

S.L. Dave and Another Vs. Union of India and Another

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Mar-15-2012

Judge : The Honourable Dr. Veena Chhotray, Member (a) & the Honourable Dr. Dharam Pal Sharma, Member (J)

Appeal No. : O.A. NO.1930 of 2011

Appellant : S.L. Dave and Another

Respondent : Union of India and Another

Advocate for Pet/Ap. : For the Applicants: Santosh Kumar, Advocate. For the Respondents: R.N. Singh, Advocate.

Judgement :

DR. VEENA CHHOTRAY

1. Both the applicants are Economic Officers under the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, Government of India. They are aggrieved by the rejection of their case for induction in Grade IV of the IES. By way of relief, the OA seeks quashing the impugned order dated 24.2.2011 (Annex A/1) as illegal, unreasonable and discriminatory. Besides, directions for consideration of their case in proper perspective as per the relevant rules with effect from the date they became eligible have been sought. Additionally, directions for grant of all consequential benefits of pay and allowances, seniority, promotion etc. and passing any such other or further order

or direction as deemed fit and proper by the Tribunal have also been sought.

2. The present OA is the second in the series. The earlier OA No.894/2009 agitating similar relief was decided vide the Tribunal's order dated 18.11.2010 in which one of us (i.e. the Member (A) was also a Member) (Annex. A/8). After considering the stands of both the sides, allowing the OA partly following operational directions were issued to the Department of Economic Affairs (DEA):-

“8. In view of the foregoing, this OA is allowed partly and the respondent no.1 is directed to reconsider the case of the applicants in proper perspective in terms of the relevant provisions of rules for induction into the entry grade of IES as per the proposal of the DIPP vide their letter dated 21.5.2008, taking the averments in the OA as supplementary representation and duly considering our observations in the body of this Order. This would culminate into a speaking and reasoned order. To balance the interests of equity, we do not find the prayer regarding grant of any retrospective benefits to the applicants. The respondents are to comply with our directions within a period of three months from the date of passing of this order.”

In pursuance of these directions, the DEA has reconsidered the matter and passed the impugned order. The demand of the applicants for induction into the entry grade of IES has been held as devoid of merit which cannot be acceded to.

3. The learned counsels Shri Santosh Kumar and R.N. Singh would appear respectively for the applicants and the respondents.

4. Both the applicants have been working as Senior Investigators, in regular capacity, in the DIPP since the year 1994. Subsequently these posts have been re-designated as Economic Officers. The claims pertain to their induction at the entry grade in the Indian Economic Service, as a feeder category. The broad background of the IES and the relevant rules had been summed up in the following manner in the Tribunal's earlier order dated 18.11.2010:-

“2.2 The Indian Economic Service is a Group ‘A’ service consisting of a special cadre of officers trained in economic analysis, policy formulation and its implementation. The Department of Economic Affairs, Ministry of Finance

(respondent 1) is its Cadre Controlling Authority (CCA). The original 1961 Rules got superceded by the new Rules 2008 (Annex. A-2). Even as per the new Rules, the entry grade of IES i.e. Junior Time Scale Grade IV, 60% of the posts are filled by the direct recruitment and 40% by promotion of feeder posts, recognized by the CCA for the purpose. It is also pertinent to mention that the duty posts of the IES are spread over a number of Ministries/Departments of Govt. of India, details of which have been incorporated in Schedule II annexed with the RRs.

2.3 As per Schedule IV read with Rule 6, the necessary eligibility qualifications for filling up the promotional quota have been prescribed. By way of educational qualifications, a post graduate degree in Economics or Business Economics are among the several alternatives stipulated therein. The length of service prescribed is at least seven years of regular service as Economic Officers or holding equivalent posts recognized for this purpose in the participating Ministries/Departments.

Both the applicants fulfill the prescribed eligibility conditions in terms of the educational qualifications as well as the length of service.”

5. The stand of the respondent 1 as reflected from the impugned order enlists as the main reasons for non-acceptance of the applicant's claims: (a) As per the Rules, the basic condition for induction into the entry grade of IES is that such posts have to be located in the participating Ministries or Departments. However, DPIIP is not a participating Department of recognized feeder post holders; (b) The applicant's contentions about DPIIP having been a 'participatory department' for this purpose is negated on the grounds that though there has been correspondence on the subject between DPIIP and DEA since 1991; however, there has been no decision to that effect; (c) The reference to inclusion of five Statistical Investigators in 1988 is stated to be as a result of the Apex Court's directions in two cases i.e. Narender Chadha vs Union of India and B.S. Kapila Vs Union of India. Hence, this cannot be construed as a precedent or a basis for an allegation of discriminatory denial against the applicants; (d) The factum of the applicants possessing the requisite eligibility conditions is not really relevant; relevant on the other hand is the requisite that the department should be a

participating one and there should be a recognition as the feeder cadre posts for the said induction; (e) there are several other instances which despite posting of IES Officers at JTS level, have not been recognized as participating department for feeder post holders. Previously also in a similar case of Shri Ramesh Kumar Puri and Shri Chetan S. Jayant vs Union of India and Ors in OA No. 3551/2009, a similar claim had been refused on this very ground of not being a department of feeder post holders for induction into IES; (f) The DIPP's letters being only recommendatory in nature and not giving any cause of action to the applicants; (g) triggering of similar demands from other quarters (h) adversely affecting the vested rights of existing participants (i) and creating various administrative and legal complications have also been cited as the other grounds.

6. Despite the aforesaid rejection, the applicants have stuck to the justification of their demands. The salient contentions reiterated in the instant OA are: (a) the present case is not of recognition or de-recognition of posts as feeder cadre of the entry grade of IES but denial of induction to the applicants. In support of their stand that the DPIP has through out been recognized for the purpose, several communications from the correspondence between the DIPP and the DEA have been cited. This, inter alia, refers to a letter dated 7.10.1994 from the DEA has been referred which mentions re-recognition of Senior Investigators of the Ministry of Commerce as feeder grade to Indian Economic Service (Annex A/9 Colly); (b) In view of the enabling provisions of the RRs and the factum of the applicants possessing the requisite eligibility conditions, the denial of the 'induction' is averred to be an infringement of their Fundamental Rights for fair and equitable consideration for promotion as per the relevant rules and instructions. Besides, it is also alleged to be arbitrary and discriminatory without any reasonable clarifications on intelligible differentia; (c) The Apex Court's directions in B.S. Kapila vs Cabinet Secretary and Ors to give the benefit of promotion to the applicants and such others who are similarly placed on the basis of their entitlement and the feeder post holders eligible to be conferred benefit of the promotion have been relied upon (Ground 'N'); (d) An instance of inclusion of Export Promotion Officers in the Directorate General of Foreign Trade under the Ministry of Commerce and Industry has been given to reinforce the contention of arbitrariness behind respondent's denial in the case of the applicants (Ground 'J'); (e) The grounds of

rejection like availability of financial upgradation under ACP, promotional posts of Research Officers in the DIPP, repercussions on the existing employees of the departments/Ministries included in the list are contended to be untenable by referring to the Tribunal's findings in the earlier OA.

7. In their Counter Reply the respondents have once again made the submissions as to why the applicants have no case. As preliminary submissions, it is stated that (a) there is no malafide on the part of the respondents in not inducting the applicants into the feeder grade; nor any violation of a statutory rule or a binding instruction is involved. (b) On reference from DIPP, the matter had been reexamined in the DEA, but the request for inclusion of the posts in the feeder cadre had not been agreed to and the decision to that effect had been communicated to the DPIP vide the DEA letters dated 11.1.2008, 11.4.2008 and 16.7.2008. (c) Making an averment that the cause of action in this case arose in the year 2008, the present OA is also stated to be barred by limitation. (d) A limited implementation of the Apex Court's orders, referred to in the OA, is stated to have been done. Further, it is argued that the applicants have not cited any instances of induction either prior or subsequent to these judgments. (e) Protecting the interests of the existing feeder post holders and their vested rights; as also to avoid any legal complications arising out of disturbing the inter-se seniority are averred to be 'justified grounds'. (f) Mere possession of eligibility qualifications is stated not to entitle the applicants to seek 'induction': several other Departments where a similar peculiar situation exists of Statistical Investigators not having been recognized as a feeder category has been submitted as an allied argument.

8. Having carefully considered the respective submissions, the relevant rules and the material on record, our findings with regard to the aspects, relevant to the present adjudication, are as below:

8.1 The stand of the respondents is not in consonance with the Scheme envisaged as per the statutory rules:

8.1.1 The relevant rules i.e. The Indian Economic Service Rules, 2008 are the statutory rules framed under Article 309 of the Constitution (Annex. A/2). As per Rule 3, the Indian Economic Service consists of persons as appointed under

Rules 6 and 7. Sub rule (3) speaks of Officers already appointed on regular basis to various grades as on the date of commencement and as specified in Schedule-I. However, it does not stop short at that point. Rule 5 while detailing the different grades, their authorized permanent strength also incorporates the provisions for the review thereof. Rule 6 prescribes the methodology for future maintenance of the service in its various grades. Rule 5 is extracted as here under:

“5. Grades, Authorized strength and its review- (1) The authorized permanent strength of the various grades of the Service on the date of commencement of these rules, the number of posts in each grade and the pay scales attached thereto, shall be as specified in Schedule I.

(2) The distribution of posts over various Ministries or Departments and designation of each post shall be specified in Schedule II.

(3) After the date of commencement of these rules, the authorized permanent strength of various grades of the Service shall be such as may, from time to time, be determined by the Government, which shall be duly incorporated into the Recruitment Rules by amending Schedule I and Schedule II.

(4) The Controlling Authority may, with the approval of the Department of Expenditure, make such temporary additions or adjustments to the strength of respective grades as it may deem necessary from time to time subject to any general or special orders that may be issued by the Government.

(5) The Controlling Authority may, with the approval of the Department of Expenditure, make such adjustments in the distribution of posts between different Ministry or Department, keeping in view the needs of the participating Ministry or Department.

(6) The Controlling Authority may, with the approval of the Department of Expenditure, include in the Service such posts (other than those included in Schedule I) as may be deemed equivalent to the posts included in the Service in status, grades, scales of pay and professional context, or exclude from the Service any posts included in the said Schedule.

(7) The Controlling Authority shall manage the posts in a centralized manner, making the orders of the Controlling Authority binding on the participating Ministry or Department.” A bare reading of these rules shows that either in respect of the authorized permanent strength in various grades or the distribution of posts in different Ministries and Departments, no immutably rigid scheme has been envisaged. While the date of commencement of the rules has been reckoned as the reference point, enabling provisions for review and re-determination from time to time have been incorporated. The present claims do not even (necessarily) entail any consequential changes either in the authorized strength at the Junior Time Scale or the distribution of the duty posts comprised therein under various Departments and Ministries. All it concerns is the enlargement of the feeder cadre recognized for purposes of induction in the JTS posts. The Scheme as envisaged under the statutory rules negates the proposition of any closing lid on the existing feeder cadre of participating Ministries and Departments.

8.1.2 There is no averment before us of the feeder cadre recognized for this purpose as being fixed right since the commencement of the rules. Admittedly, as per the directions of the Apex Court, there have been some inclusions from the DPIIP itself as the feeder category for induction in the entry grade of IES. Even the averment of certain officers being inducted from Export Promotion Organization (Ground ‘J’) has not been factually rebutted by the respondents.

8.2 The impact of the applicants fulfilling the prescribed eligibility conditions is a relevant factor.

8.2.1 Rule 6 (b) pertains to the 40% promotion quota in the entry grade, to which the applicants are aspiring by way of inclusion in the feeder category posts.

“6.(b) The remaining 40 per cent of the posts in the grade (i.e. Assistant Director) shall be filled by promotion of Economic officers or officers holding equivalent posts (pay scale of Rs.6,500-10,500) recognized by the Controlling Authority for this purpose, on the basis of selection in accordance with the provisions of Schedule IV.”

The following eligibility conditions have been prescribed in the Schedule-IV:-

“Officer meeting the following condition (i) Possessing a Post-graduate Degree in Economics or Applied Economics or Business Economics or Econometrics from a University incorporated by an act of the Central or State Legislature in India or other educational Institutes established by an Act of Parliament or declared to be deemed as University under section 3 of the University Grants Commission Act, 1956 (3 of 1955) or a foreign University approved by the Central Government from time to time, and

(ii) having rendered at least seven years of regular service as Economic Officer or holding equivalent post (scale of Rs.6,500-10,500) recognized for this purpose by the Controlling Authority, who shall prepare a list of such posts located in the participating Ministries/Departments of the Government in consultation with the Commission.”

8.2.2 The three fold requisites prescribed as per the eligibility conditions are:

Economic Officers or Officers holding equivalent posts in the prescribed pay scale;

Selection as per provisions of Schedule IV which lay down the eligibility conditions in terms of educational qualifications and length of service;

Recognition of the posts by the Controlling Authority. Further, as stipulated in Schedule IV such recognition has to be in consultation with the UPSC.

That the first two requisites are fulfilled in the present case is not a disputed point. The only contentious part is with regard to the requisite as per serial (iii) above i.e. in respect of the posts in question being ‘recognized’ for the purpose by the Controlling Authority.

8.2.3 Before dealing with the contentious issue of ‘recognition’, we find it apt to emphasize the key importance of the fulfillment of the first two requisites. This is because without the basic satisfaction of these essential conditions, no such claims can be entertainable; nor would the exercise be even worth the labour. To illustrate this point, the decision of the Coordinate Bench of this Tribunal in the OA 767/2009 (Shri Arvind Care and Ors vs UOI and Ors) decided vide an order dated 25.8.2011 is found relevant. (In this judgment one of us i.e. Member (A) was also a

Member). The applicants of that OA had been working as Data Processing Assistants in different Divisions of the National Sample Survey Organization under the Ministry of Statistics and Programme Implementation. Their claims for absorption into Subordinate Statistical Service had not been found tenable considering the basic fact that the applicants were essentially Electronic Data Personnel and as per the statutory requirements, only Statistical personnel were eligible for the absorption.

8.3 The issue of 'recognition' of the posts as the feeder cadre for the entry level posts of IES:

8.3.1 As is the settled law, where a methodology for a decision regarding a particular subject is prescribed under the Rules; the same must be observed. This would be further subject to the fulfillment of the principles of fair play and reasonableness, held to be the touch-stones of exercise of powers by any repository thereof.

8.3.2 As per Rule 4, the 'Controlling Authority' has been defined as the Union Ministry of Finance, Department of Economic Affairs. This however, is to act on the advice of the Indian Economic Service Board. Sub-rule (7) of Rule 5 does prescribe a centralized management of the posts and the decisions of the Controlling Authority being binding on the participating Ministries and Departments. However, the involvement of the participating Ministries and the Departments has been duly recognized, as is clear under sub-rule (5) of Rule 5. The relevant provision under Schedule IV also specifies about the list of the eligible officers holding the feeder category posts in the participating Ministries or Departments being prepared by the Controlling Authority, in consultation with the Commission.

8.3.3 As regards the status of 'recognition' of these posts, varying versions have come before us from both the sides. The claim of the applicants regarding the posts already having been recognized is found to have been supported by the administrative department, the DIPP (Respondent No.2) through the documentary proofs attached along with the OA. However, a contrary stand of no final decision having been taken in this regard, despite a protracted correspondence spanning

over decades, has been taken by the DEA (Res. No.1). While we propose to deal with this aspect a little more at length in the subsequent paragraphs, at this point suffice it is to note that there is no averment before us of the matter ever having been considered in the Indian Economic Service Board, as per rule 4 or the issue of recognition of these posts ever having been referred to the Commission, as is the requirement under Schedule IV.

8.3.4 We therefore, are of the view that from the material available before us, a due observance of the prescribed methodology in the matter of 'recognition' of the posts in question is not found to have been done before rejecting the claims of the applicant or even negating the DIPP proposal. Further, the stand being taken by the DEA as the 'Controlling Authority' (about which also there are qualifiers) is not in consonance with the principles of fair play and reasonableness; but of that a little later.

8.3.2.1.1 The stand of the administrative department i.e. the DIPP is important.

8.4.1 The applicants are reinforcing their claims particularly by relying upon the consistent stand of the administrative department on this issue. The matter had been dealt with by Coordinate Bench of the Tribunal while deciding the earlier OA No. 894/2009. The relevant extracts are reproduced as hereunder:-

"6.2 The basic contention of the applicants has been about the posts of sr. Investigators / Economic Officers in the DIPP having throughout being recognized as the feeder category for induction at the entry grade in the IES. This contention has been rebutted by the respondents solely on the strength of a communication dated 26.3.1991 (Annex. R/2) sent at the Under Secretary level from the DIPP. In reply to the Ground 5 (b), the CA avers about the applicant's contention as being wrong on the basis of the previous records available which indicate that DIPP was not a participating Department of feeder post holders for induction into IES since 1991; and the document cited in support is this letter of 26.3.1991.

The learned counsel Shri Khatana would submit the above stand of the respondents as untenable in view of the latest communication dated 21.5.2008, a letter from the Joint Secretary, DIPP addressed to the Department of Economic

Affairs. This letter, which is extremely critical for correct appreciation of the issues involved in this OA, makes a comprehensive case for recognition of the 3 posts of Economic Officers under the DIPP as a feeder cadre for grade IV of IES. Tracing the background from the year 1988 when 5 Sr. Investigators of the Department (with their names mentioned) had been included in this feeder cadre, the letter traces the tortuous course of the proposal through the years 1991, 1993, 1994, 1997, 1999, 2002, 2006 and then 2008. It, inter alia, mentions about the favourable view taken by the department of Economic Affairs both in the year 1991 as well as in 1993 to en-cadre these posts of Sr. Investigators in the feeder grades. It is also reiterated that the posts of Sr. Investigators (now designated as Economic Officers) do not have any promotion avenue other than that of Research Officer. Considering the importance of the issue, DO letters had been written at the level of Secretary in the year 1999. The Department of DIPP is stated to be a participating Department in the IES and a number of officers of IES Cadre are posted there and holding various posts. Referring to his own DO in 2006 and a reminder in 2008, the following was reiterated:

I would like to reiterate that Department of Industrial Policy and Promotion (DIPP) was a participating Department for the feeder grade IV of IES and has been so till 1993 and no indication is available as to how it has been rerecognized* as a feeder grade IV of IES sue moto by the Department of Economic Affairs. The case of recognition of the posts of Economic Officer (earlier known as Senior Investigators/Economic Investigator Grade-I) in the feeder cadre to grade IV of IES has been pending for a long time and is affecting the career of the concerned officials. Further, it is added that these posts of Economic Officer carry economic functions and the criterion laid down in the then Department of Personnel and Administrative Reforms O.M. No.12016/7/78-ISS dated 09.11.1978.

I would appreciate if you could kindly have the matter re-considered sympathetically so that all the three (3) posts of Economic Officer (earlier known as senior Investigators/Economic Investigator Grade-I) are recognized as feeder cadre to grade IV of IES.”

{*a typographical error for 'derecognized'}

The aforesaid proposal had not found favour in the Department of Economic Affairs, for the reasons mentioned in their reply dated 16.7.2008, already discussed above.

We have dwelt upon this communication at length to clarify that the communication dated 26.3.1991 being relied upon by the respondents should not be taken in isolation, nor does it represent the correct stand of the Department. The other reason that has weighed with us is to demonstrate that the contentions of the applicants stand validated by the Administrative Department itself.

6.3 The learned counsel Shri Khatana has also attached importance to the disclosure under the RTI. These pertain to the processing of the case in the Department of Economic Affairs. A perusal of these records shows that the Department does not have any available records. In one of the notings dated 27.8.2007 by the concerned US, it is clearly stated, in the absence of previous papers on the subject, we are not aware of the grounds on the basis of which the sr. Investigators / Economic Officers from DIPP were dropped from the integrated Seniority List of feeder post holders of IES. This factual submission is not found to be contradicted in the subsequent notings at various levels.

8.4.2 We would like to reiterate the earlier two-fold logical inferences arrived at by the coordinate Bench in the gamut of facts i.e. (a) full justification found by the administrative department in support of the case of the applicants and its being pursued over a number of years; (b) the DEA not having any clue as to the basis on which the names of the Senior Investigators/Economic Officers of the DIPP once figuring in the integrated feeder cadre list for induction at the entry level got dropped.

8.4.3 The counter reply has referred to certain guidelines issued by the Ministry of Home Affairs, the then cadre controlling authority of IES, relating to the eligibility for becoming participants in the feeder grade. It is further submitted that as per these guidelines, there should be no avenue for promotion to Clas-I post except to IES. According to the respondents, since in the present case, promotional avenues to the post of Research Officers are available; the applicant's case for induction does deserve a favourable consideration.

However, as per the applicants, the existing avenues are limited in nature. This contention has found support from the DIPP, the administrative department. There is also no material available before us to show that the aforesaid guideline is applicable with 100% satisfaction in the case of the posts already included as the feeder cadre. In the earlier orders, the Coordinate Bench had not found the grounds of rejection like availability of ACP or the promotional channels of Research Officers as valid grounds for rejection of the proposal. We see no reason to take a different view.

8.5 Claims of the new entrants qua the existing incumbents.

8.5.1 As per the Schedule I, the existing authorized strength of the IES in Junior Time Scale is 102. Schedule II containing the statement of duty posts shows these to be distributed over 19 Ministries/Departments. One of the foremost grounds on the part of the respondents in not entertaining the proposal of the DPIP is on the ground of its repercussions on the other cadres already included as a feeder category for induction in the entry grade of IES. The impugned order as well as the counter reply mention that by inclusion of other officers, the vested rights of the officials already recognized as the feeder cadre in the participating departments would be taken away.

8.5.2 For want of any capping provision on the number of participating departments/Ministries under the relevant rules, such a contention on the part of the respondents cannot be held as tenable. Any absolute rights on the part of the existing feeder categories to the utter exclusion of any new claims would not be in consonance with the scheme as envisaged under the rules. In its judgment in P.U. Joshi and Ors. Vs. Accountant General Ahmedabad and Ors. [(2003) 2 SCC 632], while propounding the general proposition of law about the determination of conditions of service being within the exclusive purview of the State, the limited scope of judicial review had been defined by the Honble Apex Court and the following had been held:-

There is no right in any employee of the State to claim that rules governing conditions of service should be forever the same as the ones when he entered the service for all purposes and except for ensuring or safeguarding rights and

benefits already earned, acquired or accrued at a particular point of time. A Govt. servant has no right to challenge the authority of the State to amend, alter or bring into force new rules relating to an existing service.

The present case does not even involve any alteration in the rules, nor does it involve any vested rights having accrued to the existing feeder category personnel. Hence this contention of the respondents is not found to be acceptable.

8.6 Issue of limitation.

8.6.1 The plea of limitation raised in the counter reply (halfheartedly though) is also not found tenable in the given factual gamut. As per their own admission, the DEA had communicated its non-acceptance of the DIPP proposal in the year 2008. The applicants had agitated their claims first through the OA 894/2009. The impugned order dated 24.2.2011 passed in pursuance of the directions of the Tribunal in the said OA has provided the cause of action in the present OA, which cannot be taken in isolation. Hence it would not be correct to say the instant OA as being time barred.

We may also at this point refer to the view taken by the Apex Court in Improvement Trust Ludhiana Vs. Ujjagar Singh, 2010 (6) SCALE 173. It was observed by the Hon'ble Apex Court that an attempt should always be made to allow the matter on merit rather than throw it on technicalities. Further, the weighing of each case in the facts and circumstances of the case had also been considered important.

8.7 Judicial intervention merited even within the limited ambit of judicial review in such cases.

8.7.1 The law on the subject had been detailed by the Coordinate Bench in its earlier order. The relevant extracts are cited below:-

“5.1 It is true that in a catena of judgments, the Apex Court has been zealous in safeguarding the legitimate domain of the executive and any unwarranted encroachment from the judiciary therein. The judgments relied upon by the respondents regarding the field of policy, which includes determining the service

conditions of its employees and inter alia the avenues of promotion and the criteria to be filled in such promotions, reiterate this very settled position of law. However, having said that, we also must hasten to add that it would not be correct to state that such matters are absolutely outside the judicial purview. In *Union of India vs Pushpa Rani and Ors*, (2008) 2 SCC (LandS) 857, while reiterating the legitimate domain of the employer, the scope for judicial intervention was also defined:

Matters relating to creation and abolition of posts, formation and structuring/ restructuring of cadre, prescribing the source/ mode of recruitment and qualifications, criteria of selection, evaluation of serviced records fall within the exclusive domain of the employer. What steps should be taken for improving the efficiency of administration is also the preserve of the employer.

Further, it was held:

Power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or vitiated by malafide". (Emphasis supplied)

Thus, without questioning the competence of the Cadre Controlling Authority to take the appropriate decision in this case; what we are concerned with is as to whether their present stand attracts any of the above grounds held as justified by the Hon'ble Apex Court for a judicial intervention even in policy matters.

5.2 The basic grievance of the applicants before us is a denial of the legitimate chances of advancement in service. This is contended to be arbitrary and discriminatory. As was ruled by the Hon'ble Apex Court in *S.B. Chatterjee Vs. S.D. Majumdar and Ors.*, (2008) 1 SCC (LandS) 21, the right to be considered for promotion in a fair and equitable way is a fundamental right as per Article 16 of the Constitution of India. Again, in *A. Satyanarayan and Ors Vs. S. Purshottam and Ors.*, (2008) 2 SCC (LandS) 979, the Hon'ble Apex Court had observed the following:

Para30 Although mere chance of promotion is not a fundamental right, but right to be considered therefore is. In that view of the matter, whereby all promotional

avenues in respect of a category of employees for all times to come cannot be nullified and the same would be hit by Article 14 of the Constitution of India.

Providing fair opportunities for promotion for its employees is not only necessary to boost up their moral but is also in the interest of the organization. In *O.Z. Hussain (Dr) Vs UOI*, 1991 SCC (LandS) 649, the Hon'ble Apex Court had observed:

“This court has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency.”

In *Council of Scientific and Industrial Research Vs. K.G.S. Bhatt*, 1990 SCC (LandS) 45, the Hon'ble Apex Court had again observed:

“Para 9 ...It is often said and indeed, adroitly, an organization public or private does not ‘hire a hand’ but engages or employs ‘a whole man’. The present is recruited by an organization not just for a job, but a whole career. One must therefore, be given an opportunity to advance.”

The factual issue in the present case need to be considered in the context of the aforesaid settled position of law.

8.7.2 We had found merit in the applicant's claims even in the earlier OA. However, as a conscious decision, we had refrained from issuing pro-active directions, lest the same should be construed as an unwarranted judicial interference. Instead we had limited ourselves to remitting the matter to the DEA for reconsideration. That exercise has merely resulted in the respondent 1 reiterating its earlier contentions, and evidently has been of no avail. We find the present case covered by the exception under *Pushpa Rani's* case (supra) where a judicial intervention is held to be justified if the action of the employer is found to be contrary to any statutory provisions or is patently arbitrary. We also find the decision being one as amounting to foreclosing the promotional avenues of a category of employees for all times to come, which was not sustained by the Apex Court in *A. Satyanarayan's* case (supra).

8.7.3 The aforesaid detailed reasons also bring out clearly the present action not fulfilling the yardsticks of fair play and reasonableness. In *Man Singh Vs. State of Haryana and Ors.*[2008 (7) SCALE 750], the Hon'ble Apex Court had held:

“Any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have had it.”

9. To conclude, on a careful consideration of the issues involved, we have not found the stand of the respondents as in consonance with the relevant rules or the law on the subject. We have also not found it to be fulfilling the yardsticks of fair play and reasonableness. The issue has been hanging fire between the two Departments for more than two decades. Despite being eligible for inclusion in the feeder category; the enabling provisions under the relevant rules; the persistent advocacy of the case by the administrative department still they have not been able to find a berth - for no valid reason whatsoever. Remitting the matter once again to the respondent No.1 seems to be futile. The matter deserves to be given a quietus.

Resultantly, allowing the OA partly, the impugned order is set aside, and respondent no.1 is directed to give the benefit to the applicants for inclusion as the feeder category for induction into the entry grade of the IES. For considerations of equity, this would be only with prospective effect. The final selection in the posts in the entry grade would only be as per the provisions under the relevant rules.

Our directions are to be complied within a period of three months from the date of receipt of a copy of this order.

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