

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.10.2020

Pronounced on : 28.10.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.11813 & 10735 of 2020 and
W.M.P.Nos.13035, 13039, 13040,
14523, 14524 & 14526 of 2020

Dr.T.Gnannamaanikkam ... Petitioner in both W.Ps

-Vs-

- 1.The Union of India,
Rep by the Secretary to Government,
Ministry of Defence,
No.101-A, South Block,
New Delhi.
- 2.The Joint Secretary to Government of India,
Border Roads Organisation,
Room No.108 A, South Block,
New Delhi.
- 3.The Director General,
Border Roads,
Seema Sadak Bhawan,
Ring Road, Delhi Cantt. (PO),
New Delhi-10.
- 4.The Secretary,
Union Public Service Commission,
Shahjahan Road, Dolpur House,
New Delhi-69. ... Respondents in both W.Ps.
- 5.Mr.Udai Shankar Srivastava,
HG Project Sampark, C/o 56 APO.
6. Mr.Mohan Lal Agarwal,
Seema Sadak Bhawan,
Ring Road, Delhi Cantt.(PO),
New Delhi.10.

7.The Under Secretary to Government of India,
Ministry of Defence,
Border Roads Development Board,
'B' Wing, 4th Floor, Sena Bhavan,
New Delhi 110 011.

... Respondents in W.P.No.11813 of 2020

Prayer in W.P.No.11813 of 2020 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 7th respondent in F.No.16017/Dir (Admn)/DPC/2020/DGBR/E1D/BRDB dated 24.08.2020 and the consequential order of the third respondent in No.13206/DIR/ADMN/DGBR E1A dated 25.08.2020 and quash both the orders in so far as the promotion to respondent 5 and 6 as Director (Administration) is concerned and consequently, direct the respondents to consider and promote the petitioner as Director (Administration) in the two newly sanctioned vacancies with all attendant benefits including seniority, pay fixation etc.

Prayer in W.P.No.10735 of 2020 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to consider and promote the petitioner as "Director" (Admn) in accordance with the seniority as he fulfils all the required eligibility qualification as per the rules against the two newly sanctioned vacancies with all attendant benefits.

In W.P.No.11813 of 2020

For Petitioner : Mr.V.Vijay Shankar

For Respondent : Mr.Sankaranarayanan,
Addl. Solicitor General
Assisted by
Mr.V.Chandrasekaran, SC
for R1 to R4
: Mr.L.Chandrakumar for R5
: Mr.Ankur Chhibber for R6

In W.P.No.10735 of 2020

For Petitioner : Mr.V.Vijay Shankar

For Respondents: Mr.Sankaranarayanan,
Addl. Solicitor General
Assisted by
Mr.V.Chandrasekaran, SC
for R1 to R4

C O M M O N O R D E R

Both the writ petitions have been filed one after the other, questioning the action initiated by the third respondent in seeking to fill up the post of Director (Administration) for the two vacancies of the year 2020, overlooking the seniority of the petitioner.

2. The first writ petition in W.P.No.10735 of 2020, was filed seeking the issuance of writ of mandamus, to promote the petitioner as Director (Administration) in accordance with the seniority and also in terms of the eligibility qualification fulfilled by the petitioner in the newly sanctioned vacancies. This court while entertaining the writ petition had passed an interim order on 13.08.2020, as under:

"The matter is taken up through web hearing.

2. The petitioner is presently working as Registrar, Central Administrative Tribunal, Chennai Bench, on deputation. He was originally appointed as Civilian Officer, Grade - II, under the Ministry of Defence in 1995 and later on promoted as Senior Administrative Officer in 2001 and thereafter, further promoted to the post of Joint Director in 2010.

3. According to the petitioner, the next higher post of promotion is to the post of Director. According to him, presently two vacancies have arisen in pursuance of the sanctioning of post of Directors, for which, the Departmental Promotion Committee has been convened for promoting the eligible officers. In the rank of Joint Director, the petitioner claims that he is the second Senior most person waiting to be promoted as Director. He apprehends that he may be overlooked in the matter of present promotion in view of the fact that he is on deputation to the Central Administrative Tribunal, Chennai Bench. According to him, he is otherwise fully eligible to be promoted to the post of Director and in case, one of his juniors is accommodated to any one of the two vacancies of Director posts, his interest would be irreparably prejudiced, since he got only one year of service left for recruitment.

4. The learned counsel appearing for the petitioner would submit that the DPC is likely

to take a decision in the matter of promotion today i.e. 13.08.2020 and if one of the Director posts is to be filled up by a junior, the petitioner's right would be infringed once and for all and he would not get another opportunity to reach the position of Director. Therefore, he would request this Court to protect the interest of the petitioner, pending final decision in the writ petition.

5. Mr.V.Chandrasekaran, learned Standing Counsel took notice on behalf of the respondents.

6. Considering the above narrative that the petitioner being the second Senior most person, fully eligible to be considered for promotion to the post of Director, there shall be an order of injunction restraining the respondents from filling up one of the two posts of Director till the next date of hearing.

Post the matter on 26.08.2020."

3. Thereafter, the hearing of the writ petition was advanced and was taken up for consideration on 20.08.2020, on the request made by the Additional Solicitor General of India Mr.Sankaranarayanan, informing this Court that the action proposed by the official respondents in convening the DPC for the subject promotion, was in pursuance of the direction passed by the Delhi High Court in a related issue, fixing a timeline for the promotion and hence, the interim order passed by this Court on 13.08.2020 may require modification. On consideration of the submission of the learned Additional Solicitor General, bringing out certain facts which were not placed for consideration before this Court at the time of passing of the Interim order on 13.08.2020, the said interim order, came to be modified on 20.08.2020, as under:

"The matter is taken up through web hearing.

This Court, on earlier occasion, i.e. on 13.08.2020 while entertaining the Writ Petition, has passed an interim injunction, injuncting the respondents from filling up one of the two posts of Director till the next date of hearing and adjourned the matter to 26.08. 2020.

2. However, it transpired that the interim order was communicated to the authorities concerned and the Departmental Promotion Committee (DPC) which was convened on 13.08.2020, had considered the name

of one Mr.U.S.Srivatsava for the subject promotion to the exclusion of the petitioner herein. The said consideration was due to the fact Delhi High Court in WP(C) No.3792 of 2020, issued directions for consideration of the name of the said U.S.Srivatsava, who was the petitioner in the above said Writ Petition, on the basis of the petitioner's claim in that Writ Petition and further directed the authorities concerned to report compliance to the Court on 24.08.2020.

3. Although the matter was originally adjourned to 26.08.2020, at the instance of the learned Standing counsel for the Central Government, the hearing was advanced and the matter is taken up today for hearing.

4. Today, the learned Addl.Solicitor General, Mr.Sankara Narayanan appearing on behalf of the Government of India, submitted that the interim order of injunction granted by this Court needs to be modified for the following reasons, viz., that according to the learned Addl.Solicitor General, the said U.S.Srivatsava approached the Delhi High Court in the above mentioned Writ Petition for his consideration for promotion to the post of Director as he was due to superannuate on 31.08.2020. On consideration of the Writ Petition, the Delhi High Court vide its order dated 17.07.2020 has directed the authorities concerned to convene DPC and consider the name of said U.S. Srivatsava and report compliance on 24.08.2020 in view of the impending retirement of said officer on 31.08.2020.

5. When the DPC was to be convened on 13.08.2020, the present Writ petitioner approached this Court claiming that he was the second senior most person waiting to be promoted as Director, apart from one senior person against whom he has no objection for his accommodation in one of the two posts of Director. According to the petitioner herein, his name was probably not being considered as he was on deputation as Registrar of the Central Administrative Tribunal, Chennai Bench and being away from the Headquarters, he was not deputed to undergo CSS Training which was one of the requirements for promotion to the post of Director. However, the submission of the petitioner was that the CSS Training requirement was not to be made applicable to the Officers who crossed the age of 58 and in such cases, the training cannot be insisted upon, as per the Rule position. Nevertheless, according to the petitioner, he was deputed to the

CSS Training OnLine and completed the same recently, just before the meeting of the DPC.

6. In consideration of the plea of the petitioner that he was the second senior person, waiting in the wings to be promoted as Director and also considering the fact that CSS Training was not to be made applicable to the petitioner in view of the age factor in terms of the governing Rules, an interim order of injunction was passed by this Court on 13.08.2020. The learned Addl.Solicitor General informed this Court that in pursuance of the interim order of injunction, though the DPC considered the name of said U.S.Srivatsava in compliance with the direction of the Delhi High Court, no further decision is taken in deference to the interim order passed by this Court.

7. Be that as it may, the learned Addl.Solicitor General submitted that the authorities are now caught between two competing orders of two High Courts in respect of the same selection. The authorities are also under legal obligation to report to the Delhi High Court on 24.8.2020 towards compliance of the direction of that Court. A dicey situation as it unfolded, the learned Addl. Solicitor General requested this Court to modify the interim orders appropriately so that the authorities are not to be hauled up for disobedience of the orders passed by either of the High Courts.

8. Mr.L.Chandra Kumar, learned counsel who intervened in the matter during the course of the arguments, submitted that he was representing U.S.Srivatsava, who is the Writ petitioner before the Delhi High Court and according to him, the said Srivatsava was fully qualified to be appointed as Director in preference to the petitioner herein, as according to him, the CSS Training was mandatory irrespective of the age as per the relevant Rules. He further submitted that the request of the learned Addl.Solicitor General for modifying the interim order of injunction becomes more imperative, as admittedly, the said Srivatsava is due for his retirement on 31.08.2020 and any further delay in the matter would imperil the chances of his client's promotion, for ever. In fact, the learned Addl.Solicitor General on instructions, also submitted that in regard to the CSS Training qualification, the contention put forth by the learned counsel for the petitioner may not be correct, as exception to the Rule is applicable only

to Secretariat Service and not to other services. However, this Court, is not inclined to go into the nuanced submissions of the learned counsels on this aspect, at this stage.

9. In consideration of the above narrative and in order to facilitate a way out of the present imbroglio faced by the authorities, this Court is of the view that the injunction granted by this Court on 13.08.2020 need not be continued by further imposing a blanket embargo on the respondents in taking forward the DPC proceedings drawn up in furtherance of its meeting held on 13.08.2020.

10. At the same time, this Court cannot also lose sight of the fact that the petitioner herein admittedly senior to the said Srivatsava and in fact, on a specific query by this Court on this aspect, it was affirmed on behalf of the learned Standing counsel for the respondents, is not to be overlooked unjustly. In the event of the petitioner's contention that CSS Training was not mandatory for him is supported by the relevant Rules, the right of the petitioner for consideration in the present DPC cannot stand negated, in order to advance the cause of expediency in preference to fairness in action. Therefore, in fitness of things, the right of the petitioner herein needs to be safeguarded to the extent possible in the peculiar circumstances of the case.

11. In the above circumstances, this Court is constrained to modify the order dated 13.08.2020 as under:

"The respondents are directed to consider the name of the petitioner herein also for promotion to the post of Director by convening a DPC at the earliest and on such consideration, the DPC can make recommendation thereafter as to which candidate is fully eligible for eventual appointment to the post of Director, as expeditiously as possible. It is made clear that any decision taken either by the DPC or by the appointing Authority on the subject matter is subject to the result of the Writ Petition."

12. Post the Writ Petition for further hearing on 07.09.2020."

4. When the above modified order was in force, it appeared that the seventh respondent had passed an order on 24.08.2020,

promoting one Mr.H.K.Patnaik and Mr.U.S.Srivatsava as Directors (Administration) against the existing two vacancies, which promotion is the subject matter of challenge in writ petition in W.P.No.11813 of 2020. As per the order dated 24.08.2020, out of the two vacancies, one was filled up with petitioner's senior Mr.H.K.Patnaik, against which, the petitioner had no quarrel, but in respect of the other vacancy, the same was filled up with one Mr.U.S.Srivatsava, the petitioner's Junior. The accommodation of the said official is the bone of contention and more so, on his retirement with effect from 31.08.2020, one more junior of the petitioner Shri.Mohanlal Agarwal, the sixth respondent herein, is to be accommodated in the said vacancy arising after 31.08.2020. Both Mr.U.S.Srivatsava and Mr.Mohanlal Agarwal are arrayed as respondents 5 and 6 in the writ petition. The second writ petition was filed, since the official respondents had proceeded with convening of the DPC and recommended the promotion of the respondents 5 and 6, notwithstanding the interim order passed by this Court on 20.08.2020 in W.P.No.10735 of 2020. But, the effective adjudication is in fact confined to writ petition No.11813 of 2020, as the challenge is to the latest promotion order dated 24.08.2020, questioning the propriety and the validity of the action of the official respondents, granting promotion to the respondents 5 and 6, in preference to the petitioner who is admittedly senior to the said respondents.

5. In the aforesaid background, the relevant facts which are necessary to appreciate the inter se contest as between the petitioner on one hand and the official respondents, private respondents viz., respondents 5 and 6 on the other, are stated hereunder.

6. The petitioner herein is presently working as Registrar, Central Administrative Tribunal, Chennai Bench. He was originally appointed as Civilian Officer Grade II, recruited through UPSC. He joined duty on 20.09.1995, in the General Reserve Engineer Force (GREF), Border Roads Organisation, Ministry of Defence. According to the petitioner, the post of Civilian Officer Grade II has been subsequently re-categorised as Administrative Officer.

7. In 2001, the petitioner was promoted as Senior Administrative Officer and was further promoted as Joint Director in November 2010. The next promotional avenue available for the petitioner is to the post of Director (Admin). The relevant recruitment rules for promotion from the feeder cadre of Joint Director to the post of Director(Admin) are that the officers in the feeder cadre/grade of Joint Director must possess five years of regular service and should have completed Level 'F' Mandatory Training in Central Secretariat Service

Officers (CSS) Course. According to the petitioner, he had served in various places during his long tenure from 1995. Lastly, he was appointed as Registrar of Central Administrative Tribunal (CAT), Chennai Bench on deputation from 22.11.2017 and the period of deputation is to expire in November 2020.

8. According to the petitioner, in May 2020, two additional posts of Director, were sanctioned on account of cadre restructuring. These two vacancies were therefore to be filled up in terms of the recruitment rules and also with reference to the seniority of the eligible officer in the feeder grade who come within the zone of consideration. One Mr.H.K.Patnaik and the petitioner were in line for promotion, as being two senior most officers. The service regulations viz., Group 'A' Posts (Administrative Cadre) in the Ministry of Defence, General Reserve Engineer Force, Border Roads Organisation, S.R.O.44 was introduced with effect from 06.06.2017, with five years experience in the post of feeder cadre namely Joint Director plus completion of 'F' Level training. As far as the petitioner is concerned, the requirement of five years experience in the feeder cadre was more than fulfilled, but, as regards the completion of 'F' Level Training, according to the petitioner though being senior, was not nominated for the training till recently, as he has been posted outside his parent service on deputation to foreign service, as Registrar of Central Administrative Tribunal, Chennai Bench, from 22.11.2017 and has been serving in the deputed post, till date.

9. The grievance of the petitioner is that his juniors viz., the fifth and sixth respondents herein, had been nominated and sent for the training (F Level), with a view to make them qualify and acquire the eligibility criteria in terms of the SRO for promotion to the post of Director (Admin), overlooking the seniority of the petitioner. The petitioner claims that he was unfortunately not informed of the training undergone by his juniors nor he was nominated to undergo the training along with his juniors, by the authorities concerned. While so, when DPC was convened in August 2020, the petitioner came to know of his juniors viz., the fifth and sixth respondents, being considered for promotion to the post of Director against the two newly created posts. The petitioner protested to the authorities that he cannot be overlooked in the matter of the subject promotion in preference to his juniors being considered and in such circumstances, the second writ petition came to be filed, challenging the order dated 24.08.2020 and its consequent order dated 25.08.2020, posting the fifth and sixth respondents, as Director(Admin) one after the other ignoring the claim of the petitioner.

10. Mr.V.Vijaya Shankar, learned counsel appearing for the petitioner would strenuously contend that the consideration of respondents 5 and 6 and their eventual promotion one after the other, as indicated in the impugned order dated 24.08.2020, is per se illegal, arbitrary and the order is also tainted with malafides. According to the learned counsel, out of the two vacancies, which were considered by the DPC meeting held on 13.08.2020, the name of one H.K.Patnaik, a senior colleague of the petitioner was recommended and posted. But, for the other vacancy, the fifth respondent viz., Mr.U.S.Srivatsava who was junior to the petitioner, was appointed and besides, in the impugned order, an extended panel was drawn up by promoting another junior, the sixth respondent viz., Mr.Mohanlal Agarwal, as well, in view of the impending retirement of the fifth respondent on 31.08.2020. The subsequent appointments of the juniors was a fall out of the recommendation of the DPC, originally made on 13.08.2020.

11. According to the learned counsel for the petitioner that one of the issues which arises for consideration before this Court is that the petitioner was stated to be overlooked as he was found ineligible for the promotion, as he having not completed 'F' Level training stipulated in the service regulation. In this regard, the learned counsel would submit that the petitioner who is now 59 years old and as per the Office Memorandum dated 24.01.2014, it was clarified that the Central Secretariat Service Training ('F' Level) for officers who are more than 58 years of age as on 1st July of the financial year, are to be exempted from the mandatory training. This Office Memorandum which provided for exemption, had not been taken note of by the official respondents while considering the claim of the juniors of the petitioner in the subject promotion. Therefore, the objection of the official respondents for not including the petitioner in the panel for the promotion with reference to the non-completion of 'F' Level Training by the petitioner, was untenable and unsustainable.

12. The learned counsel would further submit that even assuming that, such requirement was mandatory regardless of the petitioner's age and the Office Memorandum dated 24.01.2014, the petitioner herein had completed the required training on 18.07.2020, through online before the DPC met on 13.08.2020. Therefore, the petitioner was fully eligible in terms of the recruitment rules (S.R.O.44) on the day when the DPC met and recommended promotion of the petitioner's juniors. In such circumstances, the promotion of the respondents 5 and 6 cannot be countenanced both in law and on facts. This is particularly so, the two additional posts were sanctioned in the cadre of

Director (Admin) only on 26.05.2020 and therefore, the necessity to fill up the said vacancies had arisen only after 26.05.2020 and in which case, the petitioner's completion of the required training in July 2020, ought to have been taken into account when the DPC met on 13.08.2020.

13. According to the learned counsel, when vacancies itself have arisen only after 26.05.2020 due to sanction of the additional two posts of Director (Admin), the cut off date said to have been followed by the DPC for consideration of the eligible officers as on 01.01.2020, cannot have any sanctity at all. Having cut off date as 01.01.2020, could make sense and meaning only in regard to filling up of vacancies which arise due to normal circumstances like death, retirement and resignation etc., and not for the newly created vacancies. Therefore, the non-consideration of the petitioner, despite in completion of training in July 2020, by the DPC when it met on 13.08.2020, was a clear case of deliberate and malicious omission with a view to favour the juniors of the petitioner viz., the respondents 5 and 6 herein.

14. The learned counsel would also submit that when the respondents 5 and 6 were sent for training in January 2018, as claimed by the official respondents, the petitioner was not informed as by then, he was posted to the Central Administrative Tribunal, Chennai Bench on deputation on 22.11.2017. It was entirely the fault of the official respondents in not nominating the petitioner for the mandatory training nor was he informed of the training, when respondents 5 and 6 were sent. The petitioner on his own cannot undergo the training, unless such nomination come from the authorities.

15. In this regard, the learned counsel relied on a communication dated 06.01.2018, nominating the petitioner's immediate senior Mr.H.K Patnaik and his juniors namely fifth and sixth respondents herein, for training which was termed as workshop on team building and leadership from 29.01.2018 to 31.03.2018. Though the petitioner's name did figure in the communication, it could be seen that the communication was in fact sent to a place called Sewak located in the State of Nagaland, where the petitioner was previously working, before he was posted to the present place of work in the Central Administrative Tribunal, Chennai Bench, in November 2017. According to the learned counsel that the respondents 5 and 6 and other officers in the Headquarters, had ensured that the petitioner was not sent for training and prevented him from acquiring the eligibility for the purpose of promotion to the

post of Director (Admin), in order to achieve a collateral purpose.

16. The learned counsel would also submit that the training which is said to have been completed successfully by the private respondents, is not a training contemplated in the recruitment rules. In this connection, he would refer to the communication issued from the Headquarters dated 01.05.2018 and referred to the duration and the content of the training. The learned counsel would in fact questioned the very basis of the claim of eligibility of the private respondents with reference to their completion of training, which according to the petitioner was not in compliance with what is contemplated in the rules.

17. The learned counsel would further submit that in respect of promotion of senior level officers, in the administrative positions, the promotion order will always be issued, regardless of the completion of Training as stipulated. But, in the orders, as a matter of practice, it will be mentioned that such promotion will take effect only after successful completion of Training in Central Secretariat Service Course. But in the case on hand, the petitioner has already successfully completed the training well before the date when the DPC met on 13.08.2020. Therefore, the claim of the petitioner herein stood as a better footing for considering his promotion ahead of the promotion of the fifth and sixth respondents.

18. The learned counsel would submit that undue emphasis and has been placed on the training in order to deny the promotion to the petitioner. When the petitioner is due for retirement on attaining the age of superannuation on 31.12.2021, the denial of promotion at this stage would be the end of the road for the petitioner and he would have to retire in the rank of Joint Director, despite his seniority.

19. The learned counsel would also add that when the interim order was passed by this Court on 13.08.2020 and thereafter the order was modified on 20.08.2020, the DPC never implemented the interim order by considering the candidature of the petitioner. In this connection, he would refer to paragraph 5 of the counter affidavit filed on behalf of the respondents 1 to 3, wherein, it is stated that the section concerned was closed due to entire staff being quarantined on being affected by Covid - 19 and therefore, a telephonic consultation was made with the UPSC official and he informed that the proposal was returned on the basis of the official's remarks/comments, the comments as extracted in the counter affidavit, would read as under:

"The Department had considered Shri Gnanamaanikkam T, Joint Director (Admn) as ineligible for vacancy year 2020, which is in

consonance with the DPC Guidelines, since he had not completed the mandatory training requirement as per the RRs as on the crucial date of eligibility for the vacancy year 2020 i.e. 01.01.2020."

20. The learned counsel would take objections to the above statement in the counter affidavit stating that the direction of this Court has been flouted, as some lower rank official has taken a decision, not to consider the candidature of the petitioner. Therefore, he would submit that this Court has to take a serious view of the matter and the petitioner herein has been deliberately overlooked in order to favour respondents 5 and 6 with the impugned promotions.

21. Per contra, the learned Additional Solicitor General appearing for the official respondents would submit the contention that 'F' Level training is not mandatory and the petitioner being over 58 years, is exempted under Office Memorandum dated 24.01.2014, is misplaced and misconceived for the reason that the petitioner himself in his representation dated 01.06.2020, addressed to the third respondent, has requested for his nomination to the 'F' Level course, mentioning the completion of course was mandatory for promotion to the post of Director(Admin). Therefore, the petitioner himself has understood the requirement correctly, even as on 01.06.2020, a couple of months before the DPC was convened. Therefore, it does not lie in the mouth of the petitioner to take a contrary stand and contend that in view of his age, the training contemplated in the rules was not mandatory and not required at all. He would in fact refer to another representation of the petitioner dated 08.06.2020, reiterated by the petitioner in regard to the mandatory nature of the 'F' Level training.

22. The learned Additional Solicitor General would further submit that after cadre review, two additional posts were sanctioned on 26.05.2020 and any promotion whether in respect of newly sanctioned vacancies or from the existing vacancies, the cut off date has always been taken as 1st of January of the year, when the promotions are to be effected. When the promotion is to be considered and effected, the cut off date cannot be different and shifted on a year to year basis as that would only lead to arbitrariness in consideration of candidates for promotion.

23. The learned Additional Solicitor General would also submit that the petitioner while making request in June 2020, could have requested to be sent for training even earlier when he was fully aware that for his next promotion, the completion of training was mandatory as admitted by him. He would therefore submit that the non communication of the letter dated

06.01.2018, to the place of his work at Central Administrative Tribunal (Chennai Bench) may not be so material that the petitioner could have sought his nomination even without any formal intimation in that regard. In fact, he would submit that after June 2020, the petitioner was sent for training on the basis of his request and completed the same in July 2020. Therefore, the contention that he was waiting for his nomination by the authorities concerned, was without any substance.

24. The learned Additional Solicitor General, on instructions, would clarify that in regard to the exemption contemplated in Office Memorandum dated 24.01.2014, the same would have no application to the petitioner, as it was confined only to the officers employed in Central Secretariat services.

25. Mr. Ankur Chhibber, learned counsel appearing for the sixth respondent would submit that the exemption pleaded by the petitioner is completely misconceived and the same is without any legal basis. He would submit that if such exemption is to be applied to the service of Border Roads Organization, wherein, the service regulation was introduced in the year 2017, it could have incorporated such exemption contemplated in the Office Memorandum dated 24.01.2014, specifically in the column provided for eligibility criteria. In the absence of any specific mention in the regulation, he would submit that the training becomes mandatory and no such exemption is to be read into the regulation.

26. The learned counsel for the sixth respondent would submit that the submissions of the learned counsel for the petitioner that the training undergone by the sixth respondent was not in terms of the stipulation in the service rules, do not merit any serious consideration by this Court, as they appear to be off the scuff contentions which are completely unfounded and baseless. He would also submit that all the persons in the past who have been promoted as Directors have gone through similar training and he would refer to the regulation itself, which laid down the eligibility criteria as under:

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Director (Administration)	Promotion: Joint Director (Administration) in Level 12 in the Pay Matrix with five years' regular service in the grade and has successfully completed training of level 'F' for Central Secretariat Service Officers or Equivalent from Institute of Secretariat Training and Management, Delhi or Training in the training academy school of Border Roads Organization.
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27. The learned counsel would submit that the above would clarify that any training equivalent to 'F' Level Course is fair enough to acquire the eligibility. He would particularly draw reference to a communication dated 08.06.2019, addressed to Headquarters forwarding the course results ('F' Level Training Course) undergone by the sixth respondent, which would indisputably clear the unnecessary air of controversy created by the petitioner by making such frivolous submissions in a bid to malign the appointment of the sixth respondent, out of desperation.

28. The learned counsel would further refer to the seniority list published in the cadre of Joint Director (Admin) as on 01.01.2020, wherein, it was clearly mentioned that the fifth and sixth respondents were declared 'F' Level qualified officers, unlike in the case of the petitioner who was not declared so, as on 01.01.2020. The learned counsel would also refer to a decision of the Delhi High Court in W.P.(C).No.1738 of 2017 dated 01.07.2019 and W.P.(C).No.3792 of 2020 dated 17.07.2020, which considered the issue of whether relaxation is permissible in case juniors being considered for promotion, overlooking the seniority of seniors. The Delhi High Court held that unless specific provision is available in the rules, the Tribunal in that case cannot order relaxation. According to the learned counsel that the decision can be applied to the factual matrix of the case and in fact, the decision was also confirmed by the Hon'ble Supreme Court of India by order dated 14.01.2020.

29. The learned counsel would proceed to submit that unless there is a clause inserted in the service regulations contemplating any exemption in regard to certain class of people due to the age factor, this Court cannot read such exemption

claimed by the petitioner into the regulation and that it would amount to re-writing the regulation itself. As regards the crucial date of eligibility being fixed as on 1st January of the vacancy year, the learned counsel would refer to the Office Memorandum dated 08.05.2017. In the Memorandum, it is clearly stipulated that from the calendar year 2018, the crucial date of eligibility would be 1st January of the vacancy year with effect from 2019.

30. Therefore, the learned counsel would submit that it is immaterial that whether the vacancies were sanctioned on account of the cadre review in May 2020, but, what is to be taken into consideration is that when the additional vacancies were sought to be filled up in the year 2020, the cut off date would always be taken only as 01.01.2020, as per the Office Memorandum. Any other date to be considered for the purpose of consideration of eligibility, would be in violation of the Office Memorandum and such consideration would suffer from consequent illegality. He would lastly add that the petitioner has not challenged the communication dated 11.09.2020, whereby the proposal for consideration of the petitioner's candidature was rejected. The petitioner ought to have challenged that communication as the petitioner was found to be ineligible even for consideration, much less his appointment.

31. The learned counsel appearing for the petitioner by way of reply would submit that the contention regarding the absence of specific provision in the rules providing exemption of training for the officers above the age of 58 years, he would refer to the clause 7 of the recruitment rules, which reads as under:

"7. Saving - Nothing in these rules shall affect reservations, relaxation of age limit and other concessions required to be provided for the Scheduled Castes, Scheduled Tribes, the other Backward Classes, Ex-servicemen and other special categories of persons, in accordance with the orders issued by the Central Government from time to time in this regard."

32. According to the learned counsel, the above provision being a saving clause, would automatically have to be applied and read into the rules. According to him, when completion of 'F' Level training applicable to the Central Secretariat Service Officers has been made as a part of the eligibility for promotion to the post of Director (Admin), whatever exemption contemplated in regard to the completion of 'F' Level Training has to be perforce applied to all the services where such completion of training is a part of the eligibility criteria for promotional consideration. There is no requirement of bringing any specific regulation for that, in the face of above saving

clause. In fact, he would particularly refer to special categories of persons as mentioned in Clause 7, which means that the petitioner belongs to a special category of aged persons above 58 years and any exemption contemplated in Office Memorandum, would have to be automatically extended to the service of the Border Roads Organization, as well.

33. The learned counsel Mr.L.Chandrakumar, appeared for the fifth respondent, whose appointment is also questioned in these writ petition. The learned counsel formally made his submissions with reference to the appointment of the fifth respondent. However, since the fifth respondent has already served as a Director in the promoted post and retired on attaining the age of superannuation with effect from 31.08.2020, this Court is not inclined to hear any elaborate submissions on his behalf, in view of the passage of time and his promotion and posting having worked itself out, in the meanwhile and no more alive for serious adjudication by this Court.

34. After the conclusion of the arguments and submissions, this Court has enquired with the learned Standing Counsel appearing for the Official respondents whether any other vacancy is available in the post of Director (Admin) de hors the vacancy, which is the subject matter of controversy in this case. By way of clarification on behalf of the official respondents, an additional affidavit has been filed. In paragraph 2 of the clarificatory affidavit, it is stated as follows:

"2. I respectfully submit that out of 4 vacancies, 1 vacancy in respect of Training Institute has not been given effect to since the Training Institute has not been raised till date. In respect of the remaining 3 vacancies one Shri. S. Suresh Kumar was promoted as early as on 29 Aug 2018. For the remaining 2 vacancies, DPC proceedings dated 13.08.2020 found that 1. Mr. HARESH KUMAR PATNAIK and 2. Mr. UDAI SHANKAR SRIVASTAVA (Respondent No.5, who was due to retire in 31.08.2020) were fit for promotion. The DPC also by way of an extended panel found fit and recommended Mr.MOHANLAL AGRAWAL (Respondent No.6) for promotion on the retirement of Mr.UDAI SHANKAR SRIVASTAVA (Respondent No.5)."

35. In effect, as on date, if the sixth respondent is to be accommodated as per the impugned order dated 24.08.2020, there

will be no effective vacancy available, except one vacancy which was earmarked towards Training Institute which has not yet fructified.

36. This Court has considered the submissions of the learned counsels appeared on behalf of the petitioner and the respondents 5 and 6 and also the submissions of the learned Additional Solicitor General of India appeared on behalf of the official respondents and perused the materials and the pleadings placed on record.

37. On behalf of the petitioner, the learned counsel Mr.V.Vijaya Shankar, initially submitted that the petitioner was being unjustly overlooked, when the DPC met on 13.08.2020, while considering the eligible officers who came within the zone of consideration for promotion to the post of Director(Admin). It was originally pleaded that out of the two vacancies which came up for consideration, the petitioner was the second senior most after one H.K.Patnaik and therefore, he was next in line for the promotion.

38. On consideration of such submission originally made in W.P.No.10735 of 2020, an interim order was passed by this Court on 13.08.2020, as extracted supra. But, subsequently, the interim order passed on 13.08.2020, was modified on the basis of certain facts being brought to the notice of this Court, at the instance of the learned Additional Solicitor General of India on 20.08.2020, which is also extracted supra. Therefore, the second writ petition was filed taking into account the development as it unfolded after the modified direction of this Court passed on 20.08.2020, appointing Mr.H.K.Patnaik, vide order dated 24.08.2020. The said officer was not rightly arrayed as respondent in the said writ petitions, as he being admittedly senior to the petitioner. But along with him, the fifth respondent viz., Mr.U.S.Srivatsava, who was admittedly junior to the petitioner, was appointed against the other vacancy. Besides, in the impugned order dated 24.08.2020, the sixth respondent who was again junior to the petitioner, was ordered to be promoted on retirement of the fifth respondent on 31.08.2020. The adversarial order is the subject matter of challenge in the latest writ petition. According to the respondents, the above developments took place on justifiable grounds, contending that the petitioner was not eligible at all as he had not completed the 'F' Level Training on the crucial date of consideration which was a part of the eligibility criteria as stipulated in the recruitment rules governing the promotion. Therefore, his name was rightly omitted to be considered by the DPC.

39. The learned counsel for the petitioner infact vehemently contended that the authorities concerned had lost sight of the fact that vide Office Memorandum dated 24.01.2014, an exemption has been granted from 'F' Level Training for officers who had crossed the age of 58 years and the petitioner was being more than 58 years old, the question of declaring him as ineligible, was illegal and malafide.

40. The contention regarding the exemption contemplated in the Office Memorandum dated 24.01.2014, was strongly refuted on behalf of the respondents. In fact, the learned Additional Solicitor General of India has clarified on instructions that the said Office Memorandum was not applicable to the petitioner's service and the exemption contemplated therein was only confined to the officers of the Central Secretariat Service.

41. At this, the learned counsel for the petitioner contended that when 'F' Level Training applicable to the Central Secretariat Service was made applicable across the Board for other services including the petitioner's organization and when exemption was provided in the Office Memorandum dated 24.01.2014, the exemption automatically ought to have been made applicable to all services as well. This is particularly so, when no constricted applicability of the exception could be deduced from the Office Memorandum.

42. The learned counsel for the sixth respondent however would strongly disagree with the above contention stating that when the recruitment rules were framed and brought into force on 06.06.2017 through S.R.O.44, the stipulation of completion of 'F' Level Training was very much made part of the eligibility criteria. When the recruitment rules were brought into existence after the issuance of the Office Memorandum dated 24.01.2014, if exemption was to be granted to particular category of officers with reference to their age, such exemption should have been incorporated specifically in the recruitment rules. In the absence of any such stipulation, this Court may not read the exemption contemplated in the Office Memorandum dated 24.01.2014, into the recruitment rules and confer the benefit on the petitioner.

43. The learned counsel has also drawn reference to the submission made on behalf of the official respondents by the learned Additional Solicitor General of India who on instructions, categorically clarified that the exemption contemplated in the Office Memorandum dated 24.01.2014, was applicable only to the officers of the Central Secretariat Service.

44. Taking note of the above submission and the authoritative clarification spelt out by the learned Additional Solicitor General, this Court cannot rule that the exemption as provided in the Office Memorandum dated 24.01.2014, can be ipso facto imported and read as part and parcel of the recruitment rules governing the subject promotion. Moreover, as rightly contended by the learned counsel for the sixth respondent that when the recruitment rules had been brought into existence in 2017, the authorities concerned could have specifically incorporated in the rules itself in order to provide clarity on such matters of beneficial exemption being made applicable to the officers of certain age group. Therefore, it should be unhesitatingly construed that in the absence of any specific provision being made in the recruitment rules in respect of the exemption from 'F' Level Training, the eligibility criteria as provided in recruitment rules, need to be scrupulously followed, without any departure from its implementation.

45. In fact, as rightly contended by the learned Additional Solicitor General and also the other counsels for the private respondents, the petitioner himself in his representations dated 01.06.2020 and 08.06.2020 had admitted that the 'F' Level Training was mandatory and therefore, requested that he may be nominated for training to make him eligible for the promotion.

46. Therefore, this Court is of the view that the such submission on the aspect of exemption was ostensibly made as an after thought realizing the shortcoming in fulfilling the eligibility criteria as opposed to the private respondents' eligibility. The reliance placed on the Office Memorandum dated 24.01.2014, by the petitioner, appears to be a feeble attempt on the part of the petitioner to overcome the legal hurdle of his unfortunate ineligibility.

47. The other contention of the learned counsel for the petitioner is that the Saving Clause 7 in the recruitment rules which is extracted supra, is of wide amplitude and would also include the exemption contemplated in Office Memorandum dated 24.01.2014, in the opinion of this Court, appears to be too far fetched and remote. In fact, the learned counsel would draw the attention of this Court to expression "other special categories" of persons in clause 7 and submitted that the expression "special categories" included the persons of 58 years of age or more. This Court is unable to persuade itself that the expression "special categories" of persons meant to include the aged officers, as the import of expression "special categories" of persons has a different connotation like persons with disabilities etc. Certainly, such expression may not bring the aged officers within its sweep. In such view of the matter, the principal ground of attack that the petitioner was eligible to

be considered when the DPC met on 13.08.2020 and was unjustly overlooked, despite being senior to the respondents 5 and 6, is to be rejected being unfounded and untenable. This Court while concluding as above, as a corollary has as to hold that the completion of 'F' Level Training is a part of the eligibility criteria and exemption cannot be claimed under the Office Memorandum dated 24.01.2014.

48. The learned counsel for the petitioner alternatively contended that in any case, the day when DPC met i.e., on 13.08.2020, admittedly, the petitioner had successfully completed his 'F' Level Training in July 2020 and therefore, the petitioner ought to have been considered along with the respondents 5 and 6, more particularly, when the vacancies arose due to the sanctioning of the additional two posts of Director (Admin) as a consequence of cadre review in May 2020. According to the learned counsel, a decision was taken to that effect on 26.05.2020. According to the learned counsel, the cut off date taken as 01.01.2020, for the purpose of consideration of the eligibility of the officers, cannot be applied mechanically in the present promotion, as the posts itself were sanctioned only in May 2020 and only thereafter, an exercise was initiated for filling up of the posts and in that circumstances, the normal cut off date prescribed could have no application or sanctity at all.

49. The above submission of the learned counsel for the petitioner, was resisted by the learned Additional Solicitor General as well as the learned counsel for the sixth respondent. According to the learned counsels for the respondents, they would rely on the Office Memorandum dated 08.05.2017, which provided the mandatory procedure to be followed by the DPC. In that memorandum, it is clearly mentioned as under:

"The crucial date of eligibility will be 1st of January of the vacancy year with effect from 2019."

50. The above cut off date has been clarified and has been fixed on the basis of the action taken to streamline the process of convening of DPC. On the strength of this Office Memorandum, both the learned Additional Solicitor General as well as the learned counsel for the sixth respondent submitted that the cut off date cannot be shifted and varied with reference to fact situation each year as to filling up of vacancies in the estimated vacancies or newly sanctioned vacancies. The mandatory principle is that any vacancy / vacancies to be filled in a particular year, the 1st January of that year would alone be the cut off date.

51. This Court is entirely in agreement with the submission made on behalf of the respondents. If the arguments of the

learned counsel for the petitioner are to be accepted that the action initiated in convening of DPC arose only after 26.05.2020, i.e., after the sanction of two additional posts of Director (Admin) and therefore, the cut off date ought not to be considered as 01.01.2020, it would always lead to arbitrary fixing of cut off dates each year, giving rise to controversies, questioning the propriety and reasonableness of prescription of different cut off dates for different promotions. If such variant flexibility in prescription of cut off dates is to be allowed, it will only lead to undesirable result and would not advance the cause of good governance and public administration.

52. In such circumstances, this Court has no hesitation in holding that the cut off date as 01.01.2020, adopted for the present promotion in terms of the Office Memorandum dated 08.05.2017 was in order, shifting of the cut off date in the present promotion with reference to the date of the successful completion of 'F' Level Training by the petitioner, appears to be a self-centred submission of the petitioner, made in the realm of advancing his self interest contrary to the principles as contained in the Office Memorandum dated 08.05.2017. Such submission does not merit any serious consideration and hence rejected.

53. Lastly, it was contended that the so called 'F' Level Training completed by the respondents 5 and 6 was not in fact a 'F' Level Training at all as contemplated in the recruitment rules. The learned counsel in this regard submitted that the course content and the programme of 'F' Level Training was entirely differed than the duration and the training undergone by the private respondents. According to the learned counsel for the petitioner that the training said to have been completed by the respondents 5 and 6, was not akin to 'F' Level Training both in terms of content and duration. Therefore, the respondents 5 and 6 were not eligible at all in the first place in terms of the recruitment rules and hence, their promotion suffered from patent illegality.

54. At this, the learned counsel for sixth respondent has shown a communication dated 08.06.2019, wherein, the commandant of the training school has forwarded a course result to the head quarters, declaring the 'F' Level Training course undergone by the sixth respondent. The learned counsel would also refer to the fact that all other officers who had been promoted as Director in the past, had undergone the same type of training and the petitioner has come up with his contention in order to overcome his own ineligibility and to upset the promotion of the sixth respondent, by resorting to baseless objections raising the same for the first time.

55. This Court also finds that the above contention of the petitioner after exhausting all other legal and factual submissions, is presumably born out of frustration in not being found eligible for the subject promotion due to his non completion of 'F' Level Training as on 01.01.2020. In the opinion of this Court such contention is per se motivated and lacking in bonafides and deserved to be brushed aside. In any event, these kind of unsubstantiated desperate objections cannot be allowed to sneak into the process of adjudication in the eleventh hour with a malicious view to bring the very eligibility of the private respondents under a cloud. Once the petitioner is found to be not eligible, in all fours, he loses his status of locus standi, in questioning the appointment of the private respondents. For the above reasons, the said contention is liable to be rejected.

56. Having concluded as above, ultimately this Court cannot lose sight of the fact that the petitioner herein is admittedly the senior most person after Mr.H.K.Patnaik, for being considered for promotion to the post of Director (Admin). Unfortunately, in this case, the petitioner was not nominated earlier by the Administration along with the respondents 5 and 6 for acquiring 'F' Level Training experience in 2018. It is admitted on behalf of the official respondents that the communication dated 06.01.2018, sent in that regard informing respondents 5 and 6 and also the petitioner herein, had been sent to the place called Sewak in the State of Nagaland where the petitioner was earlier working, before he was deputed to work as Registrar in Central Administrative Tribunal in November 2017.

57. The non-communication of the crucial intimation to the petitioner, as to his nomination to the 'F' Level Training in 2018, he was deprived of a valuable opportunity to complete the training as a matter of routine, eventually resulting in denial of promotion at the crucial stage of his career. In the circumstances, the petitioner cannot be faulted at all for being not eligible on the date of consideration of the officers for the promotion by the DPC. Though this Court finds that petitioner did not satisfy the eligibility criteria as prescribed in the recruitment rules, when the DPC met on 13.08.2020 and the subsequent impugned order was issued on 24.08.2020 yet the petitioner's legitimate expectation for being considered for promotion to the post of Director (Admin) on the basis of his admitted seniority over respondents 5 and 6, cannot escape attention of this Court. The loss of present promotion, according to the petitioner, was the last opportunity for him to reach his career pinnacle, as he is due for retirement in December 2021.

58. Therefore, the grievance of the petitioner otherwise appears to be justified, despite suffering from lack of eligibility at the relevant point of time, for which, the petitioner cannot be held responsible. The nomination for 'F' Level Training did not happen at the appropriate time at the instance of administration, which unfortunately resulted in denial of due promotion to the petitioner, when the DPC met on 13.08.2020. The adverse effect of non considering the petitioner in the said meeting of the DPC, became irreversible in the petitioner's case as he is due for superannuation in December 2021 and in which event, according to him, he would have to retire in the rank of Joint Director. Despite his eligibility, today, after completing 'F' Level Training in July 2020, as being nominated by the administration after petitioner's representation in June 2020, the petitioner would not be able to reap the fruits of acquiring the eligibility and also being the senior most officer.

59. In consideration of the unfortunate plight of the petitioner, as in the opinion of this Court that the reason for non completion of 'F' Level Training by the petitioner on the crucial date of consideration was entirely due to the callousness and apathy of the administration, this Court enquired with the Standing Counsel as to whether there was any other vacancy against which, the petitioner could be accommodated. In the earlier part of the judgment, clarification given by the official respondents in this regard has been extracted. According to the clarification, one post of Director was originally earmarked for the Training Institute and could not be filled up due to the training institute not being raised till date.

60. In consideration of the above fact as well other circumstances of the case, this Court is constrained on equitable grounds to issue direction to the respondents / competent authority to pass orders, diverting the post of Director (Admin) earmarked for the Training Institute, atleast temporarily if the post is still available and to consider the claim of the petitioner for promotion to the post of Director (Admin) as a measure of salvation for committing a momentous mistake of not nominating the petitioner for the required training at the appropriate time. This Court is impelled to pass such extraordinary direction with a view to apply the sublime principles of equity and fair play, in the special and deserving circumstances of the case. The above direction is not only imperative in furtherance of the cause of justice, but also essential to mitigate the impact of miscarriage of justice.

61. As concluded above, the official respondents are directed to take a decision and pass appropriate orders

diverting the post earmarked for the Training Institute for the purpose of consideration of the petitioner's appointment as Director(Admin) and such decision/order to be taken or passed by the official respondents within a period of eight(8) weeks from the date of receipt of a copy of this order.

62. On such order of diversion being passed, the official respondents are further directed to proceed with the process of appointment of the petitioner expeditiously after convening of DPC and if the petitioner is found otherwise fit, he shall be promoted as Director (Admin) forthwith.

63. Alternatively, for any reason, the post earmarked for the Training Institute, is not available, the official respondents are directed to consider the claim of the petitioner and promote him to the post of Director (Admin) in the next available vacancy. The official respondents are directed to take expeditious decision in this regard, considering the fact that the petitioner is due for retirement in December 2021.

64. With the above observations/directions, both the writ petitions are dismissed in so far as the challenge to the appointments of the fifth and sixth respondents is concerned. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Ministry of Defence,
No.101-A, South Block,
New Delhi.

2.The Joint Secretary to Government of India,
Border Roads Organisation,
Room No.108 A, South Block,
New Delhi.

3.The Director General,
Border Roads,
Seema Sadak Bhawan,
Ring Road, Delhi Cantt. (PO),
New Delhi-10.

4.The Secretary,
Union Public Service Commission,
Shahjahan Road, Dolpur House,
New Delhi-69.

5.The Under Secretary to Government of India,
Ministry of Defence,
Border Roads Development Board,
'B' Wing, 4th Floor, Sena Bhavan,
New Delhi 110 011.

+1cc to Mr.L.Chandrakumar, Advocate Sr.34924
+1cc to M/s.P.VeenaSuresh, Advocate Sr.34848

W.P.Nos.11813 & 10735 of 2020 and
W.M.P.Nos.13035, 13039, 13040,
14523, 14524 & 14526 of 2020

sra[col]
srg 02/11/2020



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