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N.C. Singhal Vs. Union of India and ors.

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Court : Delhi

Decided On : Nov-19-1973

Reported in : ILR1973Delhi1081

Judge : V.S. Deshpande, J.

Acts : Constitution of India - Article 14; Health Service Rules, 1963 - Rule 7A

Appeal No. : Civil Writ Appeal No. 354 of 1972

Appellant : N.C. Singhal

Respondent : Union of India and ors.

Advocate for Pet/Ap. : T.L. Garg,; F.S. Nariman,; G.L. Sanghvi,;

Judgement :

V.S. Deshpande, J.

(1) The petitioners in these two writ petitions No. 354 of 1972 and C.W. No. 1 155 of 1971) were departmental candidates appointed under rule 7A of the Central Health Service Rules. 1963 as amended up-to-date (hereinafter called the Rules) to posts included in the Specialists' Grade of the said Service at its initial constitution on 9th September 1966. The next promotion grade is Supertims Grade II. In September 1971, a Departmental Promotion Committee made a selection from the Specialists' Grade and General Duty Officers, Grade I, as a

result of which 23 Specialists were appointed to posts in Supertime Grade Ii in 1971, one Specialist was appointed to Supertime Grade Ii in 1972 and one appointed but is yet to join a post in Supertime Grade II. Eight General Duty Officers, Grade I, have also been appointed to posts in Supertime Grade Ii as a result of the said selection. The petitioners have not been so promoted. They have filed these writ petitions complaining against their non-promotion and attacking the promotions of officers some of whom are joined as respondents as being illegal. To understand the attacks made by the petitioners, it would be useful to set out the background in which the promotions are made to Supertime Grade II.

(2) The Central Government in Delhi and in other Union territories has been maintaining hospitals, dispensaries, medical colleges, institutions and a Ministry of Health as well as a Directorate General of Health Services and has been appointing doctors to man various posts in them for anumber of years. In 1959 statutory rules were made by the Central Government to form a Central Health Service consisting of these doctors. But actually a Central Health Service could not be formed under those rules. Thereafter the Central Health Service Rules of 1963 were framed and brought into force from 15th May 1963. In pursuance of rule 7 thereof, notification No. F.I. (iii)- 2 (A)/64-CHS dated 1st January 1965 was issued making appointments to the Central Health Service at its initial constitution. In 1966 these Rules were amended and the Service was reorganized as shown separately in Appendix I attached to the judgment. This is how the petitioners came to be placed in the Specialists' Grade.

(3) Under rules 7A (1) and 7A (2) 'us soon as may he after the commencement of the Central Health Service (Amendment) Rules. 1966' departmental candidates holding posts in categories A and B of the Service were appointed to posts in Supertime Grade I and Super- time Grade Ii of the reorganized Service. Departmental candidates holding posts in categories C.D. and E were appointed either to the Specialists' Grade or as General Duty Officers. Grade Ii and 1. The petitioners were appointed to the Specialists' Grade. These appointments were made 'after selection' on the recommendations of the second selection Committee. Most of the appointments were made in March 1967 with effect from 9th September 1966 but about 25 more appointments were made to Supertime Grade

Ii in 1967 (13), 1968 (9) and 1969 (3) out of a panel prepared by the said selection committee which met in 1966.

(4) While rule 7A dealt with the appointment of departmental candidates at the initial constitution of the Service, rule 8 provided for the 'future maintenance of the Service'. Under it. 'after appointments have been made to the Service under rule 7 and rule 7A, future vacancies shall be filled', inter alki, under rule 8 (3) to the Supertime Grade Ii which is as follows:--

'(A)Fifty per cent of the vacancies in Superlime Grade Ii shall be filled by the promotion of- (i) General Duty Officers, Grade I, with not less than ten years of service in that category: or (ii) Specialists' Grade Officers with not less than eight years of service in that category; in the ratio of 2:3 on the recommendation of a Departmental Promotion Committee on the basis of merit and seniority of the officers concerned. Provided that no person shall be eligible for appointment to any such post unless he possesses the qualifications and experience requisite for appointment to such post. (b) The remaining fifty per cent of the vacancies shall be filled by direct recruitment in the manner specified in the Second Schedule.'

(5) The First Schedule of the Rules has three parts. Part A enumerates all the duty posts which are comprised in Slipertime Grade I, Supcrtime Grade If, Specialists' Grade and General Duty Officers, Grades and II. Part B enumerates the posts which are held by officers of the central Health Service on dsputation under other authorities. Part gives the authorised strength of the Service which is actually based on the number of duly and deputation posts included in Part A and 'Part B of the First Schedule. Regarding Supertime Grade Ii, the position is as follows:-

Duty posts ..... 53 Deputation posts ..... 15 Add (1) Unspecified Specialists posts ..... 19 (2) LJnspecified posts ..... 9 The position regarding Specialists' Grade is shown as follows:- Duty posts ..... 275 Deputation posts ..... 102 _____ 377 Deduct Unspecified Specialists posts and Unspecified posts upgraded to Supertime Grade Ii 28

(6) The Second Schedule lays down the procedure for direct recruitment. Annexure I to the Second Schedule lays down the educational and other

qualifications required for the posts in various categories. For Supertime Grade Ii, the qualifications are as follows:-

(1)A basic medical qualification under the Indian Medical Council Act, 1956. (2) Post-graduate degree or diploma qualifications mentioned in Annexure Ii or equivalent.

(7) Annexure Ii to the Second Schedule lists the various specialities in medicine and public health and enumerates the post-graduate degrees in Part A and post-graduate diplomas in Part B thereof. Item No. 13 is as follows:-

'PUBLICHealth-Post-graduate degrees- M.D. with Public Health, D. Sc. (Public Health), Dr. P.H. Post-graduate Diplomas- M.P.H., D.P.H., D.T.M. & H., L.P.H., D.I.H. and D.T.M.'

(8) The Departmental Promotion Committee is a mechanism functioning under Article 320(3) of the Constitution by which the Government consults the Union Public Service Commission in making appointments to the Service. The Chairman of the Committee is a Member of the Union Public Service Commission while a Joint Secretary, Ministry of Health and the Director General of Health Services were its Members. The special characteristic of the Central Health Service is that the posts included in it are different from each other. The medical profession is highly specialised. The holder of each post. thereforee, requires qualification different from holders of other posts. This is particularly so in respect of the Specialists. Na less than sixteen specialities are recognised in Annexure Ii to the Second Schedule of the Rules specifying the post-graduate degrees and diplomas required for appointment to the posts requiring such Specialists' qualifications. This is different from civil services where all the members are required to have uniform qualifications and the posts are of the same nature and are interchangeable. But the posts held by Specialists are not interchangeable as each of them requires different qualifications. The posts are named in the First Schedule. Some of them are administrative but most of them are specialised. The specialised posts have to be co-related to the specialities listed in Annexure Ii to the Second Schedule. But the Rules are silent as to whic'i of the specia- lised posts are related to which speciality. It is thus left to the Government as advised

by their experts in the Health Ministry and the Directorate General of Health Services to do so. The Government had recruited 56 officers by direct recruitment from 1966 to 1971. It had also appointed 25 officers out of the panel prepared by the Selection Committee in 1966. 31 posts were, thereforee, available for being filled by promotion so that the total posts to be filled by promotion may become 56 to equalise with the total posts filled by direct recruitment from 1966 to 1971. The Government, thereforee, sent about 152 names of Specialists and 48 names of General Duty Officers. Grade I, to the Union Public Service Commission so that these 31 posts in Supertime Grade Ii may be filled from among them. The Union Public Service Commission, however, advised the Government to send to them the names of 10 senior most persons in the particular speciality for each post to be filled in belonging to that speciality. This was done and the respondents and some others were selected by the Departmental Promotion Committee and were appointed by the Government to Supertime Grade II. It is in the above background that we may now consider such of the grounds of attack on the 1971 promotions and related matters as were advanced in arguments by Shri T.L. Garg turn the petitioner Dr. Singhal and by Smt. Leila Seth for the petitioner Dr. Chandra Mohaii.

(9) In urging the first ground. Shri T.L. Garg realised that the petitioner Dr. Singhal is an eye specialist and he could, thereforee, be eligible only for the post of an eye specialist in Supertime Grade II. He could not be eligible, thereforee, for those posts in the Supertime Grade Ii which were specified in the sense that the name and nature of each of those was described so that it could be immediately known that it could not be filled by an eye specialist but had to be filled by a doctor possessing post-graduate qualifications in some other specia- lity. He, thereforee, concentrated his a.ttack on the 28 posts which were shown as unspecified in Supertime Grade Ii in Part C of the First Schedule to the Rules. He first referred to the Health Ministry's O.M. dated 30th June 1965 proposing the re-organisation of the Cenalth Servi into General Duty Officers, Specialists' Grade Officers and Supertime Grade Officers. In paragraph 5 thereof it was stated as follows:-

'FIFTYper cent of the vacancies in the Supertime scale of Rs. 1300- 1800 will be filled by promotion of officers working in the Specialists' grades. Some of the General Duty Doctors (Class 1) may also be promoted to this grade. The

remaining 50 per cent of the vacancies will be filled by recruitment through the Union Public Service Commission.'

(10) He then referred to the Health Ministry's O. M. dated 14th July 1965 calling for options in writing by members of the Service for the revised pay and allowances as sanctioned from 1st July 1965. Counsel says that Dr. Singhal opted for the scale of pay of specialists' Grade Officers because he relied on the representation made by the Government that 50 per cent of the posts in Supertime scale would be filled by promotion from officers working in the Specialists' Grade and only some of the Supertime scale post would be given to the General Duty Officers. He says that when the Rules were actually amended in 1966, the Government went back from its representation and provided in the amended rule 8(3) thereof that out of the 50 per cent posts to be filled by promotion in Supertime Scale Grade Ii only 30 per cent out of 50 per cent would be given to the Specialists' Grade Officers while 20 per cent would be given to the General Duty Officers, Grade I. He says that the Government was estopped from going back on its lepresentation. This contention is, however, untenable for the following reasons: Firstly, the representation of 30th June 1965 was not of an existing fact but was of a proposal of future action. It was not, thereforec. covered by section 115 of the Evidence Act. Secondly, the option was asked only regarding the revised scales of pay and allowances by the letter of 14th July 1965. No option was asked about conditions of service, which would govern promotions to Supertime scale from the Specialists Grade. Thirdly, the actual amendment in the Rules made in 1966 was known to Dr. Singhal liefore he joined the Specialists' Grade under the amended Rules. If he did not want to join, he was free not to join it. Lastly, he did so in 1966 while the petition was filed in 1972. He never represented to the Government that the amendment of the Rules in 1966 was contrary to the representation made on 30th June 1965. He has, thereforee, not explained the delay in filing the writ petition and taking up this ground against the amendment of 1966. In this respect, the writ petition is unduly delayed and cannot be considered.

(11) Shri Garg then pointed out that Part C of the First Schedule shows that 28 posts were taken out of Specialists' Grade and were added to Supertime Grade II. On that basis, he argued that it is the Specialists alone who were entitled to fill

these 28 unspecified posts in Super time Grade it. This argument is, however, patently untenable. Firstly, Part C of the First Schedule itself divides the unspecified posts into two, namely:-

(1)Unspecified Specialists posts; and (2) Unspecificd posts.

(12) This shows that the 19 unspecified Specialists posts in Supertime Grade Ii were regarded as posts to be filled by Specialists while the other 9 unspecified posts were simply unspecified. If all of them were to be Specialists posts, the distinction between 19 Specialists posts and 9 other posts would not have been made. Secondly, rule 8 (3) expressly states that the promotion of the General Duty Officers, Grade I and the Specialists' Grade Officers to the 50 per cent posts in Supertime Grade Ii was to be in the ratio of 2:3.

(13) Shri Garg did not challenge the virus of the Rules in his argument. He said, however, that the discretion given to the Government to fill the unspecified posts was unguided and that it was not only liable to be abused but was in fact abused when Dr. Singhal was not promoted to Supertime Grade Ii Let us examine this contention carefully.

(14) The subject on discretion falls into two parts, namely, (1) conferment of discretion on Government or administrative authorities, and (2) the actual exercise of such discretion by them. When Legislature confers discretion on the Executive, the legislation may be attacked in either of the two ways. It may be said to amount to an excessive delegation of an essentially legislative power by the Legislature to the Executive. This would be unconstitutional becouse the essence of the legislative function, namely, to lay down the legislative policy' cannot be delegated by the Legislature to the Executive. Alternatively, such legislation can be attacked on the ground that by conferring unguided discretion on the Executive, it enables the Executive to practice discrimination and unequal treatment. It appears to me that none of these objections can arise in the present case. Under Article 310 of the Constitution, the Central Government employees hold office during the pleasure of the President. Under the proviso to Article 309, the President is enabled to frame rules regulating their conditions of service. Even in the absence of such rules, administrative instructions laid down by the Government can govern

the conditions of service of the Central Government employees. It is to be noted that neither in Article 310 nor in Article 309 any guidelines are laid down for the exercise of the powers of the President in relation to the employees of the Central Government. If the Constitution itself gives unfettered powers to the President to deal with such employees, no question of excessive delegation of either legislative or executive powers can arise. A provision of the Constitution cannot be challenged on such a ground. If Articles 309 and 310 do not contain such guidelines, the rules framed under the proviso to Article 309 which are intended to carry out the purposes of Articles 309 and 310 are not also compulsorily required to contain such guidelines. For, the object of these Constitutional provisions as also the rules or administrative, instructions framed under them is the efficiency of Government service. It is for the Government to decide which is the best way to .promote such efficiency.

(15) Statutes or rules conferring discretion on Government can be challenged under Article 14 of the Constitution. The Supreme Court decisions dealing with such challenge fall into two classes. One set of decisions summarised in Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar : [1959]1SCR279 , require a reasonable classification based on intelligible differentia the basis of which is rationally connected with the object of the statutes or rules. In keeping 28 posts unspecified in Supertime Grade Ii, no advance classification is made by the Government in framing the Central Health Service Rules. If the question is asked why discretion should be left to the Government in filling these posts and why should not these posts also be specified like the other posts so that appointments to them are also governed by the Rules, a satisfactory answer can be two-fold. Either it is not possible to describe and name these posts in advance by making rules or that it would lead to much better administration if it is left to the discretion of the Government to decide regarding each of these posts as to which speciality of medicine or public health it should be assigned. Let us examine if these two answers are valid regarding the unspecified posts. A perusal of Parts A and of the First Schedule to the Rules will show the enormous variety in the nature and work of the duty posts and the deputation posts included in the Service. Unlike in other services, most of these posts are not interchangeable with others. A person qualified in one speciality cannot be appointed to a post requiring qualifications of

any other specifility. It is this lack of interchangeability which has necessitated the naming and describing of each post in the Service. This itself is a stupendous task. But there is a Umil beyond which it cannot be carried. A few posts may have. thereforee, to be left unspecified in the Rules so that the Government may specify each of them as occasion arises, ll. is significant that the unspccihcd posts are to be found only in the Supertime Grade it catgory. For. il is that category to which p'o molions are open from two disparate grades, namely, (1) Specialists' Grade and (2) General Duly Ofticers. Grade i. it is in the Super time Grade 11 that l.wo kinds of reservations have been made. Firstly. a parity has to be maintained between direct recruits and promotees. Secondly, among the promotees a ratio has to be maintained of 2:3 between General Duly OffiJers. Grade I and Specialists. The maintenance of th' parity and the rntio is fasilitated by the margin of llexibility afforded by the iinspccihed po?ts.

(16) The second answer also is applicable to the facts of the presen! case. As the Government have staled in their affidavit, il is the number and the nature of cases which furnish the guidelines to the Government in filling each of the unspecified posts. Petitioner Dr. Singhal has filed an extract from a Health Ministry report to show that out of the total number of cases from Safdarjang and Willingdon hospitals. the cases coming to the skin department were the most numerous while the cases coming to the eye department were the second most numerous. But Dr. Singhal has not filed a copy of the report which also shows that the incidence of eye disease is only 4 percent of the total incidence of all diseases treated in these hospitals. It is not only the number but also the nature of the cases which has to be considered by the Government in making appointments to the unspecitied posts. One can easily see why the number of cases is so large in the skin and the eye departments. The majority of our population constitute what is often described as 'The Great Unwashed' namely. people who cannot either afford to keep themselves clean for want of facilities to wash themselves and their clothes or who are not particular to keep themselves clean even if they have the facilities. They have. thereforee, the various skin diseases most of which are not serious and very few of which can be fatal. This inflates the number of cases in the skin department. Similarly, the correction of the eye sight by glasses has become very widespread. People who come to hospitals for testing their eye sight to get spectacles swell the

number of the cases in the eye department. But these cases are nol of a serious nature. They do not constitute any eye disease which is to be treated by the doctors.

(17) This would show that it is only the number of cases which is large in the skin and the eye departments. But-the nature of the cases is not serious. On the other hand. other departments in medicine and surgery in these hospitals handle a comparatively smaller number of cases which may be of more serious nature. For instance, cases of heart disease, though they may be smaller in number, are certainly more serious inasmuch as they are often fatal. This brings us to the second class of Supreme Court decisions relating to cases arising under Article 14 of the Constitution, such as, Kedar Nalh Bajoria v. The Slate of West Bengal. (1954) Scr 30('), Niemla Textile Finishing Mills Lid. v. The Second Punjab Industrial Tribunal (1957) Scr 335 and Pannalal Binji-aj v. Union of India : [1957]1SCR233 . They have established that if the object of the statute conferring administrative powers oil the Government or an authority is clear then the Government or the authority can be entrusted with the task: of applying it lo each individual case according to the particluar facts of that case. The reason is that each case differs so much from another that advance criteria could not belaid down and the discretion has to beexercised on the facts of each case. The entrustment of an apparently unguided discretion is, thereforee, justified in a case like the present one. For the Government has to consider the number and nature of cases which may vary from time to time in different areas of the country betore filling an uspecified post.

(18) Though the Rules themselves were not challenged and cannot be challenged on the ground that the discretion to fill unspecified posts is left to the Government, the actual exercise of such discretion by the Government in a particular case can always be challenged as being discriminatory and, thereforee, unconstitutional as being contrary to Article 16 of the Constitution. Dr. Singhal has contended that persons junior to him liave been promoted to Supertime Grade iT in the unspecified posts and this was discriminatory against him. He conveniently forgets that the individual posts in Supertime Grade If including the unspecfied posts can be filled only by persons qualified in that particular speciality. Dr. Singhal would,

thereforee, be considered only for a post in the eye speciality. He could not be considered for posts in which qualifications in other specia.lities of medicine and surgery were required. The criteria for selection to Supertime Grade Ii are four, namely:

(1)Merit, (2) Seniority, (3) Educational qualifications and (4) Experience.

(19) Formerly, there was only one Supertime Grade Ii post in the eye spciality inths Service. It was the post of a Professor at the Medical College in Simla, Himachal Pradesh. The Medical Superintendent of the Willingdon Hospital, thereforee, recommended on 2-6-1970 to the Director General of Health Services that the Head of the Eye Dapartment (Dr. Singhal) should, thereforee, be promoted to Supertime Grade II. Accordingly, the Government converted one unspecified post in Supertime Grade Ii to the post of a Senior Eye Specialist. The Government, however, appointed DP. B.S. Jain to that post on 18-2-1971. Dr. Jain was much senior to Dr. Singhal. He was transferred from Simla to Delhi to fill up the post. Dr. Singhal was offered the Supertime Grade Ii post of Senior Eye Specialist at Simla. But he declined to accept it for personal reasons. It was, thereforee, offered to Dr. Sood who was junior to Dr. Singhal and was accepted by Dr. Sood. On 9-6-1971 , the Medical Superintendent of the Safdarjang Hospital recommended that the Head of the Eye Department in that hospital should also be in Supertime Grade II. Dr. B.S. Jain was transferred to Safdarjang Hospital in Supertime Grade Ii and Dr. Singhal was transferred to the Willingdon Hospital. But the post of the Head of the Eye Department in Willingdon Hospital was not upgraded to Supertime Grade II. Dr. Singhal cannot reasonably complain that the Supertime Grade Ii post in the eye speciality in Delhi should have gone to Dr. Jain who was so much senior to him. Nor has Dr. Singhal given a good Explanationn as to why he could not accept the Supertime Grade Ii post in the eye speciality at Simla. ShriGarg tried to argue that Dr. Singhal was not qualified to hold the post of a Professor at Simla. But this argument is unacceptable. Firstly, there is no pleading by Dr. Singhal that he was not qualified to hold a post of a Professor. On the contrary, Dr. Singhal has himself represented to the Government that he was so qualified. Secondly, if the Government offered the post of a Professor to Dr. Singhal and if Dr. Singhal regarded himself as qualified to hold it, there was no

reason why Dr. Singhal should not have accepted the Simla post. For, both the parties.the employer and the employee, were agreed that he could and should occupy that post. Lastly, Dr, Singhal declined the post not because he was not qualified but for his own personal reasons. If so, he cannot complain that he was not offered a post in the Supertime Grade II. It was a matter of accident that the post was in Simla while Dr. Singhal does not want to leave Delhi. Dr. Singhal had no right to insist that another post should be created for him in Supertime Grade Ii in Delhi. That depends on the number and the nature of cases to be considered by the Government. There is neither any pleading nor any proof that another Supertime Grade Ii post in the eye department was required to be created in Delhi. The need for such a post has to be judged by the Government by comparing the need of the posts inother specialities. The Government alone has got the data for such a comparison and judgment. This Court cannot enter into an examination of that question. It is exclusively within the purview of the Government to do so.

(20) Dr. Singhal has alleged in his petition that the Government could not give him a post in Supertime Grade Ii at Delhi because there was no Vacancy left in Supertime Grade Ii for appointing him and that he was so informed orally by some body in the Government. This allegation is specifically denied in paragraph 30 of the main counter-affidavit filed by the Government. It is also contrary to rule 5 (2) under which, after the date of such commencement (of the 1966 Amendment of the Rules) the authorised strength of the various categories shall be such . as may be determined from time to time by the Central Government. This shows that whenever the Government wants to promote an officer either form the Specialists' Grade or from the General Duty Officers, Grade I to Supertime Grade Ii, this can be done without any difficulty. The post from which the promotion is made can be suspended and one more post can be added to Supertime Grade II. Further, it is also apparent that all the unspecified posts in Supertime Grade Ii have not even now been filled in. The real reason, thereforee, why Dr. Singhal has not been promoted to Supertime Grade Ii is not the one alleged by him, namely, that there is no vacancy left in Supertime Grade Ii for him as all the vacancies have been filled in by the Government. But the real reason is that the Government has not yet thought it necessary to create another Supertime Grade Ii post in the eye speciality at Delhi. Dr. Singhal has not placed any material before this Court to

show that the decision of the Government not to create a second Supertime Grade Ii post in the eye speciality at Delhi was discriminatory against eye specialists in the Central Health Service including Dr. Singhal. The burden of proof was on Dr. Singhal to show that taking into account the number and the nature of cases coming to the hospitals in Delhi for treatment of different diseases, it was discriminatory on the part of the Government not to create asecond Supertime Grade l[post in the eye speciality at Delhi. Not only has he not discharged his burden but his stand throughout has been not that a second Supertime Grade Ii post in the eye speciality should be created at Delhi but that the one Supertime Grade Ii post which has gone to Dr. Jam should have been given to himself (Dr. Singhal). As late as on 28-3-1972 Dr. Singhal wrote to the Secretary, Ministry of Health and Family Planning that the Supertime Grade Ii post in the eye speciality which had been created at the Willingdon Hospital should be given to him because Dr. Jain, the previous incumbent of that post, had been trans- ferred to the Safdarjang Hospital. It is elementary that Dr. 'Jain could not be demoted merely because he was transferred. On the contrary, it was but fair that he should take with him the Supertime Grade Ii post on transfer. This was what was done. The stand taken by Dr. Singhal is extremely unreasonable. Nothing has been shown why the Delhi post should not have been given to Dr. Jain who was so much senior to Dr. Singhal and why Dr. Singhal should not have been offered the post at Simla. This contention also, thereforee, fails.

(21) It was then alleged that certain other unspecified posts in Supertime Grade Ii were filled in though no such recommendations had been received from Medical Superintendents of the hospitals at Delhi. But this allegation fails to take into consideration the fact that the Medical Superintendents would not have the final say in this matter. The Directorate General of Health Services and the Government of India have to take into consideration the overall interests of all the members of the Service though the Medical Superintendents of particular hospitals may plead the case of their own particular hospital.

(22) The next argument was that the appointments made from 1966 to to 1971 to Supertime Grade 11 were in violation of rule 8 (3) (a) which required that a General Duty Officer, Grade I, should have put in ten years of service in that

category and a Specialists' Grade officer should have put in eight years of service in that category before either of them could be promoted to Supertime Grade II. None of. these officers could have completed 8 or 10 years of service in. those categories and, thereforee, all these promotions were invalid. Let us understand this argument properly. As a result of the selection for the initial constitution of the re-organized Service under rule 7Aanoti- fication was issued in 1967 though the appointments were to be effective from 9-9-1966. If, thereforee, the service of the General Duty Officers, Grade I, and Specialists was to be counted from only 9-9-1966, then 8 years and 10 years could not be complete till 1974 and 1976 and no promotions from these grades could be made to Supertime Grade IT. The effect would also be that the petitioners are also not entitled to such promotion because their service would also be counted from 9-9-1966 only. In ChitraGhose v. Union of India, : [1970]1SCR413 , the petitioner who could have sought admission to the Medical College only in the general category had impeached the admissions made by the Government college authorities to a reserved category. At page 420 the Supreme Court held that the petitioner had no locus standi to do so in the following words:

'THEother question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats'.

(23) The petitioners Dr. Singhal and Dr. Chandra Mohan themselves would not be qualified for promotion to any post in Supertime grade Ii if their service is to be counted in the categories of Specialists and General Duty Officers, Grade I from 9-9-1966 only. On the ratio of the Supreme Court decision, thereforee, they would have no locus stand'. to challenge the appointments of the respondents to the posts in Supertime Grade Ii because they themselves were not entitled to get any of those posts or any other posts in Supertime Grade Ii and this for two reasons. Firstly, i:i respect of appointments in those specialities in which the petitioners were riot qualified, the petitioners were not eligible at all. Secondly, the petitioners

had not put in the requisite number of years of service from 9-9-1966 to be eligible for promotion to Supertime Grade II.

(24) Even though the above was sufficient to dispose of the challenge by the petitioners to the promotions made to Supertime Grade Ii, a proper consideration of the matter would show that the promotions made by the Government from 1966 to 1971 to Supertime Grade Ii were proper, Firstly, 25 appointments were made as a result of the selection under rule 7A (1) for the initial constitution of the Service. It is true that these appointments were not included in the not'ficatiOno of 1967 but were made subsequently. But rules 7A (1) and 7A (2) required the appointments to be made 'as soon. as may be after the commencement of the Central Health Service (Amendment) Rules. 1966'. The main. notification of appoin.tmenls to the re-organized Service was issued in March 1967. 25 more appointments were, however, made thereafter till 1969 on the strength of the selection made in 1966. 13 such appointments were made in 1967, 9 in 1968 and 3 in 1969. The question is whether these appointments were made so late after the issue of the notification of June 1967 that they could not be covered by the words of rule 7A (1) 'as soon as may be after the commencement of the Central Health Service (Amendment) Rules, 1966'. The 13 appointments made in 1967 would be so soon after the notification of June 1967 that they would be certainly covered by the words 'as soon as may be. Similarly, the 9 appointments made in 1968 would not also be said to be delayed too much and would also be so covered. The appointments in 1969 were only three, if the selection of these candidates was made in 1966. it is not seen why these candidates should suffer only because the exigencies of Service or other administrative reasons did not allow the Government to appoint them earlier. The candidates who were selected for the initial constitution of the Service in 1966 by a Selection Committee stood in a class different from the class in which the present petitioners stand. The petitioners are only wanting to be promoted. They were not included in the selection of Supertime Grade 11 in 1966. The selection of persons who were included in such selection of 1966 but who were appointed to Supertime Grade Ii in 1967, 1968 and 1969 cannot, thereforee, be challenged by the petitioners. In Fact, it has not been so challenged by them in their pleadings. The petitioners were under the impression that these persons were promoted irregularly by the Government to Supertime Grade II. This

impression was wrong. The Government has stated that these appointments were made on the selection which took place in 1966 for the initial constitution of the Service.

(25) Secondly, the majority out of the 25 persons have not been joined as parlies to these writ petitions. Lastly, the writ petitions have been filed more than three years after the appointments were made. No Explanationn is given by the petitioners why they delayed so much in challenging these ..appointmenis. These 25 appointments to Superlime Grade Ii made in 1967. 1968 and 1969 and, thereforee, immune from challenge by the petitioners.

(26) We now examine the challenge to the 29 promotions actually made by the Government in 1971 to Supertime Grade Ii and one promotion made in 1972 and one promotion which is still in the offing. The legality of these 31 promotions on the result of the Departmental Promotion Committee recommendations made in 1971 is now to be ex- amined. The merit of these candidates was entirely for the Departmental Promotion Committee to be judged. Their seniority was shown in the seniority lists. The years of service they had put in the category concerned is the real question for consideration. The word ' category' is defined in section 2(c) to mean a 'group of posts specified in column 2 of the Table under rule 4'. The Table in rule 4 gives the categories of Supertime Grade Ii, Specialists' Grade, General Duty Officers, Grade I, etc. It is significant that this definition is different from the definition of 'category' in rule 2 (b) of the old Rules of 1963. In the old definition, the word 'category'meant group of posts carrying the sa.me scale of pay'. It is an established rule of interpretation that the change of language in a provision resulting from an amendment has to be given effect to and cannot be ignored. The change in rule 2 (c) of the amended Rules has, thereforee, fob; given effect to. The intention underlying that change seems to be: that the Service has to be in the posts irrespective of the question whether the posts carried the same scale of pay ^or not. Now it is clear from a reading of the 1963 Rules and the 1966 amendment to the Rules that the posts included in the categories of Specialists Grade and General Duty Officers, Grade I, had existed from before 1963. This is clear from the following rules. Rule 2 (f) defines a 'departmental candidate' as a person regularly appointed to a duty post or a deputation post, inter alias in accordance

with the rules of recruitment applicable to the post. This recognises the existence of rules different than these Rules relating to the post. Such different rules must, thereforee, be prior to these Rules. The definition of ' departmental candidate' in rule 2 (f) of the old Rules of 1963 is also the sams with the difference that such a candidate could be one who held any of the posts included in the Service or who held a lien on such a post on the appointed day. namely, 15th of May 1963. The fact that persons initially appointed to the Service were already occupying posts and held liens on them at the initial constitution of the Service in 1963 shows that these posts existed from before 1963. The very definition of' departmental candidate' shows that these departmental candidates were in the department from before 1963. Secondly. the First lilies were made in 1959 which also shows that persons were holding posts relating to medicine and public health under the Central Government even in 1959 and prior to 1959 which made it necessary for the Government to frame the 1959 Rules. These 1959 Rules were repealed by rule 19 of the 1963 Rules with the provisc that anything done or any action taken under the 1959 Rules shall be deemed to have been taken under the 1963 Rules. Thirdly, the second proviso to rule 8 (3) (a) requires the Government to consider all persons senior to an officer in. the Specialists' Grade or in General Duty Officers, Grade T, if such an officer is to beconsidered for promotion. to Supertime Grade II. Since the Government could not consider ar officer for such promotion unless he had completed 8 or 10 years of service, it is clear that the service of all officers of Specialists' Grade and General Duty Officers, Grade 1. was not intended to be counted only from 9-9-1966. Had that been the intention, then every officer would have the same period of servici from 9-9-1966 as the service put in before that date was wiped out. But the second proviso to rule 8 (3) contemplates that offiers senior to an eligible officer may not have put in 8 or 10 years of service even though the eligible officer had put in 8 or 10 years of service. The Rules thus contemplate a difference in the periods of service put in by different officers. This meant that the service of each of them was not to be counted only from 9-9-1966. it is true that the second proviso to rule 8 (3) (a) was put in by the amendment of 5-12-1970. But even if this change in the intention of the rule making authority was effected on 5-12-1970, that intention has to be given effect to. The petitioners and the Government have both filed affidavits to show

that the petitioners themselves along with other officers have been holding posts relating to medicine, surgery and public health under the Central Government from before 1963 and these very posts were included in the Service first under the 1963 Rules and then again by the amendment of 1966.

(27) The above considerations would show that the word 'category' used in rule 8(3)(a) has to be understood to mean the posts included in that category. The 'service in that category', thereforee, meant service in a post included in that category. It is true that the payscale of the post may have been less originally in as much as pay-scales have been revised from time to time. But the difference in the payscale does not take the post out of the category. This is why both the petitioners and the Government have proceeded on the assumption that the service of the petitioners as well as of other officers has to be counted for the purpose of promotion from before 1963. Otherwise, the petitioners would not have taken the trouble of filing these writ petitions inasmuch as they themselves would have been ineligible for promotion. I, thereforee, find that the persons promoted by the Departmental Promotion Committee in 1971 had put in the requisite number of years of service or were covered by the second proviso to rule 8(3) before they were promoted.

(28) The affidavits and the annexures thereto filed by the Government on 9th January 1973 and 12th January 1973 also show that all the promotees except one had the requisite academic qualifications specified either in Part A or Part B of Annexure Ii to the Second Schedule. The exception is Dr. Broja Gopal Misra. According to Annexure I to the Second Schedule a promotee to Supertime Grade was required to possess two essential academic qualifications. namely, (1) a recognised medical qualification included in the First or Second Schedule or Part If ofthe Third Schedule (other than licentiate qualifications) to the Indian Medical Council Act, 1956 and (2) a post-graduats qualification as per Annexure It to the Second Schedule. The academic qualifications possessed by Dr. Misra are not inluded in the First or Second Schedule or Part It of the Third Schedule to the Indian Medical Council Act, 1956. The academic qualification L.M.F. is included in Part I of the Third Schedule to the said Act. This is not sufficient for the purpose of Annexure I to the Second Schedule for promotion to Supertime Grade II. It would

not have been sufficient even for appointment to General Duty Officers, Grades and Ii, but for the proviso to rule 7A(1) inserted on 20-3-1967. By the said proviso, a departmental candidate possessing a licentiate qualifications included in any of the Schedules to the Indian Medicel Council Act, 1956 (which includes L.M.F. included in Part I of the Third Schedule) and who had been appointed on a regular basis to any post in category E shall be deemed to possess the requisite medical qualifiation for appointment in the category of General Duty Officers Grades I and If, of the Service under this rule. namely, the appointment at the initial reorganisation of the Service in 1966. Dr. Misra was, thereforee, validly appointed as General Duty Officer, Grade I, at the reorganisation of the Service in 1966. But he could not, however, be promoted to Supertime Grade Ii on the recommendation of the Departmental Promotion Committee in September 1971 inasmuch as he did not possess any of the post-graduate qualifications, namely. out of the degrees specified in Part A and the diplomas specified in Part B of Annexure I [of the Second Schedule to the Rules. The post to which he was appointed in Supertime Grade Ii is Regional Deputy Director, National Malaria Eradication Programme, Hyderabad. It is argued for the Government that Dr. Singhal was not eligible to be appointed to that post and he had, thereforee, no locus standi to challenge Dr. Misra's appointment to that post. The other writ petitioner Dr. Chandra Mohan was qualified for consideration to that post. He has, thereforee, locus standi to challenge Dr. Misra's appointment. The second essential academic qualification required for appointment to a Supertime Grade Ii post under Annexure I to the Second Schedule is a post-graduate degree or diploma qualification mentioned in Annexure Ii of the Second Schedule or equivalent thereof. Though the qualification L.M.F. is not mentioned in either parts A or B of Annexure It to the Second Schedule, it was contended for the Government that the other qualification L.T.M. could be regarded as equivalent to the qualificaion D.T.M. which is mentioned in Part B of Annexure It to the Second Schedule. Since there is nothing in the Rules as to who is to determine what qualifications are equivalent to those stated in annexure Ii to the Second Schedule, presumably the Government would have the authority to do so inasmuch as the Rules are framed by the Government. However, even if L.T.M. is regarded as equivalent to D.T.M., Dr. Misra would satisfy only the second essential qualification required by Annexure I to the

Second Schedule. Nevertheless.. he still fails to satisfy the first essential qualification mentioned there under inasmuch as none of the qualifications possessed by him are included in the First or Second Schedule or Part If of the Third Schedule to the Indian Medical Council Act, 1956. He was not, thereforee, qualified to be promoted to Supertime Grade l[post. His promotion made in September 1971 to the post of Regional Deputy Director, National Malaria Eradication Programme, Hyderabad, is, thereforee, set aside as relief in the writ petition filed by Dr. Chandra Mohan.

(29) For the first time, in a rejoinder Dr. Singhal alleged that Respondents 9 and 23 (persumably Dr. K.P. Mathur and Dr. A.R. Majumdar) were held guilty of negligence of their duties by the Madras High Court in 1968. The respondents are not even named by their names but are referred to only by their numbers. No particulars of the alleged negligence have been given. No copy of any judgment of the Madras High Court has been filed. it is said that the Government had to pay Rs. 10,000 for their negligent act. This would mean that the Government must have thoroughly considered the alleged negligence. As there is no material before me on this question I am unable to say anything about the merit of these two respondents and whether they had really been negligent and whether the Government was justified in not taking any action against them but on the other hand in promoting them. In view of the inadequate pleading. did not call upon the Government to reply to these allegations. respondents 9 and 23 could not be expected to reply to them as the allegations were made for the first time in a rejoinder.

(30) By Civil Miscellaneous 1161-W of 1972 Dr. Singhal had asked certain files to be produced by the Government. had asked the Government to keep these files ready in a sealed cover so that they could be ordered to be disclosed and copies to be placed on record, if necessary. But during the argument Shri Garg did not say a word about them. As the relevancy of these files have not been shown and as the argument could be completed without any reference to them they were presumably not relevant. The application is, thereforee, hereby dismissed.

(31) Both Dr. Singhal and Dr. Chandra Mohan have complained that officers junior to them became senior to them in the reorganisation of 1966. As has already been held by this Court in Dr. S.C. Sltarma Union of India, AiR 1970 Delhi 16, the reorganisation was based on a fresh selection from among the departmental candidates who had been earlier selected in 1963 and appointed in 1965. This selection has been acquiesced in by Dr. Singhal and Dr. Chandra Mohan by 1966 onwards or at any rate from June 1967 when the list of appointments was published. Ft is too late for them to complain against the positions which were assigned to them in the seniority list of specialists' Grade as a result of the 1966 selection. They also complain that juniors havs been promoted to Supertime Grade it. it is alleged that such promotions were contrary to the concept of a centralised service. This argument overlooks the special characteristic of the Central Health Service. Most of the posts in the Service are not inter changeable. Each of the Spscialisls in one speciality has qualifications very different from the Specialists in the other specialities. Officers of each speciality, thereforee, constitute a compartment. Whenever a po.it ill. Supertime Grade Ii is to be filled various considerations liave to be taken into account in filling it such as the nature of the post, the qualifications required For it. whether it should go to a Specialist or General Duty Officer. Grade I, and lastly whether it should be filled by promotion or by direct recruitment. The nature of the post and the specific qualifications required for it exclude consideration of officers belonging to special it'es other than the speciality in which the Supere. Grade 11 past falls, it is, thereforee, the seniority of only those officers who are qualified in that speciality which can be consi dered for p:-on-iotion to Slipertime Grade it The officers of other specialities cannot be considered at all. For instance, Dr. Ram Kumar Caroli was junior to Dr. Singhal in the Specialists' Grade. But he was promoted to Supertime Grade Ii simply because he could fill the post of a Senior Physician because of his qualifications. But Dr. Sinshal being an eye specialist could not fill that post. The Union Public Service Commission have, thereforee, rightly decided that the ten seniormost candidates belonging only to the speciality concerned can be considered for promotion to Supertime Grade tL In Rum Sharan v. The Deputy Inspector General of Police, Ajmer, : (1965)ILLJ328SC the police force of the State of the Rajasthan was divided into ranges and districts. Seniority of head

constables and constables for the purpose of promotion was considered not on the basis of the whole of the police force but only in the compartments formed by the ranges and the districts. It was contended that this was discriminatory. But the Supereme Court upheld the system against such attack. A similar system has to be followed in the Central Health Service because of the want ofinterchpngeability in the posts.

(32) It was argued that rule 5(3) and the illustration given there under of the old Rules of 1963 had a different system of promotion in which seniority was given importance. Firstly, rule 5(3) and the illustration there under was confined to th6 interchangeable posts in the junior and the senior scale posts only. It did not apply for appointments to Supertime scales. Secondly, the very fact that by the amendment of 1966 even for the equivalent grades the Governent has substituted merit as the preferential consideration in place of seniority shows that the Government has now adopted a different system which today governs the promotions. It is no use looking back to the old rule now. Lastly, for appointment to Supertime Grade I, seniority was never the first consideration even under the old Rules. No complaint can, iherefore, be made against the promotions on this score.

(33) Under rule 10(2) the Controlling Authority may make temporary arrangement to fill any duty post without consultation with the Union Public Service Commission in accordance with the provisions of subregulation of regulation 4 of the Union Public Service Commission (Exemption from Consulfation) Regulations, 1958. According to the said regulation 4(1) it shall not be necessary to consult the Commission in regard to the selection for a temporary or officiating appointment to a post if the person appointed is not likely to hold the post for a period of more than one year. According to proviso (iii) to regulation 4(1) if the person so appointed is likely to hold the post for a period of more than one year from the date of appointment, the Comission shall immediately be consulted in regard to the filling of the post. The Government made certain ad hoc appointments under regulation 4(l)(a). Strictly speaking, they should not have continued beyond the period of one year and if they did. the Commission should have been consulted within the period of one year. It appears that in some cases the period of one year was exceeded. But the Government took action to consult the Commission and act

in. accordance with the advice of the Commission according to proviso (iii) to regulation 4(1). According to the affidavit dated 9th January 1973 and the annexures thereto filed by the Government, all these appointments were referred to the Commission and the appointees continued only with the approval of the Commission. Since the Commission has approved their continuance, the Commission has apparently condoned the delay on the part of the Government in getting the appointments regularised. Since they have already been regularised there is nothing that the Court could do about them now. Some of these persons are not even parties to the writ petitions and against them no relief could have been granted in any case.

(34) For Dr. Chandra Mohan Smt. Leila Seth adopted the arguments of Shri T. L. Garg and further attacked even the virus of the Rules. She first said that the officers in General Duty officers. Grade 1. category had less qualifications and a lesser scale of pay as compared to the officers in the Specialists' Grade. It was, thereforee, wrong for the Government to promote any General Duty Officer, Grade I, to Supertime Grade II. This argument ignores the fact that the General Duty Officers, Grade I, were also required in the Service. There were certain duties which had to be done by them and which could not be done by the Specialists. It was, thereforee, necessary that some avenue of promotion should be open to them also. The superiority of the Specialists has, of course, to be taken into account. This is why the Government has reserved for the Specialists three posts in Supertime Grade Ii for every two posts that are reserved for the General Duty Officers, Grade 1. The total strength of the Specialists' Grade Officers is 466 while the total strength of General Duty Officers, Grade I is 900. Had the two grades been treated equally by the Government for the purpose of promotion, General Duty Officers, Grade I, would have been entitled to double the number of posts of the Specialists' Grade Officers for promotion to Supertime Grade II. But in fact, the Specialists are given 50 per cent more posts than the general Duty Officers, Grade in the Supertime Grade II. This is eminently just and reasonable.

(35) It was then said that there was no selection by the Departmental Promotion Committee for promotion to Supertime Grade Ii from 1966 to 1971 and the vacancies arising between these years were mostly filled by direct recruitment and

that this was unfair to the petitioners. But the petitioners have themselves come forward with the case that the period of service for promotion to Supertime Grade Ii should be calculated from 9-9-1966 only and, thereforee, neither the petitioners nor the respondents were qualified for such promotion till 1974 and 1976. The Government was also hamstrung by their own rule 8(3)(a). Prima fade, that rule is capable of being construed that up to 1974 and 1976 no promotions to Supertime Grade Ii could be made at all. But on further consideration, the Government must have realised that the previous service in the posts included in the category of Specialists and General Duty Officers, Grade I, has to be taken into account. It is on that consideration that ultimately they appointed a Departmental Promotion Committee to bring about a parity between direct recruits and promotees. There is one puzzling feature about the parity which the Government must consider. If 25 posts of Supertime Grade Ii which were filled between 1966 and 1971 on the recommendations of the Selection Committee of 1966 are to be regarded as appointments at the initial reorganisation of the Service under rule 7A(1) then they were not promotions under rule 8(3). The parity has to be maintained only in respect of appointments made under rule 8(3). It is only if these 25 appointments are included in the quota allotted to promotees that a parity between direct recruits and the promotees is achieved. But if these 25 appointments are excluded, then against 56 direct recruits there are only 31 promotees. This would mean that the Government would have to make the next 25 appointments to Supertime Grade Ii by promotion as contrasted with direct recruitment. It was contended by Shri Garg that parity required that out of every two appointments one must go to promotee and one to direct recruit. The reason why the Government did not maintain such a parity is obviously that for some years the Government must have thought that rule 8 (3) (a) required the period of service for the purpose of promotion to be counted from 9-9-1966. It is only after rule 8 (3) (a) was fully considered and the hardship of such interpretation to the promotees came to be realised that promotions were made in 1971 on the basis that the previous service could becounted. As the point was not free from doubt and as the petitioners have themeselves taken the stand that service could be counted from 9-9-1966 petitioners cannot complain that direct appintments only were made and no promotions were made from 1966 to 1971.

(36) The further argument was that the system of rotation should be followed not only in respect of the parity between direct recruits and promotees but also as between the promotees from the Specialists' Grade and the General Duty Officers, Grade 1. The rotation system pre-supposes that the selection posts are interchangeable between the officers belonging to the two sources from which promotion can be made. But in the Central Health Service posts are not interchangeable. The rotation system cannot, thereforee, work. It is the nature of the post and the qualifications required for it in Supertime Grade Ii which determines which candidates can be considered for promotion. The Government cannot, thereforee, be blamed if they could not observe the rotation system.either for the parity or for the ratio. In fact. many more posts have gone to the Specialists than should have gone to them according to the ratio specified in rule 8 (3) . The Specialists cannot, thereforee, complain. It is the General Duty Officers, Grade 1. who could have complained. But they have not done so.

(37) As already stated above, posts in Supertime Grade Ii are only described or are unspecified. None of them has been earmarked to particular speciality or even generally to medicine or to surgery or to public health. It is apparently, thereforee, left to the Government and the Union Public Service Commission to characterise a particular post as belonging to a particular speciality. Once this is done, the qualifications prescribed in the Rules for a post falling in that particular speciality have to be posseseed by a person appointed to that post. Neither of the petitioners has challenged that such determination could be made by the Government. As was pointed by Shri S.B. Wad who appeared for some of the respondents, the petitioners have sought reliefs in the nature of mandamus and certiorari only. They have not sought any relief in the nature of quo warranto. This is why none of the petitioners can challenge the determination of the Government that a particular post in Supertime Grade Ii falls into a particular speciality and, thereforee only persons possessing the prescribed qualifications for that speciality are eligible to that post.

(38) Smt. Leila Seth lamented the position of Dr. Chandra Mohan who was taken in the Specialists' Grade initialy on the reorganisation oF 1966. He apparently acquiesced in that position because the Specialists Grade has a better scale and a

superior position as compared to the General Duty Officers, Grade 1. It was, however, later on realesed by Dr Chandra Mohan that the posts in. Supertime Grade Ii which could be characterised as falling in the speciality of public health are few. One such post was given to Dr.R.N.Basu. Other posts which were given to the respondents in Chandra Mohan's writ petition were not characterised as public health posts. Whether a post in the department of family planning should be regarded as a public health post or not is for the Government to decide. Dr.Chandra Mohan has not placed any material before this Court for deciding that family planning pertains to the region of public health. Eradication or prevention of communicable diseases would appear to be more akin to public health than to medicine though one cannot be sure of this in view of recent developments. Even Dr.Chandra Mohan's only qualifications are said to be in preventive medicine, one does not know how much of the area of public health is now included in preventive medicine. At any rate, anti-malaria and such posts involve a lot of administration. They can, therfore, be given to General Duty Officers, Grade 1. In view of the ratio system, Government is compelled to give certain posts to General Duty Officers, Grade I, and the Government has to select as best as it can posts which are as unspecialised as possible to be given to these person. If in doing so some public health posts are given, the public health specialists like Chandra Mohan cannot complain. Beacause after aU public health posts are less specialised than an eye post or an E.N.T.post or a cardiology post. Dr. Chandra Mohan in fact gave a notice under section 80 Civil Procedure Code to the Government claiming that he should be taken into General Duty Officers, Grade I, as he now realises that he would have more prospects of promotion from that Grade. Having been once selected in 1966 for the Specialists' Grade and having spent six years in that Grade it is doubtful if Dr. Chandra Mohan has any right to sue the Government for being transferred to the grade of General Duty Officers, Grade 1. But that question does not arise in this case for decision.

(39) Dr. Chandra Mohan complains that for the post of Director (Medical) Employees State Insurance Corporation, the Government recommended Dr. G.D. Thapar and claims that he was better qualified for the post. But it has been shown that the said post was partly administrative and partly medical inasmuch as the incumbent thereof was to be in-charge of a hospital with 400 beds. Dr. Thapar

was, thereforee, eminently more qualified for it than Dr. Chandra Mohan who had no post-graduate curative medical qualifications and whose qualifications are in preventive medicine or public health. Dr. Thapar was more senior to Dr. Chandra Mohan. The Government, thereforee, rightly preferred Dr. Thapar to Dr. Chandra Mohan in sending the former on deputation.

(40) Both the writ petitions (Civil Writs 354 of 1972 and 1155 of 1971) are, thereforee, partly allowed and partly dismissed. In both the writ petitions, it is directed that the Government shall have due regard to the fact that from 1967 to 1971 56 appointments to the Supertime Grade Ii were made by direct recruitment under rule 8(3) (as averred by the Government in paragraph 22 of their main counter- affidavit) while only 31 appointments thereto were made by promotion inasmuch as 25 appointments to Supertime Grade Ii were explained by the Government as having been made in 1967, 1968 and 1969 under rule 7A(l) and (2) on the recommendation of the Selectio Committee which met in 1966. Government shall, thereforee, have due regard to the consideration that the next 25 appointments to Supertime Grade Ii, as far as possible, should be made by way of promotion only from the Specialists' Grade and General Duty Officers, Grade I, so that the present lack of parity operating adversely against the officers of the Specialists' Grade and the General Duty Officers, Grade I, should be made good. In Civil Writ 1155 of 1971, the appointment of Dr. Broja Gopal Misra to the post of Regional Deputy Director, National Malaria Eradication Programme, Hyderabad, in Supertime Grade Ii made in September 1971 is set aside. Except as above, both the writ petitions are dismissed and the parties are left to bear their own costs.

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