SSA) is to the post of Section Supervisor (earlier known as Head Clerk), which was governed by EPF Organization Section Supervisor (Head Clerk) Regional Office Recruitment Rules 1992, as amended in 2006 (for short "Old Rules of 1992"). According to these rules, the post is required to be filled up 100% by promotion from two sources i.e. (i) $66^{2/3}$% by

promotion of SSA with 3(three) years service and (ii) $33^{1/3}\%$ by promotion of employees on the basis of a departmental examination "restricted to those who have rendered not less than 3 (three) years service as SSAs including Stenographers failing which by direct recruitment.

4. The case of the applicants is that they eligible for promotion to the post of SS under the Old Rules of 1992 under both the quotas on completion of three years regular service. In terms of order dated 14/15.11.2007 (Annexure A-5/A), 60% of SSAs were granted higher scale of Rs. 5000-8000 (revised to Rs. 9300-34800 with GP Rs.4200/-), and designated as Senior Social Security Assistants (SSSAs). Number of applicants have got this benefit. There is no separate seniority list of SSA and SSSA. Due to inaction on the part of the respondents in conducting year-wise DPC, the applicants could not be promoted to the higher post of SSs despite availability of vacancies under the old Rules of 1992.

5. The respondents have amended the Old Rules of 1992, on 05.12.2017 with Employees' Provident Fund Organisation, Section Supervisor, Recruitment Regulations, 2017 (for short Amended Rules of 2017), as per which now $33^{1/3}\%$ posts of Section Supervisors are to be filled in on the basis of LDCE, from employees, with not less than five years' service as SSSAs in Level-6 (Rs.35400-112400) as against 3 (three years) service, in Old Rules of 1992, thereby making category of applicants ineligible altogether even for the existing vacancies prior to Amended Rules. Further, they have also issued a Notification dated 21.06.2018 (Annexure A-2) vide which, vacancies of Section Supervisors, as on 31.03.2017, i.e. prior to Amended Rules of 2017, are sought to be filled in as per new criteria.

6. Thus, the case set up by the applicants, in short, is that notwithstanding the challenge to the Amended Rules of 2017, the vacancies which were available prior to Amended Rules of 2017, should be filled up according to the Old Rules of 1992. In that connection, reliance is placed by applicants on **Y.V. RANGAIAH VS. SREENIVASA RAO**, (1983) 3 SCC 284, in which it was ruled that old vacancies have to be filled up as per old rules. Hence, the O.A.

7. The respondents have filed a reply. They submit that post of Section Supervisor has undergone a basic up-gradation, where the pay level has been changed from level 6 (Grade pay Rs.4200) to Level 7 (Grade Pay Rs.4600) and thus the eligibility requirement would also undergo a change. As per para 3.12.2 of DoPT guidelines, dated 31.12.2010, the eligibility for promotion from Grade Pay Rs.4200/- (present grade pay of Senior SSA) to Rs.4600/- (Present Grade pay of SS) is 5 years and as per instructions, Recruitment rules should be revised once in 5 years to include the changes from time to time. Thus, the Rules were changed as per Annexure A-1, which are as per rules and law and cannot be challenged by the applicants, on any of the grounds raised by them. The notice for LDCE was issued but examination has been postponed until further notice. Their plea is that since Amended Rules of 2017 have come into play, the vacancies have to be filled up under these rules and persons who are eligible under these rules, can be considered and promoted. Reliance in that regard is placed upon decision of Apex Court in the case of **DEEPAK AGGARWAL VS. STATE OF U.P**. (2011) 6 SCC 725, in which it was held that there is no rule of universal or absolute application that vacancies are to be filled in variably by the law existing on the date when the vacancy arises.

8. The applicants have filed a replication.

9. We have heard the learned counsel for the parties at length.

10. Mr. R.K. Sharma, learned counsel for the applicants vehemently argued that in terms of DOPT guidelines dated 31.12.2010 (Annexure A-9), where the eligibility service for promotion prescribed in the existing Rules is being enhanced (to be inconformity with the guidelines issued by the department) and the change is likely to affect adversely some persons holding the feeder grade post on a regular basis, a note to the effect that eligibility service shall continued to be the same for persons holding the feeder post on regular basis on the date of notification of the revised rules could be included in the revised Rules. He submits that this mandatory procedure has not been adopted by the respondents. In any case, he submits that the *applicants are restricting their claim in this O.A. to the extent of filling up the posts, in terms of principle of old vacancy old rule*.

11. On the other hand, Mr. Aseem Rai, learned counsel for the respondents argued that once the very eligibility has been changed under Amended Rules of 2017, the applicants cannot, as a matter of right, claim that they should be considered for promotion under Old Rules of 1992, which is otherwise contrary to law laid down in the case of Deepak Aggarwal (supra). Secondly, he argued that since there is no challenge to the action of the respondents in conducting examination under Amended Rules of 2017, therefore, the argument of the applicants to that effect cannot be accepted in the present Petitions. Thirdly, he argued that even if the respondents have not followed DoPT Guidelines in conducting DPC in time, even then no fault can be found with action of respondents, as the instructions of DoPT are merely guidelines and the same are not mandatory in character and as such its violation would not create any right in the applicants to claim the relief asked for by them.

12. We have considered the submissions of respective counsels minutely.

13. In so far as challenge to the Amended Rules of 2017 is concerned, the learned counsel for the applicants submitted that the applicants are not pressing for grant of certiorari quashing the Amended Rules of 2017 relating to increase in residency period and inclusion of SSSAs only in feeder cadre for promotion to the post of Section Supervisor and as such O.As in that relevant connection may be dismissed as withdrawn and the applicants would restrict their claim for promotion to the post of Section Supervisor, on the principle of Old Vacancy Old Rule, as recognized in the celebrated case of **Y.V. RANGAIAH**, (supra) in which it was held in unequivocal terms that old vacancies have to be filled up as per old rules. The other side has no objection to the prayer made. The prayer is allowed. Thus, *the question of challenge to Amended Rules of 2017, at the hands of anyone who feels aggrieved by it, is kept open, to be decided in some other case*.

14. The sole plea raised by the learned counsel for the applicants is that in this case the concept of old vacancies, old rules, is applicable as the vested and accrued rights of the applicants for consideration for promotion under Old Rules of 1992, cannot be taken away by the respondents, firstly by not filling up the vacancies available at that time by not conducting the selection process and now by following Amended Rules of 2017, to old vacancies, and making them ineligible for promotion is not sustainable in law. The pointed argument is that the vacancies existing as on 31.3.2017, are sought to be filled up as per notification dated 21.6.2018, by Amended Rules of 2017, published on 6.12.2017, which is illegal. This plea was resisted by learned counsel for the respondents on the basis of decision in the case of Deepak

Aggarwal (supra). So, the question is can the right of the applicants for consideration for promotion against the vacancies existing as on 31.3.2017, be taken away by Amended Rules of 2017, which have come into force only on 6.12.2017. This issue is no longer res-integra and stands settled.

15. Hon'ble High Court of Delhi in Writ petition © No. 7416 of 2015 and C.M. nos. 13673/2015 and 13675/2015 titled **B. KUMARAVEL V. UNION OF INDIA & OTHERS**, decided on 15.05.2018, has considered the similar issue and has clearly held in unequivocal terms that no doubt, an eligible candidate does not have a right to insist that the vacancies must be filled as soon as they arise, but once there is a prescribed time frame laid down for completing the selection process and filling of vacancies, the said time limit has to be followed unless it is a case where pending amendment of Recruitment rules, a conscious decision is taken by the department not to fill the vacancies, as per the then existing rules.

16. In that case, the Hon'ble Court has also considered the DoPT Guidelines, relating to process and manner in which DPCs are to be conducted and a specific time frame for holding DPCs has been provided therein, including DoPT's OM dated 11.3.2011, which is reproduced as under :-

> "1. The undersigned is directed to invite reference to the Department of Personnel and Training Office Memorandum No.22011/5/86-Estt(D) dated 10.04.1989 containing consolidated instructions on DPCs. These instructions inter- alia provide that the DPC's should be convened at regular intervals (by laying down a time-schedule for this purpose) to draw panels which could be utilised for making promotions against the vacancies occurring during the course of a year. This enjoins upon the concerned authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like Seniority List, Annual Confidential Reports (ACRs), etc. for placing before the DPCs.
>
> 2. The above instructions have been reiterated vide this Department's O.M. No.22011/9/98-Estt.(D) dated 8.9.1998. In these instructions, it has been further stated that delays in promotions result in considerable frustrations amongst the officers, thereby adversely affecting their morale and overall productivity. As a remedial measure, it has been suggested that all Ministries/Departments provide for a

> time schedule for convening DPCs. A time schedule for convening DPCs was prescribed with the objective of ensuring that the prepared panel is utilized as and when the vacancy arises during the course of the vacancy year. It has been prescribed that in all cases requiring approval of ACC, administrative action for convening DPCs is initiated at least 81/2 months before the commencement of vacancy year and that DPCs are held at least 4 months before the commencement of the vacancy year. In other cases where approval of ACC is not required, it has been prescribed that DPCs should be held at least two months before the commencement of the vacancy year. A model calendar was also prescribed for DPCs. It was expected that this time frame will be followed in letter and spirit for all DPCs.
>
> 3. Instances have come to the notice of this Department where DPCs are not being held in advance of the vacancy year as per the prescribed schedule. Delays in holding DPCs not only affect the manpower planning in various Ministries/Departments, but also impede the career progression across the Board. Administrative delays in holding of DPCs have been viewed adversely by the Courts and is the main reason for litigation before CAT and various High Courts.
>
> 4. Non-adherence to time frame of DPCs is a matter of serious concern to the Government. Hence, all concerned cadre controlling authorities are once again counselled to ensure strict adherence to the model calendar for the DPCs as circulated vide this Department's O.M. dated 8.9.1998. Wherever DPCs are yet to be held for the vacancies arising in the year 2011-2012, the same may be completed by 31.3.2011 and for future vacancy years, the time frame referred to in Para 2 above may be strictly complied with.
>
> 5. All Ministries/Departments are also advised to immediately nominate an officer of the level of Joint Secretary as the designated authority for ensuring timely holding of DPCs and to certify adherence to the model calendar for all DPCs in the Ministries / Departments."

17. The Court considered the pleas of both sides. The contention of petitioner working in CPWD, that old vacancy should have been filled up as per old rules and in view of decision in the case **of Y.V. Rangaiah (supra) and Union of India Vs. N.R. Banerjee**, (1997) 9 SCC 287, **Nirmal Chandra Bhattacharjee v. Union of India**, 1991 Supp (2) SCC 363 etc. and also contention of respondents that vacancies were to be filled up as per amended rules in view of decision in the case of **Deepak Agarwal (supra),** but it distinguished the decision in the case of Deepak Agarwal (supra). The Court referred to the decision of the Hon'ble Supreme Court in Y.V.Rangaiah's case, in which it was held as under :-

> "8. The contention on behalf of the appellants herein is that by the time the list was prepared in May 1977 Rule 5 of the Andhra Pradesh Registration and Subordinate Service Rules was amended and the list prepared was in accordance with the rules then prevailing at the time of preparation, and therefore there was nothing wrong with the preparation of the panel. It was further contended that the petitioners

> in the two representation petitions having not challenged the validity of the amendment to Rule 5 of the Andhra Pradesh Registration and Subordinate Service Rules, it was not open to them to challenge the list prepared in May, 1977 which is in accordance with the rules prevailing at that time.
> 9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than Respondents 3 to 15 would not have been deprived of their right of being considered for promotion.
>
> The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

18. In the case of N.R. Banerjee, (supra), the Hon'ble Supreme Court considered the O.M.No.220 11/5/86-Est.(D) dated 10.04.1989 issued by Ministry of Personnel and Training (Department of Personnel and Training) and observed that it was imperative that DPCs are convened in a timely manner. The relevant paras are as under :-

> "5. Part II of the guidelines relates to the frequency of meeting of the DPC. Para 3.1 indicates that the DPCs should be convened at regular annual intervals to draw panels which could be utilised for making promotions against the vacancies occurring during the course of a year. In other words, the life of the panel is one year. For this purpose, it is essential for the appointing authorities concerned to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel, by collecting relevant documents like ACRs, integrity certificates, seniority list etc. for placing before the DPC.
>
> 6. DPCs should be convened every year, if necessary, on a fixed date, i.e. 1st of April or May. In the middle of the para, by way of amendment brought on 13-5-1995, it postulates that very often action for holding DPC meeting is initiated after the vacancy has arisen. This results in undue delay in filling up of vacancies and causes dissatisfaction among those who are eligible for promotion. It may be indicated that regular meeting of DPC should be held every year for each category of posts so that approved select panel is available in advance for making promotions against vacancies arising every year. Under para 3.2, the requirement of convening annual meetings of the DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question. It would, thus, be seen that DPCs are required to sit every year, regularly on or before 1st April or 1st May of the year to fill up the vacancies likely to arise in the year for being filled up. The required material should be collected in advance and merit list finalised by the appointing authorities and placed before the DPCs for consideration. This requirement can be

dispensed with only after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion, or that no officers are due for confirmation, during the year in question.
x x x

8. Crucial date for determining eligibility has been dealt with thereunder.

By an amendment brought w.e.f. 19-7-1989, it is stated that relevant dates for determining eligibility of the officers for promotion would be, where ACRs are written calendar yearwise, 1st July of the year and where the ACRs are written financial yearwise, 1st October of that year. The other details prescribed in Chapter IV are not material for the purpose of this case.
Para 6.4.1 deals with preparation of yearwise panels by the DPC which reads as under:
"Where for reasons beyond control, the DPC could not be held in year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedures:

(i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(iii) Prepare a „select list" by placing the select list of the earlier year above the one for the next year and so on:"

9. It would, thus, be seen that the authorities are required to anticipate in advance the vacancies for promotion on regular basis including long-term deputation posts and additional posts created and then to take the action plan in finalising the ACRs, preparation of the select list and place necessary material before the DPC for consideration of the candidates within the zone of consideration, as are found eligible for the relevant year/years.

10. The DPC in the present case was directed to consider the cases of all the eligible candidates within the zone of consideration so that there will not be any heart-burning among the eligible persons whose claims have been withheld for consideration for promotion to the higher post. In Syed Khalid Rizvi v. Union of India[1993 Supp (3) SCC 575 : 1994 SCC (L&S) 84 : (1994) 26 ATC 192] the mandatory duty of the preparation of the select list of the officers for promotion to the All India Services has been indicated in para 35 of the judgment at p. 605 thus:
"We, therefore, hold that preparation of the select list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned and this Court takes serious note of wanton infraction."

19. After considering some other decisions, the Hon'ble High Court has held in paras 21 to 29 as under :-

"21. Learned counsel for the Petitioner has also placed reliance on the decision of the Supreme Court in the case of Nirmal Chandra Bhattacharjee (supra), in support of her contention that once the petitioner was found eligible for being considered for promotion as an Architect against the vacancies available in 2003, the said

consideration had to be done only in accordance with the then prevailing 1989 Rules. She submits that the Supreme Court has in para 5 of the aforesaid decision, categorically held that a change in service rules cannot be made to the prejudice of an employee who was in service prior to the said change, and he cannot be made to suffer on account of the intervening events. It may, therefore, be appropriate to refer to para 5 of the aforesaid decision, which reads as under:-

> "5. One of the principles of service is that any rule does not work to prejudice of an employee who was in service prior to that date. Admittedly the vacancies against which appellants were promoted had occurred prior to restructuring of these posts. It is further not disputed that various other posts to which class "IV" employees could be promoted were filled prior to August 1, 1983. The selection process in respect of Ticket Collectors had also started prior to August 1, 1983. If the department would have proceeded with the selection well within time and would have completed it before August 1, 1983 then the appellants would have become Ticket Collectors without any difficulty. The mistake or delay on the part of the department, therefore, should not be permitted to recoil on the appellants. Paragraph "31" of the restructuring order itself provides that vacancies in various grades of posts covered in different categories existing on July 31, 1983 would be filled in accordance with the procedure which was in vogue before August 1, 1983."

22. As noted above the sole contention of the respondents in the present case is that there was no duty cast on it to hold DPCs for promotion of Assistant Architect to Architect in April, 2003 and the decision in Y.V.Rangaiah (supra) was not applicable to the instant case, for which reliance has been placed on the decision of the Supreme Court in Deepak Agarwal (supra), paras 21 and 22 whereof read as under:-

> "21.We are of the considered opinion that the judgment in Y.V. Rangaiah case[(1983) 3 SCC 284] would not be applicable in the facts and circumstances of this case. The aforesaid judgment was rendered on the interpretation of Rule 4(a)(1)(i) of the Andhra Pradesh Registration and Subordinate Service Rules, 1976. The aforesaid Rule provided for preparation of a panel for the eligible candidates every year in the month of September. This was a statutory duty cast upon the State. The exercise was required to be conducted each year. Thereafter, only promotion orders were to be issued. However, no panel had been prepared for the year 1976. Subsequently, the Rule was amended, which rendered the petitioners therein ineligible to be considered for promotion. In these circumstances, it was observed by this Court that the amendment would not be applicable to the vacancies which had arisen prior to the amendment. The vacancies which occurred prior to the amended Rules would be governed by the old Rules and not the amended Rules. In the present case, there is no statutory duty cast upon the respondents to either prepare a yearwise panel of the eligible candidates or of the selected candidates for promotion. In fact, the proviso to Rule 2 enables the State to keep any post unfilled. Therefore, clearly there is no statutory duty which the State could be mandated to perform under the applicable Rules. The requirement to identify the vacancies in a year or to take a decision as to how many posts are to be filled under Rule 7 cannot be equated with not issuing promotion orders to the candidates duly selected for promotion. In our opinion, the appellants had not acquired any right to be considered for promotion. Therefore, it is

> difficult to accept the submissions of Dr. Rajeev Dhavan that the vacancies, which had arisen before 17-5-1999 had to be filled under the unamended Rules."
>
> 22. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rule in force" on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah case (supra) lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment."

23. xxx
24. xxx

25. Thus what emerges from the decisions relied upon by the learned counsels for the parties is that an eligible candidate does not have a right to insist that the vacancies must be filled as soon as they arise, but once there is a prescribed time frame laid down for completing the selection process and filling of vacancies, the said timeline has to be followed unless it is a case where pending amendment of Recruitment Rules, a conscious decision is taken by the department not to fill the vacancies, as per the then existing Rules.

26. We find that there is no denial to the fact that the DOP&T"s OMs are fully applicable to the respondent no.2/CPWD and, therefore, in view of the specific time frame prescribed in the DOP&T"s OM dated 11.03.2011, we have no hesitation in holding that in the present case there was a duty cast upon the respondents to take steps to fill the available vacancies of Architect as on 01.04.2003. We find that the Supreme Court has, from time to time, emphasized on the requirement to hold DPCs in a timely-manner especially in cases, where there is a prescribed time schedule. We, therefore, see absolutely no reason as to why the time schedule as prescribed in the OM dated 11.03.2011 was not followed by the respondents. The respondents have neither contended, nor produced any material to show that any conscious decision was ever taken not to fill the vacancies of Architect as available in April, 2003 and, thus, in our considered view, the petitioner was entitled to be considered for promotion in April, 2003 itself, which consideration was denied to the petitioner without any justification. Once we conclude that the petitioner was entitled to be considered for promotion in April, 2003 itself, the necessary corollary thereof would be that the said consideration had to be done as per the rules applicable as on that date. Reliance in this regard may be placed on para 5 the decision of the Supreme Court in Nirmal Chandra (supra), where the Court held that change in service rules cannot be made to the prejudice of an employee who was in service prior to the said change, and he cannot be made to suffer on account of the intervening events.

27. In the light of our aforesaid conclusion that the petitioner was entitled to be considered for promotion to the post of Architect in the year 2003 itself, and that too on basis of the 1989 Rules, we find no merit in the submissions of the learned counsel for the respondents that the petitioner having accepted the promotion granted to him in 2005, and that too only upon grant of relaxation of the requirements of 2004 Rules, he cannot subsequently claim promotion from 2003.

> On the other hand, we find merit in the contention of learned counsel for the petitioner that, even though the petitioner was duly fulfilling the eligibility criteria for promotion as per 1989 Rules in 2003 itself- when vacancies of Architect in his quota were available, his case was wrongly clubbed with the cases of some other Assistant Architects in the year 2005, who were not fulfilling the eligibility criteria even as per the 1989 Rules, when the new Rules of 2004 were notified. It is, thus, apparent that the petitioner-who was eligible for being promoted as an Architect in accordance with 1989 Rules, was denied the said promotion in 2003 despite availability of four vacancies of Architect as on 01.04.2003. Reliance placed on Ashok Kumar (supra) is misplaced. The said decision is clearly distinguishable on facts. We have consciously highlights the differential facts of that case. The Assistant Architects in that case had not completed the eligibility service till 2004-2005, however, in the present case the petitioner had become eligible to be considered for promotion as an Architect on 08.03.2003 i.e. well beyond the amendment of the Recruitment Rules on 24.02.2004.
>
> 28. The learned counsel for the petitioner has also contended that even the revision of the original seniority list issued in 2008, by a subsequent OM dated 22.03.2011 was illegal, as it was based on DOP&T's OM dated 03.03.2008, which has been held to be "nonest" by the decision of the Hon'ble Supreme Court in the case of N.R. Parmer (supra). In view of our conclusion that the petitioner was entitled to be considered for promotion in April, 2003, the petitioner's placement in the seniority list of 2008 based on grant of promotion to him in 2005 would itself be erroneous and the aforesaid issue raised by the learned counsel for the petitioner is no longer relevant.
>
> 29. For all the aforesaid reasons, the present writ petition is allowed and the impugned order is set aside. However, instead of directing the promotion of the petitioner to the post of Architect w.e.f. 01.04.2003, we deem it appropriate to direct the respondents to reconsider the petitioner for promotion as an Architect against the vacancy as existing on 01.04.2003 in accordance with the Central Architects Service Group "A" Rules, 1989. The said exercise be carried out within 12 weeks from today. In case, the petitioner is found "fit" for promotion, his seniority shall be filed accordingly in the grade of "Architect" within six weeks thereafter. However, he would not be entitled to claim any arrears of monetary benefit-actual or notional on the basis of refixation of his seniority, if any."

20. It is apparent from the findings and observations made in the aforesaid case that the law is settled that no doubt, one does not have a right to insist that the vacancies must be filled as soon as they arise, but once there is a prescribed time frame laid down for completing the selection process and filling of vacancies, the time limit has to be followed unless it is a case where rules are under amendment and a conscious decision is taken to fill up vacancies, as per existing rules. In this case as well, in terms of DoPT guidelines dated 10.4.1989, the respondents were under obligation to conduct timely DPC which they have failed to do so nor any conscious decision is shown to have been taken not to fill up the post for any reason. The only explanation offered

in para 4 (6) of reply is that it is administratively / practically not possible to effect recruitment / promotions every year but there is no explanation that in Punjab and H.P. Region for general candidates, the departmental examination has not been conducted since the year 2004 i.e. for more than 14-15 years. There is no explanation, whatsoever, offered by the respondents. The applicability of the DoPT Instructions is also not denied by the respondents. In view of these facts, we have no hesitation in holding that the vacancies existing as on 31.3.2017 were to be filled up as per Old Rules of 1992. The decision in the case of Deepak Aggarwal (supra) has rightly been distinguished by Hon'ble High Court, which is not repeated here for the sake of brevity.

21. Not only that, a Division Bench of this Tribunal in OA No. 060/01141/2017 titled **HARPAL SINGH & OTHERS VS. UNION OF INDIA & OTHERS**, considering the question of challenge to amendment in rules and to fill up old vacancy as per old rule, decided vide order dated 10.5.2019 has taken the similar view:-

> "16. In view of the foregoing discussion, we direct the respondents to calculate the vacancies arising prior to 2014 Recruitment Rules and fill them up as per Recruitment Rules in operation prior to 2014 Rules. This exercise be carried out by the respondents within three months of receipt of a certified copy of this order. OA stands disposed of with these directions. MAs pending, if any, are also disposed of accordingly. There shall be no order as to costs

22. Now we proceed to deal with the objections/issues raised by the learned counsel for the respondents. It was vehemently argued that the applicants have not even made any specific prayer to fill up the vacancies in terms of principle of "Old vacancy, old rule" and as such O.A. is not maintainable and that they have not challenged the action of respondents in filling up the vacancies which are sought to be filled up in terms of the Amended Rules of 2017. The plea, to say the least, is farfetched. A perusal of para 8 (iii) of O.A. would indicate that there is a specific prayer made for issuance of a writ of mandamus commanding

the respondents to fill up old vacancies of SS, as per old recruitment rules" and as such we have no hesitation in rejecting the objection raised by the respondents and allowing the O.A. in that relevant connection. The applicants have challenged the action of respondents in filling up the old vacancies as per Amended Rules of 2017, on the ground that concept of old vacancy old rule would apply in the light of decision in the case of Y.V.Rangaiah (supra) and there is specific challenge to the notification dated 21.6.2018 based on Amended Rules of 2017. Thus, the half hearted objections raised by the learned counsel for the respondents deserve to be and are rejected, in the light of the aforesaid discussion.

23. The learned counsel for the respondents submitted that the instructions relating to timely holding of DPC proceedings, relied upon by the applicants, at best, can be said to be only directory in nature and not mandatory or binding and as such even if any deviation has taken place, that would not make action of respondents as illegal. To this, learned counsel for the applicants argued that since the Recruitment Rules are silent on the issue, as such instructions would fill up the gap and take place of rules itself in view of Article 162 of the Constitution of India. The plea taken by the respondents, to say the least, is preposterous and is rejected for the reasons to follow hereafter.

24. As to whether, a particular instructions or guidelines are mandatory or directory in nature, depends upon facts and circumstances of a given case and there cannot be any universal application of law in that relevant connection. In this case, admittedly, in the rules, there is no provision in that behalf. So there being a gap, the DoPT instructions would fill in the vacuum. If a Department does not fill up a post for justified reasons, one cannot found fault with the same. But if the

vacancies are available, eligible candidates are available, and there is no hindrance in holding the DPC or holding an examination, and still authorities keep on sitting over the issue for 14-15 years, then they cannot be allowed to turn around and say that instructions relating to timely holding of DPC are not mandatory.

25. Hon'ble Delhi High Court in the case of **DR. SAHADEVA SINGH VS UOI AND ORS VS. UOI ETC**. W.P.(C) 5549/2007, decided on 28.02.2012, relating to mandatory character of guidelines of timely holding of DPC, has held as under :-

> "This is not the case of the respondents that OMs dated 08.09.1998 and 13.10.1998, issued by Government of India are not binding on them. The OMs, which reflect the consistent policy of the Government, require all the Ministries/Departments to take note of the instructions contained therein for strict compliance so that the objective of convening DPC meeting and preparing approved select panels as per the prescribed time-frame may be achieved. The concern of the Government on account of delay in convening DPC was conveyed to all the Ministries and Departments vide OM No. 22011/9/98-Estt.(D) dated 14.12.2000 and they were also directed that in case of non-adherence to the prescribed time-frame, steps should be taken to fix the responsibility for the lapse in this regard. Such instructions issued by the Government are meant for compliance and not for being ignored in an arbitrary manner and unless repugnant to the Recruitment Rules, they supplement the Recruitment Rules and, therefore, have a binding force. The mandatory nature of the OMs can also be gathered from the instruction to fix responsibility for non-adherence to the time schedule fixed therein. We also take note of the view taken by Supreme Court in N.R. Banerjee (supra) that in the absence of a certificate from the appointing authority that no vacancy would

arise or no suitable candidate was available, the preparation and finalization of the yearly panel is a mandatory requirement."

26. In the case of **ASHOK LANKA V. RISHI DIXIT,** 2005 (5) SCC 598, it was held that "the question as to whether a statute is mandatory or directory would depend upon the statutory scheme. It is now well known that use of the expression 'shall' or 'may' by itself is not decisive. The court while construing a statute must consider all relevant factors including the purpose and object the statute seeks to achieve." Similarly, in the case of **P.T.RAJAN V. T.P.M.SAHIR**,2003 (8) SCC 498, it was held that "A statute as is well known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependent on the user of the words 'shall' or 'may'. Such a question must be posed and answered having regard to the purpose and object it seeks to achieve".

27. A perusal of OM dated 11.3.2011, relating to time limit for conducting of DPC in time, reproduced above, indicates that in para 4 thereof, there is a warning to the administrative authorities, that non-adherence to time framed of DPCs is a matter of serious concern to the government and as such Cadre controlling authorities were counseled to ensure strict adherence to the model calendar for the DPC. The OM dated 31.12.2010 (Annexure A-9) relating to revision of recruitment rules also talks of retention of existing eligibility service. No doubt, we have not touched upon the amendment carried out by the respondents, but on the question of prospectivity, we have recorded a finding that old vacancies had to be filled up as per old rules. On the one hand, the respondents plead that to comply with the DoPT guidelines, they amended the recruitment rules and on the other hand, they plead that guidelines are not mandatory. They cannot be allowed to approbate and

reprobate. The plea taken by the learned counsel is not supported by any law on the issue and appears to have been taken just to hide the inaction on the part of the respondents in not conducting DPC for a whopping 14-15 years. They cannot justify their arbitrariness in the guise of indicated instructions, being in the nature of directory only, from any angle, at all. The rule of law prohibits arbitrary action and command the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias, favouritism and nepotism or negation of right accrued by the policy or order, as held in **HAJI T.M. HASSAN RAWTHER VS. KERALA FINANCIAL CORPORATION**, AIR 1988 SC 157.

28. Not only that, there is no manner of doubt that the public authorities and the Government are bound to act reasonably and fairly and each action of such authorities must pass the test of reasonableness and whenever action taken is found to be lacking bonafide and made in colourable exercise of the power, the Court should not hesitate to strike down such unfair and unjust proceedings, as held in the cases of **DELHI TRANSPORT CORPORATION VS. D.T.C. MAZDOOR CONGRESS & ORS**., AIR 1991 SC 101 and **HANSRAJ H. JAIN VS. STATE OF MAHARASHTRA & ORS**. (1993) 3 SCC 634). In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides as it would only be a case of colourable exercise of power. The Rule of Law is the foundation of a democratic society.

29. It would be pertinent to advert again to the decision of Hon'ble Delhi High Court in the case of B. Kumaravel (supra), in which indicated instructions were quoted and the findings given by Hon'ble

High Court leaves no manner of doubt, at all, that the instructions indeed are binding in character and cannot be deviated by the authorities on whims and fancies, as has been done in the instant case, to the prejudice of the applicants.

30. In the wake of aforesaid discussion, this O.A. is partly allowed and the respondents are directed to fill up the post of SS existing as on 31.3.2017, according to Old Rules of 1992, as amended in 2006, and consider the applicants and others as per their eligibility as on 31.3.2017 and bring the process to a logical conclusion within a period of three months from the date of receipt of a certified copy of this order.

31. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(PRADEEP KUMAR)
MEMBER (A)

Place: Chandigarh
Dated: 28.11.2019

HC*