

**(2023) 09 DEL CK 0159**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 1473 Of 2023, Civil Miscellaneous Application  
No. 5529 Of 2023

Gagan Inder Wadhwa

APPELLANT

Vs

Vs Union Of India And Ors

RESPONDENT

**Date of Decision :** 01-09-2023

**Acts Referred:**

Constitution of India, 1950 — Article 73, 309  
DRDO Civil Works Officers" Cadre Rules, 2000 — Rule 10, 11(4)  
Defence Research Development Service Rules, 1979 — Rule 10

**Citation :** (2023) 09 DEL CK 0159

**Hon'ble Judges :** V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

**Bench :** Division Bench

**Advocate :** Rajshekhar Rao, Gauri Puri, Aditi Gupta, Areeb A. Amanullam,  
Chetan Sharma, Apoorv Kurup, Anshuman Singh, Ojaswa Pathak, Vikramaditya  
Singh, Amit Gupta, Akhil Hasija

**Final Decision :** Dismissed

## Judgement

V. Kameswar Rao, J

1. The present petition has been filed with the following prayers:

"(a) Issue a Writ of Certiorari or any other Writ/ Order/ Direction thereby setting aside the Order dated 28.09.2021 passed by the Hon"ble Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 1710/2021 titled as "Davender Pal Makkar & Anr. Vs. Union of India & Ors;

Consequently,

(b) Pass an Order allowing the Original Application No. 1710/2021 titled as "Davender Pal Makkar & Anr. Vs. Union of India & Ors";

c) Pass any other order as this Hon'ble Court may deem fit, towards securing the ends of Justice."

2. The petitioner is working in the Defence Research and Development Organisation ("DRDO" hereinafter) holding the post of Chief Executive, Civil Works and Estates ("CW&E", hereinafter), posted as Chief Construction Engineer, Research and Development (West), Pune ("CCE (R&D)" hereinafter) since October 01, 2021.

3. The Civil Works Officers Cadre ("Works Cadre" hereinafter) headed by the Chief Executive (CW&E) is a General Central Service Group-A Gazetted Officers (Technical) Service, established in the DRDO with a sanctioned strength of 53 officers.

4. On June 18, 2021, an order was issued by the respondent No.5 regarding the approval of the Appointments Committee of the Cabinet ("ACC", hereinafter) for the empanelment of the petitioner and the pro forma respondent No.6 herein for promotion to the grade of Chief Executive (CW&E) in Level-14 Pay Matrix for the panel year 2021. On July 14, 2021, approval of the ACC was duly accorded. On July 27, 2021 the respondent No.6 made a representation to respondent No.2 objecting to the posting of a scientist i.e., respondent No.4, from the Scientist Cadre as the Director (CW&E), making the post of Chief Executive (CW&E) merely decorative and with no real power. On July 30, 2021, an order was issued by the respondent No.3 regarding the approval by the Competent Authority for appointment of respondent No.4 as Director (CW&E), DRDO HQ with effect from August 01, 2021. The order further states that respondent No.4 has been transferred to this post in "public interest". It is this order that was challenged by the petitioner and the pro forma respondent No.6 before the Central Administrative Tribunal, Principal Bench, New Delhi in OA 1710/2021, resulting in the impugned order.

5. An order dated August 01, 2021 was issued by the respondent No.3 which stated that even after assumption of charge by the respondent No.6 as the Chief Executive (CW&E), he would continue as the Chief Technical Examiner ("CTE", hereinafter), i.e., his prior post in Pay Level 13A till superannuation or until further orders.

6. On September 28, 2021, the impugned order was passed by the Tribunal dismissing the O.A. filed by the petitioner and respondent No. 6 herein, on the ground that they failed to point out any prejudice or detriment caused to them since their salary and other perks remained the same. It was also held that the Competent Authority was empowered to assign any work to an officer and no employee can claim or choose to perform a particular work or assignment of his choice.

7. On September 30, 2021, an order was issued by respondent No.3 in respect of the approval by the ACC for promotion of the petitioner as Chief Executive (CW&E) in Pay Level 14. As per the communication, after assumption of charge as Chief Executive (CW&E), the petitioner was to continue at CCE (R&D) West, until further orders. It is the case of the petitioner that from October 2021 to

January 2023, the petitioner did not challenge the impugned order as he was given assurances by the then Secretary and Chairman of DRDO that upon retirement of the respondent No.4 in March, 2023 no other person would be appointed as the Director (CW&E), and as such all duties and power which are ordinarily exercised by Chief Executive (CW&E) would continue to be exercised by the petitioner who had several years of service left, till his superannuation in June, 2027.

8. However, on December 12, 2022 an advertisement bearing No.03/2022 was issued by the office of the Director General (Human Resources) for the post of Director in Labs/Departments of DRDO. Applications were invited to the post of Director, HQ, Directorate of CW&E which was to fall vacant on April 01, 2023, i.e., upon the retirement of respondent No.4. Thereafter, on December 27, 2022, a corrigendum to the advertisement was issued, revising the qualification required for appointment of Director, HQ, Directorate of CW&E as under:-

“(i) Scientist in the Grade of Sc 'F' with three years experience or above and should have at least two years of residual service; or

(ii) CCE with three years experience or above and should have at least two years of residual service.”

9. Although, no advertisement was issued at the time of appointment of respondent No.4 as Director (CW&E), he was in the grade of Scientist “G”, and did not have two years of residual service left at the time of his appointment. The petitioner has applied for the advertisement with caution, inasmuch as, despite appointment to the highest post in the Works Cadre, he is being denied of the exercise of his powers which are illegally being executed by respondent No.4 who was due to retire in March 2023.

10. Mr. Rajshekhar Rao, learned Senior Counsel appearing for the petitioner would submit that there is no post of Director in the DRDO Civil Works Officers” Cadre Rules, 2000 (“Rules of 2000”, hereinafter) wherein Chief Executive (CW&E) is the highest post in the cadre hierarchy at the Directorate of CW&E. According to him, the Tribunal erred in holding that the post of Director is an appointment which is not governed by any recruitment rules but the Competent Authority is empowered to appoint any person whom it considers appropriate. The appointment of the respondent No. 4 has not been sanctioned and accorded by the Competent Authority, and is an internal arbitrary appointment made by DRDO without following due process by an open, competitive search-cum-selection process. It is settled law that the State’s right to create posts and recruit people emanate from statutes or statutory rules and / or rules framed under the proviso appended to Article 309 of the Constitution of India and cannot be in contravention to such provisions. Therefore, in the absence of any sanctioned post of the Director in the recruitment rules or any other statutory rules framed under Article 309 of the Constitution, the said post is non-existent and any appointment made is illegal.

11. He stated that there is no post of Director in the manpower authorisation of DRDO approved by the Ministry of Defence for the Directorate of CW&E, dated June 3, 2021, or even in the earlier manpower authorisation.

12. Prior to 1992 when the Directorate of CW&E was called the R&D Constructions Establishment, there was no post of Chief Executive (CW&E) and it was the Director, R&D Construction Establishment, who headed the Civil Works Cadre. However, the said post was deleted vide corrigendum dated August 3, 1992 and was replaced by the words "Chief Executive (Civil Works & Estates)". Therefore, even the manpower authorisation is in consonance with the Rules of 2000 and as such there is no post of Director (CW&E), making the appointment of respondent No. 4 ex-facie illegal.

13. All previous appointments made from the Scientist Cadre were to the post of Chief Executive (CW&E), and not Director (CW&E), as can be seen from the following table.

14. He has contested the stand of the respondents that upon the retirement of Mr. Ajay Singh, Chief Executive (CW&E), Level 14, the respondent No.2 decided that it shall be headed by respondent No.4. Even if it is assumed on a demurrer that there exists a post of Director (CW&E), such post would be deemed to be abolished and could not have been revived without the approval of the Department of Expenditure in view of the Office Memorandum dated April 12, 2017 issued the Ministry of Finance. In any case, as per the ACC approval dated June 18, 2021, it was the respondent No.6 and the petitioner who were next in line to head the Directorate of CW&E after the retirement of Mr. Ajay Singh.

15. The DRDO Delegation of Financial Powers, 2019 mentions "Dir (CWE) / CE (CWE)" which would prove that the said posts, namely Director (CW&E) and Chief Executive (CW&E) have been used interchangeably with only one person heading the Directorate. All previous appointments to head the Directorate was only to the post of Chief Executive (CW&E) in the same level, which was sometimes interchangeably used as Director (CW&E). However, at no point in time, were there two persons of the same level officiating as Director (CW&E) and Chief Executive (CW&E). In other words, there was always only one person officiating as the head of Directorate either as (i) Director; or (ii) Chief Executive; or (iii) Director / Chief Executive. He has referred to the following letters in support of his submissions:

"(a) Letter dated 19.11.1992: Sh. N.R. Venugopal, CE, CWE was made the Director, CWE.

(b) Letter dated 05.02.1997: Sh. R. Seshadri who was the CE, CWE was redesignated as Director, CWE.

(c) Letter dated 26.11.2001: Sh. R. Seshadri is referred to as Chief Executive & Director, CWE upon whose retirement Sh. K.N. Rai was appointed as Director, CWE.

(d) Letters dated 29.09.2003, 17.10.2003, 20.11.2003 & 21.08.2007: Sh. K.N. Rai who was appointed as Director, CWE, has exercised powers of CE, CWE and signed the said letters as CE, CWE.

(e) Letter dated 11.03.2008: Sh. D. Venkateswarlu was appointed as Director, CWE. However, upon his voluntary retirement, in the letter dated 15.10.2008 pertaining to Handing/Taking over of Charge, Sh. D. Venkateswarlu has signed as "Chief Executive & Dir (CW&E)". A true copy of the handing/taking over of charge of Director, CWE dated 15.10.2008 is attached herewith as Annexure P-17."

16. Mr. Rao has stated that all the powers of Chief Executive (CW&E) were carried out by the respondent No.4 / Director (CW&E) without any vigilance clearance and / or approval from the ACC for exercise of such powers.

17. Prior to his appointment as Director, the respondent No.4 was reporting to Mr. Ajay Singh, Chief Executive (CW&E). However, after his appointment respondent No.4 started carrying out financial functions de hors any rules or provisions, that were to be exercised only by the successors of Mr. Ajay Singh. He has referred to a letter dated May 01, 2009 signed by Mr. Ajay Singh and letter dated August 31, 2021 signed by respondent No.4, to contend that respondent No.4 was illegally exercising financial powers that remained exclusively in the domain of Chief Executive (CW&E). He has also contended that to justify the illegal and arbitrary appointment of respondent No.4 to a non-existing post as on September 09, 2021 the respondent No.4 was referred to as "Chief Executive" on the website of DRDO albeit stating that he had taken charge of Director (CW&E).

18. That apart, despite the post of Chief Executive (CW&E) being the top most in the Directorate of CW&E, all the juniors of the petitioner who are CCEs are reporting to the Director (CW&E) even though they are under the technical and administrative control of Chief Executive (CW&E). As per the Rules of 2000, the Departmental Promotion Committee for considering promotion of CCEs consists of Chief Executive (CW&E) as a member, not any Director. Even in the rotational transfer policy of Civil Works Cadre officers up to CCEs, it is the Chief Executive (CW&E) who is a member and not the Director. Despite the financial and administrative powers pertaining to the Directorate being solely and exclusively vested with the Chief Executive (CW&E), the petitioner was directed to forward his Annual Performance Assessment Report to the Director (CW&E) despite the petitioner holding the top post of the Works Cadre, and would only report to the Director General (R&M).

19. That apart, there is no relative seniority or inter-se seniority between people working in Scientist Cadre and Works Cadre, as they both have two separate and exclusive seniority lists governing seniority in each cadre. As such, the respondents cannot create a post and designate the Director (CW&E) to be equivalent to the post of Chief Executive (CW&E), which is the highest post in the Civil Works Officers Cadre.

20. Mr. Rao has fairly referred to the Defence Research Development Service Rules, 1979 ("Rules of 1979", hereinafter), and the subsequent rules of the same name framed in 2023, both formulated under the proviso to Article 309 of the Constitution of India to be applicable to the officers of Scientist Cadre in DRDO. He submitted that when the Rules of 1979 were framed, there was no Works Cadre in the DRDO, which was constituted only in 1984/1988. It is the Rules of 2000 that govern the Works Cadre, and scientists cannot come under deputation to the Works Cadre, which is extendable to only civilian officers from organized Engineering Services of the Central/State Government, PSUs or other departments. He contended that the true purport of Rule 10 of the Rules of 1979 and 2023 is applicable only to the officers/scientists of DRDS. Upon a holistic reading of the Rules, in particular Rule 11(4), it is clear that officers are appointed to the Service to "undertake Defence Research & Development work". The Rules are silent as to posting of a Scientist from the DRDS Cadre to the Works Cadre, since Works Cadre did not exist at the time of promulgation of the Rules. Even the Defence Research and Development Organisation, Ministry of Defence (Civil Works Officers Cadre) Recruitment Rules, 2023 ("CWOC Rules of 2023" hereinafter), which has superseded the Rules of 2000 insofar as the Works Cadre is concerned, does not include any post or position of Director (CW&E), and much less any provision for lateral entry of scientists to the Cadre.

21. He further contended that the State's right to create posts and recruit people emanates from statutes or statutory rules and/or rules framed under the proviso to Article 309 of the Constitution. When there is a conflict between executive instructions and statutory rules framed under Article 309, the Rules must necessarily prevail. Even policy decisions taken under Article 73 of the Constitution are subservient to such rules. In this regard, he has relied upon the judgments of the Supreme Court in *S.K. Nausad Rahaman & Ors. v. Union of India & Ors.*, (2022) 12 SCC 1 and *Principal, Mehar Chand Polytechnic v. Anu Lamba & Ors.*, (2006) 7 SCC 161. He has also referred to the judgment in the case of *Asha Sharma v. Chandigarh Administration & Ors.*, (2011) 10 SCC 86 to contend that any action taken by the State has to be fair and in consonance with the statutory provisions and rules, and the exercise of discretion in line with the principles of fairness and good governance is an implied obligation cast upon the authorities. Relying upon the judgment in *Tejshree Ghag v. Prakash Parashuram Patil*, (2007) 6 SCC 220 he submitted that the terms and conditions of service, unless altered expressly, would be governed by the Rules which were in existence at the time when the impugned order was passed. While the State has the power to alter the terms and conditions, the Rules made under Article 309 ordinarily should state the same expressly.

22. Another submission of Mr. Rao is that scientists are being appointed in the Works Cadre without the approval of Ministry of Defence. He has referred to the objections raised by the Comptroller and Auditor General of India ("CAG", hereinafter) in its report placed before the Parliament in 2021 with regard to the scientists working in the Works Cadre, wherein it was stated as under:

"Audit, however, noted that against the sanctioned strength of 53 officers in CWOC, 76 officers were posted (38 officers each from CWOC and DRDS cadre). Thus, the despite there being an overall deficiency in scientists" cadre, DRDO had posted 38 scientists to works establishments, which had 23 officers overall in excess of the sanctioned strength of DRDO (July 2022) without approval of MoD....In reply, DDR&D stated (June 2022) that Scientists were posted to CWOC due to increase in workload and Government"s approval for 14 additional posts in works cadre have been accorded in April, 2022. DRDO, however, agreed to repatriate scientists to the Lab establishment concerned in a time bound manner.....".

It is the case of the petitioner that respondent No. 4 was in the grade of Scientist "G" and could not have been posted in the Works Cadre as CCE in addition to the sanctioned post of CCE. That apart, performance audit of DRDO has objected to induction of scientists in to the Works Cadre and recommended the Ministry of Defence to take an expeditious decision of review of the Works Cadre and avoid deployment of scientists as Work Engineers.

23. Reliance is placed upon an email and a letter, both dated April 21, 2023 to submit that during the pendency of this petition and upon the retirement of respondent No.4, yet again the powers of Chief Executive (CW&E) continued to be carried out by Dr. Manu Korulla, Scientist "G", Director, Directorate of Management Services who has been given the charge of Director (CW&E).

24. Mr. Rao has vehemently argued that a stop-gap arrangement, not in consonance with the statutory recruitment rules, does not constitute a precedence and it is no longer res-integra that if a mistake has been committed earlier, that cannot be a ground for directing the party to perpetuate the error for all times to come. A wrong order or decision in favour of any particular party would not entitle other parties to claim the benefit of such wrong decision.

25. Mr. Rao also submitted that the present petition was filed on February 4, 2023 against the impugned order dated September 28, 2021. Thereafter upon retirement of respondent No. 6 and day after the impugned order was passed, the petitioner on September 30, 2021 was promoted as Chief Executive (CW&E). Thereafter no challenge was preferred by the petitioner at that time to the impugned order since he was assured by the then Secretary DDR&D and Chairman, DRDO that upon the retirement of respondent No.4 in March, 2023 no other person would be appointed as Director (CW&E) and the petitioner who has residual service till June, 2027 would be able to exercise all powers Chief Executive (CW&E) as was done by Mr. Ajay Singh.

26. However, in complete volte face, for the first time in the history of appointments in the Directorate of CW&E, an advertisement dated December 12, 2022 was issued for the post of Director (CW&E) wherein only scientists were eligible to apply. The eligibility was later amended on December 27, 2022 to include officers from both cadres viz. CCEs with three years experience or more.

According to the petitioner, the fact that the respondent No. 4 was appointed without the process that is now being sought to be followed is conclusive proof of the illegality of his appointment. That apart, even as per the corrigendum to the advertisement, the respondent No. 4 does not meet the eligibility criteria for appointment/posting to the post of Director (CW&E).

27. The petitioner on January 6, 2023 sent a representation against the above mentioned advertisement requesting the respondents to consider him to lead the Directorate of CW&E.

28. Per contra, Mr. Chetan Sharma, learned ASG assisted by Mr. Apoorv Kurup, learned CGSC and Mr. Anshuman Singh, learned Senior Panel Counsel, appearing for the respondents would submit at the outset that the first prayer made by the petitioner before the Tribunal was towards the quashing the appointment order of respondent No. 4 herein which has now become infructuous as the respondent No.4 has superannuated on March 31, 2023. The second prayer sought before the Tribunal was with respect to the posting of respondent No. 6 herein. This prayer has also become infructuous with the superannuation of respondent No. 6 who is also not contesting the present petition. His submission is that none of the prayers as sought before the Tribunal survives as of today and no purpose will be served if the petitioners allowed setting aside the order of the Tribunal and allowing the OA.

29. Mr. Sharma submitted that the petitioner under the garb of challenging the order of the Tribunal is attempting to derail the process of selection and posting of a suitable officer as Director (CW&E), DRDO (HQ) for which advertisement dated December 31, 2022 and Corrigendum dated January 6, 2023 were issued by the Department to which the petitioner himself has applied. In any case the competent authority is yet to take a decision for posting a suitable officer as a Director (CW&E). He stated that the petitioner does not challenge the actual sanction of the post of Director and there is only mere averments in the grounds for the petition, and since the scope of intervention of this Court is limited when an order of the Tribunal is being assailed, the petitioner cannot seek reliefs that travel beyond the scope of the OA.

30. He has contested the submission of Mr. Rao that there is no post of Director (CW&E) in DRDO and that all previous appointments made from the Scientist Cadre was to the post of Chief Executive and not Director. Further, it is not the case of the petitioner that he is impacted or affected by the appointment of respondent No.4 in any manner whatsoever. His salary, pay scale etc. remained the same and he cannot have any grievance in respect of his service conditions.

31. He submitted that the petitioner is trying to blow hot and cold together inasmuch as on one hand he is aggrieved by the advertisement dated December 12, 2022 and Corrigendum dated January 06, 2022 and on the other hand, he has applied against the same advertisement seeking appointment as Director (CW&E). In any case, if the petitioner is aggrieved by the advertisement he has

an alternate remedy under the Administrative Tribunals Act, 1985.

32. Mr. Sharma has submitted that it is a law well settled that the Competent Authority is reposed with the power to appoint a suitable officer to discharge the duties of a particular post. The petitioner or any other person for that matter does not have any right to dictate the competent authority as to who should be posted to discharge the duties of post. The respondent No.4 was promoted as Scientist "G" by the Competent Authority, i.e., the Raksha Mantri on July 01, 2014 after due vigilance clearance, and he is much senior to the petitioner. The respondent No.4 possesses qualification in Civil Engineering, Post Graduation in Structural Engineering, Ph.D. in Blast Resistant Design and has vast knowledge of design, construction, contract management, administration and other relative works. He joined the DRDO Construction Establishment with effect from February 01, 1988 and was posted as Director (CW&E) by the Competent Authority keeping in view his eligibility and suitability.

33. Mr. Sharma submitted that the Directorate of CW&E consists of officers and staff from various cadres/streams. Officers from the Scientist Cadre as well as Works Cadre have been appointed as Director (CW&E) as it is a functional post and not a post in the hierarchy of recruitment rules governing either the Scientist Cadre or the Works Cadre. Likewise, office of Chief Construction Engineer (R&D) ("CCE R&D", hereinafter) is also headed by officers from Works Cadre at the level of Chief Executive (CW&E) /CCE and Scientist Cadre at the equivalent level of Scientist "G"/Scientist "F".

34. The authorised manpower of DRDO in various categories is given in the Presidential Sanction vide letter dated August 13, 2001, which inter alia stipulates that from the authorisation shown in Annexure-1 of that letter, the manpower authorisation called Regular Establishment was issued to individual Labs/Estts. and undistributed posts would form a corporate pool, to be maintained and managed by R&D HQ. In addition, with the sanction of the President vide letter dated May 08, 2001, a Manpower Planning Board under the Chairmanship of the Scientific Advisor to the Raksha Mantri and Secretary, DDR & D was constituted to decide the allocation of manpower to various Labs/Estts. based on functional requirements, workload and other relevant considerations. He stated that the manpower authorisation of DRDO HQ has been issued with the sanction of the Competent Authority. That apart, the Presidential Sanctions vide letters dated May 03, 1991 and July 15, 2003 contained extract of manpower authorisation of the Directorate which would conclusively prove that one post of Director has been earmarked for the Directorate of CW&E. The manpower authorisations are reviewed and revised at regular intervals depending upon the changing requirements of manpower.

35. The Presidential Sanction issued vide letter dated August 05, 2015 authorises CCR&D (HR)/Director/HRD DRDO HQ to issue in favour of individual constituents/units of DRDO the manpower and vehicle authorisations with the approval of the Secretary, Department of Defence, R&D-cum-DG DRDO within the total

manpower authorisation of DRDO as per Annexure-1 of letter dated August 13, 2001. It is noted that the post of CC R&D (HR) has been re-designated as Director General (HR).

36. Mr. Sharma also submitted that as is evident from various orders the Directorate of CW&E was always headed by the Director (CW&E) appointed either from Works Cadre or Scientist Cadre. In support of his contention, he has relied upon the following orders:-

a. Order dated June 15, 1998 regarding appointment of Mr. N. R. Venugopal as Director (Works)

b. Note dated February 05, 1997 regarding the designation of Mr. R. Sheshadri as Director (CW&E).

c. Office order dated November 26, 2001 appointing Mr. K. N. Rai, Scientist "F" of CCER&D (North) as Director (CW&E).

d. Office order March 11, 2008 appointing Mr. D. Venkateswarlu, CCER&D (South) as Director (CW&E).

e. Office order dated October 13, 2008 appointing Mr. S. T. Rangarajan, Scientist "G", CCER&D (West) as Director (CW&E).

f. Order dated January 01, 2009 appointed Mr. G. Elangovan, CCR&D(R&M) [re-designated as Director General (R&M)], as Director (CW&E).

37. Thereafter, the respondent No.4, Dr. K. Radhakrishna, Scientist "G" working as CCE (R&D), Delhi was appointed as Director (CW&E) vide order dated July 30, 2021, and was transferred from CCE (R&D), Delhi to the Directorate of CW&E, DRDO HQ, New Delhi. After his appointment, the revised regular establishment of manpower issued on September 21, 2022 contains the post of Director in the Directorate of CW&E.

38. When Mr. N. R. Venugopal was functioning as Director (Works), Mr. R. Sheshadri was promoted as Chief Executive (CW&E) vide order dated June 28, 1994 and was posted as CCE (R&D), Secunderabad where he assumed the charge on June 29, 1994. Similarly, when Mr. K. N. Rai was functioning as Director (CW&E), Mr. Salil Guha was promoted as Chief Executive with effect from April 11, 2005 and was posted as CCE (R&D) (Central). A perusal of the letter dated August 31, 2005 issued by Mr. Salil Guha, Chief Executive (CW&E) while posted as CCE (R&D) Central, would show that the post of CCE (R&D) has been previously held by other officers at the level of Chief Executive (CW&E) and there is no exception in the case of the petitioner when on promotion on the post of Chief Executive (CW&E) he was posted as the CCE (R&D) West. Respondent No.6 was promoted as the Chief Executive (CW&E) vide order dated July 30, 2021 and was ordered to continue as CTE after assumption of charge as Chief Executive (CW&E) till his retirement.

39. He stated that the appointment of the officers from Scientist Cadre as well as

Works Cadre as Director (CW&E) was made on transfer basis and they continue to draw pay and other perquisites of their respective substantive posts which they were holding in their respective cadre. Though the substantive posts of these officers are governed by the relevant recruitment rules, on appointment as Director (CW&E) they are not entitled to any extra pay or perquisites and continue to hold their respective substantive posts. The necessity of appointment of officers from two different streams as Director (CW&E) arises as the works procedures, administrative instructions and other powers are defined by using a common nomenclature of the Director (CW&E). Such laid down procedures need not be revised every time an officer is posted from a different stream i.e., from Scientist Cadre to Works Cadre or vice versa. That apart, as the post of Director (CW&E) is a functional post, even junior officers are also eligible for appointment.

40. Mr. Sharma has also referred to the Standard Operating Procedure ("SOP", hereinafter) for selection of officers in DRDO dated September 17, 2018, to contend that the broad eligibility criteria for selection of Lab Director or Corporate Director mentioned in the SOP can be relaxed by the respondent No.2.

41. As regards the contention of Mr. Rao that the respondent No.4 was not selected/promoted by the ACC, Mr. Sharma would state that the respondent No.4 was promoted as Scientist "G", Level 14 as per the Rules of 1979 by the Competent Authority i.e., the Raksha Mantri vide letter dated June 30, 2014. Even the proposal for his promotion from Scientist "F" to Scientist "G" was being approved by the Raksha Mantri. Likewise, his promotion from CCE to Chief Executive, (CW&E), Level 14 in Works Cadre was also approved by the Raksha Mantri. After 2018, all proposals to Pay Level 14 are being approved by the ACC. Since the petitioner was promoted as Chief Executive (CW&E) in July, 2021, his case was sent to the ACC for approval, like the cases of all Scientists in grade "G" whose promotions have been made after 2018. It is the contention of Mr. Sharma, that in any case, for posting of an existing officer either from the Works Cadre or from the Scientist Cadre as Director (CW&E), the approval of ACC is not required as the respondent No.2 is the Competent Authority for that purpose vide Presidential Sanction dated August 05, 2015.

42. He further submitted that there is no question of creation or abolition of any post in the present case as the post of Director (CW&E) is an appointment with functional powers. The head of the Department (respondent No.2) appoints Directors of concerned Directorates from either Scientist Cadre or Works Cadre.

43. As regards the submission of Mr. Rao that scientists are being appointed in the Directorate of CW&E without the approval of Ministry of Defence, the learned ASG would state that the respondent No.2 is the Competent Authority to decide the suitability of the concerned officers to be appointed/posted in any Directorate/Labs/Estts. No rule or instruction prescribes the approval of the Ministry of Defence for posting of any officer by the respondent No.2 in DRDO. Similarly, he contested the submission that the Director (CW&E) is illegally carrying out the functions of the Chief Executive (CW&E) without undergoing the selection

process and/or approval by the ACC, stating that no rule or instructions prescribes that the posting of Director (CW&E) has to be approved by the ACC.

44. He also submitted that the observations made in the performance audit and the CAG Audit is merely a general observation and not related to the post of Director (CW&E).

45. In reply to the issue raised by Mr. Rao that the respondent No. 4 did not have 2 years of residual service left when he was appointed as Director, and as such, the same is in violation of the letter dated February 15, 2019 and the corrigendum dated May 13, 2019 to the SOP of September 17, 2018, it is contended that provisions of an SOP are not mandatory in nature and can be relaxed by the competent authority in case of a suitable and deserving officer. Respondent No.4 joined DRDO Construction Establishment w.e.f. 01.02.1988 and was posted as Director (CW&E) DRDO HQ by the Competent Authority keeping in view his eligibility and suitability. Respondent No.4 has post graduation in Structural Engineering, PhD related to Blast Resistant Design and has vast knowledge of design, construction, contract management, administration and other related work, making him an officer who is suitable for the post of Director (CW&E).

46. He has sought the dismissal of the present petition.

47. Having heard the learned counsel for the parties and perused the record and the submissions filed by the counsel for the parties, at the outset we may state that OA 1710/2021 was filed by two applicants namely, Davender Pal Makkar and Gagan Inder Wadhwa primarily challenging the appointment of Dr. K. Radhakrishna (respondent No.4 in the OA) as Director (CW&E), DRDO HQ. Davender Pal Makkar has since retired, and it is only the petitioner Gagan Inder Wadhwa who has filed this writ petition. We have been informed that during the pendency of the writ petition that the respondent No. 4 Dr. K. Radhakrishna has also retired in March 2023. We have also been informed that one Dr. Manu Korulla from the Directorate of Management Services, DRDO has been given the charge of Director (CW&E). The challenge of the petitioner before the Tribunal was to the appointment of Dr. K. Radhakrishna who belongs to Scientist Cadre as Director (CW&E), which has the effect of negating his promotion as Chief Executive (CW&E). According to him, there is no post of Director stipulated in the Recruitment Rules which govern the appointment / promotion of officers in the Works Cadre. It was also his case that the post of Director (CW&E) has been invented to create an impression that there exists a post of Director (CW&E) over and above the post of Chief Executive (CW&E). It was also the stand of the petitioner that the recruitment to Scientist Cadre and Works Cadre are governed by their own set of the rules, neither of which mentions the post of Director (CW&E). The case of the respondent before the Tribunal and this Court is that, the competent authority is empowered to assign any work to the concerned officer in the best interest of the organisation. It was also their stand that the incumbent of the post of Chief Executive (CW&E) need not be posted necessarily

at DRDO HQ, and is liable to be posted anywhere in the country.

48. The Tribunal while rejecting the OA has in paragraph 11 held as under:

"11. The applicants are aggrieved by the order dated 30.07.2021, whereby the 4th respondent No.4, Dr. K. Radhakrishna, has been appointed as Director Civil, Works & Estates, DRDO HQ w.e.f. 01.08.2021. The applicant No.1 has also been promoted to the grade of Chief Executive (Civil Works & Estates) vide another order dated 30.07.2021 w.e.f. 01.08.2021, with the stipulation that after assumption of charge as CE (CWE), he will continue as CTE till superannuation or until further orders. Vide the aforesaid order, the applicant has been conferred all the benefits attached to the promoted post, such as seniority and fixation of pay in the higher post under FR 22(1)(a). Insofar as the 2nd applicant is concerned, his name has been included in the extended panel vide order dated 18.06.2021, wherein it is provided that he would be promoted to the post of CE (CWE) in lieu of the applicant No.1, who will be retiring during the currency of the panel year 2021. As for the appointment of the 4th respondent to the post of Director of Civil, Works & Estates, DRDO HQ, the applicants have failed to point out as to how such appointment is to their detriment, as their salary and other perks remain untouched. We are inclined to accept the contention of the respondents that it is for the competent authority to assign any work to the concerned officer, and no employee can claim or choose to perform a particular work or assignment of his choice. The plea of the applicants that the appointment of the respondent No.4 to the post of Director Civil Works & Estates is in order to nullify or over-reach the effect of promotion of the applicants, cannot be accepted. The competent authority is well within its right to appoint an officer within its jurisdiction to any post or position. The applicant No.1 also cannot challenge the stipulation in the order of his promotion dated 30.07.2021 to the effect that he would continue as CTE till superannuation or until further orders, as he accepted the said condition and assumed the charge of the higher post."

49. Suffice to state that the Tribunal has held that competent authority is well within its right to appoint an officer within its jurisdiction to any post or position. In so far as the plea of Mr. Rao that there is no post of the Director (CW&E), since the highest post under the Rules of 2000 is the Chief Executive (CW&E) and any appointment to the post of Director (CW&E) is illegal, is concerned, though the submission looks appealing on first blush, on a deeper consideration it is liable to be rejected, for more than one reason. Firstly, it is the case set up by the respondents that the competent authority is within its right to assign / designate any work to any officer, even from other cadres. Secondly, even in the past, more specifically between 2001 and 2008, one Mr. K.N. Rai who belonged to Scientist Cadre was appointed as Director (CW&E). Similarly, between October 15, 2008 and December 31, 2008, Mr. S.T. Rangarajan who belonged to Scientist Cadre was appointed as Director (CW&E) and Mr. G. Elangovan, a Scientist was appointed as Director (CW&E) from January 1, 2009 to March 11, 2009. So in that sense it is not for the first time that an officer/scientist from the Scientist

Cadre was appointed as the Director (CW&E).

50. Having said that, the case of the petitioner in this regard, as noted in paragraph 13 of this order, is that all previous appointments made from Scientist Cadre were only to the post of Chief Executive (CW&E), and not to Director (CW&E). However, this submission, and the list provided in ground "J" of the writ petition is at variance with the list filed by Mr. Rao during the course of his submissions.

51. It is clear from a perusal of the documents that the designation given to Mr. K. N. Rai, Mr. S.T. Rangarajan and Mr. G. Elangovan was as Director (CW&E). Even assuming what has been contended in the ground J of the petition is correct, it will not better the case of the petitioner as it follows that even an officer of Scientist Cadre can be appointed as Chief Executive, (CW&E), which is a post under the Rules of 2000.

52. In this regard, a perusal of the office order dated October 13, 2008 which we reproduce below would make it clear that Mr. S. T. Rangarajan, Scientist "G", CCE, R&D (West), Pune was appointed as Director (CW&E). Though no appointment letter of Mr. G. Elangovan has been placed on record, it is presumed that a similar order would have been issued in his case as well.

Office Order dated 13.10.2008 conveying the approval of the competent authority to the appointment of Mr. S.T. Rangarajan as Director (CW&E).

"Consequent to voluntary retirement from service of Sh. D Venkateswarlu, Director, Civil Works and Estates, DRDO, HQ, New Delhi wef 15 Oct 2008, the Competent authority has approved the appointment of Shri ST Rangarajan Sc "G", CCE, R&D (West), Pune as Director, Civil Works & Estates, DRDO, HQ, New Delhi with effect from 15 Oct 2008."

53. The official respondents have justified the appointment of respondent No. 4 as Director (CW&E) by stating that the head of department is empowered to appoint any officer who he deems appropriate. The above stand of the respondents appears to be on the basis of the Rules of 1979, more specifically Rule 10 which reads as under:

"10. Head of the Service - The Director General shall be the Head of the Service and shall be responsible for deployment of officers of the service to the best advantage of the Government."

54. Though the respondents have not referred to the subsequent Rules of 2023 made by them in supersession to the Rules of 1979, we note that Rule 10 therein has been framed to have a wider application / scope, as can be seen from the following:

"10. Head of Service.- The Chairperson, Defence Research and Development Organisation shall be the Head of the Service and shall be responsible for deployment of officers of the service to the best advantage of the Organisation

and the Government, including deployment of senior Scientist in his present grade as Director General, or Director, or any such designated position in the Organisation to meet its functional requirements.”

The above is clearly stipulative and / or indicative of the fact that the Chairperson of DRDO is empowered to deploy officers of the DRDS (Scientist Cadre) to the best advantage of the organisation and the government, including deployment of Senior Scientists in their existing grade as Director General or Director or any such designated position in the organization to meets its functional requirements. It is the case of the respondents in their reply before the Tribunal that the respondent No. 4 was appointed to meet the functional requirements of the organization. Mr. Rao had vehemently contested the applicability of the Rules of 1979 and 2023 and Rule 10 therein to the affairs of the Works Cadre. Though he is right in stating that the Rules of 1979 and 2023 have been framed to be applicable to the DRDS / Scientist Cadre, the wordings of Rule 10, as we have already noted are considerably wide, inasmuch as it bestows upon the Chairman, DRDO, broad powers, exercise of which could transcend cadres and the rules governing cadres, and the Rules of 2000 would not preclude him from deploying a scientist in the Directorate of CW&E, to meet the functional requirements. So, the power being there, both in terms of Rule 10 and also in view of the previous appointments of Mr. K. N. Rai, Mr. S.T. Rangarajan and Mr. G. Elangovan as Director (CW&E), which have not been contested by the petitioner in this petition or in the past at the time of appointment of the three officers, the plea of Mr. Rao that the Rules of 1979 and 2023 are not applicable cannot be accepted.

55. The plea of Mr. Sharma that the functions of Director (CW&E) are distinct and in no way affects the promotion of the petitioner as Chief Executive (CW&E), inasmuch as his pay, perquisites and his position within the Works Cadre are in no way affected, is appealing. We may also state here that it is now the stand of the respondents that even an officer in the Works Cadre is also eligible for being appointed as Director (CW&E) in view of Corrigendum dated January 6, 2023 issued to the Advertisement 03/2022, relevant part whereof reads as under:

“In the above advertisement the revised QR for S.No.04 viz. Director HQ\_DCW&E may be read as follows:-

The QR for the appointment of Director HQ\_DCW&E:

Essential:

? A Scientist in the Grade of Sc “F” with three years experience or above and should have at least two years of residual service.

or

? CCE with three years experience or above and should have at least two years of residual service.”

56. We have been told that the petitioner has also applied for the said position, though without prejudice. Having said that and having come to a conclusion that the action of the respondents in appointing respondent No. 4 to the post of Director (CW&E) is justified, it follows that the appointment of Director (CW&E) can be regulated in the manner prescribed by the respondents in the Advertisement dated December 31, 2022 and its Corrigendum dated January 06, 2023.

57. We find that the plea of Mr. Rao that as the post of Director (CW&E) has been vacant for more than 2 years, in view of the OM of the Department of Expenditure, Ministry of Finance dated April 12, 2017, the same can be considered to be abolished unless an exemption has been given at the time of sanctioning of the post, is unmerited as it is the stand of the petitioner himself that there is no sanctioned post of Director (CW&E). In the absence of any sanctioned post, the OM shall not have any applicability. Moreover, the case of the respondents is that Director (CW&E) is a designated appointment to meet the functional requirements of the organisation. In other words, it is not necessary that the position of Director (CW&E) needs to be made every year or every time the incumbent appointee demits office. As we have seen in the past during the tenure of Mr. Ajay Singh, there was no officer holding the position of Director (CW&E). Even the plea of Mr. Rao that the appointment of respondent no. 4 Dr. K. Radhakrishna was not in terms of the SOP for selection of Directors in DRDO and is hence bad is concerned, the said plea does not survive for consideration for two reasons; one- Dr. K. Radhakrishna has since demitted the office, two- the terms of the Corrigendum now issued by the respondents do meet the requirements of the SOP for selection of Directors in DRDO. Further it may be noted that it is the case of the respondents that the SOP can be relaxed by the competent authority and such exercise of authority cannot be contested.

58. Another plea of Mr. Rao is that the Director (CW&E) is discharging the financial powers of the Chief Executive (CW&E) without the approval of the ACC. We note that the letter of the Ministry of Defence, Government of India dated December 18, 2019 bearing the subject "Delegation of Financial Powers to Secretary Department of Defence (R&D), Director Generals (R&D), Heads of Defence R&D Lab/Estt & Programme/ Project Directors" contains the delegated financial powers in respect of different levels of authorities of the Department of Defence Research and Development, and delegates certain financial powers of the Director (CW&E) and the Chief Executive (CW&E). The said delegation of financial powers is not under challenge by the petitioner.

59. Mr. Rao has relied upon the judgments in the cases of S.K. Nausad Rahaman (supra), Principal, Mehar Chand Polytechnic (supra), Asha Sharma (supra) and Tejshree Ghag (supra) to contend that the State's right to create post and recruit employees emanates from statutes / rules framed under the proviso to Article 309 of the Constitution; that when there is a conflict between executive instructions and statutory rules framed under Article 309, the rules must prevail;

that any exercise of discretion taken by the State has to be in line with the principles of fairness and good governance; and that the terms and conditions of service, unless altered expressly, would be governed by the rules already in existence. There is no dispute to the propositions laid down by the Supreme Court in the said judgments. However, even applying the ratio of the judgments to the present facts, it cannot be said that the appointment of respondent No. 4 to the post of Director (CW&E) would in any way violate the Rules of 2000 or any other Rules. The petitioner has been promoted to the post of Chief Executive (CW&E) under the ambit of the said statutory Rules. It is also a conceded position that the post of Director (CW&E) is not governed by the Rules of 2000. Hence, there is no conflict between the Rules. If that be so, the judgments as referred to by Mr. Rao would not help the case of the petitioner.

60. In view of our discussion above, we agree with the conclusion arrived at by the Tribunal. The writ petition is devoid of merit and is dismissed.

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In view of the order passed in the petition, this application has become infructuous and dismissed as such.