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

+ W.P.(C) 11580/2015

% *Judgment dated 20th September, 2016*

SURESH KUMAR KALRA Petitioner
Through : Mr. R.K. Saini, Adv.

versus

UNION OF INDIA & ANR Respondents
Through : Dr. Ashwani Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the order dated 06.05.2015 passed by Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') by which OA No.1303/2012 filed by the petitioner was dismissed by the Tribunal.
2. The brief facts, which are required to be noticed for disposal of the present writ petition, are that the petitioner was a Member of Indian Forest Service (Group-A) allocated to UT cadre in the year 1979 in 'Junior Time Scale' (JTS). He earned promotions in 'Senior Time Scale' (STC) and 'Junior Administrative Grade' (JAG) in the years 1983 and 1988, respectively. The petitioner joined the respondent in the year 1988 on deputation and was further appointed as 'Deputy Secretary' in the year 1989. Subsequently, the petitioner was absorbed in Research Analysis Services (in short '*RAS*') being the Senior Executive Cadre of Research and Analysis Wing (hereinafter referred to as '*RAW*') in 1989 by maintaining his original seniority of the year 1979. He was further promoted as 'Director' and 'Joint Secretary' in

the years 1999 and 2004 respectively and became eligible for promotion to the next higher grade being 'Additional Secretary' as per the existing notified recruitment rules. However, as per the petitioner the respondents held a DPC and considered his name for promotion to the post of 'Additional Secretary', but he was not promoted to the said post. Aggrieved, the petitioner submitted his representation dated 01.08.2011 contending that he should have been promoted to the post of Additional Secretary as he fully met the benchmark/eligibility criteria, which is 'Very Good', for the preceding five years. The respondents, in response to the said representation, intimated the petitioner, vide Note dated 18.08.2011, that his promotion from the rank of Joint Secretary to the rank of Additional Secretary had not been approved by the competent authority for want of meeting the prescribed benchmark laid down for the post in question. The petitioner was additionally informed that the highlights of the Scheme of Promotion and *In situ* Upgradation at the level of Joint Secretary, Additional Secretary and Special Secretary in RAW (hereinafter '*In Situ Promotion Scheme*' and '*DPC Guidelines*') had been notified by the Cabinet Secretariat vide Order dated 03.06.2008 and its contents had been suitably circulated to all the members of the Senior Executive Cadres posted at Headquarters and at various other stations within and outside the country. Similarly, a copy of Research & Analysis Wing (Recruitment, Cadre & Service) Rules, 1975 [RAW (RC&S) Rules, 1975], as updated, had also been circulated to all the Heads of Zones.

3. As per the *In Situ* Promotion Scheme, the annual ACRs for the past 10 years were to be seen and every grade was assigned particular marks in the following manner:

<u>Grade</u>	<u>Marks</u>
Outstanding	5
Very Good	4
Good	3

For a candidate to be declared as 'fit' for promotion, he must possess a minimum of 44 marks out of 50 was mandatory, in respect of the past ten years. This was termed as a 'stricter screening standard' as the "*benchmark would be appreciably higher than the normal benchmark of 'Very Good'.*" As per the stricter standard, the petitioner herein was not eligible for the promotion. Being aggrieved by the laying of the new benchmark by the *In Situ* Promotion Scheme and the consequent denial of promotion, the petitioner herein approached the Tribunal by filing an OA, which has been dismissed and has led to the filing of the present writ petition.

4. Mr. R.K. Saini, learned counsel appearing on behalf of the petitioner, submits that issuance of any guideline with regard to the benchmark for promotion lies in the domain of the Appointments Committee of the Cabinet (hereinafter referred to as 'ACC'), whereas in the present case the scheme has been approved by the Cabinet Committee on Security (hereinafter referred to as 'CCS'). It further submitted by the counsel that the impugned order dated 06.05.2015 passed by the Tribunal is liable to be set aside as the same has been passed against the settled law of the land. Mr. Saini also contends that the Tribunal has ignored the settled law on the subject that the Rules and Regulations approved by an authority, not having jurisdiction in the matter, would have no existence in the eyes of law.
5. Learned counsel for the petitioner further submits that the Tribunal has failed to appreciate the facts and circumstances of the case and instead

blindly relied upon the *In Situ* Promotion Scheme, which has no legal sanctity. Counsel further submits that the petitioner has suffered grave injustice in the hands of the respondents since the promotion of the petitioner to the post of Additional Secretary has been declined after having taken into consideration the administrative instructions i.e. *In Situ* Promotion Scheme which has no authenticity in the eyes of law, as held by the Supreme Court of India in various judgments passed on this subject and as such the impugned order, being not tenable in the eyes of law, is liable to be set aside along with the *In Situ* Promotion Scheme, which deserves to be quashed. He further submits that the Scheme has been approved by the CSS which is a superior authority of the competent authority, being the ACC. To this end he has relied upon the judgment of the Supreme Court in ***The Joint Action Committee of Airlines Pilots Associations of India & Ors. v. The Director General of Civil Aviation & Ors., (2011) 5 SCC 435.***

6. Counsel for the petitioner further submits that the Tribunal did not appreciate the fact that the petitioner had an impeccable service record in his parent Department, i.e. Indian Forest Service, as he was specially selected by the respondents to join RAW on the basis of his unblemished service record and moreover the respondents also accorded the petitioner two promotions to the rank of Director and Joint Secretary in the respondents' organization on the basis of flawless service track record of the petitioner. Counsel further submits that the Tribunal has also failed to appreciate the fact that had the petitioner continued in his parent department he would have easily reached the highest level in the Forest Department, which is equivalent to the post of Secretary in the Government of India. Counsel also contends that by denying the petitioner promotion to the rank of Additional Secretary,

which the petitioner otherwise rightfully deserved, the respondents have ruined the career of the petitioner by completely blocking all prospects of the further promotions by relying on *In Situ* Promotion Scheme, which is devoid of any legal sanctity. Counsel contends that the Tribunal has, thus, failed to appreciate that the respondents by bringing in the *In Situ* Promotion Scheme, which is otherwise liable to be declared *ultra vires* as having been approved by an authority lacking the authority to accord such approval, caused a grave and irreparable injury to the rights of the petitioner.

- 7. Dr. Ashwani Bhardwaj, learned counsel for the respondents, submits that the scheme had been approved by the DoPT, which has full legal sanctity. Counsel further submits that the Scheme does not violate Articles 14 and 16 of the Constitution of India.
- 8. Counsel has drawn our attention to the Government of India (Transaction of Business) Rules, 1961 made under Article 77 (3) of the Constitution of India to show the division of work between the Standing Committees of the Cabinet. As per Rule 6, the standing committees are to be composed of such ministers as deemed appropriate by the Prime Minister and are to perform functions as given in the First Schedule to the Rules. Counsel urges that function no. (v) read with function no. (i) of the CCS in the First Schedule would cover the revised DPC and guidelines have been prepared for promotion to the post from Joint Secretary to Additional Secretary and above. In support of this contention, counsel has drawn the attention of the Court to the composition of both these Committees, which is as under:

<u>Committee</u>	<u>Composition</u>
ACC	1. Prime Minister 2. Minister of Home Affairs 3. Minister In-charge of concerned Ministry

CCS	1. Prime Minister 2. Minister of Finance 3. Minister of Defence 4. Minister of Home Affairs 5. Minister of External Affairs
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9. Learned counsel for the respondents has very strongly urged before us that function no. (v) has to be given a broad interpretation. It is contended that if the Committee is to revise the manpower requirement relating to national security and if the Committee is to review the proposals concerned regarding creation of their pay scales, their pay band, then the Committee would surely be empowered to deal with the issue of promotions of the officers of the said Ministry. Counsel further submits that in fact this Committee was the competent Committee to take a decision as to whether the revised DPC guidelines were necessary or not.
10. Learned counsel for the respondents submits, that even if the said function is decided to be that of ACC, even then the CSS includes all the ministers present in the ACC. The only difference remains with respect of the ‘Minister In-charge of concerned Ministry’ and this being the Prime Minister himself in respect of the RAW, the said minister of also present in the CSS. Therefore, no prejudice can be said to have been caused to the petitioner by the said *In Situ* Promotion Scheme having been made by the CSS.
11. Mr. Saini submits that the power to make the Scheme cannot be derived from function no. (v) of the First Schedule as the same pertains to the power to “*review the manpower requirements*” and not individual promotions or appointments. He submits that the term ‘manpower’ being a mass noun includes the power of a general review of all the workforce available relating to national security. In order to explain

the meaning of the word ‘manpower’, learned counsel has relied upon the meaning given on ‘thelawdictionary.org’ which features the Black’s Law Dictionary (2nd Ed., 1910), as per which it means

“1. In General, this is the personnel available or engaged for a specific job or task, as a resource supply. 2. In Economics, this is the total labour force of a nation. A manpower surplus exists if there are more people than available jobs. A manpower deficit exists if available people are fewer than jobs. Includes both men and women.”

12. Mr. Saini has also relied upon Oxford Dictionary of English (3rd Ed. 2012), which defines ‘manpower’ meaning

“The number of people working or available for work or service.”

13. The counsel for the petitioner submits that the power to create the Scheme was, in fact, vested with the ACC as per Function no. (i) of the ACC given in the First Schedule read with Item no. 1 of the Annexure I; as per which, the ACC has the power to make all appointments of and above the rank of Joint Secretary in the Central Government.
14. In support of his argument that ACC is the competent Committee to take a decision in respect of ‘appointments’ which would include promotions, counsel for the petitioner has handed over to us in Court a ‘FAQs on Recruitment Rules’ released by the DoPT. He relies upon Question nos. 25 and 27, which reads as under:

“25. What are the methods of recruitments?
Ans. The different methods of recruitments are:
(a) Promotion
(b) Direct Recruitment
(c) Deputation
(d) Absorption
(e) Re-employment
(f) Short-term contract

27. What is promotion?

Ans. Promotion is the method of recruitment from feeder grade post(s) to higher post in the hierarchy as per the provisions of the Recruitment Rules. If promotion is kept as a method of recruitment, it is also necessary to lay down the number of years of qualifying service before the persons in the field become eligible for promotion. Only regular, and no ad hoc, period of service is taken into account for purposes of computing this service.”

(Emphasis Supplied)

15. We have heard learned counsel for the parties and considered their rival submissions. We have also examined the impugned order and the documents placed on record.
16. The undisputed facts of the case, very briefly, are that the petitioner was working as a Joint Secretary in the RAS – RAW in 2011, when the DPC was held for considering candidates for promotion to the post of Additional Secretary. The petitioner was not promoted owing to the change in benchmark/ eligibility criteria affected by the *In Situ* Promotion Scheme notified by the Cabinet Secretariat on 03.06.2008. Aggrieved, the petitioner herein had challenged the legality of the *In Situ* Promotion Scheme as well as the consequent denial of promotion.
17. It may be noticed that the validity of the *In Situ* Promotion Scheme was also in question in an another OA 2830/2008 before the Tribunal; which has been upheld by an another division bench of this Court in its judgment ***C.K. Sinha v. Union of India*, 176 (2011) DLT 442 (DB)**. The challenge to the Scheme therein was premised on two grounds, i.e. applicability of the Scheme to regular employees despite the title mentioning only ‘In Situ’ and the validity/ legality in enforcing the ‘stricter’ standard. Both the grounds were rejected and we are informed that the order has attained finality. At the same time, the division bench of this Court was not concerned with the present

controversy.

18. It may be noticed that the basic challenge in the OA and before this Court is whether the revised DPC guidelines/ *In Situ* Promotion Scheme providing benchmark for promotion at the level of Joint Secretary and above of the RAS dated 03.06.2008 has the approval of the competent committee or not. As per the petitioner, the competent committee would be the ACC; while the respondents contend that the competent committee would be the CSS.
19. As per the Government of India (Transaction of Business) Rules, 1961, eight committees were formed by the President at the request of the Prime Minister. Rule 6 provides that the number and composition of committees are to be modified at the pleasure of the Prime Minister. The Prime Minister is also permitted to condone departure from the rules under Rule 12. For the purposes of the present case, two Committees are required to be examined, being ACC and CCS.
20. At this stage, we deem it appropriate to reproduce the relevant functions of both these Committees as given in the First Schedule to the Government of India (Transaction of Business) Rules, 1961:

<i>“Name of the Standing Committee</i>	<i>Functions</i>
<i>1.Appointments Committee of the Cabinet</i>	(i) <u><i>To take decisions in respect of appointments specified in Annexure I to the First Schedule to the Government of India (Transaction of Business) Rules, 1961;</i></u> ...
<i>2. Cabinet Committee on Security</i>	(i) <u><i>to deal with all Defence related issues;</i></u> ... (v) <u><i>to review the manpower requirements relating to national security including proposals concerning creation of posts carrying the pay</i></u>

<i>“Name of the Standing Committee</i>	<i>Functions</i>
	<i><u>scale or pay band plus Grade Pay equivalent to that of a Joint Secretary to the Government of India and higher, and setting up new structures to deal with security related issues;</u></i> ...”

(Emphasis Supplied)

21. We also deem it appropriate to reproduce the relevant excerpt of Annexure I to the First Schedule, which reads as under:

*“ANNEXURE I TO THE FIRST SCHEDULE
APPOINTMENTS REQUIRING THE APPROVAL OF THE
APPOINTMENTS COMMITTEE OF THE CABINET*

<i>Departments</i>	<i>Appointments</i>
<i>All Ministries/ Departments</i>	<i>1. Secretariat appointments of and above the rank of Joint Secretary in the Central Government</i> ...”

22. While it is the case of the petitioner that any amendment to the recruitment rules or any guidelines ought to have been prepared with regard to holding of DPC for the post of Joint Secretary to Additional Secretary would squarely fall within the domain of the ACC as per Function no. (i) of the Schedule read with Item No. 1 of Annexure I as reproduced by us in the preceding paragraphs. Thus the sum and substance of the arguments of the learned counsel for the petitioner is that if the ACC was the only competent authority authorised to revise the DPC guidelines, any decision taken by the CCS Committee would be *void ab initio* and, as a necessary consequence, any decision taken on the basis of the revised guidelines is liable to be struck down.

23. Mr. Saini, counsel for the petitioner, has during the course of

arguments, submitted that the petitioner has since retired and, thus, he would press this petition only for the purpose of being considered in a revised DPC and in case he succeeds, he would restrict his claim only to notional promotion and pension based on the pay which would be fixed after notional promotion. He also submits that it would be irrelevant as to whether the composition of both the Committees is same or not or larger, as in the present case, for the reason that only ACC was competent to take a decision in the matter and the CCS even having a larger composition of members would not be competent as it was not prescribed committee. To this end he has relied upon the judgment of the Supreme Court in ***The Joint Action Committee of Airlines Pilots Associations of India (Supra)***, more particularly paragraphs 26 to 28, which read as under:

*“26. The contention was raised before the High Court that the Circular dated 29-5-2008 has been issued by the authority having no competence, thus cannot be enforced. It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the statutory authority. In a democratic set-up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision-making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (Vide: *Purtabpore Co. Ltd. v. Cane Commr. of Bihar*, AIR 1970 SC 1896, *Chandrika Jha v. State of Bihar*, AIR 1984 SC 322, *Tarlochan Dev Sharma v. State of Punjab*, AIR 2001 SC 2524 and *Manohar Lal (D) by L.Rs. v. Ugrasen (D) by L.Rs. & Ors*, AIR 2010 SC 221).*

*27. Similar view has been reiterated by this Court in *Commr. of Police v. Gordhandas Bhanji*, AIR 1952 SC 16, *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia*, AIR 2004 SC 1159 and *Pancham Chand v. State of H.P.*, AIR 2008 SC 1888*

observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.”

(Emphasis Supplied)

24. Prior to proceeding further, we deem it appropriate to deal with the judgment sought to be relied upon by the counsel for the petitioner. Unfortunately, the same does not put the present controversy to rest. In the said judgment the challenge was to the Circular dated 29.05.2008 issued by the Director General of Civil Aviation, whereby the CAR 2007 was kept in abeyance. As the CAR 2007 mandated greater rest time for pilots, the Airlines Pilots' Association had challenged the order as being issued without any authority to do so. The Supreme Court ultimately held that the Director General of Civil Aviation was competent to issue such a direction under Rule 133-A read with Rule 29-C of the Aircraft Rules, 1937, which is evident from the following paragraphs:

“29. It cannot be said that the Circular dated 29-5-2008 was either issued illegally or without any authority. Admittedly, DGCA is competent to issue special directions and the same had been issued by him, though may be with the consultation of some other authorities. However, it cannot be denied that DGCA was involved in the process. The authority which had been in consultation with DGCA had been provided for under the business rules and it cannot be held by any stretch of imagination that the Ministry of Civil Aviation is not an authority concerned with the safety measures involved herein. The authorities are competent to issue the said regulations.

Exercise of the power is always referable to the source of power and must be considered in conjunction with it. In view of the fact that the source of power exists, there is no occasion for the Court to link the exercise of power to another source which may invalidate the exercise of power.

...

33. The High Court held that DGCA is directly under the control of Civil Aviation Ministry and considering the rules of business, the Government being the appropriate authority to formulate necessary policy in relation to the subject-matter in issue, and the Government in its wisdom having decided after taking into consideration all the representations made from various sections, has appointed a Committee to formulate CAR in relation to the matters enumerated under the Order dated 29-5-2008, and on that count, DGCA in exercise of its power under Rule 133-A read with Rule 29-C of the 1937 Rules issued the Circular dated 29-5-2008, and therefore, no fault can be found with the same."

(Emphasis Supplied)

25. Therefore, it is clear that the foregoing discussion that the said judgment was given in an entirely different factual background. Further, the judgments relied upon by Supreme Court in paragraph 26 to 28 deal with a scenario where the competent authority had succumbed to political pressure or had acted on behest of persons having no statutory role to play or the appellate/ revisional authorities had subsumed the power of the competent original authorities. That is not the controversy in the present case as they do not deal with a situation wherein there are two independent committees having similar compositions. Even otherwise, the Standing Committees of the Cabinet stand on a different footing altogether.
26. Now, to test the arguments of Mr. Saini, counsel for the petitioner, we have extracted the composition of both the Committees in paragraph 8 foregoing. No doubt, Mr. Saini is right that merely because the CCS has a larger composition, it may not be the competent Committee to

revise the DPC guidelines as number of members may not be relevant but what is relevant is their function and power.

27. In our view, what is important is as to whether in the competent committee, the concerned minister was present, i.e. Minister In-charge. No doubt, both these Committees are chaired by the Prime Minister; there is no doubt that the Minister In-charge is present in the ACC, but it is to be seen as to whether in the CCS the concerned Minister In-charge present or not. Incase of RAW, the Minister In-charge would be the Prime Minister only and therefore, the absence of Minister In-charge in CCS is of no consequence as the key ministers, i.e. the Prime Minister and the Minister of Home Affairs, are present in both.
28. Another vital aspect, which requires consideration, is as to whether the guidelines were amended/revised after due applications of mind or whether there was a proper study, proper note and preparation with regard to the revision of the DPC guidelines.
29. The respondents have produced in Court original file of the Department, which has been examined and which shows that a proposal dated 27.02.2008 of Secretary (RAW), the legal opinion dated 03.04.2008 of the Ministry of Law and Justice, the Cabinet Note for CCS dated 03.12.2007, approval of CCS dated 30.05.2008, *In Situ* Promotion Scheme dated 03.06.2008, approval of Minister In-charge i.e. Prime Minister to the recommendations of the Committee of Secretaries (in short 'CoS') dated 22.12.2006 were all placed when the Minutes of the CoS dated 23.8.2006 were placed in the meeting, when a final decision was taken.
30. The purpose of noticing the above factors is that this Court is satisfied that the decision was taken by the CCS after proper application of mind and based on the proposal and the opinion of the Ministry of Law and

Justice.

31. As far as the contention with regard to function no. (v) of the CCS is concerned, though a cursory reading of the function would certainly give an impression that CSS has the power to review the manpower requirement; but on a meticulous reading of the function, in our view, does not support the arguments of Dr. Bhardwaj but shows that the CCS had dwelled on the issue under the *bona fide* belief and impression that the powers under function no. (v) are broad and, thus, the Committee was competent to take a decision in the matter.
32. Be that as it may, any further deliberation upon the powers/ functions of the committees may be merely academic in nature. We must analyse the nature of the Government of India (Transaction of Business) Rules. The structure of the executive in India, or any parliamentary democracy, is that the Head of the State/ President is merely a ceremonial position, while the actual head is the Prime Minister who discharges all the functions along with his Council of Ministers. In order to overcome the problem of the whole body of Council of Ministers sitting on every decision, the framers of our constitution had incorporated Article 77 (3) in the Constitution enabling the making of rules for more convenient transaction of business by allocation of the same among the ministers. It was under this provision that the Government of India (Transaction of Business) Rules were framed. They remain administrative in nature and substantial compliance with the same suffices to uphold the validity of the orders. To this end, we are fortified by the following observations of the Supreme Court in ***Crawford Bayley & Co. v. Union of India*, (2006) 6 SCC 25:**

“20. It was next contended with reference to the Allocation of Business Rules that the Central Government in the Urban Department can appoint an Estate Officer but in the present

case, the Finance Department has appointed an Estate Officer which is in violation of the Allocation of Business Rules, 1961. Though the Division Bench dealt with this aspect exhaustively in its judgment and held that the provisions of the Business Rules are not mandatory and will not vitiate the appointment, we fully agree that the Rules of Business are administrative in nature for governance of its business of the Government of India framed under Article 77 of the Constitution of India. In this connection, the Division Bench referred to the decision of this Court in Dattatreya Moreshwar Pangarkar v. State of Bombay [1952 SCR 612 : AIR 1952 SC 181 : 1952 Cri LJ 955]. There analogous Rules of Business framed by the State under Article 166 of the Constitution of India came up for consideration and it was observed that they are directive and no order will be invalidated, if there is a breach thereof. ...

(Emphasis Supplied)

33. The Supreme Court in ***Narmada Bachao Andolan v. State of M.P.***, (2011) 12 SCC 333 after surveying a conspectus of judgments on the subject had come to the conclusion that mandatory compliance with the Business Rules is necessary if there are financial implications involved; otherwise substantial compliance would suffice. The relevant paragraphs read as under:

“32. Earlier cases of this Court suggest that the Rules of Business are to be construed as directory so that substantial compliance with them would suffice to uphold the validity of the relevant order of the Government. (See State of U.P. v. Om Prakash Gupta, AIR 1970 SC 679).

33. Similarly, in R. Chitralkha [AIR 1964 SC 1823] , a Constitution Bench of this Court had observed that it is settled law that the provisions of Article 166 of the Constitution are only directory and not mandatory in character. In para 4 it was held as under: (AIR p. 1829)

“4. ... This view has been reaffirmed by this Court in subsequent decisions: see Ghaio Mal & Sons v. State of Delhi [AIR 1959 SC 65] and it is, therefore, settled law that provisions of Article 166 of the Constitution are only directory and not mandatory in character and, if they are not complied with, it can be established as a question of

fact that the impugned order was issued in fact by the State Government or the Governor.”

(emphasis added)

The judgment in R. Chitrlekha has been subsequently cited for this proposition in Bannari Amman Sugars Ltd. v. CTO [(2005) 1 SCC 625].

34. In Dattatraya Moreshwar Pangarkar v. State of Bombay [AIR 1952 SC 181] a Constitution Bench of this Court held that an omission to make and authenticate an executive decision in the form mentioned in Article 166 does not make the decision itself illegal, on the basis that its provisions were directory and not mandatory.

35. However, in the recent decision in MRF Ltd. v. Manohar Parrikar [(2010) 11 SCC 374], a two-Judge Bench of this Court has sought to distinguish the abovementioned judgments and taken the view that in case there is non-compliance with the Business Rules framed under Article 166(3) of the Constitution, the notification issued in violation of the Business Rules is void ab initio and all actions consequent thereto are null and void. The Court held:

“107. Thus, from the foregoing, it is clear that a decision to be the decision of the Government must satisfy the requirements of the Business Rules framed by the State Government under the provisions of Article 166(3) of the Constitution of India. In the case on hand, as has been noticed by us and the High Court, the decisions leading to the notifications do not comply with the requirements of the Business Rules framed by the Government of Goa under the provisions of Article 166(3) of the Constitution and the notifications are the result of the decision taken by the Power Minister at his level. The decision of the individual Minister cannot be treated as the decision of the State Government and the notifications issued as a result of the decision of the individual Minister which are in violation of the Business Rules are void ab initio and all actions consequent thereto are null and void.”

...

37. We have considered the larger Bench judgment of this Court in R. Chitrlekha and taken note of the fact that MRF Ltd. is distinguishable from the case at hand since that case dealt with rules pertaining to financial implications for which there were no provisions in the Appropriation Act, and so the rules

required mandatory compliance. Here, there is no issue of financial repercussions. The issue here is whether the Council of Ministers is permitted to delegate the power to amend its decision to a Committee of Ministers consisting of the Ministers in charge of the Departments concerned and the Chief Minister, and whether such amendment needs to be consistent with the Rules of Business framed under Article 166 of the Constitution of India. The case law provides that delegation is permissible and that Rules of Business are directory in nature. In view of the above, we find that delegation of power is permissible. Submissions so made on behalf of the appellant in this regard are preposterous.”

(Emphasis Supplied)

34. From the foregoing discussion, it is clear that substantial compliance with the rules would suffice. In the present case, the CCS has approved the DPC guidelines/ *In Situ* Promotion Scheme under the *bona fide* impression that it was entitled to do so. Further the ministers, who would have constituted the ACC, i.e. Prime Minister and Minister of Home Affairs, were present in the meeting of the CCS. The decision was taken after thorough deliberation and proper application of mind. Therefore, even if we accept the contention of the petitioner that the ACC was the competent authority, even then the same does not vitiate the decision as there was substantial compliance with the rules.
35. Having held so, now we need to examine one last aspect, being whether any prejudice was caused to the petitioner owing to the decision having been taken by the CCS. This is necessitated as it is settled law that when procedural rules, of a non-fundamental nature, are not complied with then objections have to be judged on the touchstone of prejudice.
36. During the course of hearing, we had specifically asked the learned counsel for the petitioner as to how the petitioner has been prejudiced by a decision which has been taken by the CCS and not by the ACC; to which counsel for the petitioner submits that the petitioner has been

prejudiced to the extent that he was not considered in the DPC as he did not meet the benchmark as per the revised guidelines, as per which the ACRs of the last ten years were to be considered.

37. The said explanation of the petitioner is without any force. Prejudice has to be judged from the angle of non-compliance with the procedure and not the final decision which is taken. Thus, in our view, even though the competent Committee as per the petitioner was the ACC, no prejudice has been caused to the petitioner as in both the Committees the Prime Minister, Minister of Home Affairs and the Minister In-charge, which in the present case is the Prime Minister, was present. Further, the Committee was fully seized of the matter.
38. The original file shows an in-depth study, which was carried out before the necessary guidelines were varied. Thus, we are of the view that the petitioner was not prejudiced in any manner and he cannot complain that simply instead of ACC the matter was taken up by the CCS.
39. Resultantly, we find no infirmity in the impugned order passed by the Tribunal. The present writ petition is dismissed accordingly.

G.S.SISTANI, J

I.S. MEHTA, J

SEPTEMBER 20, 2016

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