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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 449/2014

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UNION OF INDIA

Judgment dated 14th December, 2015

..... Petitioner

Through : Mr. Sanjay Jain, Additional Solicitor
General with Mr. Akshay Makhija,
CGSC, Ms. Sanjugeetha and Ms. Mahima
Bahl, Advocates

versus

DR. RAJESHWAR SINGH & ORS.

..... Respondents

Through : Mr. Harish Salve, Senior Advocate with
Mr. Rakesh Dwivedi, Advocate for
respondent no.1.
Mr. Naresh Kaushik with Ms. Aditi
Gupta, Advocates for UPSC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by the petitioner under Articles 226 read with Article 227 of the Constitution of India seeking a direction to quash the order dated 24.12.2013 passed by the Central Administrative Tribunal (hereinafter referred to as the '*Tribunal*').
2. With the consent of the counsel for the parties, the writ petition is set down for final hearing and disposal.
3. Respondent no.1, a Police Officer belonging to U.P. State Police was appointed on deputation to the post of Assistant Director Grade-II(now re-designated as Assistant Director) for a period of three years w.e.f. 05.12.2007 to 04.12.2010.
4. The respondent no.1 made a request to Director of Enforcement vide letter dated 07.01.2008 for placing him in a higher post of Assistant Director Grade-I, which was accepted and thereafter the respondent no.1 continued

to work on ad hoc basis as Deputy Director since 08.09.2008. It is pertinent to mention here that the then existing Recruitment Rules for the post of Assistant Director Grade I, had no provision for appointment of a State Police officer. However, the Department with the approval of DoPT, agreed to place him in a higher post of Assistant Director Grade-I(re-designated as Deputy Director) for limited period purely on *ad hoc* basis.

5. On 08.10.2009 Recruitment Rules for the post of Deputy Director were amended, making the State Police Officers eligible for the post of Deputy Director on deputation. Subsequently on 23.6.2011, Recruitment Rules were further amended and a provision for appointment of officers to the post of Deputy Director on absorption was made. The petitioner, vide Office Memorandum dated 22.7.2011 invited applications for filling up 47 posts of Deputy Director of Enforcement in the Directorate of Enforcement on deputation and absorption basis. Respondent no.1, being interested, made an application on 19.10.2011 for absorption to the post of Deputy Director.
6. The Directorate of Enforcement vide letter dated 13.10.2011 requested the Department of Revenue, Ministry of Finance, that the matter of Absorption of the applicant to the post of Deputy Director may be taken up for approval by the Competent Authority. It was also informed that NOC for absorption of the applicant had also been received from the U.P. Police.
7. On 10.09.2012, the applicant/respondent no.1 was given all required Clearance Certificates by the respective Departments including Vigilance Clearance. Accordingly, the applicant/respondent no.1 was called for personal talk/interview on 18.09.2012 by the Union Public Service Commission vide letter dated 10.09.2012. The applicant appeared for the interview and was finally selected by the Union Public Service Commission along with four other Officers.

8. The UPSC vide letter dated 19.09.2012, addressed to the Secretary, Department of Revenue, recommended the name of the applicant/respondent no.1 and four other officers for being appointed to the post of Deputy Director “in that order”. The applicant/respondent no.1 was at Number 1 in the list and it stated “absorption” against his name, while the remaining four were marked for “deputation”.
9. Learned Additional Solicitor General appearing on behalf of the petitioner submits that as per the Recruitment Rules consultation by respondent no.2 i.e. UPSC is mandatory for appointing officers to the Post of Deputy Director. Accordingly, while sending applications to respondent no.2 with the approval of the competent authority i.e. the Finance Minister on 18.6.2012 it was decided that the officers would be appointed only on deputation. This request was made in anticipation of the proposed amendment in the Recruitment Rules, which had been sent to DoPT for approval. It is further submitted that the amendment to the Recruitment Rules in 2011 and the advertisement for the said post on the amended Recruitment Rules 2011 was strongly objected to by the departmental officers, who submitted representations for deletion of the provision of absorption on the ground of having a detrimental effect on their career progression.
10. Learned Additional Solicitor General contends that while forwarding the applications to respondent no.2 by a letter dated 5.7.2012 respondent no.2 was informed that as per the decision taken by the competent authority in the DOR all the applicants were to be initially appointed on deputation basis and the proposal for absorption would be considered on completion of three years of service in the grade. By a communication dated 19.9.2012, respondent no.2 informed the petitioner regarding its recommendation for the appointment of five officers to the said post, out of which only

respondent no.1 was recommended for appointment on absorption basis and four other officers were recommended for appointment on deputation basis.

11. On 14.12.2012 the petitioner decided to appoint four officers on deputation and as far as respondent no.1 was concerned it was decided that since he was already on deputation, which period stood extended upto 21.10.2013 no further decision was required to be taken. On 8.10.2013 the petitioner decided not to extend the tenure of respondent no.1 on deputation beyond 21.10.2013. This was communicated to the respondent no.2 on 15.10.2013, which led to the filing of O.A. before the Tribunal by respondent no.1. The Tribunal had passed an interim order of status quo with respect to posting of respondent no.1.
12. The Tribunal allowed the O.A. filed by respondent no.1 on 24.12.2013 and directed the petitioner to abide by the recommendation of respondent no.2 UPSC and issue an order of absorption of respondent no.1 as Deputy Director of Enforcement within four years, which led to the filing of the present writ petition.
13. Learned Additional Solicitor General submits that the order dated 24.12.2013 is erroneous on facts and law. It is further submitted that the order was passed by the Tribunal without appreciating the law and ignoring the fact that the Cadre Controlling Authority, which is also the appointing authority, took a policy decision on 18.6.2012 based on detailed examination by the Department of Enforcement and Department of Revenue for differing or resending induction of the respondent no.1 by way of absorption. It has further been contended that the Tribunal has failed to take into account that the petitioner had initially decided that all the applicants be initially appointed on deputation for a period of three years and only after the officers selected on deputation completes at least three

years in Grade-I on regular basis, request for absorption should be considered.

14. It is also urged before us that a candidate included in the select panel list has no indefeasible right to appointment even if the vacancy exists and notification of a vacancy is only an invitation to apply for recruitment but on selection no right accrues. It has also been urged before us that taking into account the resentment amongst the officers the petitioner had taken a conscious decision not to absorb respondent no.1. It is also contended that respondent no.2 UPSC is only a recommendatory authority to decide merit of competing applicants and the ultimate decision to appoint officers either on deputation or on absorption lies with the appointing authority i.e. the President.
15. Learned Additional Solicitor General points out to the Court that meanwhile on 11.10.2013, the DoPT approved the amendment of the existing Recruitment Rules 2011, whereby the provision of appointment through absorption was deleted.
16. Mr.Harish Salve and Mr.Rakesh Dwivedi, learned senior counsel appearing for respondent no.1, submit that there is no infirmity in the order passed by the Central Administrative Tribunal, which would require interference in the proceedings under Article 226 of the Constitution of India.
17. Attention of this Court is also drawn to the order of the Supreme Court of India in the case of *Centre for PIL And Ors. v. Union of India And Ors.*, Civil Appeal No.10660/2010 dated 01.05.2014, wherein the following order was passed:

“Shri K.K. Venugopal , learned senior counsel appearing on behalf of the investigating agency submits that Shri Vivek Priyadarshi is the investigating officer for Central Bureau of Investigation and Dr. Rajeshwar Singh is the investigating officer for the Enforcement Directorate, who are conducting the investigation of Aircel Maxis case.

Shri Vivek Priyardarshi, who is Supervisory Officer of the Central Bureau of Investigation is present along with Shri K.K. Venugopal, learned senior counsel.

Dr. Rajeshwar Singh, Deputy Director, Enforcement Directorate, who is conducting the investigation of Aircel Maxis case is directed to continue with the investigation along with two other Investigating Officers till the completion of the trial.

Shri K.K. Venugopal, learned senior counsel has filed two sets each of status reports i.e., firstly, the Status Report on behalf of Central Bureau of Investigation and secondly, the 11th, 12th and 13th status reports on behalf of Enforcement Directorate in sealed covers.

The same are taken on record.

The Status Report filed on behalf of the Central Bureau of Investigation is opened before us. The same is again kept in sealed covers.

We direct the Registry to keep these reports in sealed covers and not to open the same without the leave of the Court.

I.A. No.72 IN C.A. No.10660 of 2010

Status report on I.A. No.72 be filed on or before 12.08.2014.

List the matter on 12.08.2014.

Contempt Petition No.224 of 2011 In Civil Appeal No.10660 of 2010

List in the month of July, 2014.”

(emphasis added)

18. Additionally, learned senior counsel have also relied upon the subsequent order dated 8.9.2014 passed by the Supreme Court of India in the case of *Centre for PIL And Ors.*(supra), operative portion of which reads as under:

“In re : Dr.Rajeshwar Singh, Deputy Director:

A note on behalf of Dr.Rajeshwar Singh, who is on deputation as Deputy Director of the Directorate of

Enforcement is placed before us by Shri K.K. Venugopal, learned senior counsel appearing for Dr.Rajeshwar Singh.

In the Note submitted by the learned senior counsel he brings out the relevant facts which has prompted the learned senior counsel to file the aforesaid note with a request to direct the respondent(s) – Union of India & Ors. to comply with the orders and directions issued by the Central Administrative Tribunal, (for short “the Tribunal”) vide its order dated 24.12.2013.

We have heard Shri K.K. Venugopal, learned senior counsel and Shri L.N. Rao, learned Additional Solicitor General.

Dr.Rajeshwar Singh, is working as a Deputy Director in the Enforcement Directorate. Since his case was not considered by the respondent(s) – Union of India & Ors. to absorb him as a Deputy Director in the Enforcement Directorate, he had filed an application (O.A.No. 3653 of 2013) before the Tribunal, inter alia, requesting the Tribunal to issue an appropriate direction to the respondent(s) to absorb his services as Deputy Director of the Enforcement Directorate. The application so filed by Dr.Rajeshwar Singh was opposed by the respondent(s) before the Tribunal. The Tribunal, after considering the case pleaded by both the parties, has allowed the application vide its order dated 24.12.2013. The operative portion of the directions issued by the Tribunal reads as under:

“Following the view taken by the Hon’ble Apex Court in Secretary, A.P. Public Service Commission v. B. Swapna & Others (supra), we allow the present Original Application. Respondent Nos.1 and 3 – Union of India, Ministry of Finance and Ministry of Personnel, Public Grievances & Pensions are directed to abide by the recommendation of the Union Public Service Commission and also issue the order of absorption of the applicant as Deputy Director of Enforcement, within a period of four weeks from the date of receipt of a copy of this order. Till the order of absorption is issued, the interim order dated 11.10.2013 would remain in operation.”

The respondent(s), being aggrieved by the orders and directions issued by the Tribunal had approached the Delhi High Court by filing a Writ Petition in W.P.(C) No.449 of 2014. In this Writ Petition, an interim relief was sought, inter alia, requested the High Court to stay the orders and directions issued by the Tribunal.

The High Court, by its order dated 06.02.2014, while issuing notice, had observed that no grounds are made out by the respondent(s) – Union of India (petitioners therein) for grant of the interim relief. In the words of the Court:

“No ground for stay is made out. However, the appointment of the respondent no.1 shall be subject to the outcome of this petition.”

Though an interim order was declined by the Writ Court, the respondent(s) – Union of India (petitioners-therein) in the Writ Petition, did not carry the matter further. That means, the interim order passed by the High Court has become final.

As we have already noticed that a Note has been filed by the learned senior counsel Shri K.K. Venugopal for Dr.Rajeshwar Singh. In the said note, it is stated that, he is seeking a direction by this Court to direct the respondent(s) to comply with the orders and directions issued by the Tribunal.

It is not in dispute nor it can be disputed that there is a direction issued by the Tribunal while disposing of the Original Application filed by Dr.Rajeshwar Singh. The respondent(s) ought to have complied with the said direction within the time-frame that was granted by the Tribunal. However, instead of doing so, they carried the matter by filing a Writ Petition before the Writ Court. The Writ Court has declined to grant any interim relief in favour of the respondent(s). That means that the respondent(s) has to comply with the order and directions issued by the Tribunal or to carry the matter by filing an appropriate petition before the superior forums. That has not been done by the respondent(s)- Central Government. In a situation like this, in our opinion,

the request of the learned senior counsel for Dr.Rajshwar Singh requires to be granted. Accordingly, we pass the following order:

The respondent(s) – Union of India shall comply with the order and directions issued by the Tribunal within three days' time from today."

19. Learned senior counsel appearing on behalf of respondent no.1 further submit that having regard to the decision rendered by the Tribunal on merits coupled with the observations made by the Supreme Court of India, the writ petition filed by the petitioner is liable to be dismissed. Learned senior counsel contend that when the process of appointment to the post of Deputy Director of Enforcement by way of deputation/absorption was set into motion on 22.7.2011 as per the Recruitment Rules invoked the respondent no.1 was fully eligible for his appointment to the post by way of absorption and was duly selected by the UPSC and, thus, the petitioner cannot refuse to accept the recommendations of UPSC merely on the plea that after the recommendations the Recruitment Rules were sought to be amended to safeguard the interest of Assistant Directors.
20. It is further submitted by learned senior counsel that the Court cannot lose track of the fact that respondent no.1 was eligible and not that his selection was in disregard of the relevant Recruitment Rules. It is further contended that this Court also cannot ignore that respondent no.1 has worked in the present Department for almost eight years in the field of intelligence, investigation and adjudication or prosecution relating to fiscal or criminal law and has been working in the DZO investigating important cases like 2G Spectrum scam, CWG scam, EMMAR MGF case, IREO case, etc., out of which 2G Spectrum investigation was being monitored by the Supreme Court of India on day-to-day basis.

21. Above facts have been highlighted by Mr. Harish Salve to buttress his argument that the Apex Court has weighed the desirability of Dr. Rajeshwar Singh and directed that he should continue with the investigation along with other Investigating Officers. Mr. Salve has also urged before this Court that keeping in view the above orders passed by the Supreme Court of India and the orders passed by the Central Administrative Tribunal, no grounds have been made out by Union of India for interference in these proceedings.
22. We have heard the learned counsel for the parties and considered their rival submissions.
23. Before the rival contentions of the learned counsel for the parties can be considered, we deem it appropriate to notice some of the undisputed facts. It is not in dispute that respondent no.1 was appointed on deputation to the post of Assistant Director Grade-II on 05.12.2007. Respondent no.1 on 07.01.2008 made a request to the Director of Enforcement for placing him in a higher post of Assistant Director Grade-I which was agreed to in consultation with the DoPT. Respondent no.1 continued to work on *ad hoc* basis as Deputy Director since 08.09.2008. On 08.10.2009, Recruitment Rules for the post of Deputy Director were amended making the State Police Officers eligible for the post of Deputy Director on deputation. Thereafter, on 23.06.2011 the Recruitment Rules were further amended making a provision for appointment of officers to the post of Deputy Director on absorption. Respondent no.1 based on the Office Memorandum dated 22.07.2011 made an application seeking absorption to the post of Deputy Director on 19.10.2011.
24. It is the case of the petitioner that pursuant to the amendment in the Recruitment Rules in 2011, an advertisement based on the Recruitment Rules of 2011 was published but objected to by the Departmental Officers.

Representations were also made. It is also the case of the petitioner that while forwarding the application to respondent no.2 vide letter dated 05.07.2012, the petitioner informed respondent no.2 that as per the decision taken by the Competent Authority in the DOR, all the applicants are to be initially appointed on deputation basis and the proposal for absorption would be considered on completion of three years of service in the Grade. Respondent no.2 vide its letter dated 19.09.2012 informed the petitioner regarding its recommendation for the appointment of five officers to the post. Respondent no.1 was recommended for appointment on absorption. Remaining four officers were recommended on deputation basis.

25. We may notice that the UPSC before the Central Administrative Tribunal had taken a stand that since only respondent no.1 had been recommended for absorption to the post of Deputy Director of Enforcement, the respondent no.1(petitioner herein) should accept the same. The recommendation of the UPSC dated 19.09.2012 reads as under:

“I am directed to refer to your letter No.A-35011/5/2011-Ad.ED dated 14.09.2012, on the above subject, and to say that the Union Public Service Commission, on the basis of assessment of available ACRs and bio-data of the eligible received in connection with the case cited above and after holding Personal Talk with them on 18th & 19th 2012 recommended the following in that order

Sl.No.	Name(S/Shri)	Recommended on
1.	Rajeshwar Singh	Absorption basis.
2.	Ram Badan Singh	Deputation basis.
3.	H.S. Jain	Deputation basis.
4.	Ms. N. Ananthie	Deputation basis.
5.	H.P. Sudham Das	Deputation basis.

for appointment to the post of Deputy Director Enforcement in the Pay Band-3, Rs.15600-39100 + G.P. – Rs.6600/- in the Directorate of Enforcement, Department of Revenue, Ministry of

Finance. The remaining vacancies may be filled up as per the provisions of the Recruitment Rules.

2. The officers recommended for appointment on Deputation/Absorption basis may be appointed after the appointing authorities have satisfied itself about their integrity.

3. A copy of the notification appointing the officers may kindly be forwarded to the Commission, as and when issued.”

26. Primarily, two questions arise for consideration before this Court. Firstly, whether the respondent no.1 was eligible for being absorbed or not, and secondly, after the case of respondent no.1 was recommended by the UPSC, can the petitioner deny absorption to respondent no.1?
27. It is not disputed that on 23.06.2011, the Recruitment Rules were amended, a provision was made for appointment of officers to the post of Deputy Director on absorption. Not only were the Rules amended, an Office Memorandum was issued by the petitioner on 22.07.2011 inviting applications for filling up of 47 posts of Deputy Director of Enforcement in the Directorate of Enforcement on absorption basis. It is only based on this advertisement inviting applications did respondent no.1 prefer an application on 19.10.2011. The UPSC examined the applications and passed an order on 19.09.2012, which has been extracted hereinabove recommending the case of respondent no.1 herein for absorption. It has also not been disputed during the course of hearing that respondent no.1 was eligible. Thus, it can safely be said that the respondent no.1 is fully eligible as he meets the eligibility criteria.
28. The respondent no.1 was appointed on deputation as Deputy Director Enforcement(Assistant Director Grade-I) in the Directorate of Enforcement w.e.f. 08.09.2008. This appointment of respondent no.1 was not challenged at any point of time and to say that this appointment was an

irregular appointment is also without any force as it has not been disputed before us that respondent no.1 was fully eligible for absorption and it is only for this reason that his name was forwarded by the petitioner and after scrutiny accepted by the UPSC.

29. The respondent no.1 has an experience of more than six years in the field of intelligence, investigation work and adjudication or prosecution relating to fiscal or criminal law and experience of more than five years of the post on which his selection is recommended by the UPSC. It is worthwhile to point out that while forwarding the application of respondent no.1 for absorption to the post, the Directorate of Enforcement had highlighted that there were only two Assistant Directors working in the DZO against the sanctioned post of three and respondent no.1 herein was working in the DZO investigation the important cases like 2G Spectrum scam, CWG scam, EMMAR MGF case, IREO case, out of which the 2G Spectrum scam investigation was being monitored by the Supreme Court of India on day to day basis. The said communication also highlighted that absorption of respondent no.1 would give much needed continuity to the investigation being done in the DZO and his application for absorption should be considered favourably. We deem it appropriate to produce letters dated 25.07.2011 and 13.10.2011, which are as under:

“The Director
Directorate of Enforcement
6th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi

Sub: Application for absorption to the post of Deputy Director-
forwarding of application of Shri Rajeshwar Singh, Assistant Director,
Grade-I Reg.

Sir,

Shri Rajeshwar Singh joined, Enforcement Directorate as Assistant Director Grade-II w.e.f. 05/12/2007 on deputation. Prior to this he was working as Deputy Superintendent of Police in Uttar Pradesh Police. Later he was made Asstt. Director General I on Ad hoc basis. After completion of initial tenure of deputation of 3 years his deputation period was extended for one year wef 21/4/2011.

At present there are only two Asstt. Directors working in DZO against the sanctioned strength of three. Shri Rajeshwar Singh is investigating some of the important cases being investigated in the DZO like the case of 2G Spectrum scam, CWG scam, EMMAR MGF case, IREO case. The HO is aware that the 2G spectrum scam investigation is being monitored by the Supreme Court on day to day basis. Because of this reason the deputation of Rajeshwar Singh was extended by the competent authority upto 21/4/2012.

Shri Rajeshwar Singh has submitted an application for his absorption in this organization to the post of Deputy Director (earlier designated as Assistant Director, Grade-I), in term of amended Recruitment Rules of the said post promulgated vide Ministry of Finance, Gazette Notification No.336 dated 23/06/2011. His absorption will give much needed continuity to the investigations being done in DZO. In view of this his application for absorption may be favourably considered.”

.....

“The Joint Secretary
Department of Revenue,
Ministry of Finance,
Government of India
North Block, New Delhi

Sub: Absorption of Shri Rajeshwar Singh, to the post of Deputy Director in the Directorate of Enforcement-reg.

Sir,

Shri Rajeshwar Singh joined Directorate of Enforcement as Assistant Director on 05/12/2007 on deputation for initial term of three years upto 05.12.2010. Prior to this, he was working as Deputy

Superintendent of Police in Uttar Pradesh Police. His deputation period was extended upto 21.04.2012 vide letter dated 05.04.2011 of Ministry of Finance, Department of Revenue, issued from the file No.F.No.2/1/2008-Ad. ED.

At present the Directorate of Enforcement is investigating very highly sensitive case like, 2G Spectrum, Y.S. Jagan Mohan Reddy Case, Common Wealth Games-2010, Food Grain Scam in UP etc. Progress of investigation of these cases is regularly being monitored by the various Hon ble High Courts and Hon ble Supreme Court of India. Therefore, it has become necessary that the Directorate of Enforcement should retain experienced and energetic Investigating Officers.

There is overall shortage of officers in the Directorate of Enforcement. Despite our best efforts, there continues to be shortfall of officers in this Directorate. The situation has further worsened due to retirement of many cadre officers on superannuation. To fill up existing vacancies to some extent, Recruitment Rules have recently been amended for the post of Assistant Director, Grade-I and the post has been redesignated as Deputy Director, vide Ministry of Finance, Gazette Notification No.336 dated 23/06/2011 and providing therein a provision for absorption.

Shri Rajeshwar Singh is a hardworking, sincere and outstanding officer. He has been handling sensitive cases of PMLA and FEMA viz including Supreme Court monitored 2G Spectrum case etc., besides pursuing large number of complaints and new cases filed in the recent past. The repatriation of Shri Singh at this stage would not only hamper the investigation of ongoing cases, but would also adversely affect the operational effectiveness of the Directorate. Shri Singh has already submitted his willingness for his absorption to the post of Deputy Director (earlier designated as Assistant Director, Grade-I) (copy enclosed).

NOC for absorption of Shri Rajeshwar Singh from the U.P. Police, vide their Fax message No.DG-nks/v-27(17)2006 dated 12.10.2011 (Copy enclosed) has since been received.

In view of the above, it is requested that the matter be taken up for the approval of the competent authority for absorption of Shri Rajeshwar Singh to the post of Deputy Director (earlier designated as Assistant Director, Grade-I), since his services are required in larger public interest. Complete proposal is also being forwarded.

This issue with the approval of Director, Directorate of Enforcement.”

30. In view of the aforesaid two letters, the petitioner cannot take a contrary stand that it had decided not to fill up the vacancies of Deputy Director of Enforcement.
31. Additionally, we may add that respondent no.1 has been working in the present Department for eight years in the field of intelligence, investigation and adjudication or prosecution relating to fiscal or criminal law and has been investigating in the DZO important cases like 2G Spectrum scam, CWG scam, EMMAR MGF case, IREO case, out of which 2G Spectrum investigation was being monitored by the Supreme Court of India on day-to-day basis. Copies of the orders passed by the Supreme Court of India dated 01.05.2014 in Civil Appeal No.10660/2010 and the order passed on 08.09.2014 have been reproduced in paragraphs 16 and 17 aforegoing and attention of this Court has been drawn by Mr. Harish Salve to the observations so made in the orders dated 01.05.2014 and 08.09.2014 wherein in the order dated 01.05.2014, it was brought to the notice of Supreme Court of India by Mr. K.K. Venugopal, learned Senior Counsel who was appearing on behalf of the Central Bureau of Investigation that one Shri Vivek Priyardarshi is the Supervisory Officer for Central Bureau of Investigation and Dr. Rajeshwar Singh is the Investigating Officer for the Enforcement Directorate, who are conducting the investigation of Aircel Maxis case but the Supreme Court had then observed that Dr. Rajeshwar Singh, Deputy Director, Enforcement Directorate shall continue with investigation along with two other Investigating Officers till the completion of the trial. It was also brought to the notice of the Supreme Court of India on 08.09.2014 that an order had been passed by the Central Administrative Tribunal in O.A.3653/2013 by Dr. Rajeshwar Singh which

was allowed and a writ petition filed by the Union of India and in the writ petition filed by the Union of India this Court had declined the interim relief to the Union of India. The Supreme Court had then observed “*The respondent(s) – Union of India shall comply with the order and directions issued by the Tribunal within three days’ time from today*”.

32. The absorption of respondent no.1 is based on the Recruitment Rules which were in force when the petitioner had invited applications for deputation and absorption on 22.07.2011. The petitioner is unable to show that respondent no.1 is not eligible to the post by way of absorption and moreover, respondent no.1 stands duly selected by the UPSC. In this backdrop, in our view, respondent no.1 cannot be deprived of being absorbed and the plea that the Recruitment Rules are again sought to be amended to safeguard the interest of Assistant Directors who had directly joined the organization is without any merit.

33. The Tribunal in its order dated 24.12.2013 had noted the stand taken by the Union of India in O.A.3039/2012. Para 27 of the order reads as under:

“.....In O.A.No.3039/2012 (*ibid*), it was the stand taken on behalf of the Union of India that 135 posts of Deputy Director of Enforcement are vacant and the existing vacancies need to be filled up in accordance with the Recruitment Rules in vogue, as the functioning of the department cannot be paralyzed. The stand taken by the learned Additional Solicitor General in the O.A. was taken note of in the Order dated 21.8.2013, which reads as under:

“3. Shri P.P.Malhotra, learned Additional Solicitor General referred to the Recruitment Rules for the posts of Chief Enforcement Officer (AD (E) and DD (Enforcement)) and submitted that the respondents have committed no irregularity in filling up the posts in said categories/grades in accordance with the recruitment rules. Referring to the status of the working strength of the Directorate of Enforcement, he submitted that as many as 135 posts of Deputy Director are still lying vacant in the Department and just to meet the expectation of the applicants, the functioning of the department cannot be paralyzed. He

submitted with aplomb that the amendment in the recruitment rules may take its own time and the available vacancies will have to be filled up in accordance with the recruitment rules in vogue for the present. The status of the working strength of Directorate of Enforcement as produced by the learned Additional Solicitor General reads as under:-

S. No.	Name of the Post	Sanctioned strength	Working strength	Departmental	Deputation	Vacant
1.	Joint Director	33	7	2	5	26
2.	Deputy Director	150	15	11	4	135
3.	Assistant Director	250	62	17	45	188
4.	Enforcement Officer	350	113	80	33	237
5.	Assistant Enforcement Officer	425	45	12	33	380”

34. It may also be noted that at no point of time the petitioner has taken a decision not to fill up the post of Deputy Director of Enforcement. The petitioner has, however, sought to deny the absorption to the respondent no.1 on the ground that his absorption may have adverse effect on the seniority of the Assistant Directors likely to be promoted as Deputy Directors. In the circumstances detailed above, we do not find any force in the plea of learned Additional Solicitor General that since the Government has a right to take a decision not to fill up any vacancy, the respondent no.1 can be denied the benefit of recommendations of the UPSC (*ibid*).
35. In the case of ***R.S. Mittal v. Union of India, JT 1995(3) 417***, it has been held by the Apex Court that there has to be a justifiable reason to decline appointment to a person who is on the select-panel. Paragraph 12 of the said judgment reads thus:

“12. It is no doubt correct that a person on the select- panel has no vested right to be appointed to the post for which he has been

selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.”

36. We find no grounds to interfere in the orders passed by the Central Administrative Tribunal. Resultantly, the writ petition is without any merit; the same is dismissed.

CM.APPL.2718/2014

37. Application stand disposed of in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 14, 2015

msr/pst