



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 27.08.2025

Pronounced on: 16.09.2025

+ **W.P.(C) 17307/2024 & CM APPL. 73662/2024**

ALL INDIA INSTITUTE OF MEDICAL SCIENCES & ANR.

.....Petitioners

**Through: Mr.Anand Varma and
Ms.Apoorva Pandey, Advs.**

versus

AJAY KUMAR & ANR.

.....Respondents

**Through: Mr.Maninder Singh and
Mr.Vivek Chib, Sr. Advs. with
Mr.Prabhas Bajaj, Mr.Rithvik
Mathur, Ms.Mansi Gupta,
Mr.Sidharth Sunil,
Mr.Rangasaran Mohan,
Mr.Amarpal Singh Dua, Advs.
for R-1.**

**Mr.Chetanya Puri, SPC, Mr.Jai
Vardhan, Ms.Nisha Puri,
Ms.Shivi Tiwari, Advs. for
UOI.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

NAVIN CHAWLA, J.

1. This petition has been filed, challenging the Order dated



24.10.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in R.A. No. 209/2018 in O.A. No. 1297/2016, titled ***Ajay Kumar v. All India Institute of Medical Sciences & Ors.***, allowing the Review Application filed by the respondent no.1 herein, and consequentially recalling its Order dated 12.09.2018 passed in the above O.A. thereby allowing the O.A. filed by the respondent no.1, with the following directions:-

“33. In the totality of facts and circumstances, as discussed above, we pass the following orders:

(i) R.A. No.209/2018 is allowed. The order dated 12.09.2018, whereby the subject O.A. was dismissed, is hereby recalled.

(ii) O.A. No.1297/2016 is allowed and it is declared that the applicant's appointment to the post of Senior Administrative Officer was on 'transfer' basis; and his repatriation to the post of Principal Private Secretary is bad in law.

(iii) The respondent – Institute is directed to consider the applicant for next promotional post, i.e., Chief Administrative Officer, treating him eligible having five years' regular service in the feeder grade, if he is otherwise fit; and take decision in this regard as expeditiously as possible and in any case within a period of four weeks from the date of receipt of this order.”

FACTUAL BACKGROUND

2. It is the case of the petitioners that the respondent no.1 was recruited and appointed as a Stenographer in the Stenography Cadre at the petitioner no.1 Institute on 05.08.1986. He was promoted to the



post of Personal Assistant and, thereafter, to the post of Private Secretary in the Stenography Cadre at the petitioner no.1 Institute, on 01.03.1992 and 21.12.2001, respectively. He was later posted as an Administrative Officer in the Administrative Cadre of the petitioner no.1 Institute, on deputation basis, on 03.05.2006, and after completing his tenure, was repatriated as a Private Secretary in the Stenography Cadre on 08.05.2009.

3. He later filed an O.A., being O.A. No. 2202/2010 before the learned Tribunal, praying for promotion to the post of Principal Private Secretary in the Stenography Cadre. During the pendency of the said O.A., he was promoted to the said post *vide* Order dated 19.08.2011, with effect from 23.06.2011. The said O.A. was eventually dismissed in default on 14.11.2011. Being aggrieved by the effective date of his promotion, the respondent no.1 filed an application seeking restoration of his O.A., on which the learned Tribunal, *vide* Order dated 12.01.2012, directed the petitioner no.1 Institute to take a decision on the representation of the respondent no.1. The petitioner no.1, however, rejected the representation and the supplementary representation of the respondent no.1, *vide* Order dated 10.01.2014.

4. On 19.09.2014, the petitioner no.1 Institute issued an Advertisement inviting applications for filling up 1 (one) post of Senior Administrative Officer ('SAO') in the Administrative Cadre on deputation basis. It was stipulated in the said Advertisement that the period of deputation would not ordinarily exceed three years.

5. The respondent no.1 applied for the said post and was



successful in the same, as a result of which he was issued an Offer Letter for the said post, on deputation basis for a period of three years, *vide* Memorandum dated 13.05.2015.

6. The respondent no.1 accepted the said offer on 15.05.2015, and joined the post of SAO on deputation basis on the same day.

7. *Vide* Letter dated 09.06.2015, he accepted pay at his Parent Cadre along with deputation allowance as per the Rules.

8. In March 2016, the petitioner no.1 issued another Vacancy Notice, inviting applications for the post of Chief Administrative Officer ('CAO') in the Administrative Cadre, again on deputation basis.

9. It is the case of the petitioner no.1 that since no regular SAO was in employment with the petitioner no.1 at the time when the Vacancy Notice was issued, therefore, the said post could not be filled by way of promotion, necessitating the same to be filled through deputation.

10. The respondent no.1 submitted representations dated 10.03.2016 and 21.03.2016, contending in the former that his appointment to the post of SAO should be considered as one on promotion/transfer and not deputation, and requested for being considered for promotion to the post of CAO, and subsequently praying in the latter, that the petitioner no.1 should withdraw his deputation allowance as his appointment to the post of SAO was by promotion and not on deputation.

11. The respondent no.1, thereafter, filed the above O.A., that is, O.A. No. 1297/2016, before the learned Tribunal, *inter alia*, praying



for the following reliefs:-

“(b) Declare that the appointment of the applicant in the post of Senior Administrative Officer is on 'transfer' and is permanent and direct the respondents to amend the Annexure A-7 accordingly.

(c) Further declare that the applicant is eligible for consideration for promotion to the post of Chief Administrative Officer by mode of promotion.

(d) Quash and set aside the impugned vacancy notice at Annexure A-1.

(e) Direct the Respondents to give all consequential benefits to the Applicant.”

12. On 21.04.2016, the petitioner no.1 issued a Memorandum, thereby rejecting the claim of the respondent no.1, reiterating that he had been appointed as an SAO only on deputation basis. It was further stated that the respondent no.1 cannot be considered for promotion to the post of CAO as he does not belong to the Administrative Cadre, and his service rendered as Principal Private Secretary ('PPS') cannot be counted for promotion to the post of CAO, as the post of PPS is not the feeder grade post for CAO as per the Recruitment Rules and is not in the line of promotion.

13. The learned Tribunal, by an *interim* Order dated 28.04.2016, restrained the petitioner no.1 Institute from filling up the post of CAO through deputation. The said order was challenged by the petitioner no.1 Institute before this Court by way of W.P.(C) 8884/2017, and this Court, by its Order dated 10.10.2017, set aside the *interim* Order passed by the learned Tribunal and directed that any appointment made to the post of CAO shall be subject to the final decision of the



O.A. filed by the respondent no.1.

14. Thereafter, the petitioner no.1 issued a fresh Vacancy Notice dated 06.11.2017, calling for applications to the post of CAO on deputation basis. The respondent no.1 also applied for the same on 01.12.2017. By a Memorandum dated 01.01.2018, the respondent no.1 was informed that his application had not been routed through the proper channel along with necessary vigilance clearance and attested copies of ACRs, and that he was required to ensure that the same should be complied with by a stipulated date, failing which his candidature would be rejected.

15. The respondent no.1 filed another O.A., being O.A. No. 733/2018, as his application had not been forwarded for consideration for appointment to the post of CAO.

16. By an *interim* Order dated 16.02.2018, the learned Tribunal directed that the application of the respondent no.1 shall be forwarded for being considered for the post of CAO and he shall also be permitted to participate in the selection process, however, the same shall not confer any right or equity in favour of respondent no.1 and that the final result of the selection shall not be declared.

17. The said O.A., that is, O.A. No. 733/2018, was finally disposed of by the learned Tribunal *vide* Order dated 24.05.2018, noting that as the respondent no.1 and the other candidates had not been found suitable for the said post, the O.A. had been rendered infructuous.

18. By an Order dated 12.09.2018, the learned Tribunal eventually dismissed O.A. No. 1297/2016 filed by respondent no.1, *inter alia*, holding therein that though the Administrative Cadre and the



Stenography Cadre come under the common umbrella of Administration, they are not the same. It was further held that the respondent no.1, should have, at the time of his appointment, challenged or protested against his appointment as SAO on deputation basis, which he did not, and now he had been repatriated on the completion of his term. It was further held that the appointment of the respondent no.1 to the post of SAO cannot be treated as one by way of transfer, as this was not the mode prescribed in the Recruitment Rules for the said post. Consequently, the relief sought by the respondent no.1 for promotion to the post of CAO was also denied by the learned Tribunal, holding that once it was established that the respondent no.1 held the post of SAO by way of deputation, that too for a limited period, the question of his being considered for promotion in the cadre to which he is deputed, does not arise.

19. On the same day, the respondent no.1 was also repatriated back to the post of Principal Private Secretary in the Stenography Cadre.

20. Thereafter, the respondent no.1 filed the above Review Application, being RA No. 209/2018, seeking review of the Order dated 12.09.2018 passed by the learned Tribunal.

21. By an Order dated 17.12.2019, the learned Tribunal decided to consider the said Review Application. We shall quote this order in detail since the learned counsel for the petitioners has urged that the said Review Application could not have been entertained as it was more in the form of an appeal and did not fall within the limited parameters of Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (in short, 'CPC'). The said order reads as under:-



“We heard Shri Maninder Singh, Senior Advocate, learned counsel for review petitioner and Shri V.S.R. Krishna, learned counsel for the review respondents, at length. Prima facie, we are convinced that a serious factual error has crept in the order passed in the OA, particularly para 16. The Tribunal proceeded on the footing that the applicant did not protest when he was appointed as Senior Administrative Officer on deputation. The letter dated 21.03.2016 is made part of the record. In the said letter, the applicant has clearly stated that his appointment cannot be treated as the one, on deputation.

In the counter affidavit, it is not stated that the said letter did not exist. All the same, learned counsel for respondents intends to examine this aspect.

Though one option for us was to just recall the order in the OA and hear it afresh, both the counsel are prepared to address the issue finally, so that it can be decided for once and all.

We direct the case to be listed on 14.01.2020. Learned counsel for respondents shall also verify the submission made by the applicant herein that there are instances of the employees in the category of Stenographers, being appointed as Administrative Officers and Chief Administrative Officers.”

22. The learned Tribunal, by its Impugned Order dated 24.10.2024, allowed the R.A., and consequentially the O.A., with the directions reproduced hereinabove.

23. In the Impugned Order, the learned Tribunal held that the appointment of the respondent no.1 to the post of SAO has to be considered as one by way of transfer. It further held that the



Recruitment Rules of the petitioner no.1 Institute have no statutory backing and, therefore, the recruitment has to be considered in terms of Regulation 24 of the All India Institute of Medical Sciences Regulations, 1999 (in short, 'AIIMS Regulations'). It also held that as per Schedule-I to the said Regulations, the permissible modes of appointment are only by way of direct recruitment or promotion or transfer. It further held that the service rendered by respondent no.1 as Principal Private Secretary was on a post analogous to the post of SAO and, therefore, he was eligible to be considered for promotion to the post of CAO.

24. The petitioners have filed the present petition challenging the above order and findings.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS

25. The learned counsel for the petitioners submits that the learned Tribunal has erred in observing that the Recruitment Rules of the petitioner no.1 Institute do not have any statutory backing. He submits that Section 11(4) of the All India Institute of Medical Sciences Act, 1956 (in short, 'AIIMS Act') provides that subject to such Rules as may be made by the Central Government, the Institute may appoint such officers and employees, other than the Director of the Institute, as may be necessary for the exercise of its powers and discharge of its functions and may also determine the designations and grades of such other officers and employees.

26. He further submits that Section 28(1) of the AIIMS Act



empowers the Central Government to, by Notification in the official Gazette, make rules to carry out the purposes of the AIIMS Act. Section 28(2)(f) of the AIIMS Act states that such rules may provide for the number of officers and employees that may be appointed by the Institute and the manner of such appointment. He submits that it is in exercise of this power that the Central Government has framed the All India Institute of Medical Sciences Rules, 1958 (in short, 'AIIMS Rules'), Rule 7(1) of which states that the Institute may create posts on scales of pay applicable to similar posts under the Government, or on scales of pay approved by the Government, and classify them into grades and specify their designations. He submits that it is in exercise of this power that the Recruitment Rules for the Group 'A' and 'B' posts were made in the year 1991. He submits that, therefore, the Recruitment Rules have the statutory backing in terms of Section 11(4) read with Section 28(2)(f) of the AIIMS Act read with Rule 7(1) of the AIIMS Rules.

27. He further submits that in terms of the Recruitment Rules for the Group 'A' and 'B' posts, there are several distinct Cadres of the employees working with the AIIMS, like the Engineering Service Department Cadre, Administration Cadre, Library Cadre, Stenography Cadre, etc. He submits that the Stenography is distinct from the Administration Cadre and, therefore, there cannot be promotions within different Cadres.

28. He submits that as far as the posts of SAO and CAO are concerned, the Recruitment Rules provide for the method of recruitment to be 100% by promotion, failing which by deputation. He



submits that the Recruitment Rules do not prescribe transfer as a method of recruitment to the post. He submits that, therefore, the learned Tribunal has erred in placing reliance on the AIIMS Regulations.

29. He submits that in terms of Clause 11(b) of the AIIMS Regulations, the Director of the Institute can exercise the powers specified in Schedule I to the AIIMS Regulations, which *inter alia* includes making transfers of an employee from one post to another, including the transfer of a lien from one post to another. He submits that this, however, cannot be *de hors* the Recruitment Rules, and for making a transfer, there has to be a provision in the Recruitment Rules, which provision, for the posts of SAO and CAO, does not exist.

30. He further submits that the respondent no.1, having applied for the post of SAO pursuant to the Advertisement dated 19.09.2014, which clearly provided that the appointment to the said post is on deputation basis, and having accepted his appointment on the said basis and even acted thereupon, as evidenced from his own Letter dated 09.06.2015, is now estopped from contending that his appointment was by way of transfer and not on deputation basis.

31. He further submits that the learned Tribunal has erred in ignoring the recommendations of the Cadre Review Committee of the AIIMS, which stated that for filling a post on deputation basis, the employees working at AIIMS, if they are eligible, can also be considered. These recommendations were approved by the Central Government through its Communication dated 10.10.1996. He submits that, therefore, the learned Tribunal has erred in observing



that appointment on deputation cannot be from an employee working in the Institute. He submits that as for AIIMS, an exception has been carved out for this purpose.

32. He lastly submits that even otherwise, the learned Tribunal, having dismissed the O.A. filed by the respondent no.1 by a detailed Order dated 12.09.2018, could not have entertained the Review Application only because one of the representations filed by the respondent no.1 was not placed by the respondent no.1 himself on the record of the O.A. He submits that the Review Application was not maintainable in terms of Order XLVII Rule 1 of the CPC. In support, he places reliance on the Judgment of the Supreme Court in *Kamlesh Verma v. Mayawati & Ors.*, (2013) 8 SCC 320.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE RESPONDENT NO.1

33. On the other hand, the learned senior counsel for the respondent no.1 submits that in terms of Section 11(4) read with Section 28(2)(f) of the AIIMS Act, it is the Central Government which has to frame the rules for the number of officers and employees that may be appointed by the Institute and the manner of their appointment/recruitment process, and these Rules have to be notified in the official Gazette to become effective. He submits that admittedly, the alleged Recruitment Rules of 1991 have not been framed by the Central Government and have not been notified in the official Gazette, and are, therefore, merely administrative instructions at best.



34. He submits that in absence of the rules, it is the AIIMS Regulations that would prevail as they are statutory in nature. In support, he places reliance on the Judgment of the Supreme Court in ***Union of India & Ors. v. Somasundaram Vishwanath***, (1989) 1 SCC 175.

35. He submits that in terms of Regulation 24(2) of the AIIMS Regulations, the Director of the Institute may fill the vacancies in posts and services, either by direct recruitment or by promotion. The same does not provide deputation as a mode of appointment. He submits that, therefore, the appointment of the respondent no.1 to the post of SAO has rightly been considered by the learned Tribunal as one on transfer.

36. Placing reliance on the Judgment of the Supreme Court in ***Palure Bhaskar Rao & Ors. v. P. Ramaseshaiah & Ors.***, (2017) 5 SCC 783, he submits that transfer is a recognised mode of recruitment.

37. He submits that once the respondent no.1 was holding the post of SAO in substantive capacity, he was also entitled to be considered for promotion to the post of CAO as a departmental candidate. He submits that, therefore, the learned Tribunal has rightly directed such consideration of the claim of the respondent no.1 by the petitioner no.1 Institute.

38. He further places reliance on Entry 29 of Schedule-I to the AIIMS Regulations to submit that the same provides for deputation only from the Central or State Government and not from within the Institute. Therefore, the claim of the petitioner no. 1 Institute that the



respondent no.1 was appointed to the post of SAO on deputation basis, is incorrect and has been rightly rejected by the learned Tribunal.

39. He submits that, in fact, there were other officers, whose details had been given in the Review Application, who had been appointed to the post of SAO on transfer and not on deputation. He submits that the learned Tribunal, *vide* Order dated 17.12.2019, while deciding to consider the Review Application filed by the respondent no.1, had specifically directed the learned counsel appearing for the petitioners before the learned Tribunal, to verify the said statement. He submits that barring giving vague answers to the learned Tribunal and even in this present petition, there has been no denial of the above fact by the petitioner no.1, which clearly shows that the petitioner no.1 is wrongly urging that employees working in the Stenography Cadre cannot be appointed as SAO or the CAO in the Administrative Cadre.

40. On the plea of estoppel, he submits that as appointment on deputation basis is not permitted in terms of the Regulations, mere stipulation of the same in the Advertisement is of no consequence. He submits that there can be no estoppel against law, and if the condition in the Advertisement itself is violative of law, the same can neither be given effect to nor act as an estoppel against the candidate. In support, he places reliance on the Judgments of the Supreme Court in ***Dr. (Major) Meeta Sahai v. State of Bihar & Ors.***, (2019) 20 SCC 17; ***Krishna Rai v. Banaras Hindu University & Ors.***, (2022) 8 SCC 713; and ***Abhimeet Sinha & Ors. v. High Court of Judicature at Patna***, 2024 SCC OnLine SC 795.



41. On the challenge of the petitioners that the Review Application itself was not maintainable, he submits that the learned Tribunal had placed extensive reliance on the alleged Recruitment Rules while passing its initial Order dated 12.09.2018, which was an error apparent on the face of record as these alleged Recruitment Rules had no statutory backing and were mere administrative instructions that could not prevail over the statutory regulations. He submits that as this was an error apparent on the face of the record, the learned Tribunal rightly entertained the Review Application and recalled its earlier order. He submits that, in fact, the Order dated 17.12.2019 was a consent order and, in any case, was not even challenged by the petitioner no.1.

42. He submits that there is no merit in the present petition, and that the same be dismissed.

ANALYSIS AND FINDINGS

43. We have considered the submissions made by the learned counsels for the parties.

WHETHER THE RECRUITMENT RULES HAVE ANY STATUTORY BACKING

44. We shall first consider whether the Recruitment Rules of 1991 have any statutory backing.

45. Section 11 of the AIIMS Act contains provisions with respect to the ‘Staff of the Institute’. It is reproduced hereinunder:-

“11. Staff of the Institute

(1) There shall be a chief executive officer of the Institute who shall be designated as the Director of the Institute and shall, subject to



such rules as may be made by the Central Government in this behalf, be appointed by the Institute;

Provided that the first Director of the Institute shall be appointed by the Central Government.

(2) The Director shall act as the Secretary to the Institute as well as the Governing Body.

(3) The Director shall exercise such powers and discharge such functions as may be prescribed by regulations or as may be delegated to him by the Institute or the President of the Institute or by the Governing Body or the Chairman of the Governing Body.

(4) Subject to such rules as may be made by the Central Government in this behalf, the Institute may appoint such number of other officers and employees as may be necessary for the exercise of its powers and discharge of its functions and may determine the designations and grades of such other officers and employees.

(5) The Director and other officers and employees of the Institute shall be entitled to such salary and allowances and shall be governed by such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed by regulations made in this behalf."

46. Section 11(4) of the AIIMS Act states that subject to such Rules, as may be made by the Central Government in this behalf, the Institute may appoint such number of officers and employees other than the Director, as may be necessary for the exercise of its powers and discharge of its functions and may determine the designations and grades of such other officers and employees. The power of the Institute to appoint its officers and employees is, therefore, made



subject to the Rules framed by the Central Government. If there are no Rules proscribing the Director to appoint officers and employees at the Institute or to prescribe the manner of their recruitment or essential qualifications for such appointment, the Director shall have no restriction in making such appointment and prescribing the cadres and the essential qualifications for the posts.

47. Further, Section 28 of the AIIMS Act provides for the rule-making power of the Central Government, and so far as is relevant, reads as under:

“28. *Power to make Rules*

(1) The Central Government, after consultation with the Institute, may, by notification in the official Gazette, make rules to carry out the purposes of this Act:

Provided that consultation with the Institute shall not be necessary on the first occasion of the making of rules under this section, but the Central Government shall take into consideration any suggestions which the Institute may make in relation to the amendment of such rules after they are made.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

xxx

(f) the number of officers and employees that may be appointed by the Institute and the manner of such appointment”

48. The Rules framed by the Central Government can, therefore, *inter alia* provide for the number of officers and employees that may be appointed by the Institute and ‘the manner of such appointment’.

49. It was in exercise of this power, that the Central Government



notified the AIIMS Rules.

50. Rule 7(1) of the AIIMS Rules delegates the power of creation of posts and appointments to the Institute itself, and reads as under:-

“7. Creation of posts and appointment thereon:

(1) The Institute may create posts, subject to specific provision in the budget, on scales of pay applicable to similar post under the Govt. or on scales of pay approved by the Government classify them into grades and specify their designations:

Provided that no post above the Associate Professor's level shall be created except with prior approval of the Government.”

51. Therefore, by virtue of Rule 7(1) of the AIIMS Rules, it is now the Institute itself that has to create posts, prescribe the scales of pay applicable thereto, classify them into grades, specify their designations, and the mode of appointment. It is in exercise of this power that the Recruitment Rules of 1991 have been framed by the Institute. Seen from either angle, therefore, the Recruitment Rules of 1991 cannot be challenged as being without authority.

PRESCRIPTION IN THE RECRUITMENT RULES OF 1991:

52. The Recruitment Rules of 1991 establish multiple specialised Cadres as have been noted herein above. Within the umbrella Cadre of Administration, it creates sub-cadres of the Ministerial Cadre (Serial No.24), the Administrative Cadre (Serial No.24A), and the Stenography Cadre (Serial No.25). Each of these Cadres has its own



hierarchy of posts. For example, the Administrative Cadre comprises of the posts of Office Superintendent, Assistant Administrative Officer, Administrative Officer, Senior Administrative Officer, Chief Administrative Officer, and Assistant Controller of Examinations, while the Stenography Cadre comprises of the posts of Stenographer, PA, SPA, PS and PPS.

53. The Recruitment Rules further provide that as far as the post of SAO is concerned, the mode of recruitment shall be 100% by promotion, failing which by deputation. The promotion is to be made from the grade of Administrative Officer having five years of regular service in Grade Pay of Rs.2375-3500/- or eight years of regular service in Grade Pay of Rs.2000-3500/-. As far as the mode of deputation is concerned, it provides for the essential qualifications as under:-

*“(11) IN CASE OF DEPUTATION
GRADES AND SOURCES FROM WHICH
DEPUTATION TO BE MADE AND PERIOD
OF DEPUTATION:*

Officers under the Central/State Governments/U.T. Administrations of the Central Statutory/Autonomous Bodies holding analogous posts on regular basis or with at least 5/8 regular service in a post in the pay scale of Rs.2200-4000/2000-3500 respectively or equivalent and having a Degree and experience in administration and establishment matters and also preferably in accounts matters. Officers having MBA or Post Graduate Diploma in Personnel Management shall be given preference. (Period of deputation shall not ordinarily exceed 3 years).”

54. Similarly, as far as the post of CAO is concerned, the method of



recruitment is prescribed as 100% by promotion, failing which by deputation. The promotion is to be made from the grade of SAO having five years of regular service in the grade. As far as the mode of deputation is concerned, the essential qualifications for the same are provided as under:-

***“(11) IN CASE OF DEPUTATION
GRADES AND SOURCES FROM WHICH
DEPUTATION TO BE MADE AND PERIOD
OF DEPUTATION:***

Officers of Central Government (including Delhi Administration) or Central Statutory/Autonomous Bodies holding analogous posts or with at least 5 years of service in the posts in the pay scale of Rs.3000-4500 or equivalent and having experience in administration establishment and preferably in accounts matters.

Officers with MBA or PG Diploma in Personnel Management or Labour Laws or Degree in Law, shall be given preference.

(Period of deputation shall ordinarily not exceed 3 years)”

55. Therefore, recruitment by way of transfer is not a method of recruitment prescribed in the Recruitment Rules. The only method of recruitment prescribed for the posts of SAO and CAO is promotion, failing which by deputation.

56. While there can be no dispute to the fact that the Recruitment Rules may provide for recruitment by way of transfer as well, however, in the present case, the Recruitment Rules do not provide so and, therefore, in our view, the learned Tribunal has erred in placing reliance on the Judgment of the Supreme Court in ***Palure Bhaskar Rao*** (supra) in this regard.



REPUGNANCY BETWEEN THE RECRUITMENT RULES AND THE AIIMS REGULATIONS

57. While there can be no dispute on the proposition of law that in case of any repugnancy between administrative instructions and the statutory rules and regulations, it is the statutory rules and regulations that shall prevail; in the present case, we need to first determine whether there is any such repugnancy.

58. In our view, there is no repugnancy between the Recruitment Rules, even if they are considered as administrative instructions, and the AIIMS Regulations.

59. The AIIMS Regulations have been notified under Section 29 of the AIIMS Act, which, in so far as is relevant for the present petition, is reproduced hereinunder:-

“29.(1) The Institute, with the previous approval of the Central Government may by notification in the Official Gazette make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act and without prejudice to the generality of this power, such regulations may provide for:

xxx

(f) the tenure of office, salaries and allowances and other conditions of services of the Director and other officers and employees of the Institute including teachers appointed by the Institute”

60. The Regulations, therefore, are to *inter alia* provide for the tenure of office, salaries and allowances and other conditions of



service of the Director and other officers and employees of the Institute, including the teachers appointed by the Institute. The manner of appointment of the officers and employees is to be provided by way of the Rules, as stipulated in Section 28(2)(f) of the AIIMS Act, which has been quoted hereinabove.

61. Be that as it may, Regulation 11(b) of the AIIMS Regulations provides that the Director shall exercise the powers as may be specified in Schedule I to the AIIMS Regulations. The same is reproduced hereinunder:-

*“11. **Powers and duties of the Director:-** The director shall be the Head of Department in terms of Supplementary Rules 2(10) and shall exercise the powers of Head of Department and discharge the duties mentioned below, namely:-*

xxx

(b) He shall also exercise the powers specified in Schedule I to these regulations.”

62. Entry 29 in Schedule I to the AIIMS Regulations provides for the acceptance of a deputationist from the Central/State Government, and Entries 36 and 37 in Schedule I to the AIIMS Regulations prescribe for the transfer of the employees from one post to another. The same are reproduced hereinunder:-

<i>Sl. No.</i>	<i>Nature of Powers</i>	<i>Director</i>	<i>President</i>	<i>Governing Body</i>	<i>Institute Body</i>	<i>Remarks</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>
29.	Power to accept the terms and conditions	Full powers				



	<i>on foreign service terms in respect of a deputationist of Central/State Government where the terms are of usual nature.</i>					
36.	<i>To transfer the lien of an Institute employee from one post to another</i>	<i>Full powers provided that he is authorised to make appointments to both the posts concerned.</i>	<i>Full powers for all other posts.</i>			
37.	<i>To transfer an Institute employee from one post to another</i>	<i>Full powers in the case of Group C and D employees.</i>	<i>Full powers in case of Group B employees.</i>	<i>Full powers in case of Group A employees.</i>		

63. A reading of Regulation 11(b) of the AIIMS Regulations along with the above Entries in Schedule-I, merely indicates that where any officer has to be accepted on deputation or any transfer is to be made, the Competent Authority is the Director of the Institute. The said provisions do not, in any manner, prescribe the mode of recruitment to any post in the Institute.

64. As far as Regulation 24 of the AIIMS Regulations is concerned, the same reads as under:

“24. *Qualifications for appointment:-*

(1) Age, experience and other qualifications for appointment to a post under the Institute shall be prescribed by the appointing authority



keeping in view the qualifications and experience prescribed by the Central Government for similar posts before applications of candidates are called for subject to the condition that non-medical personnel shall not be appointed to the post of Director.

(2) The Director shall, in filling vacancies in posts and services, either by direct recruitment or by promotion, under the Institute, make such reservations, in favour of the Scheduled Castes and Scheduled Tribes as may be made by the Central Government from time to time in filling vacancies in posts and services under the Central Government.”

65. The above Regulation merely states that the Director, in filling vacancies in posts and services, either by direct recruitment or by promotion, shall make such reservations in favour of Scheduled Castes and Scheduled Tribes as may be made by the Central Government from time to time in filling vacancies in posts and services under the Central Government. The same, again, does not prescribe or restrict the method of recruitment only to direct recruitment or promotion, but is a provision dealing with the determination of reservation in the posts in the Institute.

66. Therefore, Regulations 11(b) or 24 or Schedule-I or 29 to the Regulations do not prescribe the method of recruitment, and cannot be termed as being inconsistent with the Recruitment Rules. These provisions operate in different fields. The Judgment of the Supreme Court in *Somasundaram Vishwanath* (supra), therefore, would have no application in the present case.



WHETHER DEPUTATION CAN BE FROM WITHIN THE INSTITUTE

67. Placing reliance on Entry 29 to Schedule I of the AIIMS Regulations, which has been reproduced hereinabove, the learned senior counsel appearing for the respondent no.1 submitted that deputation can only be from the Central or the State Government; it cannot be from an officer within the Institute appointed in a different Cadre. He had further submitted that deputation itself envisages an officer or employee being brought from outside the Institute and not from within.

68. While this may be correct as a general proposition, it cannot apply to the facts of the present case. In the present case, the Cadre Review Committee had specifically stated that officers within the Institute can be taken on deputation to higher post so as to provide them with career advancement opportunity. We quote from the recommendations of the Cadre Review Committee, which framed the following point for its consideration and answered the same in its recommendations as under:-

“Point for consideration:

(xii) There should be no induction by deputation except in the case of higher level posts such as DDA, S.E., and Labour Officer etc. The post of Accounts Officer, Divisional Accountants which are being filled by deputation and it should be open to eligible institute employees.

Recommendation of the Committee:

19. The approach of the Cadre Review Committee has been to prescribe promotion



from lower grades if there are eligible persons, from within the Institute cadres and to restrict deputation from outside to the minimum. While filling any post on deputation there should be no objection in considering officers of the Institute if they are possessing the qualifications and experience prescribed for a deputation post.”

69. The said recommendations were approved by the Central Government *vide* Communication dated 10.10.1996.

70. Therefore, if an officer or employee is eligible and selected from a different Cadre within the Institute, they can be placed on deputation in another Cadre within the Institute.

71. In the present case, the respondent no.1, who was working as PPS in the Stenography Cadre was found eligible and was, therefore, appointed to the post of SAO in the Administration Cadre on deputation basis. The same, being permissible in terms of the recommendations of the Cadre Review Committee, as accepted by the Central Government, no fault could have been found in the same.

72. Further, the finding of the learned Tribunal that since the Recruitment Rules prescribe that deputation can only be from an ‘analogous post’ and since the post of Principal Private Secretary in the Stenography Cadre and the post of SAO in the Administrative Cadre carry identical pay scales of Rs.15600-39100 with Grade Pay of Rs.6600/-, they are analogous posts and, therefore, the respondent no.1 was eligible for promotion to the post of CAO, having been working in the grade of Rs.15600-39100 with Grade Pay of Rs.6600/- as Principal Private Secretary with effect from June, 2011, can also



not be accepted.

73. This reasoning fundamentally misunderstands the distinction between analogous posts for the limited purpose of deputation versus analogous posts that altogether create a substantive right to promotion in a different Cadre. While posts with identical pay scales may be considered analogous for the limited purpose of being eligible for appointment on deputation basis under the Recruitment Rules, especially when supported by the Cadre Review Committee's specific recommendation permitting internal AIIMS employees to be considered for deputation, such analogous status cannot be extended to justify promotion rights within the deputation Cadre. The Stenography Cadre and Administrative Cadre have distinct qualification requirements, separate hierarchical structures, and different career advancement paths that cannot be conflated merely due to pay parity. They are not analogous in the substantive sense, required to confer promotion rights within the Administrative Cadre. A person on deputation remains a member of their parent cadre and may not be able to claim promotion rights in the cadre to which they are deputed, regardless of whether the posts are considered analogous for deputation purposes.

74. In view of the above discussion, it must be held that the respondent no.1 was rightly appointed on deputation as an SAO and his appointment was not on transfer but on deputation.

ESTOPPEL

75. Be that as it may, we are also of the opinion that the respondent



no.1 was estopped from not only challenging the Advertisement for the post of SAO, that invited applications for appointment on deputation basis, but also his own appointment, which was made on deputation basis.

76. The said Advertisement, in no uncertain terms, stated that applications were being invited for appointment to the post of SAO on deputation basis. The respondent no.1 applied under the said Advertisement without challenging the terms thereof, and on being found successful in the selection process, was offered the said post *vide* Offer Letter dated 13.05.2015. He accepted the said offer on 15.05.2015 and, in fact, by a Letter dated 09.06.2015, also accepted pay from his Parent Cadre with deputation allowance as per the Rules. It is only when the post of CAO was advertised, albeit on deputation basis, that the respondent no.1 made a U-Turn and started claiming that he had been appointed to the post of SAO on promotion rather than on deputation.

77. It is significant that the respondent no.1 filed his representations dated 10.03.2016 and 21.03.2016 protesting against his deputation status only after the advertisement for the post of CAO was issued. For nearly ten months, from his appointment on 13.05.2015 until March 2016, the respondent no.1 worked as SAO on deputation, drew deputation allowance, and raised no objection to his status. It was only when he realized that his deputation status would disqualify him from consideration for promotion to CAO, that he suddenly discovered his objection to the very terms under which he had been appointed and had been serving. Having accepted the benefits of deputation for



nearly ten months, the respondent no.1 is estopped from approbating and reprobating in this manner.

78. Not only this, even on an earlier occasion, the respondent no.1 had been appointed as an Administrative Officer on deputation basis in the Administration Cadre, and on completion of his tenure, had been repatriated to the Stenography Cadre as a Private Secretary. He never challenged that appointment on deputation or his repatriation at that stage.

79. In our view, therefore, the principles of estoppel clearly debarred the respondent no.1 from not only challenging the terms of the Advertisement but also his own selection to the post of SAO. In fact, if the plea of the respondent no.1 was to be accepted by the learned Tribunal, as has been done by the Impugned Order, the very selection of the respondent no.1 as SAO should have been quashed by the learned Tribunal. In case the position of SAO is to be open to all candidates in all Cadres of the Institute, the very Advertisement was to be quashed under which the respondent no.1 gained appointment to the post of SAO.

80. The submission of the learned senior counsel appearing for the respondent no.1 that where the Advertisement has conditions that are contrary to the Rules or the Constitution or other statutory provisions, the principles of estoppel may not apply, would not come to the aid of the respondent no.1 in the present case, as apart from the fact that on facts we do not find any such case to be made out by the respondent no.1, but even otherwise, in such an event, the very appointment of the respondent no.1 would be in jeopardy and be liable to be quashed. The



Judgments of the Supreme Court in *Dr. (Major) Meeta Sahai* (supra), *Krishna Rai* (supra) and *Abhimeet Sinha* (supra), therefore, would have no application to the facts of the present case.

APPOINTMENT OF OTHERS TO THE POST OF SAO ON EARLIER OCCASIONS

81. Though the learned senior counsel appearing for the respondent no.1 is correct in his submission that the specific plea of the respondent no.1 that others had also been appointed to the post of SAO on transfer, had not been refuted by the petitioner no.1, the same cannot be of much help to the respondent no.1 in the facts of the present case.

82. As noted hereinabove, the respondent no.1 had applied under a specific Advertisement which stated that the appointment was being made on deputation basis. Therefore, he cannot claim any benefit from the nature of appointment of others, who may have been appointed under different circumstances and under different advertisements.

WHETHER THE REVIEW PETITION ITSELF WAS MAINTAINABLE

83. This issue need not detain us, as we have proceeded to consider the merits of the case.

CONCLUSION:

84. For the reasons stated hereinabove, we find that the learned Tribunal has erred in passing the Impugned Order. The same is, accordingly, set aside.



2025:DHC:8131-DB



85. The petition, along with the pending application, is allowed in the above terms.

86. There shall be no order as to costs.

NAVIN CHAWLA, J

MADHU JAIN, J

SEPTEMBER 16, 2025/rv/sg/SJ