

An ANALYSIS

Second Judgement in Anti-Seniority Case -in CAT, Delhi

Further to the analysis of the case of Anti-dating submitted by the undersigned, I submit the analysis on the second Judgement by Principal -Bench of CAT-New Delhi. I don't wish to repeat the whole issue again and therefore just move ahead of the earlier.

1- What happened after the earlier analysis..

It may be remembered that in earlier analysis, it was said, that since the Railway-Administration had written to DOPT recommending anti-dating for the Railways, in all circumstances, the judgement should have been implemented without hitch.

Unfortunately, that was not to be. Due to most unfortunate instance of our own Group-"B" Officers-belonging to Federation, played a very negative role, and quoted the Railway administration for, first, wrong implementation-which we could avoid by filling the second case in the name of IRCE-Associations so that the same could be applicable to whole of the batches - and then goading the administration for filing the appeal in the Hon'ble High Court

2- The appeal in High Court

basically filed on the plea that we have not permitted necessary parties.i.e.the the Direct-recruit- as they are likely to be affected adversely, if the seniority is granted to us. Unfortunately, our Federation persons supported our adversaries openly.

The High Court, accepted the plea of the Railway and remanded back the case to CAT, asking them to implead the necessary parties .

It is said in the application as under:

" The matter was carried to the High Court of Delhi in WP (C) No.2020/2011 and WP (C) No.1353/2011, which, vide its order dated 30.05.2011, remanded the case back to this Tribunal with directions to afford the applicants to implead the necessary parties (direct recruits) and proceed afresh. The relevant portions of the order of the High Court of Delhi are extracted below:

14. In the case at hand, as is noticeable, the tribunal has repelled the plea of non-joinder of parties on the ground that the direct recruits were not necessary parties to the original application as the grievance of the applicant was against the respondents. The only illegalities and irregularities was the delay that occurred in holding the DPCs in time. For the aforesaid purpose, the tribunal has based its foundation on the decision rendered in A.P. Wasan and others (supra). On a perusal of the authorities in the field, it is quite vivid that unless the very principle of determination of seniority or promotion is called in question, the necessary parties are to be impleaded. If the policy is basically illegal or a rule is constitutionally invalid, then there may not be a necessity to implead an affected person but in the case at hand, the whole thing hinges on the fact whether the DPCs were belatedly conducted and whether the promotion relates back to the date of arising of the vacancy. This would certainly affect third persons who were appointed / promoted.

15.". This is likely to create anomaly. In our considered opinion, the finding recorded by the tribunal on this score is absolutely pregnable and vulnerable and,

accordingly, we set aside the same. Once we set aside this finding, other findings are to be set aside as the matter has to be remitted to the tribunal for a fresh adjudication after granting opportunity to the applicants therein to implead the affected persons as parties and thereafter proceed to deal with the matter in accordance with law.

16. In view of the aforesaid, the findings recorded in the case of Y.S. Chaudhary forming the subject matter of OA No. 280/2008 and OA No. 2140/2009 with OA No.2661/2010 are set aside and the matter is remanded to the tribunal to afford the applicants therein to implead the necessary parties and to proceed afresh. "

3-Hearing in CAT again

Full case was again heard, in the CAT, As many as 4-Advocates turned up on behalf of Railways, including one on behalf of Direct-recruits.

4- The important aspects of the case are placed below, as per the judgement given finally on 07.03.2012

Central Administrative Tribunal Principal Bench

M.A.No.1656/2011 & O.A.No.280/2008
with
M.A.No.1650/2011 & O.A.No.2661/2010
New Delhi, this the 7th day of March, 2012

O R D E R - By Shailendra Pandey, Member (A):

5. *The Hon'ble Court has described the case of applicants rightly as under:-*

By this common order, we propose to dispose of the OA 280/2008 and OA 2661/2010, as they involve identical issues of facts and law.

The issue involved in the above OAs is whether the delay in convening meeting of the DPCs by the respondents (Railway Board) in the case of the applicants was due to reasons beyond control or because of administrative delay/inefficiency and what would be the consequence if the delay on the part of the respondents is not found to be explained/justified.

In this OA the applicant and four others were Group 'B' officers and had been substantively appointed in Group 'A' /Junior Scale of the IRSE with effect from 14.1.2005 vide Ministry of Railways Notification dated 23.03.2005 and their revised inter se seniority in IRSE on their promotion to Group A from Group B was circulated vide Ministry of Railways notification dated 18.5.2006. They were aggrieved by the delayed induction from Group B to Group A. Being dissatisfied, they approached the tribunal in OA No. 280/2008 for setting aside the notification dated 18.5.2006 issued by the respondent inducting the applicants in Group A Junior Scale of IRSE with effect from 14.1.2005, instead of from 2002-03 when the vacancies arose and further to direct the respondents to give them the promotion/induction in Group A Junior Scale IRSE from the date when the vacancies arose in 2002-03 instead from 14.1.2005 when the DPC was conducted.

It is the case of the applicants that their promotions should be made effective from 1.4.2002 as the DPCs for induction to Group A for the vacancies of 2002-2003 ought to have been conducted before December, 2001 to be effective from 1.4.2002 (for the vacancies of the year 2001, for panel of 2002-2003) but the respondents failed to take any action in this regard. It is contended that when clear vacancies in Junior Scale Group A of IRSE were available and eligible Group B officers with the requisite non fortuitous service were also available, there was no justification for the delayed induction and the action of the respondent for delayed promotion to Group A Junior Scale of IRSE from Group B with effect from 14.1.2005 (instead of 1.4.2005) against the vacancies of 2002-2003 is highly illegal and prejudicial to their interest. It was averred that the applicants had been inducted against the vacancies pertaining to the examination year 2001 (vacancies of 2002-2003) in the promotion segment of Group A Junior Scale of IRSE for the year 2002-03 and according to the guidelines of the Department of Personnel & Training (DOPT), the panel for the vacancy for the year 2002-03 should have been available on 1.4.2002 whereas it was made effective from 14.01.2005, the date of the DPC, as a consequence of which the applicants have been placed under the direct recruit IRSE officers of 1998 Officers Examination Batch, causing loss of more than three years in their seniority and future promotional prospects for no fault of theirs. It was contended that the DOPT instructions prescribed taking of advance action for filling up vacancies of a year and for convening of DPCs of Group B officers for promotion to Group A well in time so as to be effective from the next calendar year, but the respondents had failed to follow these instructions.

We had, vide our order dated 29.01.2010 in OA 280/2008, after going through the rival contentions raised at the Bar and discussing the authorities which were cited relating to grant of benefit of retrospective promotion relating to DPC and the requirements of following the instructions of DOPT, partly allowed the Original Application by quashing the notification dated 18.05.2006 and had directed as follows:

35. The impugned notification dated 18.05.2006 is quashed and set aside. The respondents are directed to convene a review DPC to consider the promotion/induction of the applicants from the date when the vacancies arose in 2002-2003, and thereafter to pass appropriate follow up orders with regard to their seniority in Group 'A', subject to it being ensured that the seniority accorded does not result in the applicants superseding officers who were senior to them in Group 'B' and have already been promoted to Group 'A'. This may be done within a period of three months from the date of receipt of a copy of this order.

Based on our order, a Coordinate Bench of this Tribunal had passed a similar order dated 23.12.2010 in OA No.2661/2010."

6. As already indicated above, the case was taken to High court in appeal, and on the basis of this direction, the Applicants then impleaded about 30 Direct recruits and also their Federation, which was objected by the Railways. The Court observed as under:-

The applicants' counsel has also referred Order I, Rule 8 of the Civil Procedure Code, 1908, which provides as under:

8. One person may sue or defend on behalf of all in same interest.- (1) Where there are numerous persons having the same interest in one suit, - one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

Having considered the above submission with reference to the MA, we are of the considered view that now since in pursuance of the directions of the High Court of Delhi, notices have been issued to 30 persons which include persons from all the four batches and the Federation of Indian Railway Officers Association and, some of these (private respondents No.10, 17, and 19) have also filed their counter replies and as there is a common issue involved, the interest of the direct recruits would be adequately covered/protected by the impleadment as above. The MA is, therefore, allowed and we now proceed to adjudicate the OA on the basis of the pleadings before us.

7. The case was then discussed and the prayer was made as under:-

O.A.No.280/2008:

1. The applicants in this OA were Group `B` officers and were substantively appointed to Group `A` /Junior Scale of the IRSE w.e.f. 14.01.2005 vide Ministry of Railways notification dated 23.03.2005 and their revised inter-se-seniority in IRSE on their promotion to Group `A` from Group `B` was circulated vide Ministry of Railways notification dated 18.05.2006 (the impugned order). They have challenged their delayed induction from Group `B` to Group `A`, alleging that this has adversely affected them through loss of seniority, chances of promotions and resultant monetary loss through out their service life and even after retirement, and have prayed for the following reliefs:

To set aside the Notification dated 18.5.2006 (wrongly typed in the OA as 18.06.2006) issued by the Respondent inducting the applicant in Group `A` Junior Scale of IRSE w.e.f. 14.1.2005 instead from 2002-03 when the vacancies arose, as the same is illegal and arbitrary, and is in violation of principles laid down under the natural justice.

To direct the respondent to provide the promotion/induction in Group `A` Junior Scale IRSE Services to the applicant from the date when the vacancies arose in 2002-03, instead from 14.1.2005 when the DPC was conducted within.

3. According to the applicants, when clear vacancies in Junior Scale Group `A` of IRSE were available, and eligible Group `B` Officers with the requisite non fortuitous service were also available (the applicants had completed more than 3 years of stipulated service in Group `B` from 1992 itself and were waiting for their induction in to Group `A` as per Rule 209 (B) of the Indian Railway Establishment Code, Volume-I) there was no justification for the delayed induction and the action of the respondent of delayed induction/promotion of the applicants to Group `A` Junior Scale of IRSE from Group `B` w.e.f. 14.1.2005 (instead of 01.04.2002) against the vacancies of 2002-03 is highly illegal, arbitrary and against the principles of natural justice and has caused material prejudice to them.

4. It is the case of the applicants that they have been inducted against the vacancies pertaining to examination year 2001 (vacancy year 2002-2003) in the promotion segment of Group `A` /Junior Scale of IRSE for the year 2002-03 and that according to the guidelines of the Department of Personnel & Training (DoPT), the panel for the vacancy year 2002-03 should have been available on 1.4.2002 whereas it has been made effective from 14.01.2005 (the date of the DPC). As a result, the names of the applicants have been placed under the direct recruit IRSE officers of 1998 Officers

Examination Batch, causing loss of more than 3 years in their seniority and future promotional prospects for no fault of theirs.

5. The learned counsel for the applicants has pointed out that there are clear instructions of the DoPT to take advance action for filling up vacancies of a year and arrange DPCs of Group `B` Officers for promotion to Group `A` Officers well in time so as to be effective from the next calendar year, but the respondents have failed to follow these instructions. There was even a directive from the Prime Minister of India in this regard, yet the DPC in the case of the applicants was delayed for no fault of theirs and for no justifiable reasons. Such unjustified delay cannot be permitted.

7. It is, therefore, prayed that the impugned notification dated 18.05.2006 be quashed as it hampers the seniority prospects of the applicants on a permanent and continued basis without any valid reasons, and that the respondents be asked to induct/promote the applicants to Group `A` /Junior Scale of IRSE from the date when the vacancies arose.

8. The reasons given by the Administration are as under:

“9. The respondents have opposed the OA and have submitted that framing of a DPC proposal for promotion to Group `A` of any of the Railway Services requires several basic inputs such as seniority list of Group `B` Officers, their ACRs of the preceding 5 years, vigilance/D&AR reports, etc., which have to be obtained from the 16 Zonal Railways and 6 production units, each having offices of 8 major departments besides offices of 9 miscellaneous departments, and that this is, therefore, a time consuming process and that some delay in holding of the DPC Meetings becomes unavoidable for these bona fide reasons. They have also stated that promotion of Group `B` officers of Railways to Group `A` are regulated in terms of guidelines contained in DoPT OM dated 10.04.1989 which clearly provides that in cases where UPSC's approval is required the date of UPSC's letter communicating its approval or the date of actual promotion of the officer, whichever is later, should be the date of regular promotion of the officer. It is also submitted that the DoPT has clarified that even if the Department is unable to hold the DPC in time for any bona fide reason, it does not give rise to any vested right for promotion from the date/year of vacancy and that there is no concept of `date as due` in the matter of appointments including promotion, and it is, therefore, not possible to provide the relief sought for. It is further stated that efforts have been constantly made to stream line the system and to reduce the delay but in spite of these efforts, some delay has occurred but this cannot result in the applicants being allowed to claim retrospective promotion.

10. In the Written Submissions filed on 05.03.2012, the respondents have also opposed the OA on the following additional grounds:

- a) that the OA is time barred and not maintainable
- b) that no fundamental right or any statutory right or other enforceable right of the applicants has been infringed and that applicants cannot rely upon the policy guidelines/administrative instructions as regards holding of DPC since the same does not give any enforceable right to the applicants
- c) that the action of the respondents in issuance of the promotion order from the date of receipt of communication from the select list of the DPC held by UPSC is just, bonafide and in accordance with the policy guidelines of the Government which provides as under:

6.4.4. Promotions only prospective While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year (s).

d) that the recruitment rules or the policy instructions of the Govt. do not provide for grant of retrospective seniority or promotion from the date prior to the date of appointment”

10 The Court then discussed this matter as under:

“17. The main focus and emphasis in all the instructions issued on this subject is that Ministries/Departments should take action to fill up posts in time so as to ensure that there is no delay and that the DPC panel should be available in advance for vacancies arising over a year. This was emphasized even at the level of the Prime Minister as would be seen from the DoPT s OM No.23036/3/77-Estb.(D) dated 7.10.1977 (Annexure P2), the relevant portion of which is extracted below:

The Prime Minister has noted that in a number of cases appointments are made adhoc either because Recruitment Rules have not been finalized or there has been delay in the filling up of the posts in a regular manner. The Prime Minister has, therefore, desired that Ministries/Departments should take action to fill up the posts in good time before vacancies actually occur in order to avoid adhoc appointment. In case where there is unjustifiable delay, responsibility for the delay should be assigned and those responsible should be suitably dealt with it.

18. Towards this end, in 1998 the DoPT also issued a Model Calendar for DPCs and related matters vide OM No.22011/9/98-Estt.(D), dated 8.09.1998 read with OM of even number dated 13.10.1998. “

“20. In the case before us, the vacancies circulated for the exam year 2001, were supposed to be effective from 01.04.2002 onwards but the panel was made available w.e.f. 14.01.2005 only, i.e., after a delay of more than three years. The applicant became eligible for promotion in 2001 and was already working on the post on ad-hoc basis which would show that the vacancies were also available at that time but still the applicant was denied the benefit of his regular induction on account of the administrative delay, which was for a period of more than three years.

23. It is also stated that in the past Railway Federations also had highlighted the issue of delay in promotion on account of delay in conducting DPCs. The Federation s demand for the grant of promotions with retrospective effect in such cases of delay had been considered and a reference was also made to DOP&T vide Board s OM No.E(GP) 2004/1/23 dated 1.7.2004, requesting it to consider giving promotions with retrospective effect, reckoning the vacancy year as the due date of promotion rather than the date of approval of UPSC. However, DOP&T in reply vide OM No.22012/1/2201-Estt.(D) dated 29.7.2004, maintained its consistent policy, underlined in its OM dated 10.4.1989, stating inter-alia that if the department is unable to hold DPC in time for any bonafide reason, it does not give rise to any vested right for promotion from the date/year of vacancy.

24. The relevant portion of the DoPT OM dated 29.07.2004, referred to above, is reproduced below:

. Normally, there should be no delay in holding of DPCs and the system should be so streamlined that the delay, if any, are minimized. In fact, ideally the DPC

should be held as per the model calendar prescribed vide DoPT OM dated 8th September, 1998. However, there may still be a case where the DPC may be delayed for a valid reason. If the Department is unable to hold the DPC in time for any bonafide reason, it does not give rise to any vested right for promotion from the date/year of vacancy in terms of some of pertinent judgments enclosed.

(Emphasis supplied)

The Court then finally observed as under:-

We have perused the OM referred to by the respondents and find that both the OMs (that dated 10.4.1989 and the one dated 29.07.2004) would apply to cases in which there are bona fide reasons for delay in holding the relevant DPC meetings the exact words used have been highlighted above.

25. It has also been brought to our notice that the DoPT guidelines also lay down the procedure to be followed where DPC s have not met for a number of years. This is extracted below:

6.4.1 Where for reasons beyond control, the DPC could not be held in an year(s), even though the vacancies arose during that year (or years), the first DPC that meets there after should follow the following procedures.

It is the contention of the respondents that Para 6.4.4 prescribed that promotions will have only prospective effect even in cases where the vacancies relate to earlier year (s) . However, in our view, para 6.4.4 is qualified by para 6.4.1 and will have to be read along with it. It would, therefore, apply only in cases where the DPC could not be held for reasons beyond control . The repeated emphasis in various instructions issued by the DoPT is on convening DPCs/preparing of promotion panels in time, and it is not open to the respondents to ignore these instructions and place reliance only on a particular para of the instructions.

After this the Court decided as under:-

26. The crucial question, and in fact the only question, to be decided in this OA is whether the delay on the part of the respondents in convening the relevant DPC was bona fide and for reasons beyond control or just the result of administrative laxity/lethargy and could have been avoided. “

11. *And it was concluded as under :-*

“29. As observed earlier, the general reasons given for delay are not acceptable in view of the clear instructions of the DoPT reiterated from time to time, even at the level of the Prime Minister himself, that advance action needs to be taken to ensure that DPCs are held in time and that the panel for promotion is available in time. Further, these general reasons fall on their feet in the light of the respondents own assertion that the proposals for 2009-10, have been sent. The reasons given by the respondents under `Specific reasons pertaining to DPC for IRSE for 2002-03 do not establish or explain in any way how the inordinate delay in the DPC proposal for 2002-03 was on account of `reasons beyond control . In fact, a perusal of the same shows that the UPSC was responding very promptly to proposals sent whereas the Railway Administration took time, e.g., the UPSC recommendations for 2000-01 and 2001-02 were received on 16.9.2002 but on account of a few errors in the DPC recommendations - what these errors were has not been mentioned review DPC proposal was sent to the UPSC on 16.06.2003, i.e., after over 9 months (!), and without complete ACRs which were finally sent on 17.07.2003. The delay in the matter was glossed over even though the respondents were fully

aware of stagnation amongst Group `B` officers of various departments of the Railways including in the IRSE where stagnation was acute . In spite of being aware of this, another year and a half was wasted in correspondence/discussion regarding additional vacancies over and above the percentage prescribed in the Recruitment Rules, and finally the proposal sent was without these additional vacancies (!). The DPC was finally held on 18-19 November 2004 and 31st December 2004. **We are of the considered opinion that the inordinate delay with regard to the 2002-03 DPC stands unexplained.**

30. We were also not given even a single instance of any case in which the concerned Railway official had been reprimanded or cautioned or punished for delay on his part in this regard as clearly directed in DoPT's OM of 2004, referred to above.

A very important observation of the court to be noted:-

31. Therefore, we have no hesitation in holding that the present case will not fall in the category mentioned in para 6.4.1 above, i.e., where for reasons beyond control, the DPC could not be held and, therefore, para 6.4.4. would not be applicable. The case, therefore, must be categorized as a case of unexplained delay attributable to administrative laxity/lapses. In fact, although this may not be the case here, such delays can also be deliberate and can be resorted to, to deprive an individual or a group/class of individuals, the benefit of promotion which would accrue to them in normal course had their cases been dealt with promptly. Such a position cannot be allowed to continue or go unnoticed.

32. The delay in this case has caused material prejudice to the applicant(s) which would be of a permanent and continuing nature as it would affect him (them) at every stage of his (their) career (s), through loss of seniority, delay in further promotions and also monetary loss through out service and perhaps even after retirement (as a result of the drawal of lower pensionary benefits). As this delay has occurred for absolutely no fault on their part, there is considerable justification for considering positively the request of the applicants to antedate their promotion/induction to Group `A` Junior Scale of IRSE from the date when the vacancies actually arose in 2002-2003 instead of from 14.01.2005.

33. The respondents have pointed out that if such directions are given for grant of promotion to the applicants to Group `A` from a notional date, i.e., the first day of the vacancy year i.e. 1.04.02 and if along with it, the benefit of antedating of seniority by 5 years is also retained, then it would amount to grant of seniority in Group `A` from 1.04.1997. This would lead to their placement in the integrated seniority list below the junior-most direct recruit IRSE officer of 1994 Engineering Services Examination Batch (earliest date of joining in the batch was 02.01.96). **We, however, do not find this to be a justifiable reason not to set right the adverse consequences that have accrued to the applicants for no fault of theirs.**

35. The Hon ble Apex Court in P.N.Premachandran (supra), referred to above, held that employees cannot be made to suffer on the basis of the administrative lapses as a result of which DPC was not conducted in due time. It has further been laid down that the promotion in case of late holding of DPC shall relate back to the date on which the vacancy actually arose in such cases. The relevant portion of the said judgement is extracted below:

7. It is not in dispute that the posts were to be filled up by promotion. We fail to understand how the appellant, keeping in view the facts and circumstances of this case, could question the retrospective promotion granted to the private respondents herein. It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for no fault on their part. It is also not disputed that in ordinary

course they were entitled to be promoted to the post of Assistant Director s, in the event, a Departmental Promotion Committee had been constituted in due time. In that, view of the matter, it must be held that the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time although on a temporary basis, but were qualified at the time when they were so promoted and found to be eligible by the Departmental Promotion Committee at a later date, should be promoted with retrospective effect.

36. In the case decided recently (on 3.11.2009) by a Coordinate Bench of this Tribunal in the OA 2364/2008, referred to above, the applicant belonged to Group 'A' of the Indian Supply Service and had been promoted w.e.f. 14.06.2007 as Director in the Junior Administrative Grade Service. The vacancy in this Grade became available on 31.10.2003 and according to the rules, the DPC for this should have been convened by 31.03.2003, but was delayed on the ground that litigation with regard to seniority was pending in different fora. The Tribunal did not find this to be a justified reason for not convening the DPC(s) regularly for year-wise vacancies (as there was no stay) and observed that the applicant had become entitled for consideration for promotion to the post of Director from the year 2003 whereas he had been promoted only in the year 2007, and accordingly directed as follows:

7 we allow this application, directing the respondents to consider promotion of the applicant from the year 2003 by constituting a review DPC, if required. Let this exercise be done as expeditiously as possible and preferably within a period of three months from today. There shall, however, be no orders as to costs.

In the case in this OA also, there was no valid reason to have delayed the DPC and the delay was entirely due to the respondents for no fault on the part of the applicants, and similar directions, therefore, need to be issued.

12. The court's observations are important and they gave the following direction:-

39. We, therefore, hold that the delay in this case does not stand sufficiently explained and we have no hesitation in reiterating that the delay in this case is attributable entirely to administrative inefficiency/laxity in sending of complete particulars/proposals/ACRs. If such inefficiency/laxity in sending proper and complete proposals/particulars are accepted as constituting bonafide and sufficient cause for delaying DPCs, then it would be possible for any group of people in the administration to deny promotions to persons who are legally entitled/eligible to be considered for the same, by deliberately delaying matters by sending incomplete particulars and records in piecemeal. Such a situation cannot obviously be allowed, as it adversely impacts the right of an individual to be considered for promotion when he is eligible and when vacancies are available.

13. Another objection raised by the Railways was delt with as under:-

40. As regards the submission of the official respondents that no fundamental right or any statutory right or other enforceable right of the applicants has been infringed, we do not find the same to be acceptable. In a catena of judgements, the Hon ble Supreme Court has laid down that if the rules are silent in any particular aspect, the Government will be within its powers to fill up the gaps and supplement the rules and issue instructions which are not inconsistent with the Rules already framed. The rules and such instructions are required to be followed together and it is not permissible to act contrary to instructions so issued. In this connection, we may usefully quote the following relevant extracts from the Judgement of the Hon ble Apex Court in Guman Singh v. State of Rajasthan, 1971 (2) SCC 452:

"It is true that the government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

41. We, therefore, repel the submission of the respondents' counsel that the action of the respondents in issuance of the promotion order from the date of receipt of communication from the select list of the DPC held by UPSC is just, bonafide and in accordance with the policy guidelines of the Government which provides that promotions will have only prospective effect even in cases where the vacancies relate to earlier year (s). We have already observed earlier that this is applicable only where the delay in holding the DPC is justified and attributable to reasons beyond control.

7.3....." As a logical corollary, a delay in holding the DPCs and preparing panels on schedule can only be acceptable in judicial review, if it is shown to be for bona fide and unavoidable reasons."

As elaborated above, the Hon'ble Apex Court, while upholding the decision of the Tribunal in NR Banerjee's case, had specifically dwelt on this aspect, and after considering the law from varied aspects, had held the preparation and finalization of the yearly panels as a mandatory requirement.

14. The observations made by the Hon'ble court in respect with IRCE Association are produced below:-

8. To conclude, after considering the pros and cons, the balance tilts in favour of the applicants. This is a case where despite availability of vacancies and of the eligible candidates, the DPCs were not held in time, and in fact, were delayed for a long period of four years. The reasons given by the respondents for not convening the DPCs are not found to be justified when put under judicial scrutiny. If as per their own averment, the DPCs could not be held despite the dates being fixed repeatedly as the necessary procedural requisites like the ACRs, vigilance clearance, etc. could not be completed; such factors cannot be stated to be as 'not attributable to the respondents' or 'beyond their control'. Such unjustified delay is neither warranted as per the repeated instructions issued by the DOPT, nor has met judicial approval in various pronouncements by the Tribunal, the High Courts and the Apex Court (some of which have been cited in this case). The matter seems to be clinched by the notional promotions from an earlier date already having been given to two among the applicants.

Resultantly, the OA is disposed with directions to the respondents to consider the grant of regular promotions to the remaining 9 applicants also (other than the applicants No.1 and 3 of the OA No. 1563/2011) from the date of their respective ad hoc promotions or from the date of occurrence of the regular vacancy by constituting a review DPC, if required. On grant of promotions, the entitlement would be to the reliefs as granted vide the respondents' Office Order dated 1.9.2011. Our directions are to be complied within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

15 . Final direction is very clear:

45. In view of the above discussion and particularly in the context of the Apex Court Judgement in P.N.Premachandran (supra) and the order of the Coordinate Bench of this Tribunal in OA No.2364/2008 and OA No.1536/2011 (supra), the OA is partly allowed. The impugned notification dated 18.05.2006 is quashed and set aside. The respondents are directed to consider the request of the applicants herein by convening a review DPC to consider the promotion/induction of the applicants from the date when the vacancies arose in 2002-2003, and thereafter to pass appropriate follow up orders with regard to their seniority in Group `A . Action as above may be taken within a period of three months from the date of receipt of a copy of this order.

46. In the same terms, the other MA 1650/2011 and OA No.2661/2010 are also disposed of. No costs.

Registry is directed to keep a copy of this order in the other OA No.2661/2010.

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