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**(2009) 12 RAJ CK 0018**  
**In the Rajasthan High Court**

Bajrang Singh

APPELLANT

Vs

Gen. Insu. Cor. of India and Others

RESPONDENT

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**Date of Decision :** 10-12-2009

**Acts Referred:**

General Insurance Business (Nationalisation) Act, 1972 — Section 16, 2, 3, 7  
Insurance Act, 1938 — Section 40C

**Citation :** (2009) 12 RAJ CK 0018

**Hon'ble Judges :** N.P. Gupta, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

N.P. Gupta, J.—Petitioner by this writ petition seeks to have quashed the order dt. 22.5.1997 (Annexure-2), categorizing the petitioner as Development Officer, to be invalid, and prays for declaration, that the petitioner stands appointed as Assistant Administrative Officer w.e.f. 1.1.1973, with all consequential benefits.

2. This is second round of litigation, inasmuch as earlier also the petitioner had filed the writ petition, being S.B. Civil Writ Petition No. 554/1978, which was allowed in part, and the order dt. 28.2.1978 was set aside, being not speaking one, and direction was given to the appellate authority to decide the appeal as per directions given therein, then the matter was carried in intra court appeal, vide S.A.W. No. 752/1994, which came to be disposed of vide order dt. 2.9.1996, wherein with consent of the parties it was directed, that the appellant may submit representation, within the time given, which shall be duly considered by the appellate committee by proper application of mind, and the National Insurance Company Ltd. was directed to constitute a specific appellate committee for the specific purpose, and the committee was directed to decide the representation within a period of three months from the date of representation. The petitioner submits that accordingly he filed a representation on 20.9.1996, being Annexure-1, and the same was decided vide Annexure-2, which is subject matter of grievance.

3. The facts are, that according to the petitioner he entered the services of General Assurance Society Limited. At the time of taking over of this society by General Insurance Business (Nationalisation) Act, 1972, hereafter referred to as the Act, the petitioner was holding the post of Branch Secretary, and was posted at Sriganganagar in the pay scale of 200-20-400-25-600, and was in the officers cadre. He produced Annexures 3 to 5 for that purpose. The case of the petitioner further is, that the said Company along with other companies came to be taken over in terms of the aforesaid Act, and were merged to form part of different companies, and the General Assurance Society in which the petitioner was serving came to be merged with National Insurance Company on 1.4.1973. In exercise of powers conferred u/s 16(1)(g) of the Act, the Central Government made some publication, and published General Insurance (Nationalisation of Pay Scale and other Conditions of Service of Officer) Scheme, 1975, hereafter referred to as the Scheme of 1975, which came in force on 1.10.1975. With the above background the petitioner's case is, that the order dt. 30.9.1975 served on the petitioner from the C.M.D. of General Insurance Co. informing about the committee having declared the petitioner as a member of the development staff, as such he is not covered by the term officer as defined in Section 3(1) of the Scheme. This is Annexure-6.

4. Thus, the real bone of contention in the present litigation is as to whether he was rightly categorized as member of the Development Staff, or was required to be categorized as officer.

5. The committee was appointed by the Board of Directors of General Insurance Company of India. Vide Annexure-8, the petitioner was shown at S. No. 30 out of 39 names contained therein shown as members of the Development Staff. On receipt of this Annexure-8, the petitioner submitted representation Annexure-9. Having not received any reply reminders were sent. In the meantime another circular dt. 9.12.1975 came to be issued by the National Insurance Company, stating that the Development Staff named in the circular have been appointed in the rank of Administrative Officer/ Assistant Administrative Officer (Development). This circular contained the names of 16 persons whose names appear in Annexure-8. This has been produced as Annexure-10. According to the petitioner Sarva Shri Nagpal, S.L. Mittal, R.K. Agarwal, P.N. Ahuja, R.K. Kansal came to be appointed vide Annexure-10. Vide Annexure-10 the Development Staff were appointed in the rank of Administrative Officer/ Assistant Administrative Officer (Development). The petitioner also contends that the letter dt. 14.10.1976 came to be served on the petitioner conveying that he was provisionally categorised as Inspector Grade I by Categorization Committee in terms of the Scheme of 1976, and he is required to signify his approval, and if the applicant does not signify his acceptance, his services will be terminated. Faced with this situation the petitioner signified the approval, but this was under protest. Then, the petitioner represented against such categorization. The representation came to be replied, conveying that the representation has been noted and the matter will be looked after in due course. Then, when nothing

turned up for long, the petitioner got served notice for demand of justice, and then as advised by the order dt. 23.9.1977 the petitioner preferred an appeal before the Appellate Committee created vide order dt. 10.8.1977, but no order having been made on the appeal, the petitioner gave reminder. However, ultimately the appeal was rejected on 28.2.1978. Challenging that appellate order the petitioner filed the Writ Petition No. 554/1978.

6. The case of the petitioner regarding categorization is, that admittedly no criteria, or guidelines, or guiding principles were laid down by law making authority on the basis of which categorization has been made. The categorization is alleged to be discriminatory and arbitrary, as those put in administrative staff were placed in a far inferior position, as compared to the petitioner, on the basis of criteria said to have been adopted, and for that purpose has pleaded instances of certain persons who had been holding the post of Branch Manager in General Assurance Society, in which the petitioner was holding the post of Branch Secretary, and the post of Branch Manager and post of Branch Secretary were identical, inasmuch as the posts are interchangeable, and having the same pay scales. It was also contended, that the categorization of the petitioner as Development Staff was not reasonable. Various factual aspects have been highlighted, like pointing out that in Annexure-18, the chart prepared by the Company, the services rendered by the petitioner was set out as one year whereas he served for 5 years, out of 5 years for 3 years he was officer-in-charge, and for 2 years he was Branch Secretary, while other persons placed in a far inferior position were categorized as Administrative Staff.

7. A reply to the writ petition had been filed in the form of affidavit of Shri K.P. Bannerjee, Regional Manager, Jaipur Region of National Insurance Company. The stand taken is, that before merger into four companies there were as many as 107 companies, some of them were quite big, and others were very small; so much so that some companies were paid compensation amounting to over Rs. 2 crores, as against it some companies were paid compensation as low as Rs. 1000/- only, and there was no comparison between one company, or the other, and duties and responsibilities under different companies were also varied, and even the Managing Director of a company to which compensation of Rs. 1000/- was paid had been categorized as an Assistant Administrative Officer. An example has been given, that an IAS officer holding the charge of a Secretary in a State Government may be appointed, when transferred to the Central Government, as a Director, or at best as Joint Secretary, depending upon the length of service. It was pleaded that after merger the structure of the four companies became much bigger, and the categorization had to be carried in the new set up from the erstwhile smaller companies, and the officers of the previous company could not be categorized on the basis of the designation alone, held by them in the previous company. It was pleaded that Clause 5 of the Merger Scheme provided that the employees of the merged company shall continue to work on the same terms and conditions until their conditions of service were altered by the transferee company. According to Section 16(4) of

the Act it provided that if the changed terms and conditions were not acceptable to the concerned employee, then the transferee company could terminate the services by giving him the notice prescribed under the Act. On the precise aspect of controversy, the stand taken is, that on taking control of the aforesaid 107 companies, it was felt that there was no uniform system of management, and each company had its own method of management. Many companies gave very high sounding designations to their employees, not commensurate with the responsibilities shouldered by them, some companies paid very high emoluments to their employees, and employees working at the same station under different companies carrying on similar duties, functions and responsibilities were paid differently, and held different designations. In that view of the matter, the Government of India appointed a committee of experts vide Annexure R/1. The committee was headed by Shri K.P. Mathrani and was known as Mathrani Committee, which was to advise the Government, regarding the management and set up to be adopted in the Nationalised Insurance Industry; what designations and pay scales ought to be given to the employees; and what should be their other conditions of service. The committee was also assigned the task of actually categorising the officers of Higher Level Management. The employees working could be divided into three broad groups being; (i) supervisory, clerical and subordinate staff, (ii) Development Staff and (iii) Administrative and Managing Officers. u/s 16(1)(g) the Central Government framed three schemes, one being the General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974, second being the General Insurance (Rationalisation of Pay Scales and other conditions of Service of Officers) Scheme, 1975 and the third being the General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Development Staff) Scheme, 1976. Then, the Administrative and Managerial Staff were again divided into three broad categories, being one Higher Management, Middle Management and Lower Management, and since the officers to be categorized for Middle Management, and Lower Management were very large, and it was not possible to categorise them by the said Mathrani Committee, the task was assigned to GIC, who passed a resolution constituting another Committee. However, prior to the categorization, each employee was called upon to submit his bio-data, to enable the concerned committee to categorize him suitably. The bio-datas were placed before the Committee, and the Committee then categorized them suitably. According to the original scheme framed by the Central Government, it did not provide for any reconsideration of the categorization carried out by the said committee, and therefore, the Central Government constituted appellate committee for each of the company, to consider the appeals preferred by the employees against the categorization, before which committee the petitioner filed appeal, but the committee did not find any merit. Then, it is pleaded, that categorization was carried out on the basis of the nature of duties and responsibilities shouldered by the incumbent, and in order to determine whether a person belonged to Development Staff or Administrative Staff, one important factor is, as to whether the salary of the

incumbent was tied down with the business procured by him, which is a statutory requirement. Section 40C of the Insurance Act, 1938, read with Rule 17-E of the Insurance Rules, 1939, which puts a limit on the expenditure which an Insurance Company, carrying on general insurance business, can incur on management, particularly on the staff appointed for procuring insurance business, and the Company is bound to follow the Code of Conduct, regarding cost of field workers, for the reason, that a field worker must procure a particular amount of premium to justify his salary. It was also pleaded that before categorization each employee was required to submit his bio-data to enable the said committee to decide as to whether the concerned employee belonged to field staff or administrative staff, and each employee was given opportunity to submit all the particulars about his duties and functions, which were taken into consideration by the committee, before deciding as to whether the petitioner was a member of the Development Staff or was on the administrative staff. The bio-data submitted by the petitioner is produced as Annexure R/5. Question No. 14 of the proforma required information regarding the nature of duties performed by the incumbent, and question No. 25 requires the particulars of administrative duties discharged by him, and the petitioner gave similar reply to question No. 14 and 25, by describing as under:

Administration and Development. Business underwriting of all departments. Issuing and maintaining of all kinds of documents. Disbursement of salary, Commission and other exp. relate to branch. Development of business and control of branch. Maintenance of Branch accounts. To advice controlling office and clients to improve underwriting and risk.

8. It is contended, that in the bio-data he admitted that he belonged to Development Staff category, the business produced by him and the cost ratio also show that the petitioner belonged to Development Staff, and then the nature of duties like disbursement of salary was wrongly mentioned, as it was a one man office. The Branch did not have an office. Disbursement of commission to the agents received by the petitioner in the name of a particular agent, appointed by the petitioner is not, and cannot be considered as managerial function. Maintenance of accounts is not a managerial function, but clerical function. Then, it was pleaded that even if some of the duties were to be considered as managerial, still it will not make any difference, as the main duty of the petitioner remains that of development. Reliance was placed on the judgment of the Hon"ble Supreme Court in Ananda Bazar Patrika (P) Ltd. Vs. The Workmen, and it is pleaded that since the salary was tied down with cost ratio, he belonged to Development Staff. It was pleaded that the petitioner was working as a one man office, and the petitioner was operating from his house. With a view to keep the cost ratio within limits, the insurance companies appointed one person to procure business, without opening an office. According to the respondents in such a one man show the question of performing any administrative or managerial functions does not arise. It was maintained that no administrative duties were spelled out in the previous writ petition, nor the same

have been shown to have been performed, in his appeal, and the petitioner is mainly relying upon his designation in the previous company, which is of no consequence. Then, in para (w) the administrative duties shown by the petitioner in the representation Annexure-9 have been recapitulated, to explain as to how none of the duties spelt out by the petitioner disclose that he was performing any administrative duties. Regarding another employee who was employed as an office assistant, it was pleaded that he did not take up the appointment, and secondly this was only for about one month prior to the appointed day, and this one month's experience cannot be considered sufficient for entitling him, for being categorized as an administrative officer.

9. Then, it is pleaded that there is no allegation of bias against any member, whether against the petitioner or in favour of any other person. Then, in para-5 detailed reply had been given with respect to the comparison made by the petitioner in the writ petition about his case qua persons detailed therein, and it has been demonstrated as to how those persons were rightly categorized on the administrative side, and how the petitioner has been rightly categorized as Development Staff. The order of the Appellate Committee was sought to be supported. Then, reliance was placed on the judgment of the Hon''ble Supreme Court, in the case of United India and General Insurance Co. Ltd. v. K.S. Vishwa Nathan reported in 1985(3) SCC 685, wherein the Hon''ble Supreme Court upheld the categorization carried out on the basis of duties and functions performed by the concerned incumbent, and it was pleaded, that the categorization of the incumbent directed to be made on the basis of designation as Assistant Secretary in the erstwhile company by the Madhya Pradesh High Court, in the case of Kamlesh Gupta v. Chairman United India Ins. Co. being Misc. Petition No. 233/81 was interfered by the Hon''ble Supreme Court in Civil Appeal No. 235/85, and the judgment of the High Court was set aside. Then various other pleadings have also been taken, but in substance the writ petition was prayed to be dismissed.

10. Then, a rejoinder has been filed by the petitioner, interalia contending, that company in which the petitioner was employed, was paid compensation of Rs. 8 lacs. It was pleaded that in order to show that the persons were shouldering the same responsibility in the pre- amalgamation period as shouldered after amalgamation, reference was made to the position of Shri Ashok Goyanka, to contend that in the erstwhile Unit he was working as General Manager and was absorbed after categorization on the same post in National Insurance Company, and he ultimately retired as Chairman, General Insurance Corporation i.e. the highest post of the Insurance Industry. Then, the petitioner has produced a chart Annexure-21, showing, as to in which manner the designations were given on the basis of responsibility shouldered. Then, reference to Annexure-18 was reiterated. Then, regarding bio-data, it was submitted that the petitioner was discharging the duties of Branch Secretary, and since the proforma of bio-data, which was sent to him pertains to development staff, and is of no consequence, and the nature of duties were not considered. Then, Annexure-23 has been

produced to support, that proforma bio-data was for the development personnel. Then, in para-9 it is pleaded that the salary of the petitioner was not tied down with the business procured by him. Before amalgamation, he was put in the pay scale of Rs. 200-600, with regular increments along with admissible allowances. However, petitioner was not receiving anything on the premium obtained in the Branch, where he was working as a Branch Secretary in the erstwhile unit, and has produced Annexure-23 to show, that he was working in the administrative capacity. Annexure-23 is a voucher about payment of salary to one Bishan Singh dt. 27.12.1972. It was reiterated that the answer to the queries in the proforma is not the end of the matter. There are lot of facts in possession of the petitioner, which show that he was working on the administrative side, and the petitioner has produced some documents collectively as Annexure-24 in that regard. It is maintained, that the duties which the petitioner was discharging as Branch Secretary, were duties of administrative nature alone, and not one, which the development staff performs. In that regard again reliance is collectively placed on Annexure 25. In para-12 it is admitted that branch was operating from the residence of the petitioner. Receipt has been produced as Annexure-28, electricity bill is also produced. It is maintained, that it is not the case, that some duties were being discharged as managerial ones, rather the main functions being discharged by petitioner were managerial, and only few were of Development Staff category. Then, a supplementary affidavit has also been filed by the respondent, being dt. 5.4.1999, by the then Regional Manager Shri R.C. Sayal. It was submitted that like the petitioner as many as 34 companies were paid compensation of more than Rs. 8 lacs, and 25 companies were paid compensation of more than Rs. 8 lacs. Out of 107 companies 69 companies were paid compensation of more than Rs. 8 lacs, while some were paid in crores, inasmuch New India Assurance Co. Ltd. was paid Rs. 8,20,07,678/-, Oriental Insurance Company Limited was paid Rs. 2,43,98,000/-, India Re Insurance Corp Ltd. was paid Rs. 2,05,02,200/-, and so on, and it is contended, that the petitioner's employer was very small company as compared to other companies, and thus the set up of the companies nationalized were vitally different, and were not comparable with each other. It was maintained, that the committee who categorized, not only looked into the work record of each officer categorized, but also interviewed all the officers and then selected them for appointment to different posts of senior management, and in that process Shri Ashok Goyanka was General Manager of the erstwhile unit, after looking into his work record and performance at the interview, he was found suitable for appointment to the post of General Manager in the nationalized unit. While the categorization of the Middle Management and Lower Management was carried out on the basis of their records, the duties, and functions, disclosed by the incumbents in their bio-data, and no interviews were held. Thus, it is wrong to say, that if one officer of the General Assurance Society Ltd. happened to be categorized in the same position in the nationalized set up, all officers of the said company were required to be categorized similarly. Apart from Shri Ashok Goyanka no other General Manager or Manager was appointed as General Manager. It was pleaded that Shri R.C.

Srivastava another employee of the General Insurance Society was employed as Assistant Branch Secretary at Allahabad, and claimed to be categorized as an officer, but he was also categorized as Development Officer, who filed a writ petition, which was dismissed vide judgment dt. 9.10.1985. It was maintained that no different criteria could be adopted for one company to categorize its employees on the same post in the nationalized unit. Regarding Annexure-21 it was pleaded that the chart is prepared by the petitioner himself, and is a self serving statement. It is pleaded that the categorization was not carried out as shown in the chart. Then, it was pleaded that for Lower Management, various incumbents were categorized by committee appointed by the Board of General Insurance Corporation of India for each Nationalized Unit, and separate proformas had been provided for Development Staff, and the officer, to enable them to give their bio-data, and the duties and functions performed by them, and the petitioner voluntarily filled the proforma prescribed for the development. It was pleaded that Annexure-22 does not show that the petitioner did not submit his bio-data as a Development Staff voluntarily. Annexure-23 and 30 included with the rejoinder were pleaded to be forged documents, and it was maintained that no one was working under the petitioner. It was maintained that even in the earlier petition No. 554/1978, and in the representation made to the appellate committee, it was not pleaded by the petitioner, that some one was working under him, rather the stand of the respondent through out was that none was working under him, which was not disputed by the petitioner. Annexure-29 is a statistical statement giving the income and expenditure of the Branch at Sriganaganagar, prepared by the petitioner himself. Then, Annexure-23 was pleaded to be salary sheet of the petitioner for the month of December, 1972, and the amount shown to have been expended towards salary and allowances for the said branch were just sufficient to meet the salary and allowances of the petitioner, and there could be no one working under him. It is pleaded that the petitioner has now filed Annexure-25, to be showing the purported salary sheet of Bishan Singh Rathore, while this document has been prepared by the petitioner, and is signed by the petitioner, and it does not show, as to who prepared the same, and was checked by whom, and if that salary is included in Annexure-29, the claim made by the petitioner stands falsified. Various pleadings taken in the reply were reiterated. Then some documents have been filed to show, that the petitioner's salary was tied down with the business procured by him, which is done only in the case of development staff, and that the petitioner was primarily performing duties and function of a development staff. Then, regarding the alleged handicap by the petitioner about proforma, it was pleaded that even if the petitioner was handicapped he had all opportunity to detail the same in the previous writ petition, and thereafter in the representation made before the appellate committee, and at that time he was fully aware, that his categorization would depend upon the nature of his duties and functions, but the petitioner has failed to spell out duties and functions entitling him to be categorized as an officer. It is pleaded that even documents Annexure-24 and 25 do not spell out, in any way, that the duties performed by



the petitioner were that of an officer, rather they only confirm, that the duties performed by him were that of a development staff, rather apart from development staff his duties were of clerical nature, and not administrative or managerial, and since he was only person working at Ganganagar, he had to make correspondence with the controlling office, rather the petitioner was required to report his work to superiors, payment of commission to the agent received by the petitioner also does not amount to the administrative duties, as the commission is paid by the company for paying the same to the agent. It was pleaded that Annexure-30 was neither filed by the petitioner before the appellate committee, nor before this Court in the earlier writ petition, nor even before the appellate committee constituted under orders of this Court, and therefore, he cannot make any grievance about its non consideration.

11. Then, the petitioner filed yet further surrejoinder on 20.7.1999. It was denied that document Annexure -23 and 30 are false and forged, and they can be verified from the record, and they were filed in the earlier writ petition. It was pleaded, that even apart from Shri Ashok Goyanka, Shri D.C. Gupta was holding the post of Manager Northern Zone in the erstwhile unit, and has come to be categorized as Deputy Manager in the company. Then, Sarva Shri K.N. Bhandari, P.P. Gupta, Laxman Singh, S.N. Gupta, M.M. Cippy, and Ganpat Singh were also quoted as persons working as officers in the erstwhile company, but were re-categorized and come to be categorized as officers. It was pleaded that the petitioner was controlling premium of more than Rs. 30,000/-. He served for more than 2 years in the officer category, and had control over clerical or supervisory and subordinate staff at the material time, and thus he fulfilled all the three criteria, as apparent from chart Annexure-18. Then, Annexure-32 and 33 have been produced in an attempt to show, that the petitioner was running the office in premises other than his residence, and for which he was paying rent, and that Bishan Singh Rathore was appointed as Office Assistant, under the petitioner vide order dt. 17.11.1972. It was pleaded that the petitioner had with him the facility of telephone in the office in the branch, besides substantial number of persons were working in the branch, and thus the petitioner was required to be categorized as officer. Then, other pleadings taken in the supplementary affidavit were denied, and pleadings taken earlier were reiterated.

12. I may refer to the earlier judgment dt. 30.8.1994, and a look thereat shows, that all other contentions raised like principles of natural justice, or requirement of the petitioner to be heard, were all negated, and the only thing found was, that the petitioner had raised contentions in the appeal that persons junior to the petitioner and working on the inferior post had been categorized as belonging to officer staff, while on the basis of length of service, availability of staff, the petitioner was above the private respondents No. 3, 4, 5, 6, 8, 9 and 10. This was raised in the appeal filed before the appellate committee, but was not decided, which was required to be decided by the appellate committee. Therefore, to this extent writ petition was allowed, and while setting aside the order dt. 28.2.1978, the appellate authority was directed to decide the appeal on

remaining question, which though were agitated before the appellate authority in the memo of appeal but were not decided by the appellate authority. Then, the Division Bench passed virtually a consent order, as the appellate authority ceased to exist, the learned Counsel for the National Insurance Company expressed its readiness and willingness to constitute appellate committee, for hearing grievance of the appellant. It was directed, that the appellant need not be heard by the committee, but the representation should be decided by the authority, by proper application of mind. Accordingly by agreement between the learned Counsel for the parties the above order was passed, specifically observing, it not to be taken as precedent.

13. Arguing the writ petition various grounds taken in the writ petition were reiterated. Main stress was on facts pleaded on the anvil of Annexure-18 in para-VII, and it was contended that persons not having a single staff have been absorbed on the post of A.A.O., and that the facts about the petitioner were wrongly given in Annexure-18, as the petitioner was shown to have rendered one year of service as on 31.12.1972, while he had served for more than 5 years. Then, despite his having staff working under him, it was shown, that he was having no staff. It is thus by giving wrong inputs, that the consideration has not been correct, and that vitiates the impugned order Annexure-2. Then it was also contended, that there are persons and persons including those enumerated in sub-para VII, that persons shown at S. No. 3, 5, 7 have obtained premium less than the petitioner, thus going by premium, they are inferior than the petitioner, then going by salary those mentioned at S. No. 5, 6, 9 and 11 they drew less salary than the petitioner, and going by length of service the petitioner had rendered more service than that was rendered by the persons mentioned at S. No. 2, 4, and 9. Then, going by availability of subordinate staff, persons listed at S. No. 3, 4, 6, 8, 9 and 10 were in the same position as the petitioner was, and thus the person mentioned at S. No. 5 is inferior to the petitioner in every respect, then S. No. 3 is inferior than the petitioner in every respect. Thus, a comparison is sought to be made, and it is contended, that the whole action is arbitrary and discriminatory, and is liable to be set aside.

14. Learned Counsel for the respondent, on the other hand, at the outset reiterated the reliance on the judgments of the Hon"ble Supreme Court in K.S. Vishwa Nathans case, and also relied upon another judgment of the Hon"ble Supreme Court in Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others, Then arguing on merits, it was contended, that the petitioner's salary was tied down to the premium income, and in that regard the pleadings contained in various paragraphs of the reply, starting from para-2 onwards, were pressed into service. Then, para-(g) onwards were pressed into service to show, that the nature of the duties discharged by the petitioner were of development staff, and that the respondent has explained as to how the duties claimed to be discharged by the petitioner are not administrative duties. Then, para-12 of the petitioner's affidavit dt. 19.10.1998 was read, to contend, that therein the petitioner had

admitted, that he was having office at his residence itself, while at a subsequent stage he has changed the stand, by taking a plea about his having office at a place other than his residence. Thus, the petitioner is changing stands, and cannot be allowed to be heard in the writ petition. It was also submitted by referring to Annexure-2, that the committee took a decision, that employees who were having twin responsibility of administration and development were categorized as A.A.O., while employees who were operating on development side were categorized as development staff, and that the appellate committee which was constituted to dispose of the representation of the development officers, who were aggrieved with the initial pattern of categorization, had followed the criteria, being that at the relevant time the officer should have the responsibility of controlling staff which could be inspector, clerical or subordinate staff, and should have been controlling premium of Rs. 30,000/- in the year 1972, and secondly the candidate should have minimum period of two years in officer category as on 1.1.1973, and these criteria were uniformly applied, and the petitioner was not found to be fulfilling any of the criteria, and therefore, his request for re-categorization was found to be rightly rejected. It was submitted, that this being a writ of certiorari, it is not open for the petitioner to take this Court into re-appreciation of evidence, and request for arriving at a different conclusion, than the one arrived at by the appellate authority, in absence of there being any allegation of bias, or misreading etc. Regarding the wrong inputs alleged by the petitioner in Annexure-18, it was submitted that the period of one year was mentioned as the period claimed to have been served by the petitioner in administrative category. Thus, the claimant does not reach the total length of service rendered, and so far mention of Nil staff is concerned, it was contended, that even according to the petitioner Bishan Singh Rathore came to be appointed only on 17.11.1972. Thus, it cannot be said that he had any staff for requisite length of time. Thus, there is no misreading, or wrong inputs, made available to the appellate committee, or the concerned committee, and thus on the principles propounded in K.S. Vishwanathan's case and Tamil Nadu Education Department case, no interference is required to be made.

15. In rejoinder learned Counsel for the petitioner submitted that branch managers are over all in-charge, and is to be taken as such, and they have been taken as such, then how the petitioner can be excluded, and it was reiterated, that the persons with lesser services have been absorbed on administrative side. It was again submitted, that respondents have not adhered to the policy. Then, instance of Mr. K.K. Sobti was shown, to contend, that he was having no person as his subordinate, still he has been categorized on administrative side.

16. Learned Counsel for the respondent, then invited my attention to Annexure R/4 to show, that the salary of the petitioner was tied down with the business procured by him.

17. I have heard learned Counsel for the parties at length, and have gone through the judgments, and have considered the judgments cited.

18. At the outset it may be observed that as would be clear from the above narration that long drawn arguments have been raised on the side of the petitioner. However, it is required to be considered that the controversy had been subject matter of litigation earlier, and the controversy that survives was only with respect to the remaining questions, which though were agitated by the petitioner before the appellate committee in the memo of appeal but were not decided by the appellate committee. The Division Bench gave liberty to the petitioner to submit representation to the appellate committee, which was to be decided by the committee, and the representation said to have been made pursuant to the decision of the Division Bench is said to be Annexure-1. Significantly, appeal that was earlier filed by the petitioner before the committee by way of representation on receipt of the order dt. 30.9.1995 is said to be Annexure-9. Then, a look at Annexure-9 shows that therein all that was submitted was that the petitioner joined as officer in-charge in the erstwhile General Assurance Society Ltd. at Sriganganagar in the year 1967, and was entrusted dual duty of administration and development of business. Then, in para-3 it is alleged that since 1971 till merger of various units he had worked as Branch Secretary of all fledged branch which has been registered with controller of Insurance as a branch, and the amount of premium income of the year 1972 has been shown to be Rs. 50,500/-. Significantly the premium income of earlier years has not been mentioned. Be that as it may. Then, in Division C the petitioner has cataloged administrative powers, being seven in number; first being to take interview for post of staff and sub-staff and recommend for appointment to regional office, second being to grant leave to staff and sub-staff, third being to represent and defend court cases on behalf of the company, fourth being to select and guide the agents, fifth being to receive proposal forms and examine them for underwriting, sixth to accept risk without any limit, and seventh to sign policies and other documents. Then, in Division D he has mentioned claim settling powers. Then, in Division E he has mentioned to be operating accounts. Then, in Division F he has mentioned academic and professional qualifications, and submitted that in view of the above facts due to alleged long administrative and development experience, coupled with outstanding underwriting knowledge, he deserves to be categorized as A.A.O. Administration/or A.A.O.

19. Then, coming to the memo of appeal that was filed against the categorization vide circular dt. 17.8.1977, which has been produced by the petitioner as Annexure-16; a look at this Annexure-16 shows, that it is contended therein, that he was holding the post of Branch Secretary at Sriganganagar Branch in the pay scale of Rs. 200-600, and was in officer cadre. Then, coming to the controversy the petitioner made reference to the representations. Then, in para-13 and 14 he has challenged his categorization as Inspector, for the precise reasons mentioned therein, and the grounds given out were, that in terms of Section 7 of the General Insurance Business (Nationalisation) Act, 1972 he became officer, and nothing could be done by any executive order, or by utilizing

provisions of any subordinate legislation of the Act. Then other ground taken is, that he was officer in the erstwhile company where he was posted as Branch Secretary, and he was so recognized by the Scheme or otherwise question of categorization under Scheme does not arise, and to substantiate the fact that he was officer reliance was placed on the circumstances, that his case for categorization was considered in terms of Section 3 of the Act. Then, it is contended that Section 2 of the Scheme of 1975 applies to officers only, and as a matter of fact if it were considered as per the Scheme, he could not be categorized otherwise than as an officer. Then, in para-14 it is alleged that there was neither any Scheme nor any regulation framed under the Act of 1972, which empowers in regard to declaration of any officer or employee covered by the Act as member of the Development Staff. Then, in para 14(1B) it is alleged that 39 persons were shown to have been appointed along with the petitioner in the development staff vide order dt. 18.10.1975, 20 of them were shown to have been appointed as A.O./A.A.O. w.e.f. 1.1.73, by way of categorization, and that the first selection of these 20 persons as member of development staff, then within span of less than two months appointing them as A.O./A.A.O. is beyond reasoning, which is a clear case of step motherly treatment. Then, the next ground given is that while categorizing persons similar to the petitioner, and not categorizing the petitioner as officer, manifest discrimination has been practiced, and in that regard reference was made to the cases of Mr. C.P. Saxena, and Mr. P.P. Gupta, Mr. S.L. Mittal, and Mr. J.C. Mittal. Thus, in my view, the appellate committee constituted pursuant to the Division Bench order was only required to examine the case of the petitioner qua the above named persons, on the anvil, as to whether the petitioner has been discriminated against; and not that the petitioner was entitled to have the entire matter reopened.

20. It is in this background the petitioner submitted representation Annexure-1, wherein he claimed to have been discriminated qua Mr. P.P. Gupta and Mr. G.L. Jain, and has claimed that before the categorization he was required to be given opportunity of hearing. Then, in Division C, contentions have been given with case laws, which are on the anvil of entitlement of opportunity of hearing, principle of fairness, and reasonableness. The other ground taken is, that there is no discernible criteria on the basis of which categorization has been made, and in that regard reference has been made to the chart, and comparison is sought to be made by alleging that if the matter were to be taken on the basis of premium, the persons mentioned at S. No. 3, 4, 5 and 6 have earned less premium. Then, going by salary persons mentioned at S. No. 5, 6, 9 and 10 drew less salary. Then, going by length of service persons mentioned at S. No. 2, 4, and 9 had lesser length of service as the petitioner had 5 years of service. Then, going by availability of subordinate staff, persons mentioned at S. No. 3, 4, 6, 8, 9 and 10 are in the same position as the applicant is. Then, persons mentioned at S. No. 6 was contended to be inferior in every respect, i.e. premium, salary, service, and staff. Similarly person mentioned at S. No. 3 was alleged to be inferior in every respect except in respect of salary, and person mentioned at S. No. 5 was

alleged to be inferior in every respect. It is also alleged that the service of the petitioner has been taken as one year, and thus four years' service has been ignored.

21. Thus, the question that survives, even giving the larger scope is, as to whether the petitioner stands discriminated against the persons mentioned at S. No. 3, 4, 5, 6, 8, 9 and 10. The other question requiring to be gone into is, as to whether there was any discernible criteria, applied for categorization.

22. Then, a look at Annexure-2 the impugned order shows that the criteria applied was, in cases where the employee were having twin responsibility, they were categorized as A.A.O. while employees who were essentially operating in development side were categorized as development staff, and obviously the persons who were also in administrative side, qua them there was no question of categorization, and the committee came to the conclusion that the petitioner was essentially operating on development side, and did not have any administrative control over staff, and/or development staff, he was rightly categorized as member of development staff. Then, the Appellate Committee considered that for categorization on the administrative side the aggrieved development officer should have responsibility of controlling staff, which could be Inspector, or clerical or Subordinate staff, and should have controlled minimum premium of Rs. 30,000/in the year 1972, and at the same time the candidate should have minimum period of 2 years in the officer category as on 1.1.1973, and on this criteria it was found that as on 31.12.72 the petitioner had only one year's of service in the officer cadre, and did not have control over any clerical, or administrative, or subordinate staff, at the material time, therefore, the appellate committee did not find any error in the categorization. Then, the aspect of discrimination was gone into, and negated. Reference was also made to K. Swaminathan's case, where the methodology, and procedure followed by the then Categorization Committee was approved by the Hon'ble Supreme Court, and it was noticed, that all those contentions stand negated by the judgment dt. 30.8.94.

23. In view of the above, before proceeding further let the things be made clear about the facts. As noticed above, the criteria considered was that the officer should have responsibility of controlling staff, which could be inspector, clerical or subordinate staff, and at the same time should have controlled premium of Rs. 30,000/- in the year 1972, and further the candidate should have minimum of 2 years of service in the officer's cadre as on 1.1.1973. Thus, it is clear that there was a discernible criterion.

24. Then for the purpose of deciding the question, as to whether the petitioner was in the officer cadre, or development staff, in my view, the mere nomenclature of the post held, or the designation in the previous company has rightly not been taken to be a decisive factor, rather the decisive factor was the nature of duties and responsibilities shouldered by the incumbent, in the erstwhile company, and in order to determine whether a person belonged to

Development Staff or Administrative Staff, one important factor considered was, as to whether the salary of the incumbent was tied down with the business procured by him.

25. As noticed above, it is admitted by the petitioner in para-12 of the petitioner's affidavit filed on 19.10.1998, that he was having office at his residence itself, but subsequently he chose to change the stand by taking a plea about his having office at the place other than his residence. This coupled with the fact, that in Annexure-9, or Annexure-16 it was nowhere contended, that the petitioner had any staff subordinate to him, in the branch. It further appears, that in order to over come the situation, the stand is attempted to be changed, by contending, that one Bishan Singh was an employee subordinate to him. Significantly, it is a different story that this Bishan Singh is also shown to have been appointed for the first time on 7.11.1972 only. Then, the documents produced about the payments made on account of salary etc. by the petitioner show, that they do not fit in the story of Bishan Singh and petitioner both being the employee at the relevant time. It is still a different story that even if the employment of Bishan Singh is required to be considered, as having the effect of placing the petitioner in officer category, he did not complete period of 2 years. The bio-data submitted by the petitioner, being Annexure-30, clearly mention the address of the residence and office to be same and telephone number to be also same. Then in Annexure R/3 in answer to question No. 14 and 25 the petitioner has given identical answer, by answering about the nature of duties, and the duties mentioned therein are as under:

Business underwriting of all departments. Disbursement of salary & Commission and other expenses relating to the branch. Settlement of small claims and appointment of surveyors in heavy losses. Development of business and control of branch. Maintenance of the Branch accounts. To advice controlling office and clients to improve underwriting and risks.

26. Significantly, in this also this is no-where mentioned, that the petitioner was having any staff in his subordination, or control, whether Bishan Singh, or anybody-else, for any length of time whatever. This coupled with the fact, that in Annexure-9 substantially reliance is on the designation of the petitioner in the erstwhile company, does clearly show that petitioner cannot be said to be working substantially on the administrative side in the erstwhile company.

27. The question then arises as to whether in view of the nature of the duties alleged by the petitioner to be discharged by him, it can be said that he was working on the administrative side? In my humble view, the duties mentioned above, as detailed by the petitioner in answer to para-14 and 25 of Annexure R/3, none of the duties amount to administrative duties. This coupled with the fact, that Annexure R/4 does clearly establishes, that his salary was tied with the business procured by him. Obviously, it cannot be disputed, that in cases where the salary of the petitioner is tied down with the business procured by him, he can obviously be not said to be belonging to the administrative side, but has to

be taken to be belonging to development side only.

28. Then, even if the nature of duties, as given in Annexure-9 were to be examined, out of seven duties, the first is said to be power to take interview for the post of staff and sub-staff and recommend for appointment to regional office, which does not ever appear to have been exercised by the petitioner, as nobody was appointed as staff, in any case till 17.11.72. Likewise, second duty being to grant leave to staff and sub-staff is concerned, that again is not shown to have ever been exercised by the petitioner. Then, the other five duties cataloged by the petitioner are solely the duties of the development staff, and has nothing to do with the administrative nature of duty. In that view of the matter also, it cannot be said that the petitioner was performing or discharging any administrative duties, or was working on the administrative side.

29. Then, so far as the aspect of comparison, so as to examine the allegation of discrimination is concerned, in para-5 of the reply, a detailed reply has been given, as to how the cases are not comparable, or there is no discrimination. Then, in the rejoinder dt. 12.10.1998, the petitioner had amply reconciled, inasmuch as all that has been alleged in para-15 is, that the persons named were performing duties more or less akin to the one petitioner was discharging, and while petitioner was not categorized as belonging to administrative staff, while others were so categorized. Thus, it cannot be said, that the comparison made by the respondent is wrong, or that the comparison made by the petitioner is required to be acceded to.

30. Then, I come to the very big argument raised by the learned Counsel for the petitioner, about his service having been shown to be one year only in Annexure-18, as against which he served for five years. It would suffice to say, that of course, one year appears to have been wrongly mentioned, but then, this clearly appears to have been wrongly mentioned in favour of the petitioner, inasmuch as on the administrative side he had hardly worked for less than 2 months, and not one year. The entire length of service was only on the development side, which was not at all of any consequence, and thus no capital can be allowed to be made out of it.

31. I may also observe here, that all the above exercise I have undertaken, only for the purpose of satisfying my judicial conscience, about correctness, or propriety of the decision of the appellate committee, otherwise in certiorari jurisdiction, it is not open to me, to undertake all this hair spinning exercise, and re- appreciate entire material available on record, to come to a conclusion, other than the one arrived at by the appellate authority.

32. Thus, taken from any stand point, I do not find any force in the writ petition. The same is, therefore, dismissed.