

\$~11

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

+ **W.P.(C) 8137/2015 & CM APPL. No. 16934/2015**

Date of Decision : 10th April, 2017

ASHOK KUMAR & ANR

..... Petitioners

Through

Ms. Nidhi Jacob, Advocate for Ms.
Tamali Wad, Advocate.

versus

UNION OF INDIA & ORS

..... Respondent

Through

Mr. Bhagwan Swarup Shukla, CGSE &
Mr. Gaurav Rohilla, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE ANU MALHOTRA

SANJIV KHANNA, J. (ORAL)

1. The petitioners, Ashok Kumar and Kokkula Sreedhar, impugn the order dated 04th August, 2015 whereby O.A. No. 3743 has been dismissed by the Principal Bench of the Central Administrative Tribunal ("*Tribunal*" for short).
2. O.A. No. 3743 of 2011 was filed by the two petitioners along with four others. It appears that the petitioners are aggrieved and have preferred this petition, whereas the four others have accepted the impugned order.
3. The dispute raised pertains to the seniority in the cadre of Architects in the Central Architects Services.
4. The petitioners are direct recruit Assistant Architects. They were appointed in 1996 and 1997 upon selection through the Union Public Service Commission.

5. As per the Central Architects Services Group 'A' Rules 1989 (hereinafter referred to as "**1989 Rules**") vacancies in the grade of Architects were to be filled from the two feeder grades of Assistant Architects and Deputy Architects in the ratio of 1:1. Architect was a Group A post in the pre-revised scale of Rs. 3000-4500. Deputy Architect was a direct recruitment Group A post in the pre-revised pay scale of Rs. 2200-4000. Assistant Architects were Group B posts in the pre-revised pay scale of Rs. 2000-3500. Deputy Architects with 4 years of regular service and Assistant Architects with 8 years regular service were eligible for promotion as Architects.

6. Pursuant to the recommendation of 5th Pay Commission, the Central Civil Services (Revised Pay) Rules, 1997 ("**1997 Rules**" for short) were notified on 30th September, 1997. As per the 1997 Rules, pre-revised scales in several grades were to be merged. This in many a service required the recruitment rules to be amended so as to provide for promotion from the feeder grade in accordance with the revised qualifying service criteria.

7. On 25th May, 1998, Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training) issued Office Memorandum No. AB-14017/2/97-Estt. (RR), vide which Ministries/Departments were required to take consequential steps to amend the existing Service Rules / Recruitment Rules on priority basis in cases where existing pay scales were substituted by the equated revised pay scales, merger of pay scales, upgradation of posts etc. The earlier ban on framing/amendment/relaxation/modification/notification of Service Rules / Recruitments Rules was lifted with immediate effect. The Service Rules / Recruitments Rules being statutory in nature, changes were required to be brought and incorporated in the Service Rules / Recruitments Rules by making suitable amendments. In view of the urgency, the Ministries / Departments were required to complete the review of the

Service Rules / Recruitments Rules and furnish their proposals to the DoP&T / UPSC within two months from the date of issue of memorandum with regard to Group 'A' and 'B' posts. Pending revision of the Recruitment Rules with reference to the pay scales as approved by the Government, the existing rules for the lower pay scale were not to be operated.

8. Annexure 'A' to the O.M. dated 25th May, 1998 was a table with the heading "Revised Qualifying Service for promotion from the feeder grade". The relevant portion of the said Annexure 'A' is as under : -

Sl. No.	From	To	Fixed Qualifying Service
28.	7500-12000	8000-13500	2 years
29.	7500-12000	10000-15200	6 years

9. Modification of the Recruitment Rules in the present case, however, took about seven years and the 1989 Rules were replaced by the Central Architects Services Group 'A' Rules, 2004 notified vide gazetted notification dated 27th February, 2004 (hereinafter referred to as the "**2004 Rules**"). These rules were enacted in exercise of power conferred by Article 309 of the Constitution. Under the 2004 Rules the posts of Assistant Architects were given upgraded pay scale of Rs.7500-12000. The posts of Deputy Architect were placed in the pay scale of Rs.8000-13500. The posts of Architects were placed in the scale of Rs. 10000-15200. The 2004 Rules prescribed that 33.33% of the posts of Deputy Architects were to be filled from Assistant Architects with two years regular service in the grade and possessing educational qualifications specified in the 3rd Schedule of the said rules. 66.66% posts of Deputy Architects were to be filled-up through direct recruitment made by the UPSC. As noticed above, under the 1989 Rules the posts of Deputy Architects and Assistant Architects were both

direct recruitments cadres. Both Assistant Architects and Deputy Architects were to be considered for promotion to the post of Architects after 8 and 4 years of regular service in the grade, respectively. Consequent to amendment, the cadre of Assistant Architects became the feeder cadre for promotion to the cadre of Deputy Architects, the next in the hierarchy. Further, the posts of Architects were to be filled by promotion of Deputy Architects with four years of regular service in the grade.

10. The effect of the 2004 Rules was that Assistant Architects after two years of regular service in the grade were eligible for consideration for promotion as Deputy Architects and Deputy Architects with four years of regular service in the grade were eligible for promotion to the post of Architects. Assistant Architects were not eligible and could not be promoted as Architects under the 2004 Rules. The earlier promotional avenue open to Assistant Architects with eight years qualifying service was abrogated.

11. Before the 2004 Rules were notified, the Directorate General of Works, Central Public Works Department vide letter dated 03rd March, 2003 had informed the UPSC that the revision of the recruitment rules was under process and was likely to take considerable time. The UPSC was requested to decide the mode of recruitment for filling up eight posts in the grade of Architects for the years 2002-2003 and 2003-2004 from the Assistant Architects quota, with one time relaxation pending the revision of recruitment rules. As noticed above, O.M. dated 25th May, 1998 had directed that pending revision of the recruitment rules with reference to pay scale as approved by the Government existing rules for lower pay scale shall not be operated.

12. The UPSC by their reply dated 31.03.2003 granted approval, as one time measure pending finalization of recruitment rules, to promote Assistant Architects to the post of Architects. With regard to the field of selection, it was

directed that an Assistant Architect in the pay scale of Rs.7500-12000 with six years regular service in the grade and possessing a Degree in Architecture from a recognized university or institute would be eligible.

13. However, before any Departmental Promotion Committee Meeting could be convened to consider the cases of Assistant Architects, the revised 2004 Rules were notified on 27th February, 2004. The proposal sent by the department to the UPSC for convening the meeting of the Departmental Promotion Committee was returned vide letter dated 10.12.2004 on the ground that the 2004 Rules had been notified before the mode of recruitment as approved by the letter dated 31.03.2003 could be implemented. The UPSC was of the opinion that one time approval granted by them earlier, consequent to the notification of the 2004 Rules had become infructuous. It was also opined that meeting of the Departmental Promotion Committee should not be held for promotion of Assistant Architects to the post of Architects.

14. There was exchange of correspondence between the Department and UPSC. Letter dated 14th February, 2005 from the Ministry of Urban Development to the Secretary, UPSC, sought relaxation of the 2004 Rules to promote 13 Assistant Architects directly to the grade of Architects. This had been agreed to by the DoP&T. The UPC agreed to grant relaxation for promotion to Assistant Architects.

15. Thereafter, Departmental Promotion Committee meeting was held on 22nd August, 2005. This meeting had recommended promotions of eight Assistant Architects to the post of Architects for the year 2003-2004 and one Assistant Architect to the post of Architects for the year 2004-2005. The two petitioners were beneficiaries and were promoted to the grade of Architect on 18.10.2005 and 24.10.2005.

16. Consequently, seniority dispute arose between the Assistant Architects

who were promoted as Architects pursuant to the Departmental Promotion Committee held on 22nd August, 2005 and Deputy Architects who had been promoted to the posts of Architect in the year 2004 in accordance with the 2004 Rules. The contention of the petitioners is that there should be rotation of posts in the ratio of 1:1 as was the position stipulated in the 1989 Rules. It appears that this position was initially accepted in the seniority list published / circulated on 01.06.2008. However, thereafter the matter was referred to the DoP&T for its advice and clarification. A revised seniority list was then published vide O.M. dated 22.03.2011 as per which the petitioners became juniors to those who have been promoted as Architects from the cadre of Deputy Architects for the years 2003-2004 and 2004-2005.

17. Aggrieved the present petitioners along with four others had filed O.A. No. 3743/2011, which as noticed above has been dismissed by the impugned order dated 04.08.2015.

18. We have heard learned counsel for the petitioners and the respondents and feel that the case is rather peculiar and fact specific. It would be futile to refer to ratio of any earlier judgment, decided in different factual matrix. It would be difficult to find a case which would be identical or similar to the present factual matrix.

19. The question of seniority would have to be decided on the basis of first principles, keeping with the view that seniority must be fixed in a manner which is just and fair to the Assistant Architects as well as the Deputy Architects. Noticeably both Assistant Architects as well as Deputy Architects have suffered because of delay in finalization of the recruitment rules after the 1997 Revised Pay Rules were published. It is a matter of concern that despite instructions vide O.M. dated 25.05.1998, the authorities took nearly seven years before the new recruitment rules, i.e. the 2004 Rules, were notified. To this extent, both the

petitioners as well as the private respondents faced the brunt. It would be wrong to hold and state that the petitioners alone have suffered and, therefore, have been at the receiving end.

20. The petitioners as noticed above were appointed as Assistant Architects in the year 1996 and 1997 respectively. Under the 1989 Rules, they were entitled to be considered for promotion to the post of Architects after 8 years of regular service. Therefore, as per the 1989 Rules, the petitioners would have been eligible for consideration for promotion to the post of Architects in 2004 and 2005 respectively, subject to vacancies. In fact, the petitioners have been granted promotion to the post of Architects in the year 2005. There were 13 vacancies in the grade of Architects which were to be filled as per 2004 Rules.

21. If the 2004 Rules are applied, the petitioners would have been promoted as Deputy Architects after two years of regular service. Thereafter, on completion of four years of regular service in the grade of Deputy Architects, they would be eligible to be promoted as Architects.

22. As per relaxation granted to the petitioners and other Assistant Architects, they were considered eligible for promotion to the post of Architects after six years of regular service. Benefit of the relaxation was granted and Assistant Architects required six years regular qualifying service, though the 1989 Rules had postulated 8 years of regular service, for promotion to the posts of Architect.

23. It is noticeable that the private respondents, i.e. erstwhile Deputy Architects with whom the present petitioners have the seniority dispute, were directly recruited and appointed to the post of Deputy Architects between the period 10.08.1994 and 28.02.1997. They had become eligible for consideration for promotion to the posts of Architects under the 1989 Rules after four years of regular service in the grade. In other words, they were eligible for consideration

for promotion as Architects between the period 1998-2001. The petitioners herein, appointed in 1996-1997, would have completed eight years of service under the 1989 Rules only in the year 2004-2005. They would have completed six years of service in 2002-2003, which is again after the private respondents no. 5 to 8 had already become eligible for promotion as Architects between the period 1998-2001.

24. This is a case in which rules were relaxed to give benefit to the petitioners and other Assistant Architects. They have enjoyed the benefits of relaxation. Their claim for seniority against Deputy Architects, who were eligible both under the 1989 Rules and the 2004 Rules, and were senior, should be rejected.

25. Learned counsel for the petitioners submitted that the rules have been amended to the disadvantage of the petitioners and has relied upon the decision of the Hon'ble Supreme Court in *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others* (1983) 3 SCC 284 and *Nirmal Chandra Bhattacharjee and Others Vs. Union of India and Others* 1991 Supp (2) SCC 363. These decisions would not be applicable to the present factual matrix. The rules were not amended to the detriment of the petitioners as under the 1989 Rules the petitioners were eligible for consideration for promotion to the grade of Architects in the year 2004-2005, i.e. after they had completed eight years of regular service, whereas under the 2004 Rules, Assistant Architects were eligible for consideration to be promoted as Deputy Architects after two years regular service, and would be eligible for consideration to be promoted as Architects after four years regular service as Deputy Architects. Thus the minimum qualifying service to be considered for promotion to the posts of Architects was reduced from eight years to six years. Relaxation had made them eligible for promotion after six years of regular service. In any case, the private respondents no. 5 to 8, who were Deputy Architects, had become eligible for

promotion to the posts of Architect after four years of regular service under both the 1989 Rules and 2004 Rules at a much earlier in point of time, i.e. between 1998-2001.

26. Learned counsel for the petitioners had submitted that pursuant to O.M. dated 25.05.1998, the petitioners had become eligible for promotion to the cadre of Architects, carrying the pay scale of Rs.10000-15200 on completion of six years of service. We do not agree that this can be a valid ground to give the petitioners the seniority as prayed. We have quoted Annexure-A to the O.M. dated 25.05.1998 that the petitioners have been upgraded and given the pay scale of Rs. 7500-12000. As per Annexure-A, they were entitled to promotion from the feeder cadre to the promotional post carrying pay scale of Rs.8000-13500 after two years of qualifying service or Rs.10000-15200 after six years of service. Thus two options were available to the authorities under Annexure-A.

27. In the present case the authorities had accepted the first option, i.e. Assistant Architect after two years of regular service were to be considered for promotion from pay scale of Rs.7500-12000 to the scale of Rs.8000-13500. It is noticeable that the petitioners did not challenge the validity of the 2004 Rules.

28. In view of the aforesaid position, we find that order passed by Tribunal is just, fair and has balanced the equities between the present petitioners and the private respondents.

29. The writ petition being devoid of any merits is dismissed. There would be no order as to costs

SANJIV KHANNA, J

ANU MALHOTRA, J

APRIL 10, 2017/mk