

URGENT

**No. 404-04/2014-STG III
Government of India
Ministry of Communications
Department of Telecommunications**

Sanchar Bhawan, 20 Ashoka Road
New Delhi-01, Dated: 27th March, 2017

SPEAKING ORDER

Subject: Representation of Shri Rama Krishna Nelli dated 18.03.2017 for convening of DPC for promotion of ITS officers in compliance of Hon'ble High Court order dated 15.02.2017

Whereas Shri Rama Krishan Nelli (Staff No.20394), an officer of ITS Gr. A, has represented vide his representation dated 18.03.2017 for convening DPCs for promotion of ITS officers in various grades of ITS Group 'A' against the vacancy year 2012-13 onwards in compliance of order dated 15.02.2017.

2. Whereas, Shri Nelli had filed OA No. 794/2014 before Hon'ble CAT, Hyderabad for the above mentioned purpose. The said OA was disposed of by the Hon'ble Tribunal vide its order dated 01.09.2016 whereby the respondents were *inter-alia* directed to comply with the order passed in O.A. No.836 of 2013 that was related to cadre review and thereafter take necessary steps for maintenance of the ITS Cadre by conducting DPCs regularly.

3. Whereas, aggrieved by Hon'ble CAT order dated 01.09.2016, Sh. Nelli filed WP No. 31965 of 2016 before Hon'ble High Court of Hyderabad. In reply to the WP No. 31965 of 2016 challenging the order dtd. 01.09.2016 (Copy enclosed), Hon'ble Court was apprised with the latest position of completion of cadre review of ITS as conveyed vide DoT OM No. 9-5(1)/2016-Estt. Dated 29th December 2016. Court was further apprised that the department had started the process of convening DPCs for promotion in various grades of ITS Gr. A.

4. Whereas, considering the facts of the case, Hon'ble Court disposed of the WP vide order dtd. 15.02.2017 (Copy enclosed) directing the respondents to give effect to the order dtd. 01.09.2016 in O.A. No. 794/2014 by maintaining the ITS Cadre by conducting DPCs regularly.

5. Whereas, consequent upon the issue of OM dated 29th December 2016, as mentioned in para 3 above, the department has initiated the process of convening DPC for promotion in various grades of ITS Gr. A as per the available vacancies. As such, the directions of Hon'ble Court are being entirely complied by the respondents.

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6. And whereas, DPC for promotion to Advisor Grade (HAG+) of ITS Gr. A against the vacancy year 2016-17 has already been conducted and proposal for approval of the recommendations of DPC has been submitted to ACC after due approval of Hon'ble Mos(IC), MoC. Proposal for convening DPC against vacancies created in HAG and SAG of ITS Gr. A have also been submitted to UPSC on 20.01.2017 & 02.03.2017 respectively.

7. The competent authority considered the representation of Shri Nelli dtd. 18.03.2017 in the light of above facts. After examination, the Competent Authority has found that, since the directions of the Hon'ble Court dtd. 15.02.2017 are being complied by this department, as such, there is no merit in the submissions made by Shri Nelli in his representation dated 18.03.2017. Accordingly, the representation dated 18.03.2017 is hereby disposed off.

Anil Kumar
27/3/17

(Anil Kumar)
Director (Staff)
Tel. No. 23036645

To,
Shri R K Nelli
Director CMS
Hyderabad

Copy to:

1. All concerned ITS officers who have represented for convening of DPC for promotion of ITS officers in compliance of Hon'ble High Court order dated 15.02.2017.
2. Director (IT) for uploading the same on DoT website.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:: HYDERABAD

O.A. NO. 021/00794/2014

DATE OF ORDER: 1st September 2016

BETWEEN

Rama Krishna Nelli, S/o. Venkata Swamy,
Aged about 47 years, Occ: Director,
Department of Telecommunications, Hyderabad,
R/o. 12-2-830/15, Flat No. 401, Crest Homes,
Alapati Nagar Colony, Mehdipatnam, Hyderabad – 28.

... APPLICANT

AND

1. Union of India, Rep. by its Secretary,
Department of Telecommunications,
20, Ashok Road, New Delhi – 110 001.
2. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi – 110 069.
3. The Secretary,
Department of Personnel and Training,
North Block, New Delhi – 110001.
4. Deputy Director General,
TERM Cell, Hyderabad,
2nd Floor, Kavadiguda Tel Exge Bldg
Bholakpur, Hyderabad.

....Respondents

COUNSEL FOR THE APPLICANT : Dr. A. Raghu Kumar, Advocate

COUNSEL FOR THE RESPONDENTS: Mr.T. Hanumanth Reddy, ✓
Sr. PC for CG
Mr.M.C. Jacob, Advocate for Sri
B.N. Sharma, SC for UPSC

CORAM:

HON'BLE MR. B.VENKATESWARA RAO, MEMBER (JUDL.)
HON'BLE MRS. RANJANA CHOWDHARY, MEMBER (ADMN.)

ORDER

(PER HON'BLE MR. B.VENKATESWARA RAO, MEMBER (JUDL.))

This application is filed by the applicant under Section 19 of the
Administrative Tribunals Act, 1985 seeking the following relief:



"In view of the above facts and circumstances, the applicant herein prays that this Hon'ble Tribunal may be pleased to direct the respondents to take all necessary steps for maintenance of Indian Telecommunications Service Group A in terms of Rule 8(2) and Schedule III of ITS Recruitment Rules 1992 by conducting DPCs regularly in the interest of justice, and be pleased to pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. The relevant facts in brief are as follows:

The applicant initially joined the erstwhile Department of Telecommunications in 1990 as Junior Telecom Officer and after completing the pre-induction training at Jabalpur joined as JTO at Sangareddy, Medak SSA in February 1991. In 1991, he appeared for Indian Engineering Services Examination conducted by the UPSC and he was selected and allotted to the Indian Telecom Services. He joined the JTS Grade of ITS Group A on 19.02.1993 and his probation was confirmed on 18.02.1995. He was promoted to STS Grade of ITS Group A on 23.08.1996 and to JAG of ITS Group A on 31.12.2004. He was granted NFSG JAG on 01.01.2005 and NFU SAG on 08.07.2013. He submits that as per Rule 8(2) of the Indian Telecommunications Service (Group-A) Recruitment Rules, 1992 published by the Government of India, appointment in grades specified in the Sl. No. 1 to 6 in the Schedule-I shall be made by promotion from amongst the officers in the next lower grade possessing minimum qualifying service as specified in the schedule III. Further, Schedule II contemplates that an officer in the Junior Administrative Grade (JAG) (i) with eight years regular service in the grade, failing which (ii) with seventeen years of total regular service in ITS Group A of which four years of regular service shall be in the Junior Administrative Grade in the ITS Group A will be eligible for promotion to Senior Administrative Grade (SAG).



3. The applicant contends that he is eligible for consideration for promotion to SAG w.e.f. 31.12.2012 with eight years of regular service in the JAG Grade or w.e.f. 18.02.2010 with 17 years of regular service in Group A. He further submits that on formation of BSNL, the ITS Group A posts have been transferred to BSNL/MTNL by a Cabinet decision and since then the posts of ITS Group A in BSNL/MTNL are being considered as encadred posts of ITS Group A and promotions are being given based on the combined vacancies that arose in DOT as well as in BSNL/MTNL apart from the retirement vacancies in the ITS Group A service. The cadre review proposal of ITS Group A was sent to DOPT and the same was pending in DOPT from 2000 onwards.

4. The respondents contested the O.A. by filing a reply denying the contentions and averments of the applicant and the applicant has also filed a rejoinder.

5. Heard learned counsel appearing for both sides.

6. Dr. A. Raghu Kumar, learned counsel for the applicant mainly argued that the cadre review of ITS Group A is pending with the 3rd respondent from 2000 onwards. So far, the vacancies in DOT, BSNL and MTNL are being considered for promotion of ITS Group A. He submitted that, when the UPSC objected for consideration of ITS posts in BSNL/ MTNL for conducting DPC for promotion of ITS Group A, the 3rd respondent vide letter dated 22.02.2007 clarified that the UPSC has so far been conducting DPCs after formation of MTNL in 1986 and BSNL in 2000 and it was not possible to segregate posts of BSNL/DOT and frame separate rules and non-conducting of DPC will lead to a serious crisis of



management. That, the Director to the Government of India is equivalent to the Executive Director of BSNL. Since the ITS posts were transferred to BSNL and MTNL, they carry the rank of the Civil Posts of the Government of India. If the said ITS posts in BSNL and MTNL are abolished, then all the ITS Group A officers need to be repatriated back to DOT along with their posts and the ITS officers cannot be deployed in the PSU posts against their wishes, that too on the posts which do not commensurate their rank in Government. Learned Counsel further contended that, without considering all these aspects, the Finance Branch of DOT restricted the strength of ITS Officers to 463 (476-13 where sanction for drawing back the post is pending) by distorting facts in violation of the rules governing the sanctioned strength of an organized Group A cadre and based on the said distorted information, approval of the Cabinet was obtained for restricting the cadre strength of ITS officers to 463 and the same was done without even consulting the UPSC. As such, the said action of the respondents is perverse and bad in law and against the principles of natural justice and violative of Articles 14 & 16 of the Constitution of India.

7. Learned counsel further submitted that in *Union of India & Another Vs. Hemraj Singh Chauhan & Others* in Civil Appeal Nos. 2651-52/2010 decided on 23.03.2010, the Apex Court held that "It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution". He contends that despite the well settled legal position, the respondents have not taken any steps to conduct DPC for promotion of eligible ITS Group A Officers in



terms of Rule 8(2) and Schedule III of ITS Recruitment Rules, 1992, which is bad, illegal and violative of Articles 14 and 16 of the Constitution of India. Learned counsel further submitted that the applicant has already completed 21 years of service in ITS Group A and he is eligible to be considered for promotion to SAG of ITS Group A in accordance with Rule 8(2) and Schedule III of ITS Recruitment Rules, 1992 and the inaction on the part of the respondents defeats the fundamental right guaranteed to the applicant.

8. Learned counsel further contended that, out of the total strength of ITS posts of 8864 as on 21.10.2011 as sanctioned by DOT and BSNL, 476 ITS officers were working in DOT and about 100 ITS officers were working on Central Deputation/ Deputation to State Governments and the remaining ITS officers were sent on deemed deputation to BSNL/MTNL on encadred ITS posts. That, on termination of deemed deputation and repatriation of 434 ITS officers back to DOT vide their order dated 03.11.2011, equivalent number of posts stands reverted back to DOT and the same has already been approved by the Controlling Authority. Thus, at present, 897 ITS posts (463 + 434) available in DOT are being used for payment of salary and posting of ITS officers, but even these posts are not being considered for promotion purpose due to biased, arbitrary and malafide application of rules by the applicant. That, the process of absorption of Group A officers was initiated in 2005 and the process was completed only recently in 2013 and the applicant is one among the officers of ITS Group A who have opted for DOT. That, around 20 vacancies occurred in the CGMs (HAG) and 60 vacancies in SAG of ITS Group A during 2012-13 due to retirement/ resignation/ chain vacancies, etc. i.e. before finalisation of absorption process by DOT vide OM dated 11.03.2013 and these vacancies are required to be filled up by



convening DPC against these vacancies and the matter is still pending with DOT as per the information furnished to the applicant. Apart from the vacancies occurred in 2012-2013, vacancies might have occurred in 2014-15 and 2015-16 due to retirement/ resignation, etc and if these vacancies are taken into account, he will become eligible for promotion to SAG Grade of ITS Group A. He further contended that, as per the reply filed by the respondents clearly demonstrate that there is no cadre review after formation of BSNL in respect of ITS Officers. As such, the cadre strength, as determined in 2008, shall continue to operate in accordance with the rules of recruitment.

9. On the contrary, Sri T. Hanumantha Reddy, Learned Standing Counsel for the respondents submitted that mere qualifying the minimum service does not make the Government servant eligible for promotion to the next grade as it depends upon other facts. That, the sanctioned strength of ITS was fixed by the Department of Telecommunications as 463 with concurrence of Finance Branch of the Department and the approval of the Cabinet. That, on formation of MTNL in 1986 and BSNL in 2000, Group A, B, C and D employees/ officers of the Government Department were transferred to these companies on 'as is where is basis' along with their posts on deemed deputation and these posts were transferred to BSNL/MTNL and prior to completion of the absorption process, all the posts transferred to BSNL/MTNL were being operated by the officers sent there on deemed deputation and none of these posts were being filled by BSNL/MTNL through their own cadres. Thus, these posts were being taken into account for the purpose of promotion of ITS officers to higher grades. However, in the post-absorption scenario, ITS officers have been deployed in BSNL/MTNL for a period of 10 years on year to year diminishing basis on the premise that the posts



vacated by the deployed officers on their retirement/ promotion, etc. will be filled by BSNL/MTNL by their own cadres and such retirement/ promotion will not cause any vacancies for promotion in DOT. That, it has been stipulated in the terms and conditions of deployment of ITS officers in BSNL/MTNL approved by the Cabinet that the posts of BSNL and MTNL against which these officers would be deployed would not be counted towards cadre strength of ITS for the purpose of promotion and these officers would be eligible for consideration for promotion against the vacancies arising in DOT out of the sanctioned strength of 463 as on date or the revised strength determined after the cadre review. The respondents stated that till completion of the cadre review of ITS, services of ITS officers in excess of the current sanctioned strength of this service are being utilized in this Department.

10. Learned standing counsel further submitted that the proposal for promotion in SAG and CGM grade against the vacancy year 2012-2013 which occurred before completion of absorption process (11.03.2013) was examined in detail in DOT and was referred to DOPT, which, after examination, stated that the promotion in ITS Group A can be made within the sanctioned posts of ITS in DOT i.e. 463 (HAG + 04; HAG: 05; +SAG: 56; JAG:100; STS:280 and JTS:18). Since the vacancies arose during 2012-2013 are in excess of sanctioned strength of SAG and CGM and it is not possible to promote the ITS officers against the posts transferred to BSNL/MTNL, the request for promotion to SAG and CGM grade cannot be acceded at this stage.

11. Having heard both sides and after perusal of the material on record, it is clear that it is not in dispute that the cadre review of ITS Group A is pending



before the DOPT from 2001 onwards. There is no dispute with respect to the authorized strength of ITS till 2011, up to which time, the DPCs were conducted regularly for promotion of ITS officers. The last DPC for promotion to CGM's Grade of ITS against the vacancy year 2011-12 was held on 02.09.2011 and the review-cum- supplementary DPC for promotion to SAG of ITS against the vacancy year 2011-12 was held on 28.06.2012. Thereafter, DPC was not held for promotion of ITS officers either for SAG or for HAG. Till this time, the authorized strength of ITS was considered as 8335, as notified by DOPT, for conducting DPCs for promotion of ITS Officers. The main contention of the applicant is that the authorized strength of ITS Group A is 8335 as notified by the DOPT in their website and the DPC should be conducted on yearly basis by the DOT for promotion of ITS officers for the vacancies arise due to death/promotion/retirement/resignation of the ITS Officers in any grade after 2011-12 also. Broadly, there is no dispute with such contention till the year 2011-12 upto which the DPCs were conducted regularly. The controversy arose in the year 2013 when the absorption process of Group 'A' officers into BSNL/ MTNL is concluded. It is the contention of the respondents that on 01.10.2000, the ITS posts were transferred to BSNL/ MTNL and after conclusion of absorption process, the posts of BSNL and MTNL are not counted towards the cadre strength of ITS and due to completion of absorption process, determination of ITS posts in DOT is necessitated and accordingly, the current ITS cadre strength in DOT has to be taken as 463 for all practical purposes which was determined with the concurrence of Finance Branch of DOT considering the posts retained in DOT as on 01.01.2000 and the posts drawn back from BSNL from time to time.

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12. In view of the above pleadings and submissions of both sides and after perusal of the material on record, the following issues that arise for consideration:

1. Whether the ITS posts have been transferred to BSNL/MTNL on 01.10.2000 as contended by the respondents and whether such transfer of ITS posts to BSNL/ MTNL is a correct legal proposition?
2. Whether the determination of ITS cadre strength in DOT as 463 in consultation with Finance Branch of DOT in post-absorption scenario is in accordance with the rules on the subject? Whether the respondents have acted fairly?
3. Whether non-conducting of DPC from 212-13 onwards for promotion of ITS is as per rules on the subject?
4. To what relief?

Issue No.1:

13. This issue deals with the transfer of ITS posts to BSNL and MTNL as contended by the respondents. The respondents have not produced any order with respect to transfer of ITS posts to BSNL and MTNL. A perusal of material on record throws light to Rule 37-A of CCS(Pension) Rules, 1972 which is also inserted in the Central Civil Service (Pension) Rules 1972 (in short 'CCS Pension Rules') on 30.9.2000 simultaneously with the formation of BSNL. This Rule 37-A of CCS Pension Rules is the consolidated instructions about conversion of a Department of the Central Government into a Public Sector Undertaking or an autonomous body and treatment of employees on such conversion. The relevant parts of the Rule 37-A of CCS Pension Rules are as below:

"37-A. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Public Sector



(1) On conversion of a department of the Central Government into a Public Sector Undertaking, all Government servants of that Department shall be transferred en-masse to that Public Sector Undertaking, on terms of foreign service without any deputation allowance till such time as they get absorbed in the said undertaking, and such transferred Government servants shall be absorbed in the Public Sector Undertaking with effect from such date as may be notified by the Government.

(2) The Central Government shall allow the transferred Government servants an option to revert back to the Government or to seek permanent absorption in the Public Sector Undertaking.

(3) The option referred to in sub-rule (2) shall be exercised by every transferred Government servant in such manner and within such period as may be specified by the Government.

(4) The permanent absorption of the Government servants as employees of the Public Sector Undertaking shall take effect from the date on which their options are accepted by the Government and on and from the date of such acceptance, such employees shall cease to be Government servants and they shall be deemed to have retired from Government service.

(5) Upon absorption of Government servants in the Public Sector Undertaking, the posts which they were holding in the Government before such absorption shall stand abolished.

(6) The employees who opt to revert to Government service shall be redeployed through the surplus cell of the Government.

(7) The employees including quasi-permanent and temporary employees but excluding casual labourers, who opt for permanent absorption in the Public Sector Undertaking shall, on and from the date of absorption, be governed by the rules and regulations or bye-laws of the Public Sector Undertaking.

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14. It is seen that while setting up BSNL, the orders were issued for transfer of staff vide Department of Telecom Services Letter No. 2-29/2000-Restg. dated 30th September 2000, as per which, the Government of India decided to transfer the business of providing telecom services in the country currently run and entrusted with Department of Telecom Services (DTS) and the Department of Telecom Operations (DTO) as was provided earlier by the Department of Telecommunications (DoT) to the newly formed company viz., BSNL with effect from 1st October 2000. It is further mentioned in the said OM that it has been decided to make the following interim arrangements for smooth transition of administration and operations to the new company:

“ (i) The establishment (officers, staff, employees and industrial workers) sanctioned for exchanges/offices, in various telecom circles, metro districts of Calcutta and Chennai, project circles, civil, electrical and architectural wings, maintenance regions, specialized telecom units namely Data Networks, National Center for Electronic Switching, Technical and Development circle, Quality Assurance circle (except TEC), training institutions, other units like telecom factories, stores and electrification projects of DoT/DTS/DTO (belonging to various organized services and cadres given in Annexure A to this letter) and posted in these circles/offices/units will stand transferred to Bharat Sanchar Nigam Limited along with their posts on existing terms and conditions, on as is where is basis, on deemed deputation, without deputation allowance, with effect from 1st October 2000, i.e. the date of taking over of telecom operations by the Company from DTS & DTO. Bharat Sanchar Nigam Ltd. will exercise control and supervision of staff working against these posts.... ”

15. The other rule which are relevant to determine this point is Indian Telecommunications Service Group 'A' Recruitment Rules, 1992. The relevant



provisions of the said Recruitment Rules, relevant for the purpose of this point, are set out below:

- 2 (1) "Commission" means the Union Public Service Commission;
- 2 (2) "Controlling authority" means the Minister-in-charge of administration in the Department of Telecommunications;
- 2 (5) "Government" means the Central Government;
- 2 (7) "Post" means any post in a grade whether permanent or temporary, mentioned in Schedules -I to these rules;
- 4 (1) The following persons shall be the members of the service
 - (a) Persons appointed to a post under rule 5; and
 - (b) Persons appointed to a post under rule 6;
- 4(3) A person appointed under clause (b) of sub-rule (1) shall be a member of the service in the appropriate grade applicable to him specified in Schedule I, from the date of such appointment.

6 Grades, authorized strength and its review -

- 6(1) On the date of commencement of these rules, the posts in the various grades in the service, their numbers and scale of pay, shall be as specified in Schedule I;
- 6 (2) On and from the commencement of these rules, the authorized strength of the posts in various grades shall be such as may, from time to time, be determined by Government;
- 6 (3) The controlling authority may in consultation with the Commission, make temporary additions to, or reduction in the strength of the posts in various grades as it may deem necessary from time to time subject to any general or special order issued by the Government;
- 6 (4) The controlling authority may in consultation with the commission, include in the Service such posts as may be equivalent to the posts included in the services in status grade, pay scale and professional requirements other than those included in schedule I or exclude from the service a post included in the said Schedule;



6(5) The controlling authority may, in consultation with the Commission, appoint an office whose post is included in the service under sub-rule (4) to the appropriate grade in a temporary capacity or in substantive capacity as it may deem fit, and fix his seniority in such grade in accordance with the general orders and instructions issued by the Government from time to time.

16. The posts belonging to ITS are governed by ITS Recruitment Rules. Rule 37-A of CCS (Pension) Rules speaks about treatment of employees on conversion of Government Department into PSU and the OM dated 30.9.2000 contemplates the transfer of ITS posts to BSNL. Now, the question that arise is whether the respondents are correct to apply the provisions of Rule 37-A of CCS (Pension) Rules, 1972 to transfer the ITS posts to BSNL and determine the abolition of posts of a service which was constituted as per the rules framed under Article 309 in the form of Indian Telecommunications Service Group 'A' Recruitment Rules, 1992. In other words, whether the inserted Rule 37-A of the CCS (Pension) Rules, 1972 has impliedly repealed the provisions of the ITS Recruitment Rules, 1992?

17. In our opinion, this point is aptly covered by the *ratio* laid down by Hon'ble High Court of Judicature at Bombay in *Shri Prince Shivaji Maratha Boarding House's College of Architecture & other Vs State of Maharashtra & others* in Writ Petition No. 5942 of 2004 wherein it was held that:

8. In U.P. State Electricity Board vs Hari Shankar Jain, (1978) 4 SCC 16, the Supreme Court observed:

"In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears



that the special Act again received consideration from Parliament”.

10. In *State of M P vs. Kedia Leather and Liquor Ltd &ors*, (2003) 7 SCC 389, a two Judge Bench of the Supreme Court observed:

“There is presumption against a repeal by Implication; and the reason of this rule is based on the theory that **the legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation.** (See *Municipal Council, Palai v T J Joseph*, AIR 1963 SC 1561, *Northern India Caterers (P) Ltd v State of Punjab*, AIR 1967 SC 1581, *Municipal Corpn of Delhi vs Shiv Shankar*, (1971) 1 SCC 442, and *Ratan Lal Aduki v Union of India*, (1989) 3 SCC 537). When the new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle *expressio unius (persone vel rei) est exclusion alterius*. (The express intention of one person or thing is the exclusion of another), as illuminatingly stated in *Garnett v Bradley*, (1878) 3 AC 944. **The continuance of the existing legislation, in the absence of an express provision of repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act that the two cannot stand together.** But, if the two can be read together and some application can be made of the words in the earlier Act, a repeal will not be inferred (**Emphasis is ours**).

11. A two Judge Bench of the Supreme Court in a recent judgment in *Godavat Pan Masala Products I.P. Ltd vs Union of India*, 2004 AIR SCW 4483, observed that in case of conflict between a special law and a general law, even if both are enacted by the same legislative authority,



the special law must displace the general law to the extent of inconsistency. The operation of the maxim generalia specialibus non derogant has been approved and applied by the Court in such situations.

20. In the light of the above observations it is obvious that the Legislature never intended to confer on the AICTE a super power undermining the status, authority and autonomous functioning of the existing statutory bodies in areas and spheres assigned to them under the respective legislations. There is nothing in the AICTE Act to suggest a legislative intention to belittle and destroy the authority or autonomy of Council of Architecture which is having its own assigned role to perform. The role of the AICTE vis-à-vis the Council of Architects is advisory and recommendatory and as a guiding factor and thereby subscribing the cause of maintaining appropriate standards and qualitative norms. **It is impossible to conceive that the Parliament intend to abrogate the provisions of the Architects Act embodying a complete code for architectural education, including qualifications of the Architects by enacting a general provision like section 10 of the AICTE Act.** It is clear that the Parliament did have before it the Architects Act when it passed AICTE Act and Parliament never meant that the provisions of the Architects Act stand pro tanto repealed by section 10 of the AICTE Act. **We, therefore, hold that the provisions of the Architects Act are not impliedly repealed by the enactment of AICTE Act because in so far as the Architecture Institutions are concerned, the final authority for the purposes of fixing the norms and standards would be the Council of Architecture.** Accordingly, we quash and set aside the order of the Deputy Director reducing the intake capacity of the petitioner college of architecture from 40 to 30. Rule is accordingly made absolute in terms of prayer clauses (a) and (b) with no order as to costs.

(Emphasis is ours).

18. In *Nirmal Chandra Bhattacharjee & Ors. Vs Union of India & Ors.* reported in 1991 Supp. 2 SCC 363, the Hon'ble Apex Court observed as under:



“No rule or order which is meant to benefit employees should normally be construed in such a manner as to work hardship and injustice specially when its operation is automatic and if any injustice arises then the primary duty of the courts is to resolve it in such a manner that it may avoid any loss to one without giving undue advantage to other”.

19. In *R.S. Ajara and ors. Vs. State of Gujarat and ors. (1997) 3 SCC 641*, the Hon'ble Supreme Court held that a benefit that has accrued under the existing rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down or destroy any right which has become crystallized and no rule can be framed under the proviso to Article 309 of the Constitution which affects or impairs the vested rights.

20. Undoubtedly, the Government has got the power under proviso to Article 309 of Constitution to make rules and amend the rules. Nevertheless, such amendments cannot take away the vested rights and such amendments must be reasonable, not arbitrary or discriminatory violating Articles 14 and 16 of the Constitution.

21. By virtue of operation of Rule 4 of ITS Recruitment Rules, a member of ITS holds lien on a post in any grade of Indian Telecommunications Service. Transferring the ITS posts to BSNL and MTNL as contended by the respondents and thereby limiting the cadre strength of ITS to the posts in DoT alone will have effect on termination of lien of the members of the ITS on such transferred posts. FR9(13) defines 'lien' to mean the title of a Government Servant to hold on regular basis a post including a tenure post to which he has been appointed on regular basis and on which he is not on probation. The connotation 'lien' came to be interpreted by the Apex Court in the case of *Ram Lal Khurana Vs. State of*



Punjab, 1989(4) SLR 243 wherein the Hon'ble Apex Court ruled that

“Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed. Generally when a person with a lien against a post is appointed substantively to another post, he acquires a lien against the latter post. Then the lien against his previous post automatically disappears. The principle being that no Government Servant can have simultaneously two liens against two posts in two different cadres. It is a well-accepted principle of service jurisprudence.”

This means, if the Government Servant is on deputation or holding a post in another cadre, his lien shall revive as soon as he ceases to hold the post in that another cadre. DoP&T vide its OM No: 28020/1/2010/Estt.(C) dated 26th Dec 2013 notified the termination of lien as under:

Termination of Lien:

9. A Government servant's lien on a post may in no circumstances be terminated even with his consent if the result will be to leave him without a lien upon a permanent post. Unless his lien is transferred, a Government servant holding substantively a permanent post retains lien on that post.

If the argument of the respondents is accepted that the ITS posts in DoT are transferred to BSNL and MTNL, then it tantamounts to civil death of ITS officers in their parent department.

22. After giving our anxious consideration to the facts of the case, we are of the view that having regard to our findings on Issue No:1, we declare the contention of the respondents that the ITS posts were transferred to BSNL and MTNL is not a correct legal proposition and the respondents do not have any right to transfer the ITS posts to BSNL and MTNL without



Issue No.:2

23. The respondents contended that in post-absorption scenario, the determination of ITS posts in DoT was necessitated and the ITS cadre strength in DoT was arrived as 463 by DoT in consultation with the Finance Branch of the Department. The respondents have not produced any order with respect to determination of ITS cadre strength as 463. On the other hand, the applicant contended that the authorized strength of ITS Group 'A' is restricted to 463 erroneously instead of 8335 by the respondents without following the procedure prescribed by DoP&T for cadre review of Group 'A' services and the procedure prescribed as per ITS RRs for maintenance of the service. The applicant filed the following documents -

- (i) Indian Telecommunications Service (Group - A) Recruitment Rules, 1992
- (ii) Statistical profile as on 01.01.2008 published by DoPT
- (iii) Information under Right to Information Act on the method of arrival of Sanctioned Cadre Strength of ITS Group 'A' as 463 and its approval
- (iv) Note for the Cabinet dated 23.01.2013 submitted by the Department of Telecommunications on the subject of 'Absorption of Group 'A' officers including ITS officers in BSNL and MTNL and requirement of such officers in these organizations.

Rule 4 of ITS Recruitment Rules defines the Member of Indian Telecom Service. According to this rule, unless a person is appointed to a post in any grade of ITS, whether permanent or temporary, he cannot be considered as a Member of ITS which means a person appointed to Indian Telecom Service virtually acquires a lien on a post which is included in the authorized strength of the ITS. As per the Cabinet Note, the number of ITS officers working as on



29.10.2012 is 1857. This implies that the authorized strength of ITS can never be 463 as already 1857 ITS officers are working who have been appointed by the President to a post in any grade of ITS as per Rule 4 of ITS Recruitment Rules.

24. Rule 6 of ITS Recruitment Rules speak about various grades in ITS, authorized strength of ITS and its review. According to the Rule 6(3), the Controlling Authority may, in consultation with the Commission, make temporary additions to, or reduction in the strength of the posts in various grades as it may deem necessary from time to time subject to any general or special order issued by the Government. The respondents contend that the sanctioned strength of ITS was fixed by the Department of Telecommunications as 463 with concurrence of Finance Branch of DoT and approval of the Cabinet. As seen from the material on record, no such exercise was carried out by the respondents in terms of Rule 6 of ITS RR while fixing the ITS strength as 463_inasmuch as there was no consultation with the UPSC also by the Competent Authority.

25. There is no dispute with the authorized strength of Indian Telecommunications Service as 8335 as on 1.1.2008 as illustrated in statistical profile of Technical Services published by the DoP&T with grade-wise strength of Higher Grade (Above AS) -4, Higher Grade (AS Level) - 75, Senior Admn Grade - 482, Junior Admn Grade - 1271, Senior Time Scale - 5681 and Junior Time Scale - 812.



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26. The Annexure-4 of the "Cabinet Note" on the issue of Absorption of Group A officers including Indian Telecom Service (ITS) officers in Bharat Sanchar Nigam Limited (BSNL) and Mahanagar Telephone Nigam Limited (MTNL) and requirement of such officers in these organizations (in short "Cabinet Note") shows that only 2211 ITS Officers are eligible to take absorption in BSNL / MTNL on 1.10.2000. In other words, the total working ITS officers in DoT, BSNL and MTNL put together on that date is 2211. When BSNL was formed on 1.10.2000, the ITS officers were transferred on as is where is basis to BSNL along with their posts barring some of the officers who were working in DoT and MTNL on that date. In our opinion, the calculation of the Establishment Branch that only 476 ITS posts were retained in DoT is wrong as less than 2211 ITS officers were transferred to BSNL on 01.10.2000 along with their posts which implies that the ITS posts transferred to BSNL are less than 2211 and all remaining ITS posts are retained in DoT on 01.10.2000.

27. The issue of authorized strength of ITS and decadrement of posts from ITS were discussed in the Committee of Secretaries meeting held on 29.10.2012 under the chairmanship of Cabinet Secretary in the committee room of Cabinet Secretariat as part of the preparation of the Cabinet Note. The relevant portion of the discussion is extracted below:

4. Secretary, DoP&T, while broadly agreeing to the proposal and stating that the comments of the department will be sent to DoT soon, mentioned that there has to be clarity on the concept of decadrement of posts of ITS in DoT. The posts against which ITS officers have been posted in BSNL/ MTNL cannot be added to the ITS cadre strength in DoT. BSNL/ MTNL will have to create their own posts and build up their own cadre. Secretary, DoT clarified that of the total ITS cadre posts of 8335 as on 01.01.2008, the number of working ITS officers as on date is 1857, and hence the proposal is for proforma



decadrement of 6478 (8335-1857=6478) posts from ITS cadre. Similarly, proforma decadrement of other Group 'A' Services is as per the chart in para 6 of the CoS note dated 22.10.2012. Further, there is a need to decadre the posts when in subsequent years, ITS officers posted in BSNL/MTNL retire or are reverted to Government on a year-to year basis as per the chart at Annexure 'E' of the CoS note dated 22.10.2012. Secretary, DoP&T clarified that for all practical purposes, sanctioned strength of ITS cadre should be based on the number of posts created in Government i.e. DoT and should not include the posts in BSNL/MTNL. If any new work of permanent nature in the Department/Government is envisaged, the same can be considered during cadre review and accordingly, the posts should be created as per the procedure.

5. JS, DoP&T mentioned that clarity is also required on whether or not the posts in BSNL/ MTNL will be taken into account for giving promotion, initially in DoT. **Secretary, DoP&T stated that DoT has to first work out the cadre strength of ITS required in DoT based on a cadre review.** Jobs of a temporary nature cannot be considered for being encadred. Further, Secretary, DoP&T mentioned that officers who are on deemed deputation to BSNL / MTNL cannot be given promotion unless the recruitment rules of BSNL/ MTNL provide for the same. JS, DoT, however, mentioned that ITS officers on deemed deputation to BSNL/ MTNL are eligible to be promoted till the process of absorption under Rule 37A is completed but once the process is finalized, they may no longer be eligible. (*Emphasis is ours*)

28. This Tribunal in OA 836/2013 in ITSA vs UoI & others has observed that:

Para 34 : one is left with a lingering taste of unease with the way in which the total posts of one service i.e. IP&TAFS have increased to 420 when the officers in the cadre are much less than this number, while that the other i.e. ITS is drastically reduced to 463 more so when the officers in the cadre are much more than this number. Surely, it cannot be the case that the scope of work of one service has



dramatically increased manifold to justify increase while the functions of the other has been whittled drastically reducing their strength.

The Respondents stated that the argument of the applicants that the ITS cadre working strength of 2211 in 2009 is misleading as majority of the posts are in BSNL/MTNL. This itself perhaps puts to rest the doubt that the lien of the ITS officers who are on deputation to BSNL/MTNL/other departments, as envisaged in FR-13 and FR-14, was not taken into consideration while arriving at the strength of ITS cadre borne in DoT. The Monograph on the Cadre Review of Group 'A' Central Services issued by the 2nd Respondent states that a well-structured cadre consists of Regular Duty Posts and Reserves and the latter are intended to serve as substitute for regular duty posts. In the event service officers holding duty posts being temporarily away from their cadre on leave, training or deputation, as it is expected that at any time there will be some officers who are on leave, deputation or training. This is in line with the principles of lien enumerated in the FR-13 and FR-14. **This leads to the inevitable conclusion that the 3rd respondent (i.e. DoT) has limited the cadre strength of ITS to the number of posts in DoT alone without considering the lien of the ITS officers who are on deputation to BSNL/MTNL/other Central and State Government Departments which is in violation of Fundamental Rule-13 and Fundamental Rule-14"**

(Emphasis is ours)

29. The Absorption Cell of DoT sought information from Establishment Branch of DoT with regard to particulars of sanctioned posts of various services of DoT especially to declare the number of officers in different grades of services to be declared surplus. While furnishing the information on total sanctioned posts of ITS both in DoT and BSNL, the Director (Estt.) remarked that – *“Since the information sought by the Absorption Cell is regarding number of sanctioned posts in various grades of ITS, TTS, TFS and GCS in the context of requirement of*



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officers in DoT, the status of total sanctioned posts and posts currently being operated in DoT have been provided in para 5 and 6 above. As far as actual present requirement of ITS officers in DOT is concerned, the same will be provided to Absorption Cell after approval of the competent authority as per details given in para 4 above. This puts rest to the doubt that only 476 ITS posts are retained in DoT as the said figure is only the number of ITS officers working in DoT on that date". Thereafter, after discussing with the Additional Secretary(T), it was decided to cross-check the information from finance wing. The Accounts Officer (Fin) examined the details and came to a conclusion that the total number of Group 'A' posts of ITS in DoT is 463. This was concurred by ADG(Fin), Director(Fin), DDG(FEB) and AS(T). The respondents have not carried out any exercise in terms of Rule 6(3) of ITS RRs or as mandated in the guidelines for Cadre Review of Group 'A' services while determining the ITS cadre strength in DoT as 463. The lien held by the officers on deputation is also not considered while arriving at the ITS cadre strength as 463.

30. In our view, the action of the DoT in determining the ITS cadre strength as 463 is without jurisdiction and not as per the procedure laid down in the rules on the subject. The action of DoT, in our opinion, is arbitrary. We do not hesitate to hold the determination of ITS cadre strength as 463 by DoT as bad in law. This issue is decided in favour of the applicant.

Issue No.3:

31. It is seen that the last DPC for promotion of ITS officers was held on 2.9.2011 for the vacancy year 2011-12 and the review-cum-supplementary DPC for promotion to SAG of ITS against the vacancy year 2011-12 was held on 28.6.2012. The guidelines issued by DoP&T on DPC mandates that the DPCs



should be convened at regular intervals. The said guidelines stipulate that the requirement of convening annual meetings of the DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question. The respondents failed to submit any such certificate from the appointing authority. The main contention of the respondents is that the DPC for promotion of ITS officers can be convened only if a vacancy arises out of the ITS cadre strength of 463. We have already determined the issue and held that the determination of ITS cadre strength as 463 by DoT as bad in law.

32. Hon'ble Supreme Court of India in CA No. 2651-52 of 2010 in Union of India and another vs Hemaraj Sing Chauhan and others held that:

38. It is an accepted legal position that the right of eligible employees to be considered for promotions virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution."

33. Hon'ble High Court of Lucknow in Chandra Prakash Sharma Vs State of UP through the Prin. Secy., Housing and Urban Planning in Service Bench Case No. 105 of 2011 decided on 27.01.2011 held that:

"Depriving a Government employee from the promotional avenues facing stagnation and in consequence thereof there is demoralizing effect on the employees working in a cadre."

"Their Lordship of Hon'ble Supreme Court expanded the horizon of Article 14 read with Article 21 of the Constitution and also add promotional avenues as civil rights and held that employee cannot be deprived from his promotional avenues by the State on unfounded ground."



34. Kolkata Bench of this Tribunal in Sunil Bhattacharya vs Union Of India & Anr decided on 02.03.2000 observed and held that –

“As per the OM No. 22011/3/91-Estt. (D) dated 13.5.91 it is obligatory on the part of the administration to hold Departmental Promotion Committee meeting every year for making promotions against the vacancies arising every year, thereby the delay in filling up of the vacant post does not cause any injustice to the employees.” (Para 4)

“Therefore it is the constitutional mandate that every employee if he comes within the zone of consideration for the next higher post, he should be exposed before the DPC and if found suitable by the DPC, he will get the promotion and if unsuitable, remains there, This is the vested right of an employee under Article 14 of the Constitution of India, which is further enlarged by Article 16, which are to be read in conjunction with Article 21, "Right to Life". The process is the Constitutional mandate and not the sweet will and pleasure of the departmental authorities.” (Para 12)

“If the DPC meetings are held as per the rules, every employee who comes within the zone of consideration will have equal opportunity for promotion and appointment to the next higher post at the time when the employee is ripe for the same.” (Para 12)

“In the service jurisprudence getting promotion is one of the "Life objects-Pride of an employee." The employee has every right to be considered for promotion as per rules. If the action for convening the DPC meeting is not initiated at the appropriate time, the life span on promotional post is in jeopardy and that cannot be compensated by simply granting the monetary benefits. Right to hold an office is the prime thing i.e. the status of the job one holds and the salary attached to that post is secondary.” (Para 12)

“The other connotation "equal protection" must be understood to mean that from out of persons who have to be considered the promotion on availability of a vacant post or of a post likely to be vacant in the near future by which time process of DPC will normally be completed and the



considered by the DPC at the appropriate time when the employee is eligible for being considered for promotion. In other words Article 14 of the Constitution is the clog on the arbitrary acts of the executive to hold the DPC whether the authorities like, but it must be held well within time so that the equal protection for that post to be considered is maintained." (Para 13).

"Further by postponing the DPC meeting, the promotional life span would be reduced to some employees among the same class of employees violating the Articles 14 & 16 of the Constitution of India." (Para 14).

"When once an employee joins the service, the employee will have ambition to go up in the service career and when that employee attains that, it will be having "meaningful life". In other words, getting promotion to higher post is "worth living", and his non-promotion due to non-holding of the DPC at the appropriate time would lead to frustration and mental torture and psychological set back. If a person is eligible to be considered for promotion and he is not considered for such promotion at the appropriate time, that employee will lose interest in the service which may lead to ineffective service in the job." (Para 15).

"It is pertinent to point out here that the language used in Articles 14, 16 and 21 of the Constitution of India is "shall". The word shall indicate "the imperative duty" cast on the State. Non-performing of Duty cast under the Constitution is also violative of fundamental rights. An act need not be positive violation of fundamental rights and if the duty is not performed at the appropriate time as per constitutional mandate, it is also the glaring infraction of Fundamental Rights" (Para 15).

"As per the saying that "Justice delayed is Justice denied", "Promotion delayed is Promotion denied". (Para 16).

"Another parameter of this decision is the guidelines that there should not be any casual approach by the State. It equally applies with regard to consideration of an employee for promotion by convening a DPC well within time. Otherwise, the eligible employees will go to Courts questioning that they are affected in their promotional avenues on account of the casual approach of the authorities in not convening the DPC in time resulting in unnecessary litigation, waste of time and money." (Para 17).



“The above statement of the Apex Court would go to show that the conferment of power to convene necessary DPC meeting for consideration of an employee for promotion "is the duty" and it should be exercised in time so that an eligible employee who would be found suitable will get promotion in time. If the DPC is not convened in time it amounts to arbitrariness and this is not permissible under Article 14 of the Constitution of India. It is only for the purpose of coming to the conclusion that non-convening of a DPC meeting at the relevant point of time when an employee is to be considered is arbitrariness, the decision is relied. This Tribunal is of the opinion that the non-convening of the DPC in time would mean that the authorities have failed in discharging their duties and the non-convening of the DPC in time must be taken to mean as arbitrary action on the part of the concerned authorities.” (Para 18).

“According to the above judgment, in the service jurisprudence inaction on the part of the State is stated as dereliction of duty. Applying the said dictum of law if the Departmental Promotion Committee is not convened at the appropriate time, the right of a particular employee for being considered for promotion for that particular post is deprived.” (Para 19).

“The authorities in the State should discharge their duties as per the Constitutional mandate. Failure to do so will have to be construed as "deficiency in service" in addition to the infraction of constitutional rights. Those officers will have to be held personally responsible for that (damage likely to cause) in addition to liability of the State for compensation. The authorities should perform their duties when it is contemplated to be done without postponing it. Therefore the non-convening of the DPC at the appropriate time unless there are reasons beyond their control would amount to negligence on the part of the authorities. There should be a "watch dog" in order to avoid all these complications. This is essential for not only protecting the interest of an employee but it protects the constitutional obligations of the State also. The authorities should act in time and thereby unnecessary litigations be avoided”. (Para 20).



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“One more facet of this aspect is, if a particular employee is promoted at the appropriate point of time, that employee can show the calibre, capacity and dedication to work in the next promoted post. If that opportunity is not given at appropriate time it is postponed to a future date on account of the non-convening of the DPC for promotion, that employee may lose interest in performing the duties of the present post, with vigour and interest. These are the imbedded aspects if an employee who is eligible for consideration for promotion to the next post, is not considered at the appropriate time by the concerned authorities. We consider the above fact as the guidelines in order to act as a mandatory duty for the concerned authorities to constitute DPC at the point of time when it is required to be constituted and take a decision one way or the other even without one day's delay.”

35. Rule 8(2) of the ITS Recruitment Rules stipulate that the appointment in the grades specified at Serial Number 1 to 6 in Schedule I, shall be made by promotion amongst the officers in the next lower grade possessing minimum qualifying service as specified in Schedule III, if any vacancy arises in any of the grades specified in Schedule I. There is force in the argument of the applicant that when a member of ITS retires / resigns, then a vacancy arises in that grade and the respondents are duty bound to conduct DPC for that vacancy.

36. In view of the above legal position, the respondents should conduct the DPC for promotion of ITS Officers after arriving at the vacancies in various grades of the ITS Group A due to death, retirement, resignation, promotion, etc.

37. Taking into account the aspirations of the applicant for promotion, the respondents are directed to comply with the order of this Tribunal passed in O.A. 836/2013, dated 23.03.2015, in which, it was indicated that cadre review has to be



completed within six months from the date of passing of the order i.e. by 23.09.2015 and the operative portion of the said order is as under:

“56. On basis of the aforementioned facts and circumstances also the observations made, we direct the Official Respondents to identify and earmark the technical, administrative and executive functions of ITS and also to identify the areas/ functions of the Internal Financial Adviser and to conduct Cadre Review of the ITS & the IP & TAFS either simultaneously or else in close proximity keeping in view relevant Acts, Rules and Regulations, Schemes, etc., as also the guidelines contained in DoP&Ts Cadre Review of Group A Central Services Monograph, 2010. The aforementioned exercise should be completed within a period of six months from the date of receipt of copy of order.”

In the absence of a cadre review, it is not possible for us to arrive at the vacancy position. Hence, we direct the respondents to comply with the orders passed in O.A. 836/2013 dated 23.03.2015 forthwith and thereafter, take all necessary steps for maintenance of Indian Telecommunications Service Group A in terms of Rule 8(2) and Schedule III of ITS Recruitment Rules 1992 by conducting DPCs regularly in the interest of justice. The respondents shall complete the entire exercise within a period of two months from the date of receipt of copy of the order.

38. In the results, the O.A. is allowed. There shall be no order as to costs.

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या
CASE NUMBER O.A.: 794/14
निर्णय का तारीख
DATE OF JUDGEMENT 1/9/16
प्रति तैयार किया गया कि
COPY MADE READY ON 1/9/16

[Signature]
1.9.16

अध्याय अधिकारी / आचार्य अधिकारी
Section Officer / Court Officer
केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal
हैदराबाद ब्याच/ Hyderabad Bench

Free Copy U/R 22 of
CAT (Procedural) Rules

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS
WRIT PETITION NO.31965 OF 2016**

ORDER

(Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the applicant in O.A.No.794 of 2014 on the file of the Central Administrative Tribunal, Hyderabad Bench. His prayer in the said O.A. was to direct the authorities to take steps for maintaining the Indian Telecommunications Service Group A in terms of Rule 8(2) and Schedule III of ITS Recruitment Rules 1992 by conducting DPCs regularly in the interest of justice. By order dated 01.09.2016, the Tribunal allowed the O.A. but while directing the authorities to conduct DPCs regularly, the Tribunal thought it fit to link up this exercise with the cadre review which was still in process. The operative portion of the Tribunal order in para 37 reads to the effect that the authorities should comply with the orders passed in O.A.No.836 of 2013, with regard to the cadre review, and thereafter take steps for maintenance of the Indian Telecommunications Service Group A in terms of Rule 8(2) and Schedule III of ITS Recruitment Rules 1992 by conducting DPCs regularly. The authorities were directed to complete the entire exercise within two months from the date of receipt of a copy of the order. Aggrieved by the linking up of holding of DPCs with the pending cadre review, the petitioner approached this Court.

While the matters stood thus, the Deputy Controller of Communication Accounts (Legal) filed a counter-affidavit on behalf of the authorities wherein he stated that the cadre review had been completed as demonstrated by the Office Memorandum dated 29.12.2016 and that the process of promotions of ITS Officers in all

Grades had been initiated. He therefore stated that the authorities were alive to the concerns of the ITS Officers with regard to their career progression and promotion prospects. A copy of the Office Memorandum dated 29.12.2016 was also placed on record.

In the light of the aforesaid development, Sri J.Sudheer, learned counsel, would submit that as the hurdle contemplated in terms of para 37 of the order passed by the Tribunal is no longer in existence, the directions of the Tribunal as set out in the aforesaid order should be given effect to by the authorities. He would further submit that as the time frame fixed by the Tribunal already expired, the authorities may be directed to complete the exercise expeditiously.

Given the aforesaid facts, the writ petition is disposed of directing the authorities to give effect to the order dated 01.09.2016 passed by the Central Administrative Tribunal, Hyderabad Bench, in O.A.No.794 of 2014 by maintaining the Indian Telecommunications Service Group A in terms of Rule 8(2) and Schedule III of ITS Recruitment Rules 1992 by conducting DPCs regularly in the interest of justice. The directions given by the Tribunal in the aforesaid order shall be given full effect to and implemented in true letter and spirit by the authorities. This exercise shall be completed expeditiously and, in any event, not later than three months from the date of receipt of a copy of this order. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

SANJAY KUMAR, J

ANIS, J

15th FEBRUARY, 2017
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