UNION OF INDIA & ANOTHER

v.

HEMRAJ SINGH CHAUHAN & OTHERS

(Civil Appeal No. 2651-2652 of 2010)

MARCH 23, 2010

[R.V. RAVEENDRAN AND ASOK KUMAR GANGULY, JJ.]

Service law:

Indian Administrative Service (Cadre) Rules, 1954 – Rule 4(2) – Cadre review – Compliance of Rule 4(2) – Members of U.P. State Civil Service seeking promotion – Issuance of Notification in 2000, fixing the cadre strength of U.P. – Another Notification in 2005, re-fixing the cadre strength – Challenge to, on the ground that since last cadre review of I.A.S. in UP cadre conducted in 1998, next cadre review was due in 2003, thus, cadre review conducted in 2005 to be given retrospective effect – Application set aside by tribunal – High Court setting aside the judgment of tribunal – On appeal, held: Statutory duty cast on State and Central Government to undertake cadre review exercise every 5 years is ordinarily mandatory subject to exceptions – Lethargy, in-action not just exceptions – On facts, both Central and State Government under Rule 4(2) accepted on principle that cadre review in U.P. was due in 2003 – Reason for delay in review was total in-action on the part of State and lackadaisical attitude in discharging its statutory responsibility – Delayed exercise cannot be justified within the meaning of 'ordinarily'– Thus, members not responsible for the delay – Rule 4(2) will operate prospectively and not retrospectively – Directions issued by High Court reasonable – Indian Administrative Service (Appointment by Promotion) Regulations, 1955 – Indian Administrative Service (Recruitment) Rules, 1954 – Rule 4(1)(b).

A *Words and Phrases: Word 'ordinarily' – Meaning of – In the context of Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954.*

The respondents are members of the State Civil Service (S.C.S.) of the State of Uttar Pradesh. They completed eight years of service on 23.07.85 and 04.06.86 respectively. As a result of the bifurcation of the State of Uttar Pradesh, notification was issued on 21.10.2000, fixing the cadre strength of State of Uttar Pradesh. On 25.08.2005, another notification was issued re-fixing the cadre strength in the State of Uttar Pradesh. The respondents challenged the said notification on the ground that since the last cadre review of the I.A.S. of Uttar Pradesh cadre was conducted in 1998, the next cadre review was due in 2003; and that the cadre review conducted in August 2005 should be given retrospective effect from April 2003. The respondents also sought quashing of the notification dated 01.02.2006 whereby vacancies were increased. The tribunal held that the cadre review carried out in 2005 cannot be given retrospective effect. The High Court set aside the order of the tribunal and also the notifications dated 25.08.2005 and 01.02.2006. It directed the State Government and the Central Government that cadre review exercise should be undertaken as if it was taking place on 30-04-2003 with reference to the vacancy position as on 01.01.2004. Hence, the present appeals.

Disposing of the appeals with certain modifications/ directions, the Court

HELD: 1.1 The authorities who are under a statutory mandate to re-examine the strength and composition of cadre are the Central Government and the concerned State Government. On facts, it is clear that both the authorities under Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954 accepted on principle that

cadre review in Uttar Pradesh was due in 2003. [Paras 27 and 34] [767-F-G; 770-C]

T.N. Administrative Service Officers Association and another v. Union of India and others **(2000) 5 SCC 728, relied on.**

1.2. The Court must keep in mind the Constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a Welfare State. [Para 37] [771-C]

1.3. The right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution. Therefore, it is clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the government and if not of the Central Government, certainly the unreasonable in-action on the part of the Government of State of U.P. stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. [Paras 38 and 40] [771-D-E; G-H]

The Manager, Government Branch Press and Anr. vs. D.B. Belliappa, **(1979) 1 SCC 477, referred to.**

1.4. The submission that the statutory mandate of a cadre review exercise every five years is qualified by the expression 'ordinarily' and so if it has not been done within five years that does not amount to a failure of exercise of a statutory duty on the part of the authority

A **contemplated under the Rule cannot be accepted. The word 'ordinarily' must be given its ordinary meaning. While construing the word the Court must not be oblivious of the context in which it has been used. In the case in hand, the word 'ordinarily' has been used in the**
B **context of promotional opportunities of the officers concerned. In such a situation the word 'ordinarily' has to be construed in order to fulfill the statutory intent for which it has been used. The word 'ordinarily', of course, means that is does not promote a cast iron rule, it is**
C **flexible. It excludes something which is extraordinary or special. The word 'ordinarily' would convey the idea of something which is done 'normally' and 'generally' subject to special provision. [Paras 41, 42 and 43] [772-B-E]**

D *Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed and Others* **(1976) 1 SCC 671;** *Eicher Tractors Limited, Haryana vs. Commissioner of Customs, Mumbai* **(2001) 1 SCC 315;** *Krishan Gopal vs. Shri Prakashchandra and others* **(1974) 1 SCC 128;** *Mohan Baitha and others vs.*
E *State of Bihar and another* **(2001) 4 SCC 350 354, relied on.**

1.5. The statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily
F **mandatory subject to exceptions which may be justified in the facts of a given case. Lethargy, in-action, an absence of a sense of responsibility cannot fall within category of just exception. [Para 44] [772-G-H; 773-A]**

1.6. In the facts of the case, neither the appellants nor
G **the State of U.P. justified its action of not undertaking the exercise within the statutory time frame on any acceptable ground. From the materials on record, it is clear that the appellant as the Cadre Controlling authority repeatedly urged the State Government to initiate the**
H **review by several letters. The only reason for the delay**

in review, was total in-action on the part of the U.P. Government and lackadaisical attitude in discharging its statutory responsibility. The delayed exercise cannot be justified within the meaning of 'ordinarily' in the facts of this case. Therefore, there was failure on the part of the authorities in carrying out the timely exercise of cadre review. [Paras 36 and 45] [770-F-H; 773-B]

1.7. The word 'ordinarily' does not alter the underlying intendment of the provision. Unless there is a very good reason for not doing so, the Selection Committee shall meet every year for making the selection. [Para 47] [773-F]

Union of India and Ors. vs. Vipinchandra Hiralal Shah **(1996) 6 SCC 721;** *Syed Khalid Rizvi vs. Union of India* **1993 Supp. (3) SCC 575, referred to.**

1.8. Rule 4(2) cannot be construed to have any retrospective operation and it will operate prospectively. But in the facts and circumstances of the case, the court can, especially having regard to its power under Article 142 of the Constitution, give suitable directions in order to mitigate the hardship and denial of legitimate rights of the employees. In the instant case, for the delayed exercise of statutory function the Government has not offered any plausible explanation. The respondents cannot be made in any way responsible for delay. In such a situation, the directions given by the High Court to the State Government and the Central Government that the cadre review exercise should be undertaken as if it was taking place on 30.04.2003 with reference to the vacancy position as on 01.01.2004, cannot be said to be unreasonable. In any event, the said directions are reiterated in exercise of the power under Article 142 subject to the only rider that in normal cases the provision of rule 4(2) of the Cadre Rules cannot be construed retrospectively. [Paras 18 and 49] [774-D-F; 764-G]

A **Case Law Reference:**

(2000) 5 SCC 728	**Relied on.**	**Para 29**
(1979) 1 SCC 477	**Referred to.**	**Para 39**
B **(1976) 1 SCC 671**	**Relied on.**	**Para 43**
(2001) 1 SCC 315	**Relied on.**	**Para 43**
(1974) 1 SCC 128	**Relied on.**	**Para 43**
(2001) 4 SCC 350	**Relied on.**	**Para 43**
C **(1996) 6 SCC 721**	**Referred to.**	**Para 46**
1993 Supp. (3) SCC 575	**Referred to.**	**Para 47**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. D 2651-2652 of 2010.

From the Judgment & Order dated 14.11.2008 of the High Court of Delhi at New Delhi in Writ Petition (Civil) No. 19103-04 of 2006.

E V.N. Shetty, L.N. Rao, S.L. Misra, Shail Dwivedi, AAG, Ravindra Kumar, T.V. Ratnam, Naresh Kaushik, Kiran Bhardwaj, Anil Katiyar, B. Krishna Prasad, Binu Tamta, Upendra Nath Misra, Nikhil Majithia, Anuvrat Sharma, Kapil Misra, Shiva Kumar Sinha, Jitendra Mohan Sharma, Sandeep F Singh and Sandeep Malik for the appearing parties.

The Judgment of the Court was delivered by

GANGULY, J. 1. Leave granted.

G 2. In SLP (C) Nos.6758-6759/2009, Union of India and the Secretary, Union Public Service Commission are in appeal impugning the judgment and order dated 14.11.2008 delivered by the Delhi High Court on the writ petition filed by Hemraj Singh Chauhan and Ramnawal Singh, the respondents herein.

H

3. The respondents are members of the State Civil Service (S.C.S.) of the State of Uttar Pradesh and according to them completed eight years of service on 23.07.85 and 4.6.86 respectively. The contention of the respondents is that in terms of Regulation 5(3) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, a member of the S.C.S., who has attained the age of 54 years on the 1st day of January of the year in which the Committee meets, shall be considered by the Committee, provided he was eligible for such consideration on the 1st day of the year or of any of the years immediately preceding the year in which such meeting is held, but could not be considered as no meeting of the Committee was held during such preceding year or years.

4. Those regulations have been framed in exercise of power under Sub-Rule 1 of Rule 8 of Indian Administrative Service Recruitment Rules, 1954 and in consultation with the State Government and the Union Public Service Commission.

5. Regulation 5 (1) of the said Regulation provides that such Committee shall ordinarily meet every year and prepare a list of such members of the S.C.S. as are held to be suitable for promotion to the service. The number of members of the said civil services to be included in this list shall be determined by the Central Government in consultation with the State Government concerned but shall not exceed the number of substantive vacancies in the year in which such meeting is held.

6. It may be mentioned in this connection that as a result of bifurcation of the State of Uttar Pradesh as a result of creation of the State of Uttaranchal in terms of the State Reorganization Act, namely Uttar Pradesh State Reorganization Act 2000, two notifications were issued on 21.10.2000. The first was issued under Section 3(1) of the All India Services Act, 1951 read with Section 72 (2) and (3) of the Reorganization Act and Rule 4 (2) of the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1956 (hereinafter referred to as the "Cadre Rule").

A 7. Thus, the Central Government constituted for the State of Uttaranchal an Indian Administrative Service Cadre with effect from 1.11.2000. On 21.10.2000 another notification was issued fixing the cadre strength of State of Uttar Pradesh thereby determining the number of senior posts in the State of
B Uttar Pradesh as 253.

8. The case of the appellants is that the next cadre review for the State of Uttar Pradesh fell due on 30th April, 2003. To that effect a letter dated 23.1.2003 was written by the Additional Secretary in the Department of Personnel and Training, Ministry
C of Personnel, Public Grievances and Pensions, Government of India to the Chief Secretary, Government of Uttar Pradesh.

9. The further case of the appellants is that several reminders were sent on 5th March, 3rd September, 17th
D September and 8th December, 2003 but unfortunately the Government of Uttar Pradesh did not respond. Then a further reminder was sent by the Government of India stating therein that four requests were made for the cadre review of the I.A.S. cadre of Uttar Pradesh but no response was received from the
E Government of Uttar Pradesh. In the said letter the Government of India wanted suitable direction from the concerned officials so that they can furnish the cadre review proposal by 28.2.04. Unfortunately, there was no response and thereafter subsequent reminders were also sent by the Government of
F India on 14th/17th June, 2004 and 8th October, 2004.

10. Ultimately, a proposal was received from the Government of Uttar Pradesh only in the month of January 2005 and immediately preliminary meeting was fixed on 21st February, 2005. Thereafter, a cadre review meeting was held
G under the Chairmanship of the Cabinet Secretary on 20th April, 2005 and the Minutes duly signed by the Chief Secretary, Government of Uttar Pradesh were received by the appellants on 27th June, 2005. After approval was given to the said Minutes, notification was issued on 25th August, 2005 re-fixing
H the cadre strength in the State of Uttar Pradesh.

11. Challenging the said notification, the respondents herein approached Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as C.A.T.) by filing two O.As, namely, O.A. No.1097/2006 and O.A. No.1137/2006 praying for quashing of the said notification. The respondents also prayed for setting aside the order dated 1.2.2006 whereby vacancies were increased as a result of the said cadre review adding to the then existing vacancies for the year 2006.

12. In those O.As the substance of the contention of the respondents was that the last cadre review of the I.A.S. in Uttar Pradesh cadre was conducted in 1998 and the next cadre review was therefore due in April 2003. As such it was contended that the cadre review which was conducted in August 2005 should have been given effect from April 2003 so that the respondents could be considered for promotion against the promotion quota.

13. The stand of the State of Uttar Pradesh before C.A.T. was that with the issuance of notification issued by the Department of Personnel and Training on 21.10.2000 bifurcating cadre of undivided Uttar Pradesh to I.A.S. Uttar Pradesh and I.A.S. Uttaranchal upon the Uttar Pradesh Reorganization Act, cadre review has already taken place and as such the next review was due in 2005 only.

14. The stand of the appellants both before the C.A.T. and before the High Court was that the cadre review was due in 2003. However, the C.A.T. after hearing the parties upheld the contention of the State of Uttar Pradesh and held that the cadre review carried out in 2005 cannot be given retrospective effect. The Tribunal dismissed O.A. No.1097/06 and partially allowed O.A. No.1137/06, inter alia, directing the respondents to convene the meeting of D.P.C. Selection Committee to fill-up the posts which were not filled up in the year 2001, 2002 and 2004 and to consider all eligible S.C.S. Officers in the zone of consideration including the officers who were put in the select list of those years but could not be appointed in the absence

A of integrity certificate.

15. However, the respondents being aggrieved by the judgment of the C.A.T. filed a writ petition before the Hon'ble High Court on 18.12.2006 contending therein that the cadre review of the I.A.S. of Uttar Pradesh cadre was due in 2003 B and was delayed by the State of Uttar Pradesh as a result of which some of the S.C.S. Officers were deprived of their promotion to the I.A.S. Their specific stand in the writ petition was if the increased vacancies were available in 2004 as a result of the cadre review in 2003, they could have been C promoted to I.A.S.

16. However, before the High Court the stand of the Central Government was that the cadre review of the I.A.S. of Uttar Pradesh was due in 2003 but unfortunately it was held in 2005 D when State of Uttar Pradesh had sent its proposal. Such review was made effective from 25.8.2005 when the revised cadre strength of the I.A.S. cadre of Uttar Pradesh was notified in the official Gazette in terms of the statutory provisions. The further stand of the appellants was that the cadre review undertaken E in 2005 cannot be given retrospective effect.

17. However, before the High Court the stand of the Uttar Pradesh Government was slightly changed and it filed a 'better affidavit' and took the stand that they have no objection to any direction for exercise of cadre review to be undertaken with F reference of the vacancy position as on 1.1.2004

18. The High Court after hearing the parties was pleased to set aside the judgment of C.A.T. dated 15.12.2006 and the notifications dated 1.2.2006 and 25.8.2005 were set aside. The G State Government and the Central Government were directed that the cadre review exercise should be undertaken as if it was taking place on 30th April, 2003 with reference to the vacancy position as on 1st January, 2004.

19. In order to resolve the controversy in this case, the H

relevant statutory provisions may be noted. The respondents being S.C.S. Officers, are seeking promotion to I.A.S. in terms of Rule 4(1)(b) of the relevant recruitment rules. Rule 4(1)(b) of the Indian Administrative Service (Recruitment) Rules, 1954 is set out:-

"4. Method of recruitment of the Service

(1) xxx xxxx

Xxx xxx

(b) By promotion of a substantive member of a State Civil Service;"

20. In tune with the said method of recruitment, substantive provisions have been made under Rule 8 for recruitment by promotion. Rule 8(1) of the Recruitment Rules in this connection is set out below:-

"8. Recruitment by promotion or selection for appointment to State and Joint Cadre:-

(1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the substantive members of a State Civil Service."

21. Under Rule 9, the number of persons to be recruited under Rule 8 has been specified, but in this case we are not concerned with that controversy.

22. The other regulation which is relevant in this case is Rule 5 of Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as, 'the

A said regulation'). These regulations have been referred to in the earlier part of the judgment. Rule 5(3) of the said regulation, relevant for the purpose of this case, is set out below:-

"5 (3) The Committee shall not consider the cases of the
B members of the State Civil Service who have attained the age of 54 years on the first day of January of the year in which it meets:

Provided that a member of the State Civil Service whose name appears in the Select List prepared for the earlier
C year before the date of the meeting of the Committee and who has not been appointed to the Service only because he was included provisionally in that Select List shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile attained
D the age of fifty four years:

Provided further that a member of the State Civil Service who has attained the age of fifty-four years on the first day of January of the year in which the Committee meets shall
E be considered by the Committee, if he was eligible for consideration on the first day of January of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding
F year or years."

23. Another regulation relevant in this connection is Indian Administrative Service (Cadre) Rules, 1954 (hereinafter referred to as, 'the Cadre Rules')

G 24. Under Rule 4 of the said Cadre Rules, the strength and composition of the Cadres constituted under Rule 3 shall be determined by regulation made by the Central Government in consultation with the State Government and until such regulations are made, shall be as in force immediately before
H the commencement of those rules.

25. Rule 4(2) has come up for interpretation in this case and to appreciate its true contents, the said Rule 4(2) is set out below:-

> "(2) The Central Government shall ordinarily at the interval of every five years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations therein as it deems fit.
>
> Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time:
>
> Provided further that State Government concerned may add for a period not exceeding two years and with the approval of the Central Government for a further period not exceeding three years, to a Sate or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts."

26. The main controversy in this case is, whether re-examination on the strength and composition of cadre in the State of Uttar Pradesh had taken place in accordance with the mandate of Rule 4 sub-rule (2).

27. It appears clearly that the authorities who are under a statutory mandate to re-examine the strength and composition of cadre are the Central Government and the concerned State Government. It can be noted in this connection that word 'ordinarily' in Rule 4(2) has come by way of amendment with effect from 1.3.1995 along with said amendment has also come the amendment of 5 years, previously it was 3 years.

28. From the admitted facts of this case, it is clear that Central Government had always thought that cadre review in terms of Rule 4(2) of the cadre Rules was due in 2003. In several letters written by the Central Government, it has been repeatedly urged that the cadre review of I.A.S. cadre of Uttar

A Pradesh is due on 30th April, 2003. The letter dated 23/24 January, 2003 written to that effect on behalf of the appellant to the Chief Secretary, Government of Uttar Pradesh, Lucknow is set out below:-

B "Dear Shri Bagga,

The cadre review of IAS cadre of Uttar Pradesh is due on 30.04.2003. The Supreme Court in 613/1994 (TANSOA vs. Union of India) has stated that the Central Government has the primary responsibility of making cadre
C reviews and to consider whether it is necessary or not to encadre long existing ex-cadre posts. Delay in conducting the cadre review results in avoidable litigation as officers of the State Civil Service approach the Courts that the delay has stalled their promotional avenues. It is important
D that the cadre reviews are held on time.

2. I shall, therefore, be grateful if you could look into the matter personally and instruct the concerned officials to sponsor the review proposals in the prescribed proforma, after taking into consideration the requirement of the State
E Government by 28th February, 2003 to this Department for processing the case further.

With regards"

F 29. In various subsequent letters, namely dated 5th March, 2003, 3rd September, 2003, 17th September, 2003, 8th December, 2003, the Central Government reiterated its stand that cadre review has to be done by 2003. Admittedly, the Central Government took the aforesaid stand in view of the law
G laid down by this Court in the case of *T.N. Administrative Service Officers Association and another v. Union of India and others,* reported in (2000) 5 SCC 728.

30. It cannot be disputed that the Central Government took the aforesaid stand in view of its statutory responsibility of
H initiating cadre review as a cadre controlling authority. In fact

in the letter dated 29th August, 2005 by Neera Yadav, on behalf of the State of Uttar Pradesh, it has been categorically admitted in paragraph 3 of the said letter that the previous cadre review was done in 1998. The stand is as follows:-

> "Thus, the cadre review for alteration was to be done under Rule 4(2) of the Indian Administrative Service Cadre Rules, 1954 as on 30.04.2003. The Department of Personal & Training, through D.O. letter No.11031/5/2003-AIS-II dated 23.01.2003 requested that State Government to sponsor the review proposal on the prescribed proforma as cadre review as cadre review of Indian Administrative Service, Uttar Pradesh cadre was due on 30.04.2003."

31. In the affidavit of the appellant, filed before Central Administrative Tribunal, the following stand has been categorically taken:-

> "It is submitted that the last cadre strength of the IAS cadre of unified cadre of Uttar Pradesh was notified on 30.04.1998. Therefore, as per Rule 4(2) of the IAS (Cadre) Rules, 1954, the next review was due on 30.4.2003."

32. It was also stated that the reference by the State Government to order dated 23.9.2000 was not one of cadre review. It was a reference of the State Government in connection with the bifurcation of Uttar Pradesh and Uttaranchal, pursuant to Uttar Pradesh Reorganization Act, 2000. It was admitted that the I.A.S cadre of Uttaranchal was constituted later i.e. on 21.10.2000.

33. In so far as the State of U.P. was concerned, the State filed an application for a 'better affidavit' before the High Court and in paragraphs 4 and 5 of the said application the State Government reiterated the reasons for filing a 'better affidavit'. In those paragraphs, the stand of the Central Government was reiterated, namely, that the last cadre review was done in 1998 and the subsequent cadre review under Rule 4(2) of the Cadre

A Rules was due on 30.04.2003. In the 'better affidavit', which was filed on behalf of the State of Uttar Pradesh before the High Court, in paragraph 8, the stand taken is as follows:-

> "..In this view of the matter, since the last "Quinquenial Cadre Review" of the IAS Cadre was held on 30.4.1998, the next "Quinquenial Cadre Review" of the IAS cadre became due on 30.4.2003 as stated by the Cadre Controlling Authority in para 9 of its counter affidavit."

B

34. It is thus clear that both the authorities under Rule 4(2) C of the Cadre Rules accepted on principle that cadre review in Uttar Pradesh was due in 2003.

35. Appearing for the appellants the learned counsel urged that the judgment of the High Court in so far as it seeks to give D a retrospective effect to the cadre review is bad inasmuch as the stand of the appellants is that the Notification dated 25.8.2005 makes it explicitly clear that the same comes into force on the date of its publication in the Official Gazette. Relying on the said Notification, it has been urged that since E the same has been made explicitly prospective and especially when the Rule in question, namely, Rule 4(2) of the Cadre Rules is expressly prospective in nature, the cadre review exercise cannot be made retrospective. This seems to be the only bone of contention on the part of the appellants.

F 36. However, from the discussion made hereinbefore, the following things are clear:

(a) Both the appellants and the State Government in accordance with their stand in the subsequent G affidavit accepted that Cadre Review in the State of U.P. was made in 1998 and the next Cadre Review in that State was due in 2003;

(b) Neither the appellants nor the State Government has given any plausible explanation justifying the H delay in Cadre review;

(c) From the materials on record it is clear that the appellant as the Cadre Controlling authority repeatedly urged the State Government to initiate the review by several letters referred to hereinabove; A

(d) The only reason for the delay in review, in our opinion, is that there was total in-action on the part of the U.P. Government and lackadaisical attitude in discharging its statutory responsibility. B

37. The Court must keep in mind the Constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a Welfare State. C

38. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution. D E

39. In *The Manager, Government Branch Press and Anr. vs. D.B. Belliappa* – (1979) 1 SCC 477, a three judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomized under Articles 14 and 16 is "fairness founded on reason" (See para 24 page 486). F

40. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the government and if not of the Central Government, certainly the unreasonable in-action on the part of the Government of State of U.P. stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is G H

A weighing on the conscience of this Court is how to fairly resolve this controversy.

41. Learned counsel for the appellants has also urged that the statutory mandate of a cadre review exercise every five
B years is qualified by the expression 'ordinarily'. So if it has not been done within five years that does not amount to a failure of exercise of a statutory duty on the part of the authority contemplated under the Rule.

42. This Court is not very much impressed with the
C aforesaid contention. The word 'ordinarily' must be given its ordinary meaning. While construing the word the Court must not be oblivious of the context in which it has been used. In the case in hand the word 'ordinarily' has been used in the context of promotional opportunities of the Officers concerned. In such a
D situation the word 'ordinarily' has to be construed in order to fulfill the statutory intent for which it has been used.

43. The word 'ordinarily', of course, means that it does not promote a cast iron rule, it is flexible (See *Jasbhai Motibhai*
E *Desai vs. Roshan Kumar, Haji Bashir Ahmed and Others* - (1976) 1 SCC 671, at page 682 (para 35). It excludes something which is extraordinary or special [*Eicher Tractors Limited, Haryana vs. Commissioner of Customs, Mumbai* - (2001) 1 SCC 315, at page 319 (para 6)]. The word 'ordinarily' would convey the idea of something which is done 'normally'
F *[Krishan Gopal vs. Shri Prakashchandra and others* - (1974) 1 SCC 128, at page 134 (para 12)] and 'generally' subject to special provision *[Mohan Baitha and others vs. State of Bihar and another* - (2001) 4 SCC 350 at page 354].

G 44. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a
H given case. Surely, lethargy, in-action, an absence of a sense

of responsibility cannot fall within category of just exceptions. A

45. In the facts of this case neither the appellants nor the State of U.P. has justified its action of not undertaking the exercise within the statutory time frame on any acceptable ground. Therefore, the delayed exercise cannot be justified B within the meaning of 'ordinarily' in the facts of this case. In the facts of the case, therefore, the Court holds that there was failure on the part of the authorities in carrying out the timely exercise of cadre review.

46. In a somewhat similar situation, this Court in *Union of* C *India and Ors. vs. Vipinchandra Hiralal Shah* – (1996) 6 SCC 721, while construing Regulation 5 of the I.A.S. (Appointment by Promotion) Regulations, 1955 held that the insertion of the word 'ordinarily' does not alter the intendment underlying the provision. This Court in that case was considering the provision D of Clause (1) of Regulation 5 of the IPS (Appointment by Promotion) Regulations along with other provisions of Regulation 5. The interpretation which this Court gave to the aforesaid two Regulations was that the Selection Committee shall meet at an interval not exceeding one year and prepare E a list of members who are eligible for promotion under the list. The Court held that this was mandatory in nature.

47. It was urged before this Court that the insertion of the word 'ordinarily' will make a difference. Repelling the said F contention, this Court held that the word 'ordinarily' does not alter the underlying intendment of the provision. This Court made it clear that unless there is a very good reason for not doing so, the Selection Committee shall meet every year for making the selection. In doing so, the Court relied on its previous decision in *Syed Khalid Rizvi vs. Union of India* – G 1993 Supp. (3) SCC 575. In that case the Court was considering Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 which also contained the word 'ordinarily'. In that context the word 'ordinarily' has been construed as: H

A "……since preparation of the select list is the foundation for promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for promotion as IPS officers, the preparation of the select list must be construed to be
B mandatory. The Committee should, therefore, meet every year and prepare the select list and be reviewed and revised from time to time as exigencies demand."

48. The same logic applies in the case of cadre review
C exercise also.

49. Therefore, this Court accepts the arguments of the learned counsel for the appellants that Rule 4(2) cannot be construed to have any retrospective operation and it will operate prospectively. But in the facts and circumstances of the
D case, the Court can, especially having regard to its power under Article 142 of the Constitution, give suitable directions in order to mitigate the hardship and denial of legitimate rights of the employees. The Court is satisfied that in this case for the delayed exercise of statutory function the Government has not
E offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event this Court reiterates those very directions in exercise of its power under
F Article 142 of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2) of the said Cadre Rules cannot be construed retrospectively.

50. With the aforesaid modification/direction, the appeals filed by the Union of India are disposed of. There shall be no
G order as to costs.

N.J. Appeals disposed of.