

provided that parity is maintained between the two families in question. Why cannot a Company carry on and transact business with two Directors or their respective nominees, is wholly un-understandable. All that appears is that the Arbitrator in view of the disputes between the parties thought that two brothers representing their families were infact the real persons who floated the Company and there should be parity in their families insofar Directors are concerned. It is not disputed between the parties as well that the pioneers of these Companies are the two brothers. Insofar as clause (xii) of the Award which mentions Raghbir Bicycles International as well, is concerned, suffice it to say that it is mentioned that Gurcharan Singh and his family members or M/s Raghbir Cycles (P) Ltd. shall have no right of any kind whatsoever in the said company. This rather supports the case of objectors and, thus, in no way detracts from the validity of the Award. These are the only points on which arguments were addressed. Inasmuch as no arguments were addressed on the other points mentioned in the objection petition, reproduced in the earlier part of the judgement, no comments on the said objections are necessary.

(60) Finding no merit in the objections, I reject the same. Resultantly, Award rendered by the Arbitrator dated January 27, 1993, is made the rule of the Court. Let decree be drawn in accordance with the Award. The objections are rejected with costs quantified at Rs. 5,000.

S.C.K.

Before Hon'ble S. P. Kurdukar, C.J. & H. S. Bedi, J.

DR. DALBIR SINGH BAKSHI,—Appellant.

versus

DR. HIMAT SINGH ANEJA AND ANOTHER,—Respondents.

L.P.A. 895 of 1993

May 9, 1994

P.C.M.S. (Class I) Rules, 1972 as amended in 1979—Rules 9(2) (3) and 9-A—Service rendered as deputationist—Employee reverting to parent department—Benefit of service rendered on deputation—grant of—Employee whether has a right to claim particular posting—Posting mala fide—Court may cancel such order.

Held, that when an employee goes on deputation to some other cadre and when he comes back his entire service in the other cadre is taken in the parent cadre for all purposes deeming as if for all intents and purposes during the period of deputation, such a person had been working in the parent department.

(Para 16)

Further held, that no government employee can have a right or claim to a particular post or posting. If this request of an employee is accepted, it will lead to disastrous results. If the exercise of power by the appropriate authority is found to be *mala fide* or tainted, the Court may strike down such action.

(Para 21)

J. S. Khehar, Advocate and M. S. Bedi, Nirmal Singh, V. S. Chandok and Rajeshwar Singh Thakur, Advocates, for the Petitioner.

H. S. Mattewal, Sr. Advocate with Gurminder Singh, Advocate, S. S. Saron, DAG, Punjab, for the Respondents.

JUDGMENT

S. P. Kurdukar, C.J.

(1) These two connected Letters Patent Appeals can be disposed of by this common judgment since they arise out of a judgment and order dated December 14, 1993, passed by the learned Single Judge in Civil Writ Petition No. 6375 of 1993.

(2) Letters Patent Appeal No. 895 of 1993 is filed by the appellant Dr. Dalbir Singh Bakshi (hereinafter referred to as 'Dr. Bakshi'), who was the second respondent in the writ petition filed by Dr. Himmat Singh Aneja, the writ petitioner first respondent in this appeal (hereinafter referred to as 'Dr. Aneja'). Letters Patent Appeal No. 903 of 1993 is preferred by the State of Punjab, the first respondent in the said writ petition.

(3) The learned Single Judge has very succinctly and briefly set out relevant facts in his judgment and it is not necessary to reproduce all these facts in detail in this judgment. We may, however, reproduce some necessary facts in order to appreciate the rival contentions raised before us. For the purpose of this judgment, we may refer to the facts set out in the compilation of Letters Patent Appeal No. 895 of 1993.

(4) On 29th May, 1993 Dr. Aneja filed a writ petition under Articles 226 and 227 of the Constitution of India challenging the order

dated 28th May, 1993 (Annexure P-11) by which Dr. Bakshi has been promoted to the post of Director Health Services and Family Welfare by the Government of Punjab. He prayed that said order of promotion and posting be set aside and the Government of Punjab be directed to consider and appoint him to the post of Director, Health Services and Family Welfare according to the P.C.M.S. (Class-I) Rules, 1972 as amended in 1979 (hereinafter referred to as 'the Rules'). The abovesaid reliefs in the writ petition were based upon the following averments in the writ petition.

(5) Most of the facts are not in dispute and we may, therefore, refer to these facts as not disputed. Both Dr. Aneja and Dr. Bakshi were appointed to P.C.M.S. (Class-I) service on 1st March, 1973 (Annexure P-3). The seniority list of P.C.M.S. (Class-I) officers was prepared some time in July 1975. Dr. Aneja was placed at serial No. 65 whereas Dr. Bakshi at serial No. 67. Revised seniority list of the year 1979 again placed Dr. Aneja at serial No. 62 whereas Dr. Bakshi at serial No. 64. Both these Doctors on 18th May, 1987 came to be promoted as Deputy Directors, Health Services and Family Welfare (see Annexure P-4). The seniority list prepared thereof showed Dr. Aneja at serial No. 7 whereas Dr. Bakshi at serial No. 9. Both these Doctors on 27th September, 1989,—*vide* annexure P-5 were promoted as Joint Directors, Health Services and Family Welfare and in the said cadre Dr. Aneja was shown senior to Dr. Bakshi. It is, thus, admitted position that Dr. Aneja has been senior to Dr. Bakshi at all times.

(6) On 2nd April, 1990 Dr. Bakshi was sent on deputation to Union Territory, Chandigarh as Director, Health Services. Both these Doctors thereafter were considered for promotion to the posts of Additional Directors of Health Services and Family Welfare. Both were found equal on merits. Since Dr. Aneja was senior to Dr. Bakshi, the former came to be promoted on 21st November, 1990 as Additional Director, Health Services and Family Welfare (Annexure P-6). As Dr. Bakshi was on deputation to Union Territory, Chandigarh, he was given proforma promotion as Additional Director on 31st October, 1991 (Annexure P-7).

(7) It is also common premise that the services of both these Doctors are governed by the Rules called Punjab Civil Medical Service (Class-I) Rules, 1972 as amended in 1979,—*vide* notification dated 24th April, 1979. Appendix A to the Rules refers to a post of Director, Health Services and Family Welfare. The Government of Punjab in the past has created an 'ex-cadre post' of Director, Health

Services Social Insurance (hereinafter referred to as the 'Director, Health Services S.I.'). As stated earlier Dr. Aneja,—*vide* Annexure P-6 came to be promoted as Additional Director, Health Services and Family Welfare on 21st November, 1990 whereas Dr. Bakshi came to be promoted and appointed as Additional Director, Health Services and Family Welfare,—*vide* Annexure P-7, dated 31st October, 1991. Some time in March, 1992, the post of Director, Health Services (S.I.) fell vacant. Dr. Aneja being the seniormost Additional Director was entrusted with the current duty charge of the said post,—*vide* order dated 16th March, 1992 (Annexure P 8). On 29th March, 1993,—*vide* Annexure P-10, the Government of Punjab promoted Dr. Aneja and appointed him as Director, Health Services (S.I.) in the pay scale of Rs. 5900—200—6700. The post of Director, Health Services and Family Welfare held by Dr. Ram Lal on his superannuation fell vacant on April 30, 1993. The Government of Punjab,—*vide* order dated 28th May, 1993 (Annexure P-11) promoted Dr. Bakshi as Director, Health Services and Family Welfare, Punjab in the scale of Rs. 5900—200—6,700. It is this promotion and appointment of Dr. Bakshi on the cadre post of Director of Health Services and Family Welfare was challenged by Dr. Aneja in the writ petition.

(8) The main contention of Dr. Aneja in the writ petition was that on retirement of Dr. Ram Lal on 30th April, 1993 as the Director, Health Services and Family Welfare, the cadre post he being the senior most Medical Officer in the cadre of P.C.M.S. (Class-I), should have been considered and appointed on the cadre post of Director, Health Services and Family Welfare in terms of the Rules. As per the amended Rules, he being the seniormost officer in the P.C.M.S. (Class-I) and since he fulfilled the eligibility and requirements of Rule 9(2) (3) and 9-A of the Rules, he ought to have been appointed on the cadre post of Director, Health Services and Family Welfare. Alternatively he averred that although he was promoted to the ex-cadre post of Director, Health Services (S.I.), he should have been transferred from the ex-cadre post to the cadre post being the senior most. The merits of the petitioner (Dr. Aneja) and Dr. Bakshi being equal, Dr. Aneja being the senior most should have been transferred and appointed to the cadre post of Director, Health Services and Family Welfare in preference to Dr. Bakshi. Notwithstanding the fact that he was appointed on the ex-cadre post of Director, Health Services (S.I.), he still continues to hold a lien on the substantive post or Additional Director, and therefore, on superannuation of Dr. Ram Lal on 30th April, 1993, he should have been considered along with Dr. Bakshi to the cadre post of Director, Health Services

and Family Welfare. It was then averred in the petition that Dr. Bakshi does not fulfil the requirements prescribed under Rule 9(2) (3) and 9A of the Rules and consequently his appointment as Director, Health Services and Family Welfare on the cadre post is illegal. It was further pleaded that the cadre post of Director, Health Services and Family Welfare is higher in status and, therefore, it should have been offered to the petitioner Dr. Aneja being the senior most Medical Officer. The appointment of Dr. Bakshi is an act of favouritism. The impugned order dated 28th May, 1993 being a colourable exercise of power, is unsustainable. The appointment of Dr. Bakshi,—*vide* order dated 28th May, 1993 in supersession of the claim of the petitioner is in utter violation of Articles 14 and 16 of the Constitution of India. The petitioner Dr. Aneja, therefore, prayed that the impugned order dated 28th May, 1993 (Annexure P-11) be set aside and he be considered and appointed to the cadre post of Director, Health Services and Family Welfare, Punjab.

(9) The State of Punjab filed the written statement and contested the petition. Dr. Bakshi, however, did not file any separate written statement but sought to justify his appointment being legal and suffering from no vice. The State of Punjab in their written statement pleaded that both the posts i.e. Director, Health Services and Family Welfare and Director, Health Services (S.I.) are equal in status and carry equal pay. They admitted that the petitioner Dr. Aneja is senior to Dr. Bakshi and both of them are equal in merits. The case pleaded by the State of Punjab is that Dr. Aneja was already promoted and brought into the cadre of Director, Health Services,—*vide* order dated 29th March, 1993 (Annexure P-10) and, therefore, question of considering him again to the cadre post of Director, Health Services and Family Welfare did not arise. Dr. Bakshi being the next senior most person was promoted and brought into the cadre of Director, Health Services and at the time of making posting to the vacant post of Director, Health Services and Family Welfare, a cadre post, Dr. Aneja as well as Dr. Bakshi was considered by the Government of Punjab. A conscious decision was taken to appoint Dr. Bakshi to the cadre post of Director, Health Service and Family Welfare and, therefore, there is neither any illegality nor the order of promotion of Dr. Bakshi suffers from any vice. No Government employee can claim a right to a particular post or posting. It is the prerogative of the Government and the same is not justiciable. The petition is devoid of merit and the same be dismissed.

(10) The learned Single Judge after hearing counsel for the parties and after perusing the return and relevant documents on record held : (i) that the post of Director, Health Services and

Family Welfare (cadre post) is higher in status and has got more powers and privileges than the post of Director, Health Services (S.I.) ; (ii) Dr. Aneja being senior to Dr. Bakshi and both being equal on merits, seniority should have been the criteria in respect of an appointment to the post of Director, Health Services and Family Welfare, the cadre post ; (iii) there is no material on record to show that Dr. Aneja during the period of two months had suffered any adverse remarks ; (iv) it was a clever move on the part of the Government of Punjab to by-pass the claim of Dr. Aneja to the cadre post of Director, Health Services and Family Welfare; and (v) the learned Single Judge also opined that the appointment of Dr. Bakshi is in clear violation of Articles 14 and 16 of the Constitution of India. The learned Single Judge then observed :—

“—————and I am satisfied that the cadre post of Director, Health & Family Welfare, Punjab being higher in status and responsibility, the petitioner had a legitimate right to be considered for the same, but was not considered as such on the basis of irrelevant consideration. Even there is nothing on the record showing that equivalence of the two posts. Rather Annexure P-12 which is an official document, though produced by the petitioner, clinches the matter that the post of Director, Health Services S.I. is lower in status and responsibilities than the post of Director, Health and Family Welfare, Punjab.”

The learned Single Judge then observed :

“The sequence of events shows that it was a clever move simply to favour respondent No. 2 by ousting the petitioner outside the cadre against the ex-cadre post, which is not equivalent to the cadre post of Director, Health and Family Welfare.”

Relying upon the past precedent, the learned Single Judge held that it pricked the conscience of the Court when examined in the totality of the circumstances keeping in view the past precedent, departmental files and *inter-se* merit of Dr. Aneja *viz-a-viz* of Dr. Bakshi. The equality and fairness being the guiding principles in the matter of appointment to the public service, the Government of Punjab should not have ignored these principles and appointed Dr. Bakshi. Consequently, the learned Single Judge set aside the impugned order dated 28th May, 1993 (Annexure P-11) and directed the Government of Punjab to consider the case of the petitioner in accordance with

the existing rules, past practice and treating the post of Director, Health Services and Family Welfare being higher in status and responsibilities than the post of Director, Health Services (S.I.). The learned Single Judge directed the Government of Punjab to comply with these directions within two months and in the meantime, the post of Director, Health and Family Welfare be given to the senior most incumbent in the cadre in P.C.M.S. (Class-I) in accordance with the past precedent. It is this order passed by the learned Single Judge which is the subject matter of challenge in both these Letters Patent Appeals.

(11) Mr. Khehar, learned counsel appearing for Dr. Bakshi urged that once Dr. Aneja was promoted and brought into the cadre of Director and having been appointed in the ex cadre post of Director, Health Services (S.I.), there was no question of considering him again to the post of Director, Health Services and Family Welfare, the cadre post. The Government of Punjab while making an appointment to the post of Director, Health Services and Family Welfare did consider both Dr. Aneja and Dr. Bakshi. The Government of Punjab neither acted illegally nor violated Articles 14 and 16 of the Constitution of India. The appointment of Dr. Bakshi as Director, Health Services and Family Welfare does not suffer from any vice nor the same can be branded as discriminatory. He also urged that Dr. Bakshi is retiring sometime in October, 1994. In the facts and circumstances of the case, if the Government of Punjab preferred Dr. Bakshi to man the post of Director, Health Services and Family Welfare, no fault whatsoever could be found with the said decision. The posts of Director, Health Services and Family Welfare and Director, Health Services (S.I.) are equal in status and pay scales. He, therefore, urged that the impugned order passed by the learned Single Judge is contrary to law and facts and, therefore, deserves to be set aside.

(12) Mr. Saron, the learned Deputy Advocate General appearing for the State of Punjab adopted the arguments of Mr. Khehar and in addition thereto he urged that no Government employee can claim a right to a particular post or posting. The Government of Punjab did consider both Dr. Aneja as well as Dr. Bakshi while filling up the vacancy of Director, Health Services and Family Welfare, the cadre post. The impugned order dated 28th May, 1993 (Annexure P-11) is fair and just. There is neither any discrimination nor any favour shown to Dr. Bakshi. The impugned judgment of the learned Single Judge is not correct and the same be quashed and set aside.

(13) Mr. Mattewal, learned Senior Advocate appearing on behalf of Dr. Aneja supported each finding recorded by the learned Single Judge. He urged that Dr. Bakshi was not at all eligible as he did not fulfil the requirements prescribed under Rule 9-A (a) of the Rules. Emphasis was on the condition that in order to be eligible for appointment to the post of Director, Health Services, P.C.M.S. (Class-I) officer must have an experience of working on the post of Joint Director, Health Services for a minimum period of one year (see Rule 9-A(a)). Dr. Bakshi was appointed as Joint Director, Health Services and Family Welfare on 27th September, 1989 and thereafter he was sent on deputation to the Union Territory, Chandigarh as Director, Health Services on 2nd April, 1990. The post of Director, Health Services in Union Territory, Chandigarh is equal to the post of Deputy Director in the parent department. Dr. Bakshi had no experience of working on the post of Joint Director/Additional Director, Health Services for a minimum period of one year as he was on deputation to the Union Territory as Director which is equivalent to the post of Deputy Director in the parent department. In view of this factual position Dr. Bakshi was wholly ineligible for being appointed as Director, Health Services and Family Welfare, the cadre post.

(14) Mr. Mattewal, then urged that since Dr. Aneja was appointed on ex-cadre post of Director, Health Services (S.I.) his lien on the substantive post of Additional Director in the parent department still continues. He ought to have been considered for the cadre post of Director, Health Services and Family Welfare. Mr. Mattewal, therefore, urged that the order dated 28th May, 1993 appointing Dr. Bakshi as Director, Health Services and Family Welfare, a cadre post, without considering the claim of Dr. Aneja is illegal and cannot be sustained. The learned Single Judge was right in setting aside the appointment order of Dr. Bakshi dated 28th May, 1993. Mr. Mattewal also urged that the post of Director, Health Services and Family Welfare is rightly held to be higher in status with more privileges and the said finding of the learned Single Judge needs no interference. Mr. Mattewal strongly relied upon the findings of the learned Single Judge as quoted above being based on appreciation of pleadings and the documentary evidence and the same being fully justified in the circumstances of the case, calls for no interference. Mr. Mattewal, therefore, urged that both the Appeals be dismissed.

(15) After hearing counsel for the parties at greater length and on scrutiny of the material on record we are with great respect

unable to agree with the learned single Judge for the reasons set out hereinafter.

Coming to the first contention as regards the eligibility of Dr. Bakshi in terms of Rule 9-A (a) of the Rules, it may be stated that Dr. Bakshi does not fulfil the eligibility criteria. Relevant rules read as under :—

“Rule 9. Method of recruitment.—

(2) Recruitment to the post of Director Health Services, Joint Director Health Services and Deputy Director Health Services shall be made by selection from amongst the members of the Service.

(3) (All promotions whether from one grade to another or from one Class of Service to another shall be made by selection on the basis of merit-cum-seniority and seniority alone shall not give any right of appointment.

9-A. Appointment to senior post.—No person shall be appointed—

(a) to the post of Director, Health Services, unless he has an experience of working on the post of Joint Director, Health Services for a minimum period of one year.”

(16) Mr. Khehar, the learned counsel for Dr. Bakshi is right in submitting that by reason of administrative exigencies, Dr. Bakshi came to be sent on deputation to the Union Territory, Chandigarh when he was holding a substantive rank of Joint Director in the P.C.M.S. (Class-I) service of the Government of Punjab. Assuming that the post of Director in the Union Territory, Chandigarh is equivalent to the post of Deputy Director in the P.C.M.S. (Class-I) service in the Government of Punjab, it cannot be held that Dr. Bakshi was the Deputy Director when in fact he was holding ~~substantively~~ the post of Joint Director in the Punjab Government. Dr. Bakshi cannot be reduced to a lower rank by virtue of deputation. Dr. Bakshi shall be deemingly held to be in the same cadre i.e. Joint Director. In order to bring home the point, Mr. Khehar drew our attention to the phraseology used in Rule 9-A (a) and (b) of the Rules. Mr. Khehar in support of his submission relied upon the decision of this Court in *Ram Saran and Another v. State of Punjab and others* (1). The Division Bench ruled “.....where a

(1) 1991 (1) Recent Services Judgement 107.

person goes on deputation to some other cadre and when he comes back his entire service in the other cadre is taken in the parent cadre for all purposes deeming as if for all intents and purposes during the period of deputation, such a person had been working in the parent department." Support was drawn from Apex Court decision in *State of Mysore and another v. P. N. Nanjundiah and another* (2), (see para 13). We are in agreement with the ratio laid down by the Division Bench of this Court in this decision.

(17) Mr. Khehar then drew our attention to a decision of the Supreme Court in *State of Mysore and another v. P. N. Nanjundiah and another* (2). It was a case of an employee who was sent on deputation. A question arose as to whether services as deputationist in the new department could be counted for promotion in the parent department. The Supreme Court ruled that service as deputationist in the new department can be counted for promotion in parent department provided service rendered in new department is satisfactory (see para 3). This decision in our opinion is a complete answer to the contention raised by Mr. Mattewal. Mr. Mattewal, however, tried to distinguish the judgment with reference to the word 'deputation' contained in Rule 10.21 in Punjab Civil Services Rules, Vol. 1 Part I at page 195. We are unable to accept the distinction sought to be drawn by Mr. Mattewal. It must, therefore, follow that Dr. Bakshi did fulfil the requirements prescribed under Rule 9(2)(3) and 9-A(a) of the Rules.

(18) Mr. Mattewal, however, drew our attention to a decision of the Division Bench of this Court in *Leela Ram Saluja v. Bal Krishan Soni and another* (3). He relied upon paragraphs 15, 16 & 17 of the said decision. This decision is again clearly distinguishable on facts and the ratio of this decision does not apply to the facts of the present case.

(19) The next controversy that needs to be decided in the present Appeal is as to whether Dr. Aneja was required to be considered at the time of filling up the vacancy of Director, Health Services and Family Welfare, the cadre post which fell vacant on superannuation of Dr. Ram Lal on 30th April, 1993. It is not and cannot be disputed that Dr. Aneja,—vide order dated 29th March, 1993 (Annexure P-10) was promoted as Director, Health Services (S.I.). This was a regular promotion. This order of promotion (Annexure P-10) has the effect

(2) 1969 S.L.R. 346.

(3) 1983 (2) S.L.R. 753.

of bringing Dr. Aneja into the cadre of Director though he was not appointed on the cadre post since it was not vacant and available. Dr. Aneja had accepted the promotion to the post of Director, Health Services (S.I.), the ex-cadre post, and he continued to hold the same until Dr. Bakshi came to be appointed as Director, Health Services and Family Welfare, a cadre post on 28th May, 1993. The order of promotion of Dr. Aneja (Annexure P-10) does not even remotely indicate that it was either stop-gap arrangement or an *ad hoc* promotion. It was a regular promotion against a clear vacancy. If this be so, it is difficult to accept the contention of Mr. Mattewal that Dr. Aneja still continues to hold lien on his substantive post of Additional Director in P.C.M.S. (Class I) service. It is not the case of Dr. Aneja that he accepted the promotion to the post of Director, Health Services (S.I.), the ex-cadre post without prejudice to his claim to the cadre post of Director. The promotion order of Dr. Aneja dated 29th March, 1993 (Annexure P 10) as Director, Health Services (S.I.) is final and conclusive for all intents and purposes and Dr. Aneja cannot be heard to say that he still continues to hold lien on the post of Additional Director in the P.C.M.S. (Class-I) service and, therefore, he should have been again considered to the cadre post of Director. It is in these circumstances, if the Government of Punjab did not consider Dr. Aneja for the post of Director, Health Services and Family Welfare when Dr. Bakshi was promoted on 28th May, 1993 to the cadre post that fact does not in any manner render the action of Punjab Government either illegal or contrary to the Rules.

(20) Mr. Mattewal vehemently urged that Dr. Aneja being the seniormost P.C.M.S. (Class-I) officer and notwithstanding the fact that he was promoted on the ex-cadre post of Director, Health Services (S.I.), he ought to have been considered for a cadre post of Director, Health Services and Family Welfare. The ex-cadre post is temporary in nature. Dr. Aneja being the seniormost person has got every right to be considered for the cadre post. Admittedly, having not done so, the impugned order dated 28th May, 1993 appointing Dr. Bakshi as the Director, Health Services and Family Welfare is contrary to the Rules. The contention of Mr. Mattewal in our considered opinion appears to be contrary to the service jurisprudence.

(21) The written statement filed on behalf of the State of Punjab indicates that the claim of Dr. Aneja as well as Dr. Bakshi was considered while filling up the vacancy of Director, Health Services and Family Welfare, the cadre post. The Government of Punjab

had taken a conscious decision to appoint Dr. Bakshi to the said post and accordingly order dated 28th May, 1993 (Annexure P 11) came to be issued. An employee has certainly got a right to be considered for the promotional post and the claim of each of the contender needs to be considered on merits by the appropriate authority. "No Government employee can have a right or claim to a particular post or posting. If this request of an employee is accepted, it will lead to disastrous results". However, we may add a rider that "if the exercise of power by the appropriate authority is found to be *mala fide* or tainted, the Court may strike down such action". In the case before us as stated earlier, both the Doctors were treated equal on merits. We have also held that Dr. Bakshi was eligible for appointment to the post of Director, Health Services and Family Welfare, the cadre post, and in the absence of any material to indicate that the order dated 28th May, 1993 suffers from any vice, ordinarily the Court would not interfere in the matter of such postings. It is the prerogative of the Government as to who should be appointed on a particular post and Court would be slow to interfere with such discretion exercised by the Government unless it is shown per se perverse, illegal or discriminatory.

(22) Mr. Mattewal then contended that the ex-cadre post of Director, Health Services (S.I.) held by Dr. Aneja is not the equivalent post to the cadre post of Director, Health Services in the P.C.M.S. (Class-I) service. According to Mr. Mattewal in the absence of declaration by the Government declaring both these posts equivalent, Dr. Aneja who is appointed on the ex-cadre post of Director, Health Services (S.I.) cannot be ignored while filling the cadre post of Director, Health Services and Family Welfare. In support of this submission, Mr. Mattewal, relied upon the decision of the Supreme Court in *E. P. Royappa v. State of Tamil Nadu and another* (4). This decision is rendered by the Constitutional Bench of the Supreme Court. Controversy raised in this litigation was related to interpretation of certain fundamental rules and in particular Rule 9. In Rule 9, a declaration of equivalence of post was mandatory and unless such a declaration is made there would be non-compliance of Rule 9. Mr. Mattewal pointedly drew our attention to paragraphs 82, 83, 85 and 89 of the said decision. We have gone through this decision very carefully and find that the same is clearly distinguishable inasmuch as there is no provision like Rule 9 in the Rules. Mr. Mattewal also drew our attention to another decision of the Central Administrative Tribunal in *Gurnam Singh v.*

Union of India and others (5). Mr. Mattewal urged that this decision has been approved by the Supreme Court. It was again a case where declaration of equivalence was required to be made under Rule 9-A. On facts it was found by the Tribunal that the declaration so made was not in accordance with Rules and, thus, the same was quashed. This decision again is not applicable.

(23) Mr. Mattewal, the learned counsel then relied upon the past precedent and practice followed in the medical department. He urged that the Director, Health Services (S.I.) was generally given a posting of Director, Health Services and Family Welfare as and when the post falls vacant. Having regard to the past practice which according to Mr. Mattewal is fair and reasonable, Dr. Aneja should be given posting on the cadre post of Director, Health Services and Family Welfare. There was no reason to deviate from the said healthy practice and permit the Government to pick and choose their favourites. He also urged that there is no reason whatsoever why Punjab Government should deviate from the past practice and deny Dr. Aneja posting of Director, Health Services and Family Welfare on 28th May, 1993. He urged that there is nothing on record to indicate anything adverse against Dr. Aneja. Both Dr. Aneja and Dr. Bakshi were treated equal on merits. If this be so, Dr. Aneja who happened to be senior at all times ought not to have been denied the posting of Director, Health Services and Family Welfare. We must emphasis that there is no doubt that both Dr. Aneja and Dr. Bakshi were equal on merits at all times. It is true that there is nothing adverse against Dr. Aneja and in particular no such event had occurred within two months when Dr. Bakshi came to be appointed on 28th May, 1993. The question, therefore is, should this Court interfere with a discretion exercised by the Government in the matter of posting. With great respect, we are unable to agree with the learned Single Judge when he recorded a finding that order dated 28th May, 1993 is a clever move to by-pass the claim of Dr. Aneja. We are also unable to agree with the learned Single Judge that the order dated 28th May, 1993 is discriminatory and/or violative of articles 14 and 16 of the Constitution of India. When there are two contenders and only one post is available, there can be no solution to satisfy both and this by itself may not lead to a conclusion that order of appointment is discriminatory and violative of Articles 14 and 16 of the Constitution of India.

(24) We must make it clear that the issue as to whether there is one cadre post or otherwise is not considered by us since admittedly Dr. Aneja was promoted and brought into the cadre of Director,—*vide* promotional order dated 29th March, 1993 (Annexure P-10).

(25) We are also unable to agree with the finding of the learned Single Judge that post of Director, Health Services and Family Welfare is higher in status than the post of Director, Health Services (S.I.). The various circumstances relied upon by the learned Single Judge are of little significance. All these circumstances are incidental. These circumstances are not decisive to hold one post higher in status than the other.

(26) In the view which we have taken, both the appeals will have to be allowed and we do allow. Impugned judgment of the learned Single Judge dated December 14, 1993 is quashed and set aside. Consequently Civil Writ Petition No. 6375 of 1993 filed by Dr. Aneja to stand dismissed. In the circumstances, parties are directed to bear their own costs throughout.

S.C.K.