

(2008) 06 MAD CK 0092

In the Madras High Court

Case No : Writ Petition No's. 15073, 20256 and 26407 of 2001; W.P. No's. 414, 13509, 14051 and 32314 of 2002; W.P. No's. 1133, 1800, 3705, 6758, 12826, 17991, and 26935 of 2003; W.P. No's. 996, 22436, and 27164 to 27166 of 2004; and W.P. No. 6318 of 2005 and W.

M. Sekar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 10-06-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21
Department of Posts Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 — Rule 4

Citation : (2008) 5 MLJ 1158

Hon'ble Judges : P.K. Misra, J;K. Chandru, J

Bench : Division Bench

Advocate : C. Selvaraju, SC for S. Mani, for the Appellant; K. Balachandran, for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard the arguments of learned Counsels for private parties and the learned Assistant Central Government Standing Counsel representing the Union of India and perused the records.

2. In all these twenty writ petitions, the question raised is with regard to the procedure for recruitment with reference to the Extra Departmental staff in the Postal Department of the Union of India. The Recruitment Rules (RR) are a compilation of various executive orders and circulars issued by the Postal Department from time to time and they are not statutory in character. Subsequently, the said service was rechristened as Gramin Dak Sevak. Rules have also been framed for the various posts which are known as Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 [for short, "GDS Rules"]. The principle questions raised in these writ petitions are as follows:

(a) Whether preference shown to applicants who have scored highest marks in S.S.L.C./ Matriculation when the minimum qualification was only VIII Std. is proper?

(b) Whether property or income criteria can be imposed as a pre-condition for selecting the candidates and the prescription of such criteria will be constitutionally valid in terms of Articles 14, 16 and 21 of the Constitution?

(c) Whether appointments made contrary to the executive instructions can be reviewed and rectified by superior officers by exercising power of review is valid?

(d) If the power of review exercised is held to be valid, should there be a reasonable time limit prescribed for the said exercise?

3. Over the years, the Central Administrative Tribunals (CAT) and various High Courts have taken different views on the issues raised above. While some Benches of the CAT had taken the view that the inter se merit of the candidates with VIII Std. as its basis alone should be taken into account, some other Benches of the CAT had taken the view, after referring to the instructions, that preference can be shown for marks obtained in Matriculation also.

4. With reference to the income criteria, the Ernakulam Bench of CAT took the view that there cannot be any income / property criteria for getting into the employment. The said view was also confirmed by the High Court of Kerala vide its decision in Director General of Post Offices v. Central Administrative Tribunal, Ernakulam Bench 2002 (1) KLT 554. While some Benches of the CAT followed this decision and disapproved the income / property criteria as a requirement, the other Benches of the CAT went strictly by the circular instructions prescribing such income criteria holding it as valid.

5. A Division Bench of this Court vide its judgment in Union of India (UOI) Vs. The Registrar, Central Administrative Tribunal, G. Ganesan, M. Sivakumar and Regional Director, Regional Directorate, Apprentices Training, upheld the property / income criteria prescribed under the relevant Rules. This decision also came to be followed by a subsequent Division Bench of this Court vide its decision dated 19.9.2006 in K. Sulochana v. K.G. Jayasankar and Ors. W.P. No. 33898 of 2002.

6. With reference to the power of review, different Benches of the CAT have reached opposite conclusions. In this regard, a Full Bench of the CAT, Hyderabad Bench in O.A. No. 57 of 1991 [N.Ambujakshi v. Union of India] held that Rule 16 of the Extra-Departmental Agents (Conduct and Service) Rules, 1964 did not confer power upon a higher administrative authority to revise the order of appointment purported to have been issued by a lower authority under Rule 3 of the said Rules. It was also held that the higher authority has neither inherent power or otherwise, to revise the orders of appointment passed by the lower administrative authority. In the meanwhile, the Department issued the instructions dated 13.11.1997 providing for review by the superior officers in

case of an irregular appointment. The CAT Bench at Cuttack, vide its decision in *Saroj Kumar Mohanty v. Union of India and Ors.* 2001 (1) A.T.J. 161, held that such a circular cannot nullify the judicial pronouncements of the Tribunal. The same view was taken by the Allahabad Bench of the CAT in *Baijnath Tripathi v. Union of India and Ors.* 2001 (3) A.T.J. 285. However, another Bench of the CAT at Chennai in *C. Pughazhenthir v. Union of India* in O.A. No. 609 of 2001, (disposed on 23.11.2001), upheld the validity of the circular dated 13.11.1997 providing for review of selection made by subordinate authorities. The said Bench also held that the power of review, pursuant to the circular dated 13.11.1997, was prospective and it should be exercised within a reasonable time, viz., 3 to 6 months.

7. The variance of the opinion amongst different Benches led to the constitution of another Full Bench at Chennai to consider the correctness of the said opinion. The said Full Bench, by its order dated 08.01.2004, in O.A. Nos. 587 to 589 of 2002 held that the view of the Madras Bench in *Pughazhenthir's* case (cited *supra*) was wrong and that the circular dated 13.11.1997 was illegal. The Government, by an executive instruction, cannot nullify the previous decisions of the Tribunal and that the executive instructions do not provide for any such review. It also distinguished the judgment of the Kerala High Court taking a contrary view in paragraphs 22, 23 and 27 in its judgment which read as follows:

Para 22: We were referred to the decision of the Kerala High Court in the case of the Superintendent of Post Offices and Ors. v. The Registrar, Central Administrative Tribunal and Anr. in O.P. No. 12575 of 1999 rendered on 14.11.2002. The Kerala High Court held that if the irregularities are found out, the same can be corrected. In other words, if on inspection, it is found that the appointments were done by doing malpractice, accepting bribes or totally against the rules or unqualified candidates are appointed, the same can be corrected. In the facts of that case, it was found that there was no allegation of malpractice nor was there any allegation that an unqualified candidate was appointed.

Para 23: We have already referred to above, that the cases of malpractice cannot be equated with a case where a person had been appointed by an authority competent to appoint and there is substantial compliance of the rules and regulations. Therefore, the decision rendered by the Kerala High Court must be held to be distinguishable.

Para 27: From these principles, it is clear that the instructions which give unfettered powers to the higher authority, therefore, cannot be sustained.

8. After having held the said legal position, the CAT also took note of the amendment made in the year 2003 to the GDS (Conduct and Employment) Rules, 2001 providing specifically for review of appointment made by the lower authority, by the superior authorities and stated that henceforth, such reviews are permissible in case of irregular appointment. In fact, this decision of the Full Bench is under challenge in W.P. Nos. 27164 to 27166 of 2004 in this batch.

Following the aforesaid Full Bench, the CAT, Madras Bench, subsequently quashed several orders of review against which the Union of India had preferred some writ petitions which are listed in this batch cases.

9. In view of the commonality of the subject matter involved in these writ petitions, they were grouped together and heard by this Court and a common order is being passed.

10. Fortunately for this Court, the issues raised in these writ petitions are no longer res integra and covered by the binding precedents of the Supreme Court rendered in three separate decisions.

10 (a) Qualifications and preference:

In *Surinder Singh v. Union of India and Ors.* (Civil Appeal No. 143 of 2001, disposed on 30.3.2007), the Supreme Court upheld the validity of the instructions giving preference to candidates with Matriculation qualification based on the instructions issued by the Department. The following passages found in pages 10 and 13 of the judgment may be usefully extracted:

In our view, in service jurisprudence the prescription of preferential qualification not only refers to numeric superiority but is essentially related to better mental capacity, ability and maturity to shoulder the responsibilities, which are entrusted to the candidates after their selection to a particular post. All the more, it is important for efficient and effective administration. The basic object of prescribing a minimum qualification is to put a cut off level for a particular job in accordance with the minimum competency required for the performance of that job. The object of prescribing preferential qualification is to select the best amongst the better candidates who possess more competence than the others. Sub-clause (iv) of Clause 2 puts a limit with respect to preferential qualification by way of a clear stipulation that no preference should be given to the qualification above Matriculation. Hence, the preferential qualification was considered to be more effective and efficient and also it was a clear assumption that a candidate possessing the same is best suited for the post in question.

...In these circumstances, the post of EDDA was notified to the Employment Exchange and general public by the respondent-Department. The respondent Nos. 1 and 2 had justified the selection and appointment of the appellant on the basis of marks secured by him in Matriculation examination, which according to them is a preferential qualification, as per the Guidelines/Norms/Instructions prescribed by the Competent Authority.

10 (b) Power of Review by superior authorities:

The Supreme Court in *Union of India (UOI) and Others Vs. Bikash Kuanar*, upheld the view of the Division Bench of the Orissa High Court and restricted the scope of power of review. The relevant passages found from paragraphs 7 to 16 may be usefully reproduced below:

Para 7: The Division Bench after hearing the counsel for the parties observed that the power of review is conferred by the statute. In case of an appointment made under the rules framed for the purpose of appointment, such appointment could not be cancelled either by the same authority or by the higher authorities in exercise of power of administrative exigency.

Para 8: The High Court in the impugned judgment also stated that the civil rights had already accrued to the respondent who rendered one-and-a-half years of service. Once such civil rights had accrued, the authorities exercising their executive power cannot review the appointment.

Para 9: The Division Bench held that the administrative instructions have no statutory force, therefore, these cannot be enforced and following such instructions, the respondent's appointment could not be legally cancelled.

Para 10: The Division Bench also directed that the respondent be given an opportunity to resume his duties within 30 days from the date of its order.

Para 11: The appellants, aggrieved by the said judgment, preferred a SLP before this Court. We have heard the learned Counsel for the parties at length. Mr T.S. Doabia, the learned Senior Counsel appearing for the appellants, submitted that once an irregular or unconstitutional appointment has been made, the higher authorities have the power to review the appointment. Moreover, the department has issued OM No. 19-15/ 2002-GDS dated 9-5-2003 which empowers the superior authority to rectify the irregularity in such cases on its motion or otherwise. Mr Doabia contended that the power to rectify any irregularity cannot be questioned. Mr Doabia also contended that an employee who has been appointed irregularly cannot claim any right of recruitment. Nevertheless, the respondent was given a show-cause notice under the rules before his appointment was terminated. He further submitted that, in the instant case, the respondent and other two candidates applied for the post of EDDA. Admittedly, all the candidates possessed not only the minimum educational qualification required for the said post i.e. VIII standard but were matriculates. Though the respondent in all respects was qualified to be appointed to the said post but according to the appellants one Pitamber Majhi had secured higher marks than the respondent in the matriculation examination and his claim could not have been ignored. According to the appellants, the irregularity which had crept in with regard to appointment to the said post could not be perpetuated for eternity. Therefore, the higher authorities of the department were justified in rectifying the irregularity. The Division Bench did not accept the plea of the appellants being contrary to law. In this view of the matter it has become imperative to examine correct position of law.

Para 12: The matter relating to appointment or recruitment of EDDA is not governed by any statute but by departmental instructions. It is now trite that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of a mistake, however, may in a given situation require

compliance with the principles of natural justice. It is only in a case where the mistake is apparent on the face of the record, a rectification thereof is permissible without giving any hearing to the aggrieved party.

Para 13: The respondent was recruited not only on the basis of marks obtained by him in the matriculation examination but also upon consideration of various other criteria necessary therefor. He filed all necessary and requisite documents. The candidature of all the candidates has been considered on their own merits. Only because one Pitamber Majhi had obtained higher marks in the matriculation examination, the same by itself should not have been a ground for cancelling the order of recruitment passed in favour of respondent.

Para 14: When a Selection Committee recommends selection of a person, the same cannot be presumed to have been done in a mechanical manner in absence of any allegation of favouritism or bias. A presumption arises in regard to the correctness of the official act. The party who makes any allegation of bias or favouritism is required to prove the same. In the instant case, no such allegation was made. The selection process was not found to be vitiated. No illegality was brought to our notice. In this view of the matter, we are of the opinion that the said Pitamber Majhi by reason of higher marks obtained by him in the matriculation examination also cannot be said to be a better candidate than the respondent herein. In this view of the matter, we do not find any fault with the impugned judgment of the High Court.

Para 15: The Division Bench of the High Court, in our considered view, correctly applied the law, which has been crystallised in a number of decisions of this Court.

Para 16: Indisputably, the respondent has fulfilled all the essential terms and conditions for the appointment to the said post. The respondent alone had submitted all necessary and required documents before the date prescribed by the appellants. It may also be pertinent to mention that at the time of selection the respondent was the only one who had the experience of working continuously on the said post for a period of one-and-a-half years. Perhaps, all these factors cumulatively persuaded the authorities concerned to select the respondent to the said post.

10 (c) Income / property criteria as a pre-condition for recruitment:

The Supreme Court in Smt. Kiran Singh Vs. Union of India (UOI) and Others, dealt with such an issue. The relevant passages found in paragraphs 19 and 20 of the said judgment may be usefully reproduced below:

Para 19: CAT allowed the application of Respondent 5 merely on the sole ground that as Respondent 5 has secured more marks in the High School examination as against the appellant but it has lost sight of the other eligibility conditions contained in the Service Rules and the Circular governing the selection of the candidate to the post in question. The High Court in its impugned orders has not

recorded independent reasons except to agree with the order of CAT.

Para 20: In the facts and circumstances of the case, in our view the order of CAT which has been affirmed by the High Court is manifestly erroneous and cannot be sustained. The appellant and Respondent 5 both have qualified the High School examination by securing first division. The eligibility criterion for the selection of the candidate to the post of EDBPM as per the Service Rules was not only the merit between the two candidates in High School examination but the additional criterion was that the candidate must be one who has "adequate means of livelihood derived from landed property or immovable assets" if the candidate is otherwise eligible for appointment. The instructions governing the eligibility of the candidates also provide that no weightage will be given for any higher qualification. The appellant has fulfilled the essential qualification and required eligibility criterion and as such her selection to hold the post in question was valid whereas Respondent 5 was not eligible to be appointed on the post for lack of income criterion in terms of the Circular.

11. The above three pronouncements of the Supreme Court completely cover the issues raised in these writ petitions. However, before proceeding with the cases of individuals, it is necessary to refer to the relevant Rules framed by the Postal Department in this regard.

12. With reference to educational qualification, the following is the requirement prescribed by them.

2. Educational Qualifications:

ED Sub-Postmasters and ED Branch Postmasters:

Matriculation, [The selection should be based on the marks secured in the Matriculation or equivalent examinations. No weightage need be given for any qualification(s) higher than Matriculation.]

ED Delivery Agents ED Stamp Vendors and All other Categories of EDAs.

VIII Standard. Preference may be given to the candidates with Matriculation qualifications. No weightage should be given for any qualification higher than Matriculation. Should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily. Categories such as ED Messengers should also have enough knowledge of English.

13. With reference to power of review, the Union of India had amended the 2001 Rules and had provided for a specific power on the higher authorities with reference to irregular appointments as noted already. Rule 2 of the amendment introduced in the year 2003 reads as follows:

2. In the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001, in Rule 4, after Sub-rule (2), the following sub-rule shall be inserted, namely:

(3) Notwithstanding anything contained in these rules, any authority superior to the Appointing Authority as shown in the Schedule, may, at any time, either on its own motion or otherwise call for the records relating to the appointment of Gramin Dak Sevaks made by the Appointing Authority, and if such Appointing Authority appears-

(a) to have exercised a jurisdiction not vested in it by any law or rules time being in force; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity;

such Superior Authority may, after giving an opportunity of being heard, makes such order as it thinks fit.

14. With reference to the income criteria, the Government of India, Department of Posts, vide their order dated 17.9.2003, dispensed with the said criteria. The relevant portion of the instructions reads as follows:

2. The preferential condition of income derived from landed property or immovable assets as laid down vide letter, dated 6.12.1993, which was extended to all GDSs vide Department of Posts (Conduct and Employment) Rules, 2001 has come for judicial scrutiny before various benches of the Hon'ble Central Administrative Tribunal and High Courts.

3. Against the aforesaid backdrop, the whole matter had been re-examined in this office in its entirety in consultation with Ministry of Law, which has also termed the above condition as violative of Constitutional provisions. The above matter was placed before the Postal Services Board. The Postal Services Board considered the above issue and also the issue of enhanced security in view of increased cash handling liability of GDSs. Keeping in view all the relevant considerations and after careful deliberation, the Postal Services Board has decided as follows:

3.1. The condition of income preferably derived from landed property or immovable assets for recruitment to the posts of Gramin Dak Sevaks (GDSs) including GDS BPM / SPM, will be deleted.

15. With reference to the power of review and income criteria, the amendment to the Rules are only prospective and it cannot have a bearing on the earlier cases disposed of by the CAT. Therefore, as per the Rules in existence and as interpreted by the Supreme Court, the individual cases will have to be disposed of.

16.1.W.P. No. 15073 of 2001 (M. Sekar v. Union of India):

16.1.1. This writ petition is filed against O.A. No. 384 of 2001. The petitioner had secured 285/500 in the S.S.L.C. Examination. He was provisionally appointed as

an Extra-Departmental Delivery Agent [for short, "EDDA"] on 01.5.1998. When his services were terminated, he challenged the same in O.A. No. 954 of 1998. By an order dated 06.9.2001, the CAT allowed the O.A. and directed the Department to issue fresh proceedings after complying with principles of natural justice. The fresh proceedings ended in the termination of service of the petitioner. The petitioner challenged the said order in O.A. No. 384 of 2001 on the ground that only the marks obtained in VIII Std. must be considered. The said O.A. was dismissed after holding that the educational qualification prescribed therein provides for preference to the marks obtained in Matriculation. It is against this order, this writ petition is filed.

16.1.2. In the light of the above legal discussion, the order passed by the CAT does not call for any interference and accordingly, this writ petition will stand dismissed.

16.2. W.P. No. 20256 of 2001 (T. Nataraj v. UOI):

16.2.1. This writ petition was filed against the order of the CAT dated 06.9.2001 made in O.A. No. 550 of 2000. The petitioner was appointed as an ED Stamp Vendor on 01.01.1997 provisionally. The regular post was notified on 29.5.1999. The petitioner had completed only X Std. and among the 43 applicants, who had responded pursuant to the notification, 36 were having S.S.L.C. Qualification. The petitioner was given a show cause notice on 18.3.2000 and he challenged the fresh selection stating that the selection should be confined to basic qualification of VIII Std. candidate only and no preference can be shown on the basis of other qualifications. The O.A. was dismissed on 06.9.2001 after referring to the educational qualification prescribed. It is against this order, the writ petition is filed.

16.2.2. In the light of the above legal precedents, the order passed by the CAT does not call for any interference and accordingly, this writ petition will stand dismissed.

16.3. W.P. No. 26407 of 2001 (K. Bhojamani v. UOI) and W.P. No. 32314 of 2002 (UOI v. K.Bhojamani):

16.3.1. Both the writ petitions are directed against the order dated 11.12.2001 passed by the CAT in O.A. No. 490 of 2001. The petitioner was a Graduate and he was appointed as an Extra-Departmental Branch Postmaster [for short, "EDBPM"]. While the petitioner had secured 251/500 marks in S.S.L.C., there was another candidate by name, Thavamani, who had secured 350/500 marks. The superior authorities found that there were 17 candidates sponsored by the Employment Exchange and 28 names were kept in the dovetailed list. Without considering the merits of those candidates, the petitioner's appointment was made and he was given a show cause notice for cancelling his appointment. The CAT, by an order dated 11.12.2001, found that the appointment of the petitioner Bhojamani was irregular on the ground that at the time of appointment, the petitioner did not have the income criteria and it cannot be post selection criteria

and upheld his termination as confirmed by the superior authority by order dated 12.4.2000. In the same order, the CAT directed fresh selection to go on but confined the selection only to the original candidates called for certificate verification.

16.3.2. While the petitioner K. Bhojamani challenged the order upholding his termination, the Union of India challenged the order of the CAT directing the selection to be confined with the candidates who had already responded. Pending the writ petition, interim stay was made absolute on 20.9.2004.

16.3.3. In the light of the above legal precedents, W.P. No. 26401 of 2001 filed by K. Bhojamani will stand dismissed. Once the selection is set aside, it is open to the Department to advertise afresh calling for applications. This is all the more so since seven years have elapsed since the earlier notification. Therefore, W.P. No. 32314 of 2002 will stand allowed and the order of the CAT in O.A. No. 490 of 2000 dated 11.12.2001 in so far as it relates to restricting the zone of consideration will stand set aside.

16.4. W.P. No. 414 of 2002 (T. Ramalingam v. Union of India):

16.4.1. This writ petition is directed against the order of the CAT dated 09.10.2001 made in O.A. No. 610 of 2001. Eight weeks' stay was granted by this Court on 08.01.2000 and thereafter, it was not extended. The petitioner was a failed S.S.L.C. candidate but nevertheless appointed provisionally. A show cause notice was given by the Department and he was terminated from service. It was stated that the selecting authority did not consider the S.S.L.C. marks for giving preference and there were three candidates who had secured more marks in S.S.L.C. The O.A. was dismissed upholding the review done by the Department. It is against this order, this writ petition has been filed.

16.4.2. As pointed out by the Supreme Court, if there are material irregularities, review can be done by the authorities. In the light of the same, this writ petition stands dismissed.

16.5. W.P. No. 13509 of 2002 (UOI v. M. Bhoopathy):

16.5.1. This writ petition is filed by the Union of India against the order of the CAT dated 20.02.2001 made in O.A. No. 912 of 2000. The first respondent was appointed as an ED Packer on 06.02.1996. The superior officers, by exercising the so-called review, issued a show cause notice dated 07.9.1998 and after getting his explanation, terminated his service on 09.8.2000. The CAT held that though there is a power of review available pursuant to the circular dated 13.11.1997, it cannot have any retrospective effect and, therefore, the review was invalid. It also found that the first respondent has qualification to hold the post. In that view of the matter, the first respondent was directed to be restored in service. It is against this order, the present writ petition has been filed.

16.5.2. In the light of the judgment of the Supreme Court referred to above, the order passed by the CAT does not call for any interference and accordingly, this

writ petition will stand dismissed.

16.6. W.P. No. 14051 of 2002 (K. Raja v. UOI):

16.6.1. This writ petition is directed against the order of the CAT dated 18.6.2001 made in O.A. No. 1383 of 2000. The petitioner was appointed as an EDDA on 06.01.1999 and he joined in service on 21.01.1999. After five days of his appointment, he was not allowed to continue in service. The petitioner moved the CAT with O.A. No. 113 of 1999. The CAT directed the respondent to follow the prescribed procedure. Pursuant to the said direction, an order was passed by the Post Master General, Tamil Nadu, dated 31.10.2000 and it was found that there were more than one applicant, who have done S.S.L.C. whereas the petitioner had not completed S.S.L.C. Therefore, fresh selection was ordered. Aggrieved by the said action, the petitioner moved the CAT. The O.A. was dismissed upholding the stand of the Department.

16.6.2. In the light of the above legal precedents, there is no substance in the writ petition. Hence, this writ petition will stand dismissed.

16.7. W.P. No. 1133 of 2003 (UOI v. Muthukumar):

16.7.1. The Union of India has filed this writ petition challenging the order of the CAT dated 06.11.2001 made in O.A. No. 1402 of 2000. The CAT, following the earlier Full Bench Judgment of the CAT, held that the power of review permitted by the circular dated 13.11.1997, was not available and allowed the O.A. Subsequently, another Full Bench in O.A. No. 587 of 2002 and other cases, vide order dated 08.01.2007, took a similar view. The said view taken by the CAT is in consonance with the judgment rendered by the Supreme Court in Bikash Kuanar's case (cited supra).

16.7.2. In the light of the same, there is no infirmity in the order passed by the CAT and hence, this writ petition will stand dismissed.

16.8. W.P. No. 1800 of 2003 (R. Vasuki v. Registrar of Central Administrative Tribunal and Ors.) and 12826 of 2003 (Union of India v. Noorul Wahida Begum):

16.8.1. Both the writ petitions are directed against the order of the CAT dated 01.11.2002 made in O.A. No. 243 of 2002. In both the writ petitions, the order in favour of Noorul Wahida Begum (contesting respondent) is under challenge both by the private individual and the Union of India. In the selection process, one Senthilkumar, who had secured 448/500 in the S.S.L.C. Examination was selected. Since the said candidate did not join, the selection was made in favour of R. Vasuki, who had secured only 372/500. Noorul Wahida Begum, who had secured 443/500 and who was second in rank, challenged the appointment in favour of R. Vasuki in O.A. No. 243 of 2002, which was allowed by the CAT and Noorul Wahida Begum was directed to be appointed.

16.8.2. The Union of India contended that the order of the CAT was erroneous because the contesting respondent Noorul Wahida Begum, though was second in

the merit, did not produce any documents relating to property and income and, therefore, she was excluded in accordance with the instructions in this regard.

16.8.3. However, the CAT, relying upon the judgment of the Kerala High Court in 2002 (1) K.L.T. 554 (cited supra), held that the income criteria was not essential requirement and set aside the selection made in favour of R. Vasuki. But in the light of the judgment of the Supreme Court in Surinder Singh's case, the order of the CAT is liable to be set aside and accordingly, set aside. Both the writ petitions are allowed.

16.9. W.P. No. 3705 of 2003 (UOI v. Panneerselvam):

16.9.1. The writ petition challenges the order of the CAT dated 16.10.2002 made in O.A. No. 560 of 2002. The first respondent was appointed as an EDDA on 15.9.1999. In the guise of reviewing the said order, after a period of three years on 29.4.2002, a show cause notice was given to him and he was terminated from service on 21.6.2002. The CAT found that though among the applicants, there was a candidate with higher marks in S.S.L.C., viz., 390/600, the first respondent had obtained only 307/600. The candidate with the higher marks had submitted a defective application, viz., he did not sign the application, and that the date of birth furnished by a candidate varied from the original records. Therefore, the CAT held that there was nothing wrong in the selection made in favour of the first respondent and allowed the O.A. by its order dated 16.10.2002.

16.9.2. It must also be stated that there cannot be review of an order after three years and the order passed by the CAT is in consonance with the judgment rendered by the Supreme Court in Bikash Kuanar's case (cited supra). In the light of the same, there is no infirmity in the order passed by the CAT and hence, this writ petition will stand dismissed.

16.10. W.P. No. 6758 of 2003 (V. Dhanasekaran v. UOI):

16.10.1. This writ petition is directed against the order of the CAT dated 17.7.2002 made in O.A. No. 1233 of 2001. The petitioner was appointed as an EDDA / MC in March 1999. In the selection, there were 12 candidates including the petitioner. For no reason, the petitioner was asked to hand over the charge. He filed O.A. No. 789 of 2000 and the CAT directed the respondents to conduct a fresh enquiry. When an order was passed without reasons, once again, O.A. No. 378 of 2001 was filed and the CAT directed the respondents to assign reasons. It was found that the post was not reserved for SC candidate and it was an OC vacancy. While the petitioner had secured 266/500, one other applicant by name, G. Veerabadran had obtained 358/500. Therefore, the selection was irregular. Though it was argued that there is no power of review, the CAT held that selecting the petitioner as if it was SC vacancy was wrong. Hence, the O.A. was dismissed on 17.7.2002 holding that there was nothing wrong in the Department calling for fresh nominations. Against the said order, the present writ petition has been filed.

16.10.2. It must also be stated that there cannot be a review of an order after three years and the order passed by the CAT is in consonance with the judgment rendered by the Supreme Court in Bikash Kuanar's case (cited supra). In the light of the same, there is no infirmity in the order passed by the CAT and hence, this writ petition will stand dismissed.

16.11. W.P. No. 17991 of 2003 (UOI v. M. V. Nakkeeran):

16.11.1. The Union of India has filed the present writ petition against the order of the CAT dated 22.11.2002 made in O.A. No. 424 of 2002. The first respondent challenged his termination order before the CAT stating that since he had the highest marks among the applicants, he should be selected and that no economic criteria should be followed. The CAT allowed the O.A. after following the judgment of the Kerala High Court in 2002 (1) K.L.T. 554 (cited supra). This view of the CAT is completely erroneous in the light of the judgment of the Supreme Court in Smt. Kiran Singh (cited supra).

16.11.2. However, the learned Counsel for the first respondent brought to our notice the judgment of the Division Bench of this Court in Union of India v. Central Administrative Tribunal and Anr., disposed on 01.02.2008, and prayed for a similar order. In that case, this Court taking note of the subsequent amendment to the Rules relating to immovable property and upheld the selection of the candidate as he was meritorious. At the time of rendering the said decision, the decision of the Supreme Court in Smt. Kiran Singh's case was not brought to the notice of this Bench. Therefore, we are not persuaded to follow our earlier order relied on by the first respondent.

16.11.3. In the light of the above, the writ petition will stand allowed and the order of the CAT will stand set aside.

16.12. W.P. No. 26935 of 2003 (UOI v. M. Ravikumar):

16.12.1. This writ petition is filed against the order of the CAT dated 05.8.2002 made in O.A. No. 14 of 2002. The first respondent was appointed as an EDDA / MC and his services were terminated on 20.4.1999. He filed O.A. No. 1139 of 1999 and the CAT directed the respondents to dispose of his representation. As against the refusal to consider in favour of the first respondent, he moved the CAT with an O.A. The CAT held that there was no power of review by the superior officers and allowed the O.A. by its order dated 05.8.2002 and directed the restoration of service of the first respondent. Aggrieved by the same, the Union of India has filed the present writ petition.

16.12.2. The stand taken by the CAT is in consonance with the reasoning rendered by the Supreme Court in Bikash Kuanar's case (cited supra). In the light of the same, there is no infirmity in the order passed by the CAT and hence, this writ petition will stand dismissed.

16.13. W.P. No. 996 of 2004 (UOI v. V. Gajendran):

16.13.1. The Union of India has filed the present writ petition against the order of the CAT dated 22.11.2001 made in O.A. No. 206 of 2001. The first respondent was appointed as an EDBPM on a temporary basis from 20.7.1999. He was regularly appointed in the said post w.e.f. 04.11.1999. In the guise of reviewing his appointment, a show cause notice dated 27.11.2000 was issued to him. Subsequently, by an order dated 08.01.2001, his services were terminated. The CAT, following the Full Bench of the CAT, held that there was no power of review and allowed the O.A. and directed the restoration of service of the first respondent. Aggrieved by the same, the Union of India has filed the present writ petition.

16.13.2. The stand taken by the CAT is fully in consonance with the reasoning rendered by the Supreme Court in Bikash Kuanar's case (cited supra). In the light of the same, there is no infirmity in the order passed by the CAT and hence, this writ petition will stand dismissed.

16.14. W.P. No. 22436 of 2004 (Marudhai v. UOI):

16.14.1. This writ petition has been filed against the order of the CAT dated 08.7.2004 made in O.A. No. 1026 of 2003. The petitioner's appointment was sought to be reviewed in the light of the 2003 amendment made in GDS Rules 2001. The CAT held that in the light of the amendment to the Rules, there was nothing wrong in the show cause notice dated 25.8.2003 which was admittedly given after the amendment to the GDS Rules. In that view of the matter, the O.A. was dismissed and hence, the present writ petition.

16.14.2. The writ petition is misconceived and devoid of merits. Accordingly, it will stand dismissed.

16.15. W.P. Nos. 27164 to 27166 of 2004 (UOI v. R.Jambugeswaran, S. Natarajan and N. Kamaraj respectively):

16.15.1. The first respondent in each of the writ petitions, when their appointment was sought to be reviewed by the superior officer in the light of the circular dated 13.11.1997, moved the CAT with three Original Applications in O.A. Nos. 587, 589 and 588 respectively. The O.As. were dealt with by a Full Bench of the CAT. The Full Bench, by an order dated 08.01.2004, held that there was no power of review by the superior officers and allowed the O.As. and that the circular was in direct contradiction with the judicial pronouncement of the CAT.

16.15.2. Though such an absolute view taken by the Full Bench may not be in consonance with the observations made by the Supreme Court in Bikash Kuanar's case (cited supra) especially in the light of paragraph 12 of the said judgment (reproduced above), in the present case, no reason is given by the Union of India in reviewing the orders of appointments long after their appointments. Therefore, to some extent, the view of the Full Bench requires modification in the light of the judgment of the Supreme Court. Yet, since there

are no merits in the stand of the Union of India, all the writ petitions are dismissed.

16.16. W.P. No. 6318 of 2005 (UOI v. K. Dhanasekar):

16.16.1. The Union of India has filed the present writ petition against the order of the CAT dated 23.12.2004 made in O.A. No. 430 of 2004. The first respondent's appointment was sought to be reviewed after a period of three years and his services were terminated by an order dated 18.6.2003. The first respondent moved the CAT which found that there was no misrepresentation on his part and no reasons were given for reviewing his appointment. It also followed the Full Bench judgment of the CAT in Jambukeswaran's case and allowed the O.A.

16.16.2. The reasoning given by the CAT is fully in consonance with the reasoning rendered by the Supreme Court in Bikash Kuanar's case (cited supra). In the light of the same, there is no infirmity in the order passed by the CAT and hence, this writ petition will stand dismissed.

17.1. In the light of the above, the following writ petitions are dismissed:

1. W.P. No. 15073 of 2001
2. W.P. No. 20256 of 2001
3. W.P. No. 26407 of 2001
4. W.P. No. 414 of 2002
5. W.P. No. 13509 of 2002
6. W.P. No. 14051 of 2002
7. W.P. No. 1133 of 2003
8. W.P. No. 3705 of 2003
9. W.P. No. 6758 of 2003
10. W.P. No. 26935 of 2003
11. W.P. No. 996 of 2004
12. W.P. No. 27164 of 2004
13. W.P. No. 27165 of 2004
14. W.P. No. 27166 of 2004
15. W.P. No. 6818 of 2005
16. W.P. No. 22436 of 2004

17.2. The following writ petitions will stand allowed.

1. W.P. No. 32314 of 2002
2. W.P. No. 17991 of 2003
3. W.P. No. 1800 of 2003
4. W.P. No. 12826 of 2003

However, there will be no order as to costs. Connected Miscellaneous Petitions are closed.