

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT: SERVICE MATTER

Date of reserve : September 17, 2007

Date of decision: November 13 , 2007

W.P. (C) No. 1206/2006

S.K. Zaman ...

Through: Petitioner
Mr. (Dr.) Madan Sharma and
Mr.Nalin Jain, Advocates

Versus

Ministry of Urban Development
and Others ...

Through: Respondents
Mr. Dinesh Agnani, Advocate for
Respondent No. 2.
Ms.Prasanthi Prasad, Advocate for
Respondent No. 3.

AND

W.P. (C) No. 1185/2006

Rajeev Malhotra ...

Through: Petitioner
Ms.Prasanthi Prasad, Advocate

versus

Union of India and Others ...

Through: Respondents
Mr. Dinesh Agnani, Advocate for
Respondent No. 2.
Mr. (Dr.) Madan Sharma and
Mr.Nalin Jain, Advocates for
Respondent No. 3.

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J.

1. By this common order and judgment we propose to dispose of Writ Petition Nos. 1206/2006 and 1185/2006 filed against the order dated 13.9.2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi whereby the O.A. No. 2093/2004 (preferred by Shri S.K. Zaman, the petitioner in W.P. (C) No. 1206/2006), was disposed of by holding that Respondent No. 3 Shri Rajeev Malhotra was illegible, having the requisite qualification and experience prescribed under the Recruitment Rules for being appointed to the post of Chief Regional Planner in the NCR Planning Board and with the directions to treat the appointment of Shri Rajeev Malhotra, (the petitioner in W.P. (C) No. 1185/2006) to the post of Chief Regional Planner in the NCR Planning Board as on deputation with effect from 25.11.2003 for a specific term, and the same was directed not to be treated as an appointment by way of promotion. The claim of the Petitioner Shri S.K. Zaman, that Shri Rajeev Malhotra, Respondent No. 3, did not have the necessary qualification and experience to be considered for the post of Chief Regional Planner was rejected. For the convenience, we shall be referring to Shri S.K. Zaman as the petitioner and to Shri Rajeev Malhotra (petitioner in WP No.1185/2006) as respondent No.3.

2. On 16.4.2003, the Respondent No. 1 invited application for filling up the post of Chief Regional Planner in National Capital Region Planning Board (hereinafter referred to as the Board) on deputation basis from the candidates having the following qualifications and experience: Qualification: Essential : P.G. Degree in Urban or Regional Planning or equivalent Desirable : FITP (India) Experience : At least 15 years experience in Planning, execution and monitoring of projects etc.

3. More than 15 candidates had applied for the said post including the Petitioner Shri S.K. Zaman. For the purposes of interview candidates were short listed by a screening committee.

4. The petitioner contends that the name of Shri Rajeev Malhotra, respondent No.3 was not included in the list of short listed candidates, being an internal candidate having only a graduate degree in Civil Engineering and lacking the essential qualification of Post Graduate in Town and Regional Planning, as well as the desirable qualification of fellow of Institute of Town Planning and the minimum experience of 15 years in planning, execution and monitoring of projects. However, after the replacement of the Chairman of the Selection Committee by Shri N.N. Khanna, Secretary, Ministry of Urban Development, Government of India, the name of respondent No. 3 was included in the list of candidates short listed for interview. The name of the petitioner was on the top of the said list and he was possessed of the essential and desirable qualifications as well as the requisite experience in the relevant field, as at the relevant time he was posted as Chief Coordinator Planner, NCR (UP). The interviews were conducted in November, 2003 under the Chairmanship of Shri N.N. Khanna. Respondent No. 3 was selected for the post of Chief Regional Planner.

5. Against the selection of Respondent No. 3, the petitioner made a representation to the Chairman of the Selection Committee on 20th November, 2003. Vide office order dated 8.12.2003, Respondent No. 3 was appointed to the said post with effect from 25.11.2003. Aggrieved by these acts, the petitioner sent another representation. However, no response was received and the petitioner filed OA No. 2093/2004 before the Principal Bench, Central Administrative Tribunal, New Delhi challenging the aforesaid appointment of Respondent No. 3 and also making a claim for being considered for the said post. The Petitioner contended before the Tribunal that since the recruitment rules prescribed the essential qualification as a Post Graduate Degree in Urban or Regional Planning or equivalent, mere passing of Associateship examination of the Institute of Town Planning India (which Respondent No. 3 had) was not sufficient for the purposes of recruitment to the said post. After the enactment of All India Council for Technical Education Act, 1987, no other authority has power to recognize any technical examination, degree, certificate or diploma. Reliance has also been placed on a certificate dated 14.12.2004 issued by the All India Council for Technical Education indicating that associateship examination has not been recognized by the said Council. The Petitioner also contended that under the Rules, the post of Chief Regional Planner had to be filled by direct induction, and that too preferably by deputation. Consequently, it could not be filled by a appointing a departmental candidate. We may note that this submission of the Petitioner was accepted by the Tribunal and accordingly directions were given to treat the appointment of Respondent No. 3 as being on deputation.

6. Before the Tribunal, the original application was opposed by Respondent No. 3 by placing reliance on a letter dated 4.4.1963 whereby the Ministry of Scientific Research and Cultural Affairs has accorded recognition to the Associateship examination of Institute of Town Plannner, India for recruitment to superior posts and services under the Central Government in the field of Town Planning.

7. The Tribunal while relying on, inter-alia, the said Government of India Letter dated 4.4.1963 held that the Associateship Examination of the Institute of Town Planners India had received recognition for the purpose of recruitment to the superior posts and services under the Central Government in the field of town planning and that the post of Chief Regional Planner being a superior post under the Central Government in the field of town planning, the Associateship Examination of the Institute of town planner could be treated as 'equivalent' qualification prescribed by the recruitment rules. The Tribunal held that as far as desirable qualification was concerned, the same are not essential and only lead to additional weightage being given to the candidature of the candidate possessing it and is barely of any consequence. Respondent No. 3 was also found to be having relevant experience of approximately 25 years by the Tribunal. However, the Tribunal found that instead of being appointed on deputation, Respondent No. 3 was appointed on promotion basis. This, according to the Tribunal, was in violation of the Rules. The Tribunal, however, held that this defect did not go to the root of the matter and was not sufficient to set aside the appointment of Respondent No.3 and the defect could be cured with retrospective effect by directing the respondents to treat the appointment as being on deputation for a specific term and not on promotion basis.

Appropriate directions were passed accordingly. Respondent No. 3 has impugned this part of the direction of the Tribunal in his writ petition being W.P. (C) No.1185/2006.

8. Before us, the Petitioner challenges the finding of the Tribunal whereby Respondent No. 3 has been held to be sufficiently qualified to hold the post of Chief Regional Planner. Apart from advancing the arguments taken by the Petitioner before the Tribunal, it is also submitted that the Tribunal relied on a document being a letter dated 18.11.2004 written by one Shri B.C. Datta, Secretary of Institute of Town Planners India giving his personal views in respect of OM Dated 4.4.1963, without the said document having been taken on record and without confronting the petitioner with the same, thereby denying him an opportunity to deal with it. The Petitioner submits that the Tribunal erred in treating the associateship examination of Institute of town planners as 'equivalent' to a Post Graduate Degree in urban regional planning and in failing to appreciate that respondent No.3 had only 8 years experience working as a Joint Director with National Capital Region Planning Board and he cannot be said to be having the requisite 15 years experience as provided by the Rules. The finding of the Tribunal that Respondent No.3 could not have been appointed to the said post on promotion has been supported by the Petitioner.

9. The Respondent No. 3, while defending the findings of the tribunal in so far as it holds that he had the essential qualifications and experience for being considered for the post of Chief Regional Planner, has relied on the Establishment Manual, Chapter on Recruitment by absorption/deputation, para 1.2, to assail the direction of the Tribunal in so far as it directs that his appointment be treated as a Deputation for a fixed period of three years. In the said para 1.2 it is provided that in cases where the field of promotion consists of only one post, and if the departmental candidate is selected for appointment to the post, it is treated to have been filled by promotion, otherwise the post is filled on deputation for the prescribed period and at the end of expiry of the said period, departmental officers are again afforded an opportunity to be considered for appointment to the post. It is contended that there was only one post of Chief Regional Planner in the NCR Planning Board under Section 31 of the NCRPB Act, 1985. Since the post of Chief Regional Planner is an isolated post, the departmental candidates are considered along with the outsiders, and their absorption is considered as promotion. On this ground, the said order has been assailed by Respondent No. 3.

10 The Respondent No. 3 has also contended that the office memorandum dated 21.8.2001 issued by Ministry of Personnel, Public Grievances and Pension, whereby exemption has been granted to the post of Regional Planner from the Rule of immediate absorption, does not affect his case since that exemption was granted only for a period of 3 years from the date on which the post was first filled up, i.e. 31.12.1999. The exemption became invalid after 30.12.2002. Discussion and Decisions

11. The following questions arise for consideration before us :- (a) Whether Mr. Rajeev Malhotra, Respondent No. 3 possessed the essential qualification to be appointed to the said post of Chief Regional Planner in the NCR Planning Board (b) Whether he had the requisite experience prescribed under the Recruitment Rules (c) Whether the

appointment of the petitioner on promotion, instead of deputation was correct, and its consequences.

12. The relevant Regulations, called Recruitment Rules and Assessment, scheme for NCR Planning Board Staff, framed under the NCR Planning Board Act, 1985, for the post of Chief Regional Planner reads as follows: 2.2 Recruitment to these posts will be made on direct induction basis. 2.3 Qualifications, experience etc. for Recruitment 2.3.1 The minimum qualifications and experience etc. for recruitment at various levels are as follows: (1) Chief Regional Planner scale 5100-5700. Essential: (i) Post Graduate Degree in Urban or Regional Planning or equivalent (ii) At least 15 years experience in planning, execution and monitoring of projects, etc. Desirable: FITP (India) Note: The post may be preferably filled up on deputation from amongst candidates fulfilling the prescribed qualifications and experience as above.

13. Therefore, the post of Chief Regional Planner has to be filled on direct induction basis, preferably on deputation basis. The Essential qualification prescribed under the Recruitment Rules is Post Graduate Degree in Urban or Regional Planning or equivalent.

14. The notification of the vacancy of the post of Chief Regional Planner issued by the Board reads as follows: S.No. Name of Post Chief Regional Planner 2. Number of Posts One Post 3. Mode of Recruitment Deputation 4. Scale of Pay Rs.16,400-450-20,000 5. Age Limit Not exceeding 56 years 6. Essential Qualification and experience (a) Post Graduate Degree in Urban or Regional Planning or equivalent from a recognized University/Institute. (b) At least 15 years experience in Planning execution and monitoring of projects etc. 7. Desirable qualification F.I.T.P (India) 8. Period of deputation 3 years extendable by two years 9. Emoluments The selected officers will be entitled to DA, HRA, CCA, TA etc. as applicable to officers of the Govt. of India in addition to the permissible deputation allowance. 10. Job requirement The incumbent is required to head the Planning Wing of the Board involving inter-alia preparation of Regional, Sub-Regional, Functional and Project Plans etc. The qualification for planning as recognized by the Institute of Town Planners/All India Council for Technical Education would only be admissible.

15. The Asterisk () clearly provides that only those qualifications in 'planning', which are recognized by the Institute of Town Planners/All India Council for Technical Education as equivalent to Post Graduate Degree in Urban or Regional Planning, would be admissible. Regarding question (a) above;

16. The case of Respondent No. 3 is based on his claim that he had a qualification, which is equivalent to Post Graduate Degree in Urban or Regional Planning. For this purpose, he, inter-alia, relies on the office memo dated 4th April 1963 of the Government of India, Ministry of Scientific Research and Cultural Affairs, which states that it had been decided by Government of India to recognize the Associateship Examination of the Institution of Town Planners, India for the purpose of recruitment to superior posts and services under the Central Government in the field of Town Planning. The said office memorandum dated 4.4.1963 reads as follows: Office Memorandum Sub: Recognition of

Technical and Professional Qualification. The undersigned is directed to state that on the recommendations of the Board of Assessment for Technical and Professional Qualifications, Government of India have decided to recognise the Associateship Examination of the Institute of Town Planners, India, for purposes of recruitment of superior posts and services under the Central Government in the field of Town Planning. Sd/- (L.S. Chandrakant) Deputy Education Advisor.

17. In our view, the reliance placed by the Respondent No. 3 on the said Office Memo is misplaced. The said OM dated 4.4.1963 nowhere postulates equivalence between the qualification of Post Graduate Degree in Urban or Regional Planning on the one hand and Associateship Examination of the Institute of Town Planners, India on the other. The Office memorandum dated 4th April 1963, in our view, merely enables the Government to prescribe in the Recruitment Rules for making recruitments to posts and services in the field of town planning, the Associateship Examination of the Institute of Town Planner, India, India as an essential qualification. However, it cannot be said that even where the Recruitment Rules prescribe a different essential qualification, such as in the present case, the essential qualification can be read so as to include the Associateship Examination of the Institute of Town Planner, India even though it is not so included in the Recruitment Rules. Pertinently, the Recruitment Rules are statutory in nature having been framed in exercise of powers conferred upon the National Capital Region Planning Board under Section 37 of the National Capital Region Planning Board Act, 1985. The said Recruitment Rules were framed in the year 1997 i.e. much after issuance of Office memorandum dated 4.4.1963. The Recruitment Rules have been framed with the previous approval of the Central Government. Had it been the intention of the Board and the Central Government to treat the Associateship Examination of the Institute of Town Planner, India as a qualification equivalent to a Post Graduate Degree in Urban or Regional Planning, nothing prevented the Board and the Central Government to specifically so provide in the Recruitment Rules.

18. As to what qualification is considered 'equivalent' to the qualification of Post Graduate Degree in Urban or Regional Planning has been prescribed by the Respondent No. 2 Board by stating that 'The qualification for Planning as recognized by the Institute of Town Planners/All India Council for Technical Education would only be admissible. Therefore, apart from Post Graduate Degree in Urban or Regional Planning from a recognised University/Institute, only those qualifications obtained from recognized Universities/Institute, which are recognized as equivalent by the Institute of Town Planners/All India Council for Technical Education, qualification. It is not the Respondent's case that the Associateship Examination of the Institution of Town Planning, India has been recognized by the Institute of Town Planners/All India Council for Technical Education as a qualification equivalent to a Post Graduate Degree in Urban or Regional Planning from a recognised University/Institute.

19. In fact, so far as All India Council for Technical Education is concerned, the Associateship Examination conducted by the Institute of Town Planners has not even been approved by it, as evidenced from its letter dated 14th December 2004 Similar is the position with regard to the said Associateship Examination in so far as Association of

Indian University is concerned. It has been stated by the Association of Indian University in their communication dated January 6, 2005 that they have not granted equivalence to the said Associateship Examination of the Institute of Town Planners, India for admission to higher course. The Indira Gandhi National Open University in their letter dated 31.1.2005 have also stated that the Associateship Examination Correspondence Course was being conducted by the Institute of Town Planners, New Delhi is not recognized by the Distance Education Council. It is also pertinent to note that in the eligibility condition for taking the Associateship Examination conducted by the Institute of Town Planners, New Delhi there is no requirement that the examinee should have a Post Graduate Degree in Urban or Regional Planning.

20. The primary purpose of conducting the said Associateship Examination appears to be to elect Associate members of the Association of the Institute of Town Planners, India. It is not even necessary to take the said examination and a candidate seeking election as an Associate could be exempted from taking the examination by the Council, provided he has experience as Town Planner for one year. In the case of a Graduate with Bachelor in Planning Degree, two years experience in Town Planning subsequent to his passing the qualifying examination is all that is required for being exempted from taking the Associateship Examination. In our view, the aforesaid provision itself shows that there is no requirement of any formal training, study or research required to be undertaken by a candidate, who is seeking election as an Associate Member of the Institute of Town Planners, India by taking the Associateship Examination. On the other hand, a candidate obtaining a Post Graduate Degree in Urban or Regional Planning or another equivalent degree from a recognized University or Institute necessarily would have to go through a regular course of study with a prescribed syllabus, instructions, class rooms or long distance classes and training and research.

21. So far as the communication dated 18th November 2004, issued by the Secretary General of Institute of Town Planner, India is concerned, which is relied upon by Respondent No. 3, the same appears to be a self serving interpretation given by the Secretary General of the said Institute to the aforesaid OM dated 4th April 1963 when he states: Thus, it is amply clear that as far as Town Planning discipline in concerned Associateship Examination of ITPI is at par with Post Graduate Degree in Town/ Urban and Regional Planning of various Universities/Institutions.

22. Pertinently, the so called equivalence of the Associateship Examination is inferred on the basis that the said examination is one of the Technical and Professional qualifications recognised by the Government of India for recruitment to superior posts and services. The five qualifications mentioned are : 1. Degree awarded by Indian Universities established by an Act of the Central or State Legislature Institutions of National Importance set up under an Act of Parliament and Institutions deemed as Universities under Section 3 of the U.G.C. Act. 2. Diploma in town and Country Planning awarded by the School of Town and Country Planning (Now School of Planning and Architecture), New Delhi. 3. M. Tech. In Regional Planning awarded by the Indian Institute of Technology, Kharagpur. 4. Association Examination of the Institute of Town Planners, India (ITPI) 5. P.G. Diploma in Planning awarded by the Center for

Environmental Planning and Technology (CEPT), Ahmedabad to the students of School of Planning, Ahmedabad from 1975. (emphasis supplied)

23. Even according to Shri B.C. Dutta, the Associateship Examination of the Institution of Town Planning, India is at par with degree awarded by Indian Universities, and not at par with Post Graduate Degree awarded by Indian Universities. Merely because the Government of India has recognized various degrees and diplomas awarded by Indian Universities, School of Town and Country Planning, Indian Institution of Technology, Kharagpur, Institute of Town Planners India and others for recruitment to superior posts and services under Town Planning, that by itself does not lead to the inference that the said decrees/diplomas are equivalent to a Post Graduate Degree from a recognized University or Institution, or even to one another. As aforesaid, such notifications are merely to enable the Government to prescribe in its Recruitment Rules in relation to a particular post one or more of such qualifications as a sufficient essential qualification for recruitment. It does not follow that even where the Recruitment Rules do not recognize the said qualifications as essential qualifications, or qualifications equivalent to the prescribed essential qualifications, they can be read as equivalent to the prescribed essential qualification. Since the said communication is founded upon the Office Memorandum dated 4th April 1963, which in our view, does not create any equivalence between the Associateship Examination of the Institute of Town Planners, India and a Post Graduate Degree in Urban or Regional Planning, we reject the interpretation given by the Secretary General of the Institute of Town Planners, India in the said communication. The qualification of Associateship Examination of the Institute of Town Planners, India cannot be considered as equivalent to the qualification of Post Graduate in Urban or Regional Planning from a recognised University/Institute.

24. In our view, therefore, the Tribunal has erred in concluding that Respondent No. 3 had the requisite qualification equivalent to a Post Graduate Degree in Urban or Regional Planning from recognized University/Institute.

25. We may also notice that one of the grievances of the Petitioner is that the said communication dated 18.11.2004 was produced by Respondent No. 3 before the Tribunal only at the time of hearing without the same being formally placed on record and that the Petitioner was not given an opportunity to meet the same. However, in view of the fact that the Petitioner has had ample opportunity to deal with the said communication in his Writ Petition and has himself produced subsequent communications including those issued by All India Council for Technical Education on December 14, 2004, Association of Indian University on January 6, 2005 and Indira Gandhi National Open University on 31.1.2005, we have considered the effect of the communication dated 18.1.2004 and the said communications in the interest of justice.

26. Now coming to the aspect of the professional experience of Respondent No. 3 in Planning, Execution and Monitoring of project, we find from the record that Respondent No. 3 in his own curriculum vitae states that he was working as a Planning Engineer in the scale of Rs.10,000 to Rs.15200 from 18.9.19988 to 26.3.1993. He states that he was associated with appraisal of various documents received from Ministry of Urban

Development and to provide material relating to Urban Habitat and its environment whenever it was required by the Ministry. He further claims experience in other related fields during the said period. From 26.3.1993 to 31.1.1999 he states that he worked as Additional Director (Scientist 'SF') on deputation basis in the scale of Rs.14300-18300 when he was associated with project planning, appraisal implementation and monitoring of pollution abatement project and other fields.

27. A perusal of the record of Respondent No. 2 pertaining to the consideration of the candidature of, inter-alia, Respondent No. 3 shows that Respondent No. 3 was considered as having the experience in Planning from the year 1995 onwards only on the basis that he cleared the Associateship Examination of the Institute of Town Planners, India in the said year. The note of the Director (AandF) dated 28.11.2003 in relation to Respondent No. 3 reads as follows: The essential qualifications for the post of Chief Regional Planner are: (a) 'Post Graduate degree in Urban or Regional Planning or equivalent: Shri Rajeev Malhotra has acquired Associate Member of Institute of Town Planner (AITP) in 1995, which is equivalent to post graduate degree. He has experience of urban and regional planning from 1995 onwards. (b) 'At least 15 years experience in planning, execution and monitoring of projects': Shri Rajeev Malhotra has experience as Urban Regional Planner from 1995 onwards (after AITP and prior to 1995 (since 1979), he has been working on execution and monitoring of projects. The details are placed below at flag-a. As per the Recruitment Rules total 15 years experience is required in planning, execution, and monitoring of projects. The total experience of 15 years cannot be taken in isolation for planning or for project execution and monitoring. It is the total number of years of experience in the two areas of work which has been taken into account by the Board in the past also. Therefore, it was on the basis total number of experience of Shri Malhotra in planning and in project execution and monitoring that he was short listed by the Screening Committee for the interview. Regarding the Desirable qualification it is mentioned that Shri Malhotra has not yet acquired FITP but has applied for it. The candidates, who fulfill the essential qualifications had been short listed by the Screening Committee. The then Member Secretary vide his note at page 8-9/ante had desired to forward names of only those candidates for interview to the Chairman of the Personnel Group, who fulfilled the desirable qualifications also. Therefore, names of only three candidates were sent for the post of Chief Regional Planner (excluding Shri Malhotra) out of total six short listed by the Screening Committee. The Ministry vide their DO No. K-14011/7/2003-DDIB, dated 27.10.2003 from Smt. Nisha Singh, Director, Delhi Division, conveyed the approval of the Chairman of the Personnel Group for conducting interview on 14.11.2003 and also conveyed his directions that 'all eligible candidates i.e. those eligible as per Screening Committee's recommendations may be called for interview'. Hence, all the candidates short listed by the Screening Committee were called for interview. Submitted for kind perusal and orders please. Director (AandF) 28.11.2003

28. Merely because Respondent No. 3 cleared the said examination in the year 1995, it could not be assumed that he started gaining the requisite experience of Planning from the time he acquired the said qualification, since experience in a particular field has to be gained by actually working in the said field and that depends on the job profile and the duties and responsibilities discharged by the incumbent, and not on his acquiring a

particular qualification. Between 1993-99 Respondent No. 3 was working as Additional Director (Scientist 'SF') on deputation basis with the Ministry of Environment and Forest, Government of India. Whether or not this posting involved discharge of responsibilities in planning, has not been considered or addressed by Respondent No. 2 while considering the candidature of Respondent No. 3. This shows that the Respondent authorities have in fact mislead themselves by assuming that Respondent No. 3 had the experience in planning, from 1995 onwards merely because he cleared the Associateship Examination conducted by Institution of Town Planning, India in the said year. The experience gained by Respondent No. 3 between 26.3.1993 to 31.1.1999, or even prior to that may or may not be relevant to consider him as having the requisite experience, and we are not commenting on that aspect of the matter. However, we do not agree with the conclusion drawn by Respondent No. 2 that Respondent No. 3 acquired the relevant experience in Planning, execution and monitoring projects from 1995 merely on account of his having cleared the Associateship Examination conducted by Institution of Town Planning, India in the said year.

29. Since respondent No. 3 was not eligible to be considered for appointment to the post of Chief Regional Planner, and he has been treated to have the requisite experience in Planning on a wrong and unsustainable premise it would follow that his appointment to the said post itself was illegal and accordingly we quash the same. Regarding question (c) above:

30. However, since Respondent No. 3 has also preferred the aforesaid Writ Petition being W.P. (C) No. 1185/2006 in respect of the directions issued by the Tribunal, though the same has become infructuous, we proceed to consider whether the said direction, to the effect that the Respondent authorities should issue a 'corrigendum' to the appointment letter of Respondent No. 3 dated 8.12.2003 treating his appointment to the post of Chief Regional Planner as on deputation for a specific term and not on promotion, is valid or not.

31. Under the Recruitment Rules, the post of Chief Regional Planner was required to be filled on direct induction basis and preferably filled up on deputation from amongst candidates fulfilling the prescribed qualification and experience. Consequently, the method of recruitment prescribed under the Rules is by Direct Induction and even within that method, the first preference is to fill up the post on deputation basis. Promotion to the said post as a method of recruitment is conspicuous by its absence. It appears that the intention behind the said recruitment rule is to bring in fresh blood into the organization, i.e., from outside the existing cadre of the said Board. Admittedly, Respondent No. 3 belongs to the same Board, namely, Respondent No. 2. His appointment to the post in question, whether it is called deputation or promotion, would therefore defeat the purpose that the recruitment rule seeks to achieve. Moreover the term deputation itself connotes that 'an officer from outside is appointed for limited period by the end of which he will have to revert to his parent cadre. Under deputation or absorption, suitable officers having the requisite qualification and experience working in other Central Government, department or State Government are considered for appointment'. [See Chapter 19 of Swami's complete manual of Central Government offices, para 1.1 under the heading

'induction' that recruitments by absorption /deputation); also See State of Punjab vs. Inder Singh, (1997) 8 SCC 372.]

32. Reliance placed by respondent No.3 upon paragraph 1.2 of the said Chapter 19 is misplaced since it deals with cases where the method of recruitment is composite, i.e., by 'deputation (including short term contract)/promotion'. In the present case, the said composite method is not provided for recruitment to the post of Chief Regional Planner since the Recruitment Rules stipulate for filling up the said post on direct induction basis and preferably on deputation basis from amongst the candidate fulfilling the requisite qualification and experience. Consequently, promotion as a manner of filling up the said post cannot be considered, unless there is a power to relax the said rule and the same has been so relaxed by the competent authority. We may hasten to add that there is no case of relaxation of the Rules made out in this case. The appointment of respondent No.3 to the post of Joint Regional Planner cannot be considered to be as on deputation also for the reason that the post earlier held by him of Joint Director in the pay scale of Rs.12000-16500 in the Board cannot be said to be an analogous post to the post of Chief Regional Planner, which is in the pay scale of Rs.16400-20000. We may refer to paragraph 5 of Chapter 19 of Swami's complete manual of Central Government offices, which reads as follows: 5. Analogous posts 5.1 Whenever the Recruitment Rules for a post prescribe deputation/absorption as a method of filling up the post, they generally contain an entry in Column 12 of the standard form of schedule stating inter-alia, that the 'deputation/absorption shall be made from amongst the officers holding analogous posts on regular basis under the Central/ State Government. This Department has been receiving references from various Ministries/Departments asking for the definition of 'analogous posts'. It has, therefore, been considered appropriate to lay down the following criteria for determining whether a post could be treated as analogous to a posts under the Central Government: (i) Though the scale of pay of the two posts which are being compared may not be identical, they should be such as to be an extension or a segment of each other, e.g., for a post carrying the pay scale of Rs.3,000-5,000 (pre-revised scale), persons holding posts in the pay scale of Rs.3,000-4,500 (pre-revised scale) will be eligible. (ii) Both the posts should be falling in the same Group of posts as defined in the Department of Personnel and Administrative Reforms Notification No.13012/2/87-Estt.(D), dated the 30th June 1987, viz., Group 'A', Group 'B', etc. (iii) The levels of responsibility and the duties of the two posts should also be comparable. (iv) Where specific qualifications for deputation/absorption have not been prescribed, the qualifications and experience of the officers to be selected should be comparable to those prescribed for direct recruits to the post where direct recruitment has also been prescribed as one of the methods of appointment in the Recruitment Rules. Where promotion is the method of filling up such posts, only those persons from other Departments may be brought on deputation whose qualifications and experience are comparable to those prescribed for direct recruitment for the feeder grade/post from which the promotion has been made. 5.2 As far as the post under the State Government/ Public Undertakings, etc., are concerned, it is quite likely that even posts with identical designations may not have comparable scales of pay and they may also differ with reference to the extent and stage of merger of Disciplinary Authority with pay. The levels in the hierarchy and the nature

of duties, may not also be comparable. These posts may not also be classified into four groups as has been done under the Central Government. Taking these factors into consideration, the selection authorities may have to be guided more by the nature of duties performed by the candidates in their parent organization vis-a-vis those in the posts under selection and qualifications and experience required for the posts under the Central Government for making selection for appointment by absorption/deputation (including short term contract) from outside the Central Government service. Since details of the Recruitment Rules for the posts under the State Government/Public Undertakings, etc., may not be available, bio-data sheets, signed by the officers themselves and certified/countersigned by their employer indicating their qualification, experience, assignments held in the past, contributions made by them in the field of research, publications to their credit and any other information which the officers might consider relevant for assessing their suitability for the post in question may be obtained in the Presenting Officer forma at Annexure-A.

33. We find that the Tribunal, while issuing the said directions for amending the appointment letter of respondent No.3 to treat him as having been appointed on deputation, has failed to even notice this aspect of the matter. Consequently, the direction issued by the Tribunal to treat the appointment of respondent No.3 as being on deputation is laconic and is set aside.

34. The Tribunal was right in its conclusion that since the post in question has to be filled up by Direct Induction method, preferably by deputation, respondent No.3 could not have been promoted to the said post. That is another reason why we feel that the appointment of respondent No.3 to the post of Chief Regional Planner cannot be sustained.

35. Accordingly, we allow W.P. (C) No.1206/2006 filed by Shri S.K. Zaman while we dismiss the W.P. (C) No.1185/2006 filed by Shri Rajeev Malhotra and quash the appointment of respondent No. 3 to the post of Chief Regional Planner in respondent No. 2 while holding that he did not have the requisite qualification for being considered to the said post. The parties are left to bear their own respective costs.

Sd./-
VIPIN SANGHI, J

Sd./-
A.K. SIKRI, J.

November 13 , 2007