

Delhi High Court Sh. K.M. Agrahari vs Govt. Of N.C.T. Of Delhi And Ors. on 30 May, 2002 Author: A Sikri Bench: S Sinha, A Sikri JUDGMENT A.K. Sikri, J. 1. This case has chequered history. The petitioner has approached the Tribunal as well as this court earlier on number of occasions by filing various Original Applications/writ petitions and numerous miscellaneous applications/writ petitions and numerous miscellaneous applications, contempt petitions etc. It is because of his reason that record of the present writ petition has become voluminous. However, it may not necessary to state all these facts in detail having regard to the controversy involved in this writ petition. It would be appropriate to trim down the record by noticing only most relevant facts having direct bearing on the controversy in issue. After pruning the facts in this manner, the relevant facts as taken from this writ petition are the following:

2. On 3rd September, 1969 the petitioner was selected as Assistant Employment Officer (Technical) ('AEO' for short) in Directorate of Employment, Delhi Administration in the pay scale of Rs. 1640/- 2900/- (revised) through Union Public Service Commission. The petitioner was entrusted with the duties of Sub-Regional Employment Officer (Technical) ('SREO' for short) in addition to his own duties of AEO as Mr. D.P. Agarwal, SREO was relieved for deputation to the Govt. of India. On 20th October, 1972 the petitioner was promoted on adhoc basis as SREO w.e.f. 1st July, 1972 in the pay scale of Rs. 2000/- Rs. 3500/- (revised) Mr. D.P. Agarwal called back from deputation in order to create a fake necessity for reversion of the petitioner on the basis of complaints. The Directorate of Employment reverted the petitioner on 31st May, 1973 on the basis of anonymous complaints and posted Mr. D.P. Agarwal as SREO. On 10th July, 1973 promotion orders in respect of Mr. D.P. Agarwal as Assistant Director were issued and his posting as SREO was cancelled. On 12th July, 1973 the petitioner was transferred from PUSA employment exchange to Headquarters office against a cadre post of AEO (R&JD). On 14th January, 1974 a charge sheet was served on the petitioner and he was placed under suspension on the basis of contemplated disciplinary proceedings. On 9th April, 1975 another charge sheet forming the basis of suspension dated 21st 1974 was served and the petitioner was dismissed from service. It is also stated in the petition that on 26th October, 1979 the orders of dismissal were set aside by this court and on 26th march, 1980 the petitioner was reinstated back into service with consequential benefits. On 24th January, 1981 the charge sheet dated 9th April, 1975 was again served and inquired into by the Central Vigilance Commission and none of the 35 charges were proved. The petitioner was again placed under suspension on 21st November, 1982. On 9th January, 1985 another charge sheet was served on the petitioner and the enquiry was held and none of the 35 charges could be proved. 3. On 4th January, 1989 the petitioner filed OA No. 233/89 praying for restoration of Status Quo Ante with further consequential benefits in the Tribunal. The petitioner filed another OA No. 234/89 in the Tribunal praying for regularisation of adhoc appointment and seeking directions of amending Recruitment Rules of SREO in the Tribunal. During the pendency of these OAs., the petitioner filed certain miscellaneous petitions in which the sought the directions to the effect that Mrs. Manju Karmeshu, the respondent

No. 4 herein, should not be regularised as Assistant director allegedly on the ground that she was junior to the petitioner. He also prayed for inclusion of his name in the seniority 1st of AEO/OIO/ACC and promotion as SREO as per the 1965 Rules. 4. On 5th September, 1993 a consent order was passed by the learned Tribunal directing the petitioner to file a fresh representation and the official respondents were asked to consider the said representation within three months. The petitioner accordingly made representation dated 20th September, 1993 pursuant thereto action was taken by the official respondents by giving him promotion to the post of SREO w.e.f. 3rd September, 1974 with full back-wages. This was done vide order dated 18th March, 1994. On 2nd December, 1994 the petitioner was accorded seniority at S.No. 4 in the official seniority list. 5. However, on 7th December, 1995 the Chief Secretary passed an order to convene a review DPC in respect of promotion of the petitioner to the post of SREO which had already been granted to him vide order dated 18th March, 1994. As, it would be noticed in detail at a later stage, the official respondents on re-examination of the matter, found that the petitioner was wrongly promoted and he was not eligible for promotion to the post of SREO. 6. The petitioner immediately rushed to the learned Tribunal by filing MA in the pending OAs. and the learned Tribunal passed an order maintaining status-quo. 7. At this stage the respondent No. 4 filed OA No. 353/96 in January, 1996 challenging the seniority and promotion of the petitioner. 8. In the meantime, the petitioner represented to official respondents vide his Communication dated 26th August, 1996 for promotion as Assistant Director w.e.f. 3rd September, 1982 and as Joint Director w.e.f. 1st February, 1989. He also filed contempt petition on 15th October, 1996 which was dismissed on 12th November, 1996. 9. Thereafter, the petitioner filed OA No. 2518/96 on 6th December, 1996 in which relief claimed by the petitioner was for quashing and setting aside the order of the official respondents for seeking to convene review DPC proceedings. He also sought declaration for further promotion to the post of Assistant Director (E) w.e.f. 3rd September, 1982 and to the post of Joint Director (E) w.e.f. 1st February, 1989 with consequential benefits. In this OA, the learned Tribunal passed the order directing the respondents to maintain status-quo. In fact various MAs and CCPs were filed even thereafter. Although it is not necessary to refer to these miscellaneous applications and interim orders passed thereon, what is relevant to point out is that on 17th September, 1974 the respondent No. 1 issued a show cause notice to the petitioner intimating that a review DPC was held on 3rd September, 1997 which decided to cancel the promotion of the petitioner w.e.f. 3rd September, 1974 to the post of Assistant Director (E). The petitioner now filed MA N. 2160/97 seeking quashing of show cause notice dated 17th September, 1997 and in the meantime stay of operation of this order. Order dated 26th September, 1997 was passed by the learned Tribunal directing the official respondents to maintain status-quo as on date. Thereafter, both the OAs, i.e. 2518/96 & 353/96 filed by the petitioner and the respondent No. 4 respectively were heard together and disposed of vide impugned judgment dated 21st December, 1998. 10. The aforesaid narration of facts can be summarised as under: 11. In the earlier OAs filed by the petitioner, on the

directions issued by the learned Tribunal to the official respondents to consider the representation of the petitioner and pass appropriate orders, the petitioner was given promotion to the post SREO w.e.f. 3rd September, 1994. Thereafter, however, on 7th December, 1994 it was decided to review the aforesaid promotion by convening review DPC as according to the official respondents, the petitioner was not eligible for the aforesaid post, and therefore, was wrongly promoted in the first instance. The respondent No. 4 also felt aggrieved by the promotion given to the petitioner and she filed OA No. 353/96 in January, 1996 challenging the seniority and promotion given to the petitioner. On the other hand, the petitioner treated the act of convening of review DPC as contempt and filed contempt petition. When this contempt petition was dismissed, he filed OA No. 2518/96 challenging the decision dated 7th December, 1995 as per which review DPC was sought to be convened. Since during the pendency of these OAs the review DPC was held on 3rd September, 1997 which decided to cancel the promotion of the petitioner w.e.f. 3rd September, 1974 the petitioner was issued show cause notice dated 17th September, 1997 as to why his promotion be not cancelled, he filed MA No. 2160/97 seeking to set aside this show cause notice dated 17th September, 1997 as well. 12. As already pointed out above, in OA No. 2518/96 the relief claimed by the petitioner was to quash and set aside the order to review the Departmental Promotion Committee proceedings issued by respondent No. 1. He also sought a declaration for further promotion to the post of Assistant Director (E) w.e.f. 3rd September, 1982 and to the post of Joint Director (E) w.e.f. 1st February, 1989 with consequential benefits. This direction was sought if the petitioner's promotion to the post of SREO w.e.f. 3rd September, 1974 on 18th March, 1994 was eventually sustained. 13. In OA No. 353/96 the reliefs prayed for by the respondent No. 4 were as under: a(i) Set aside the order No. Emp. 5(28) Admn./88/11429 dated 2.12.1994 thereby rejecting the applicant's representation No. 373 dated 31.3.1994; (ii) Set aside the Seniority list of S.R.E.Os. (ex-cadre), Psychologist, Planning Officer (ex-cadre), Welfare Officer (ex-cadre) issued vide Directorate's (28)/88/Admn./Pt./file/11421-27 dated 2.12.1994; and (iii) Direct the respondents not to give further promotion to the respondent No. 5, pursuant to seniority list dated 2.12.1994; (b) Directorate's letter No. 5 (33) /87-Admn/2508-35 dated 18.3.1994 thereby 3.9.1974, is illegal and be declared null and void. (iv) Direct the respondents not to post any other from DANICS Cadre against the post of Joint Director (ex-cadre). (v) Direct the respondents to consider the applicant for the purpose of promotion to the post of Joint Director as she fulfills all conditions stipulated in the recruitment rules and is eligible for promotion since 30.6.1991. (vi) Pass any other order/orders which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the present case." 14. Before advertizing to the decision rendered by the learned Tribunal which is impugned in the present writ petition, it would be apposite to note that as per the respondent No. 1 the reason for convening review DPC was that the earlier DPC held in March, 1994 was not placed with the correct facts and it recommended petitioner's promotion from the post of AEO and SREO (ex-cadre) though the petitioner was ineligible to be considered for the post as per

the Recruitment Rules. In fact, as per the respondent No. 1, the DPC was misled by placing incorrect facts and inapplicable rules. The respondent No. 1 also maintained before the learned Tribunal that stern vigilant action had been initiated against the persons responsible for placing incorrect facts before the DPC in March, 1994. Even the respondent No. 4 in her OA challenged the proceedings of DPC on 9th March, 1994 as illegal on the ground that the petitioner was not entitled for promotion to the post of SREO and further promotion to the post of Assistant Director and Joint Director as he does not belong to the feeder cadre, and therefore, the very promotion was void in law. 15. The learned Tribunal, accordingly, went into this question, i.e. regarding the eligibility of the petitioner to the post of SREO and observed that promotion of the petitioner from the post of AEO to SREO on 18th March, 1994 with retrospective effect from 3rd September, 1974 had raised a number of fundamental issues viz: a) The petitioner does not belong to a feeder cadre. b) He was promoted under the 1965 rules which ceased to operate. c) The seniority list of three different services combined together is not properly done. d) The DPC was misled into taking this decision by placing wrong facts and inapplicable rules. e) The competent authority never signed the promotion order. f) The subsequent seniority list issued on 22nd March, 1994 was also not legal. 16. The learned Tribunal further noticed that the petitioner who was holding the post of AEO was not in the feeder line of SREO. That was an isolated post having its own separate channel of promotion. It further noticed that the fact of the matter was that the Recruitment Rules of 1965 contained the appointment of AEOs which was a non-technical posts but the petitioner was appointed as AEO(T) which was a technical post with technical qualifications as prescribed in the Recruitment Rules of 1963. The qualification of AEOs in the Recruitment Rules 1965 was different from the qualification AEO(T) in the Recruitment Rules 1963. In the Recruitment Rules of 1963 the post of AEO(T) was slated as the feeder post for promotion to the Deputy Employment Officer (T). This post was redesignated as SREO(T) in 1968 and a new set of Recruitment Rules came into force with effect from 25th November, 1968. Under these Recruitment Rules SREO(T) was required to be filled by direct recruitment. All the posts of AEOs shown in the Recruitment rules of 1965 were cancelled by Notification dated 27th March, 1968. The learned Tribunal, after noticing the aforesaid fact, further observed as under: "We find that respondent No. 1 has considerably delayed in disposing of the representation. If the representation was disposed of within a period of three months on the basis of the order dated 15.9.1993 there would not have been any occasion for all this muddle that had crept in. We are informed that the Chief Secretary never approved the promotion of Shri Agrahari and yet an order of promotion was issued in his name by the then Joint Director Shri R.B.S. Tyagi. We are informed that he DPC has been correctly constituted and yet facts were not put properly and correctly before the said DPC. We have in our orders at the time of hearing categorically required the respondents to place that DPC file to show us the facts and circumstances under which Shri Agrahari was promoted so that we could know the reasons which were placed before the said DPC. We are informed that with the collusion and active involvement of Shri Agrahari the

files were missing. As a Court of Law we cannot approve of a promotion which is inconsistent with the Recruitment Rules. We cannot approve of a promotion which is obtained by misrepresentation if the operative Recruitment Rules were of 1968 and the post of SREO was a post to be filled in by direct recruitment, how was that Shri Agrahari was promoted with retrospective effect from 1974? In the background of rival contentions summed up above, we shall consider the reliefs prayed for first by Shri K.M. Agrahari in OA 2518/96. He seeks a direction to quash and set aside the order of the review DPC made by respondent No. 1. Normally once a Dpc is held and orders are issued promoting a particular person certain rights are created in his favor he can be dislodged from enjoying those rights only by a due process of law. In this case the respondents admit that the DPC itself was duly constituted. But, at the same time they say that the DPC was not properly advised about the correct rule. The contention of the respondents is that the promotion issued to Shri Agrahari is not legal. In *Indian Council of Agricultural Research and Anr. v. T.K. Suryanarayan and Ors.* (1997) 1 SCC 766 the case dealt with by their Lordships related to erroneous promotion given departmentally by misreading of rules. We shall do no better than extract the summary of page 767 of the report as follows:-"The Indian Council of Agricultural Research (ICAR), by misinterpreting the service rules, had promoted several employees but in the case of one set of employees (the respondents in the present case), the ICAR insisted on correct application of rules. The respondents' plea was that they were discriminated vis-a-vis the employees who had been promoted under similar circumstances. Rejecting this contention. Held: Even if in some cases, erroneous promotions had been given contrary to the service rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim in law courts for promotion contrary to the statutory service rules. Incorrect promotion either given erroneously by the department by misreading of the service rules or such promotion given pursuant to judicial orders contrary to service rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory service rules. In a court of law, the respondents cannot be permitted to contend that the service rules should not be adhered to because in some cases erroneous promotions had been given. The statutory service rules must be applied strictly. The question of unmerited hardships, if any, and need for amendment of rules to remove such hardship are matters for consideration of the rule-making authority. It is reasonably expected that the authority concerned will be sensitive to unmerited hardship to a large number of its employees, if occasion by introduction of service rules so that appropriate remedial measures may be taken." We have already mentioned above that the post of SREO is to be filled by direct recruitment and the post the applicant was holding was not a feeder post for SREO. We have also noticed that the 1965 Rules do not apply and what is applicable is the 1968 Rules. On the question as to whether one feeder post can be transposed by another equivalent post as a feeder post, the Hon'ble Supreme Court has already pronounced in the negative in *H.R. Ramchandraiah and Anr. v. State of Karnataka and Ors.* 1997 SCC (L&S) 849. The decision is as under: "One category cannot be transposed by

interpretation of rules, and filled into altogether a different category of service, merely because channel of promotion in that service is not provided. Unless the petitioners get into the channel of promotion under statutory rules, they cannot by interpretation, be filled into a category to which they did not belong and cannot claim promotion on that basis." Thus, if the Recruitment Rules of 1968 do not permit promotion from AEO(T) to SREO, no promotion can be given. Secondly, promotion can be given only to Shri Agrahari under the relevant rules and that channel is admittedly of Vice Principal and Principal, IIIs. As the promotion of Shri Agrahari is dehors the rules, we have no hesitation in upholding the decision of the respondents to order a review DPC."

17. Thereafter, commenting on the exercise of review DPC done by the official respondents the learned Tribunal pointed out that it was wholly inappropriate to confine the relief to the review DPC only to review the promotion of the petitioner was SREO with retrospective effect from 1974 onwards and directed the respondents to frame the terms of reference to the review DPC to consider petitioner's claim for promotion w.e.f. 21st May, 1971 onwards when he was suspended from the post of AEO, as he was appointed on 3rd September, 1969. The respondents were accordingly directed that the DPC should consider his eligibility under the Rules which were applicable at that time or from time to time which are operative to each promotional post that would come in the way during the period from 21st May, 1974 till the date the review DPC meets. The learned Tribunal, for the guidance of the official respondents, even illustrated as to how the task should be accomplished by review DPC by observing as under: "We would make this clear though we would not like to go into the details of the rules. By a hypothetical illustration let us say the applicant is eligible to be considered for promotion after putting in 3 years of service as AEO(T) to the post of Vice Principal. The review DPC should not go into only the negative aspect as to whether the existing promotion of SREO(T) is legal or illegal. It should also see and we direct that the review DPC to examine at each and every stage when Shri Agrahari is due for promotion from the date he was suspended on 21.5.1974 till the date he was reinstated and thereafter till the date of the review DPC. If as the respondents say he is due for promotion as Vice Principal, let us say after putting in 'x' years of service, hypothetically speaking, the respondents should consider his records for conducting the DPC as on that date and so on and so forth on all subsequent dates. Secondly, the DPC should be apprised the facts and circumstances of the entire case by a self contained note which has to be approved by respondent No. 1. We have already given sufficient material to show that on his pleadings before us a promotion dehors the rules is not legal and a promotion not in accordance with law cannot be sustained but even so it is for the review DPC to consider the whole aspect of the question and record its own conclusion. In doing so, it has also to look into the eligibility of Shri Agrahari for promotion at each and every stage during the last 24 years from 1974 to 1998 and record its findings on the eligibility of Shri Agrahari. As the official respondents have conducted the review DPC when the matter was before us in its final stages, we do not want to take judicial notice of that and direct the respondents to constitute a fresh review

DPc to give effect to the law laid down by the Hon'ble Supreme Court in the case of K.V. Jankiraman (supra)." 18. The learned Tribunal did not stop here and even issued further directions in the following terms: "The second direction we intend to issue is that in the event the review DPC holds the promotion of Shri Agrahari to the post of SREO as illegal after applying the principles of law laid down by us, the salary and allowances drawn by Shri Agrahari in the promoted post from the date of promotion and till the orders are set aside, shall not be recovered because we have no material to hold that Shri Agrahari is to be blamed for what had happened in conducting and concluding the first DPC in 1994 which had promoted him from 1974 onwards. We also direct that the findings of the DPC in this regard, if it is adverse to Shri Agrahari with regard to his promotion as SREO may be formally made known to him as is proposed by the official respondents, before this order, by way of a show cause notice. If he is unfit or fit for promotion in the intervening period of these two decades to any other promotional post, should also be made known to him. As we have left the entire matter of promotion to all other grades in the hands of the review DPC, we would not like to comment on the reliefs sought for by Shri Agrahari for the post of Assistant Director Employment with effect from 3.9.1992 and for the post of Joint Director Employment with effect from 1.2.1989. If he does not belong to a feeder cadre for those posts under the rules he will not be entitled to those promotions. The review DPC should be held within a period of three months from the date of receipt of a copy of this order." 19. Thereafter, the learned Tribunal considered the OA of the respondent No. 4 and observed that there was no connection between the case of the petitioner and that of the respondent No. 4 when admittedly the respondent No. 4 was recruited as a Planning Officer and her claim for promotion was due for consideration and was not considered. The learned Tribunal, therefore, directed that a DPC in accordance with the rules be constituted to consider the case of the respondent No. 4 along with other eligible candidates for the post of Joint Director within a period of one month from the date of DPC to review the case of the petitioner. This, DPC, it was further directed, should examine the claim of the respondent No. 4 from the date she became eligible for the post of Joint Director if she fulfills all conditions stipulated in the Recruitment Rules and is eligible for promotion. 20. In nutshell, the learned Tribunal held as under: i) The petitioner was not eligible for promotion to the post of SREO as he was governed by the 1968 Rules and not by 1965 Rules. ii) He was, therefore, erroneously promoted to the post of SREO retrospectively w.e.f. 3rd September, 1974 and in view of the law laid down by the Supreme court in Indian Council of Agricultural Research & Ors. v. T.K. Suryanarayan (supra). The official respondents had right to correct the mistake. Therefore, their decision to convene the review DPC could not be faulted with. iii) However, the exercise of convening review DPC done in the year 1997 by the official respondents was not proper. The learned Tribunal, therefore directed proper terms of reference for review DPC viz. to consider the case of the petitioner for promotion from 21st May, 1971 onwards as per the Rules applicable to him. It also observed that although the promotion of the petitioner to the post of SREO dehors the Rules was not legal

but it was for review DPC to consider the whole aspect of the question and record its own conclusion and while doing so it was to look into the eligibility of the petitioner for promotion at each and every stage during the last 24 years from 1974 to 1998 and record its findings on the eligibility of the petitioner. iv) Certain other incidental directions were also issued in para 26 of the impugned judgment already reproduced above which included a direction to issue him show cause notice before taking any action if the DPC comes to the conclusion that the promotion of the petitioner as SREO was not proper. 21. Mr. H.B. Mishra, learned counsel appearing for the petitioner made vehement plea in assailing the aforesaid directions of the learned Tribunal by submitting that the petitioner was rightly promoted to the post of SREO w.e.f. 3rd September, 1974 and the entire exercise done by the official respondents thereafter to take away that promotion, apparently on the ground that the petitioner was not eligible for consideration to the post of SREO, was mala fide with the sole motive to harass and humiliate the petitioner. The learned counsel traced out the history of the petitioner's case submitting that the petitioner was harassed time and again by not giving him his due promotion from time to time by issuing false charge sheets against him. He was honourably exonerated from this court on 15th September, 1993 and the CVC from all these charges, and therefore, in view of the judgment of the Apex Court in the case of Union of India etc.etc. v. K.V. Jankiraman etc.etc. the petitioner was entitled to all consequential benefits. In fact, in his earlier OA on the directions given by the learned Tribunal he was rightly considered for promotion to the post of SREO and was given the same w.e.f. 3rd September, 1974. He was therefore entitled to the next promotion to the post of Assistant Director (E) w.e.f. 3rd September, 1982 and Joint Director w.e.f. 1st February, 1989 but instead of giving the same to the petitioner, the official respondents alleged that promotion of the petitioner even to the post of SREO was against the rule. His further submission was that earlier decision dated 15th September, 1993 in OAs. 233 & 234/89 of the learned Tribunal operated as res judicata and it was not open for the official respondents to reopen the matter. Dilating on this aspect, he submitted that the direction given in the order dated 15th September, 1993 was on the basis of seniority list dated 11th May, 1993 which treated him in the feeder cadre to the post of SREO. The petitioner had, pursuant to the aforesaid order, given the representation which was duly considered by the Chief Secretary who approved his promotion and thus it was not permissible for the Chief Secretary to reopen the decided issue. 22. On the other hand, Mr. V.K. Shali, appearing on behalf of the official respondents supported the decision of the respondent No. 1 convening review DPC on the ground that the factual position placed before the earlier DPC was not correct and the matter was proceeded on the basis that the petitioner was governed by the 1965 Rules which was not so and that the official respondents had right to correct the mistake and for his purpose held review DPC. He further submitted that the official respondents were ready to consider the cases of the petitioner in his channel right from 1974 as per the directions given by the learned Tribunal and were also willing to accord him all promotions on that basis in his channel as per the Rules applicable to him. It was



also submitted that keeping in view the fact that the petitioner was about to retire in immediate future, the official respondents were ready to undertake and complete the exercise in a time bound manner. 23. Mr. M.A. Krishnamurthy, learned counsel appearing on behalf of the respondent No. 4 submitted that the respondent No. 4 was appointed as a Planning Officer in August, 1979. She was thereafter promoted as Assistant Director (E) on adhoc basis on 30th June, 1988 and on which post she was regularised on 24th July, 1990. She had become eligible for promotion to the next post of Joint Director to which post she was not being considered only because of the present writ petition and interim orders passed in this petition. It was further submitted that the petitioner had no right for appointment as Joint Director when he had not worked as Assistant Director. It was his submission that the post has to be filled up as per the Recruitment Rules and the petitioner could not seek promotions to the post of SREO, Assistant Director and Joint Director when he was not eligible as per these Recruitment Rules which were not even applicable to his cadre. It was further submitted that no res judicata applied as order dated 15th September, 1993 passed by the learned Tribunal in OAs. No. 233 & 234/89 was simply directing the petitioner to make a representation and further directing the official respondents to consider the said representation. The issue regarding eligibility of the promotion of the petitioner to the post of SREO was not even considered or decided by the learned Tribunal in its order dated 15th September, 1993 and thus principle of res judicata did not apply at all. 24. There cannot be any dispute that if promotion of a person is made wrongly and in violation of the Recruitment Rules, it is always open for the Government to correct the said mistake, of course, after following requisite procedure therefore including giving of opportunity to the concerned employee to show cause against the proposed action is consonance of principles of natural justice. There also cannot be doubt that if a person belongs to a particular cadre, he is to be considered for promotion in that cadre alone as per the Recruitment Rules applicable to his cadre and there cannot be a change of cadre by considering him for promotion in different cadre on the basis of Rules which are not applicable in his case. 25. The core issue, therefore, is whether the petitioner is governed by the 1956 Rules or the 1968 Rules, i.e. whether in this cadre, he is entitled to be considered for promotion to the post of SREO and consequently further promotions to the post of Assistant Director and Joint Director? If the answer to the aforesaid question is in the negative, i.e., against the petitioner then no fault can be found with the course of action adopted the official respondents and sequentially with the order passed by the learned Tribunal and directions contained therein. Conversely, if the issue is decided in the affirmative, i.e., in favor of the petitioner then the consequence would be that the promotion given to the petitioner to the post of SREO w.e.f. 3rd September, 1974 was correctly given and the official respondents had no right not only to convene the review DPC, the petitioner shall also be entitled to be considered for promotion to the post of Assistant Director and Joint Director w.e.f. 1982 and 1989 respectively. 26. The first argument made by learned counsel for the petitioner, in support of his Plea, was namely the promotion of the petitioner the post of SREO having been considered by

the official respondents after order dated 15th September, 1993 would operate as res judicata may not hold water. The official respondents are correct when they argue that the order dated 15th September, 1993 passed in OAs No. 233 & 234/89 does not decide this issue regarding the eligibility of the petitioner to the promotion to the post of SREO. In that order the learned Tribunal had simply directed the petitioner to make a representation with direction to the official respondents to consider the said representation. This would be clear from the following portion of the said order: " Sh. J.P. Verghese appearing on behalf of the applicant stated that the major grievance of the applicant has been resolved by the respondents by assigning him seniority at Sr.No. 1 in the combined seniority list of A.E.O. (T), OIO/ACC(Ex-cadre) in the revised pay scale of Rs. 1640-2900/- as on 1.11.1988. He contends that as the applicant has now been exonerated from all the charges levelled against him and his dismissal from service has also been set aside, his case for promotion should be reviewed by the respondents so that consequential benefits of his revised seniority as per notification of 11.5.1993 may be made available to him. While considering the matter, the jurisdiction of the Tribunal is limited under Section 21(2)(6) of the Administrative Tribunals Act, 1985 that if the cause of action has arisen before 1.11.1982, the Tribunal has no jurisdiction to entertain the petition. Moreover, it is not clear what shape of seniority list of 11.5.1993 would take after objections having been disposed of by the respondents. Both the counsel agreed that the matter could best be dealt with by applicant's submitting a detailed representation to the respondents which should be considered by them within a time bound period. If, as claimed by the applicant the seniority has rightly fixed, we have no reason to doubt that any benefit flowing from the revised seniority list will be denial to him by the respondents. In view of the aforementioned discussions, these O.As. are, therefore, disposed of with the direction that the applicant shall be allowed to submit a fresh representation within a period of 3 weeks from the date of receipt of certified copy of this order regarding his various claims including promotions. The respondents shall consider this representation in the light of rules within a period of 3 months after the submission and pass speaking orders." 27. It is, therefore, clear from the aforesaid order that not only the learned Tribunal specifically refused to go into the matter, it categorically refused to even comment upon the seniority list of 11th May, 1993 by stating that it was not clear what shape that seniority list would take after objections to the said seniority list were disposed of by the official respondents. The only direction given was that the petitioner should submit a fresh representation regarding his various claims including promotions and the official respondents should consider the said representation. In so far as consideration of the case of the petitioner and giving him promotion to the post of SREO w.e.f. 3rd September, 1974 is concerned, merely because the petitioner was given the said promotion earlier, it would not preclude from official respondents to reopen the said case if it is found that it was a case of mistake and even if the promotion of the petitioner was earlier approved by the Chief Secretary on wrong facts placed before him. 28. We, therefore, revert to the core issue to be decided in this case. 29. The petitioner was appointed to the post of AEO

on 3rd September, 1969. The chronology of the relevant Rules which had come into operation at that time may, therefore, be noted in order to understand as to which Rules would govern the appointment of the petitioner to the post of SREO. It may be mentioned that vide Notification dated 6th May, 1965 which was made in exercise of powers conferred by the proviso to Article 309 prescribed the mode of recruitment for the post of SREO, AEO etc. However, vide Notification dated 27th March, 1968 these Recruitment rules stood cancelled as is clear from the wording of this Notification which reads thus: "ADMINISTRATION : DELHI Dated the 27th, March 1968 7th Chaitra 1969. NOTIFICATION No. F. 2(5)/68-Services(C) :-In exercise of the powers conferred by the proviso to Article 309 of the Constitution read with the Government of India, Ministry of Home Affairs, Notification No. F. 27/59-Him(i) dated the 13th July, 1959 and all other powers enabling him in this behalf, the Administrator, Delhi is pleased to cancel the Recruitment Rules notified from time to time in respect of the posts mentioned in the Schedule hereto annexed. By Order. Sd/- (T.R. KALLA) UNDER SECRETARY (SERVICES) DELHI ADMINISTRATION : DELHI 30. Thereafter, another Notification dated 25th November, 1968 was issued framing Rules for appointment to the post of SREO(T) and AEO(T) in the Directorate of Employment, Training and Technical Education, Delhi Administration. These Rules were also framed in exercise of power conferred to Article 309 of the Constitution. Thus as on the date of the appointment of the petitioner to the post of AEO, it is these Rules dated 25th November, 1968 which held the field and Rules promulgated earlier vide Notification dated 6th May, 1965 had already been repealed. Notwithstanding this, the case of the petitioner who was holding the post of AEO was considered for promotion to the post of SREO in accordance with Notification dated 6th May, 1965 as per which 25 per cent of the posts of SREOs could be filled up by promotion failing which direct recruitment and feeder cadre was AEO with five years' service in the grade and as the petitioner had completed five years' service in the year 1974. However, as mentioned above, these Rules were not in force at all in 1969 and or for that matter, in 1974 when the petitioner was to be considered for further promotion. So far as the post of SREO is concerned, as per the Notification dated 25th November, 1968 the method of recruitment was 'by direct recruitment'. Therefore, the post of SREO could not be filled up by promotion at all. The petitioner was, thus, wrongly considered for promotion to the post of SREO (T). 31. In fact, as per the Recruitment Rules dated 25th August, 1972 for Class-II posts in Industrial Training Institute, Directorate of Employment, Training, Delhi Administration could be considered for further promotion to the posts of Principal ITIs/Assistant Inspector of Training/Vice Principal/Industrial Liaison Officer-cum-office in charge. The Recruitment Rules for these posts clearly stipulate, amongst others, AEO (T) as feeder cadre for promotion. These posts are to be filled up by promotion to the extent of 50 per cent and by direct recruitment to the remaining 50 per cent. It may be that after the Notification dated 6th May, 1965 AEOs were eligible for the posts of SREOs also, in addition to the posts of Principals IT is etc. as per the Recruitment Rules dated 25th August, 1972 but the Notification dated 6th May, 1965 which made

AEOs eligible for promotions to the posts of SREOs (25 per cent quota) stood cancelled by the Notification dated 27th March, 1968 and thus after this date the only promotional avenues for AEOs were to the post of Principal IT is etc. and not the post of SREO (T) which post could be filled up only by direct recruitment. In view of the aforesaid rule position, the directions contained in the order of the learned Tribunal cannot be faulted with. In fact, the learned Tribunal, has by giving directions in the impugned judgment, balanced the equities while noticing that the petitioner was wrongly considered for promotion to the post of SREO as per the 1965 Rules which were not applicable. The learned Tribunal has not approved the approach of the official respondents in having limited scope of review DPC and has spelt out the complete terms of reference for review DPC in order to do complete justice in the matter. It has also left it to the review DPC to consider the whole aspect of the question and record its own conclusion and in the process to also look into the eligibility of the petitioner at each and every stage during the last 24 years from 1974 to 1998 (which would be now 28 years, i.e., from 1974 to 2002) and record its finding on the eligibility of the petitioner. 32. As we are sitting in judicial review over the aforesaid decision of the learned Tribunal and we do not find any illegality, irrationality or perversity therein, we uphold the same. The effect thereof would be to dismiss the present writ petition. 33. However, before we part, we deem it proper to observe that we would be failing in our duty if we do not remark that the petitioner has suffered immensely due to the lapses on the part of the official respondents and also in delaying the matter considerably. We also note that the petitioner had been denied his legitimate due as far as consideration of his case for further promotions is concerned because of repeated frivolous charge sheets levelling malicious allegations which the official respondents could not sustain ultimately. Thus, the pendency of these charge sheets and judicial proceedings pursuant thereto, deprived the petitioner of his due consideration. Even if the petitioner is ultimately found not entitled to the promotion to the post of SREO, he was entitled to promotions in his cadre which also were not given to him. The petitioner joined the services as AEO in 1969 and within two years thereafter, i.e., in the year 1971 onward he was subjected to the charge sheets. He first approached the court of law for addressing his grievance in so far as departmental inquiries were concerned. After succeeding therein, he has been fighting for his promotions which has remained illusory hope till date. The matter could be given a quietus after the learned Tribunal's order dated 15th September, 1993 had the official respondents acted in accordance with the Rules applicable in his case. However, their mistake led to further litigations first before the Tribunal and then before this court. This entire process has been time consuming and the petitioner is now at the verge of his retirement who is due to retire on 30th June, 2002. In the process the petitioner's entire career, i.e., within two years after his joining the official respondents, has been consumed in litigation and in fighting the mighty department. 34. We may also note that the petitioner is again suspended vide order dated 3rd August, 2001 by the respondent No. 1 in exercise of power conferred by Sub-rule (1) of Rule 10 of the CCS (CCA) Rules, 1965 as the disciplinary proceedings against the petitioner

were contemplated. We were informed that the alleged disciplinary proceedings relate to the loss of certain files for which the petitioner is allegedly blamed. In fact, an FIR is also filed against the petitioner to this effect under Section 477(A) of the IPC on 3rd August, 2001. However, neither any charge sheet for department proceedings is issued nor any charge sheet is filed in the court of law in connection with the alleged FIR against him. We hope and trust that keeping in view the fact that the petitioner is about to retire and that he was duly exonerated in the earlier charge sheet against him, the official respondents shall consider the desirability of revoking the suspension order and dropping the charges against the petitioner. We may further note that notwithstanding the aforesaid, the learned counsel for the respondent No. 1 had given an assurance that the petitioner's case for promotions as per the Rules applicable to him, shall be duly considered. 35. The relief is still illusory as the petitioner is again thrown at the mercy of the official respondents who would consider his case in accordance with the directions of the learned Tribunal contained in the impugned judgment. Having regard to these peculiar facts and circumstances, we would like to issue the following directions: I. The case of the petitioner for further promotions to various posts as per the Recruitment Rules applicable to him, to be considered forthwith and in any case, before the retirement of the petitioner. II. It is hoped that while considering the case of the petitioner, the official respondents shall keep in view the aforesaid peculiar facts which made the petitioner struggling for his legitimate rights in his entire career and also keeping in view the fact that the petitioner was afterall found suitable for promotion to the post of SREO, and therefore, he would not be deprived of his legitimate promotions now in his own cadre and his case would be considered objectively, dispassionately and without any bias. III. The petitioner shall be entitled to cost of Rs. 10,000/- even when we are dismissing the writ petition of the petitioner. We only hope that the official respondent shall not be wanting in their solemn duty which they have to discharge and the petitioner would find a smile on his face at least at the end of his career and would go home as a happy person.