

(2001) 03 DEL CK 0154
Delhi High Court
Case No: L.P.A. No. 240 of 1998

Dr. S. Bal

APPELLANT

Vs

All India Institute of
Medical Sciences and
Another

RESPONDENT

Date of Decision: March 23, 2001

Acts Referred:

- All India Institute of Medical Sciences Rules, 1958 - Rule 6
- Constitution of India, 1950 - Article 226

Hon'ble Judges: Mahmood Ali Khan, J; Dalveer Bhandari, J

Bench: Division Bench

Advocate: Geeta Luthra, for the Appellant; Mukul Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Mahmood Ali Khan, J.

Challenge in this L.P.A. is to an order of the learned Single Judge dated 22.5.1998 by which Civil Writ Petition No. 1217/98 was dismissed. The Civil Writ Petition was filed by the appellant and the respondent No. 3 herein jointly for grant of relief;

(a) Issue an appropriate writ or direction quashing the interviews to be held on 16, 17, 18 March 1998 and setting aside any appointment made pursuant to the said interviews.

(b) to restrain respondent from taking any action or making any appointments at Points II & III before the guidelines and rules in this regard as settled.

2. The All India Institute of Medical Sciences (the Institute for short) advertised in April, 1997 and in July, 1997 for recruitment of 10 persons for manning faculty posts at level II & III, i.e. the post of Associate Professors and Additional Professors besides recruitment of 19 Professors at level IV. By interim orders dated 29.5.1998

and 13.11.1998 persons selected after interviews were allowed to be appointed by the Institute to level II and III posts subject to the result of this appeal.

3. The appellant has challenged these appointments. Before advertizing to the relevant facts of the case, it is necessary to know about the Institute and the rules and regulations which are applicable to the filling of posts at level I to IV. The Institute was established under an Act of the Parliament known as All India Institute of Medical Sciences Act, 1956 (hereinafter to be called The Act). Section 5 of the Act declared the Institute as an institution of national importance. Section 13 sets out the aims and objects which the Institute will attain. The Institute was conceived as a premier institution of the country and was constituted with the object of developing patterns of teaching in undergraduate and post graduate medical education in all its branches so as to demonstrate a high standard of medical education to all the medical colleges and other allied institutions in India and to bring together in one place educational facilities of the highest order for training of the personnel in all important branches of health activity and to attain self-sufficiency in post graduate medical education and also excellency in research. The Institute in the years gone by has earned international recognition and is considered one of the best in the country.

4. Section 4 of the Act sets out the composition of the Institute. The Institute consisted of the following members :-

(a) The Vice-Chancellor of the Delhi University, ex-officio;

(b) The Director-General of Health Services, Government of India, ex-officio;

(c) The Director of the Institute, ex-officio;

(d) Two representatives of the Central Government, to be nominated by the Government, one from the Ministry of Finance and one from the Ministry of Education;

(e) Five persons of whom one shall be a non-medical scientist, representing the Indian Science Congress Association, to be nominated by the Central Government;

(f) Four representatives of the medical faculties of Indian Universities to be nominated by the Central Government in the manner prescribed by rules; and

(g) Three members of Parliament of whom two shall be elected from among themselves by the members of the House of the People and one from among themselves by the members of the Councils of States.

5. Section 6 provides for the term of office of and vacancies among members of the Institute. The President of the Institute is to be nominated by the Central Government from among the members of the Institute other than the Director in accordance with Section 7. The President is to exercise such powers and discharge such functions as are laid down in the Act or as may be prescribed by rules and

regulations. The Governing Body and other Committees of the Institute are constituted in accordance with Section 10. The Governing Body is constituted by the Institute from among its members in such a manner as may be prescribed by regulations. The Governing Body is envisaged to be the Executive Committee of the Institute to exercise such powers and discharge such functions as the Institute may, by regulations confer or impose upon it. The President of the Institute shall be the Chairman of the Governing Body and shall exercise such powers and discharge such functions as may be prescribed by regulations. The Director of the Institute is the Chief Executive Officer and he is empowered to exercise such powers and discharge such functions as may be prescribed by the regulations or 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. Section 14(i) empower the Institute to appoint persons to Professorship, Readership, Lectureship and the posts of any description in accordance with regulations. The Central Government, u/s 28, after consultation with the Institute by notification in the Official Gazette will make rules to carry out the purposes of the Act. The Institute also, u/s 29, with the previous approval of the Central Government, by a notification published in the Official Gazette, is empowered to make regulations consistent with the Act and the rules made there under to carry out the purposes of the Act.

6. In exercise of the powers conferred by Section 28 of the Act, the Central Government framed rules as All India Institute of Medical Sciences Rules, 1958 (the Rules in short). Inter alia, the Rules provided for constitution of a Standing Finance Committee for taking care of the annual accounts, the budget estimates, creation of new posts, all financial matters pertaining to the Institute etc. The Standing Finance Committee constituted by the Institute is to include members representing the Ministry of Finance. Rule 7 lays down that the Institute may create posts subject to the specific provision in the budget, on scales of pay applicable to similar post under the Government or on scales of pay approved by the Government, classify them into grades and specify their designations.

7. The Institute in exercise of the powers conferred by Section 29 of the Act also made the regulations called All-India Institute of Medical Sciences Regulations, 1958 (hereinafter the Regulations). Regulation 4 provided for holding of the meeting of the Institute and recording of the Minutes of the meetings. Regulation 5 related to the constitution of the Governing Body. The Governing Body is to consist of the 11 members namely :-

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| (a) President of the Institute | -- | Chairman. |
| (b) Director General of Health Services | -- | Ex-Officio Member |
| (c) Representative of the Ministry of Finance | -- | Member |

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| (d) | Director, All-India Institute of Medical Sciences | -- |
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(c) One member elected by the members of the Institute from amongst the three members of the Parliament elected to the Institute.

(f) Six members to be elected by the members of the Institute from amongst themselves.

8. Powers and functions of the Governing Body are laid down in Regulation 6. The Governing Body shall exercise such powers and discharge such functions as are laid down in the regulations and in Schedule I. Regulation 12 provided for constitution of other Standing Committees, apart from the Standing Finance Committee of which Academic Committee may be one of such other Committees. The Academic Committee, as per the Regulation 12(2) is an Standing Committee constituted for the purpose of considering the matters specified in Clauses (a) to (m) of Section 14 of the Act. Section 14 of the Act has provided for the functions of Institute which relate to the academic, clinical and research activities etc. mentioned herein-before. As per Regulation 24, the qualification for appointment to the post under the Institute are to be prescribed by the appointing authority keeping in view the qualifications and experience prescribed by the Central Government for similar post. The Director shall in filling vacancies in posts and service, either by direct recruitment or by promotion under the Institute make such reservation in favor of the Scheduled Castes and Scheduled Tribes etc. as it is made by the Central Government from time to time in filling vacancies and posts in services under the Central Government. Other Regulations provided for the allowances of the Chairman and Members of the Governing Body and Standing Committee etc., the powers and the duties of the Director, Sub-Committees and Ad hoc Committees all of which shall be Advisory Committees, the tuition fee etc., prescribed for registration for under graduate and post-graduate courses of study at the Institute, the probation, seniority, leave, pension, superannuation of the employees, disciplinary proceedings against the employees etc. etc. which need not be gone into in detail being not relevant.

9. In pursuance to the provisions of the Act, the Rules, and the Regulations the Institute has constituted, Institute Body, a Governing Body, a Finance Committee and an Academic Committee, among others, for carrying out the purpose of the Act, Rules and the Regulations.

10. The dispute in this appeal relates to the filling of faculty posts in the Institute. At present there are four levels of faculty positions :-

- Level I -- Assistant Professor;
- Level II -- Associate Professor;
- Level III -- Additional Professor;
- Level IV -- Professor.

11. The designation of Level I post of Assistant Professor, prior to 1.1.1986 when the recommendations of the Fourth Pay Commission were given effect to, was Lecturer. The post of Lecturer was upgraded to the post of Assistant Professor, the post of Associate Professor was in turn upgraded to the post of Additional Professor.

12. As noted above, appointment to a faculty post under the Institute, which included level-I to level-IV post mentioned above was either by direct recruitment or by promotion. It is an admitted case of the parties that appointment at level-I and IV had always been through the mode of direct recruitment whereas after the formulation of Assessment Promotion Scheme (APS) w.e.f. 01.07.1983 the appointment at level II & III i.e. intermediary level, was ordinarily under the APS on the principles of merit-cum-seniority subject to completion of 4 years of service by the candidate but appointment by direct recruitment at level II & III were also made at times in accordance with the policies approved by the Institute from time to time.

13. Before embarking upon the adjudication of the questions in controversy, it is necessary to recapitulate the relevant facts as emerged from the pleadings of the parties. When the Institute Body had its meeting on 9.1.1979 & 17.3.1979, it constituted an ad hoc Committee under the Chairmanship of Dr. M.L. Dhar for (i) going into the question of rationalisation of pay structure and career prospects in respect of the faculty members and other staff; (ii) to reduce the number of categories of post; and (iii) to revise the recruitment rules.

14. The recommendations of the above said Sub-Committee were approved by the Finance Committee of the Institute on 8th November, 1981 so far as they related to the rationalisation of pay structure and career prospects of faculty members of the Institute.

15. Governing Body and the Institute Body too accepted these recommendations. Since the APS of faculty members of the Institute involved financial implications, the case was referred to the Government of India which also put its seal of approval on the recommendations on 28.05.1983. The Institute Body by order dated 29.7.1983 resolved to approve the implementation of the Assessment Promotion Scheme in the matter of promotion from level I to level II and from level II to level III w.e.f. 1.7.1983. The Institute Body at the same time also decided that the faculty posts would be created at level I and level IV i.e. Lecturers and the Professors but in exceptional cases post at the level of Assistant Professors and Associate Professors may also be created. It is pertinent to mention here that before 1.1.1986 the post for initial recruitment in the faculty was the post of Lecturer which was upgraded and was converted into the post of Assistant Professors at level I. The APS as approved by the Institute Body and the Government of India continued to be operative till 1.7.1988. The post of Associate Professors were filled in at that level by direct recruitment while level of Lecturers.

16. On 8.3.1990 the Governing Body of the Institute while considering the promotional avenues and the amendment of the recruitment rules in respect of the faculty posts regarding filling the vacancies at level II and Level III decided that if a post fell vacant at any level due to any reason, it would be filled at the same level at which it was originally sanctioned. Accordingly, advertisement for direct recruitment/lateral entry of 32 faculty posts of Associate Professors and Additional Professors were issued by the Institute. In the meantime Governing Body as well as the Institute Body in their meetings held on 24.11.1991 considered some alteration in the Assessment Promotion Scheme. Interviews of the candidates for direct recruitment on 32 faculty posts, which were advertised, and also for promotion of the Assistant Professors for promotion to level II & III posts under APS were held in the beginning of 1992. The Governing Body considered the recommendation of the Select Committee in its meeting held on 25.4.1992 and decided that the 32 posts advertised be offered to the selected candidates at the level of Assistant Professors. It further decided that faculty posts at (sic) compelling functional requirement those posts may be operated at level II and III as well with the prior approval of the Governing Body. On protests against the decision of the Governing Body that the candidates who were selected to the post of Associate Professor and Additional Professor be offered the post of Assistant Professor, from candidates, faculty members and the members of the Governing Body, the Governing Body reconsidered its decision on 9.6.1992 and decided that 32 posts be offered to the selected candidates at level II & III but whenever a faculty post at level II & III became available, it should be operated at level I i.e. at the level of Assistant Professors. Another important decision taken by the Governing Body was that if there was some critical gap and need to fill the faculty post at the same level at which it was created, the Director will recommend to the Governing Body for selection of candidates at the level of II & III by direct recruitment.

17. The Governing Body on 19.8.1996 approved the filling of the post of Additional Professor of Urology at the same level. An advertisement was issued in April 1997 for direct recruitment of this faculty post along with 15 posts of Professors in different disciplines and faculties of the Institute. The post of Assistant Professor of Nuclear Medicines was upgraded to the post of Associate Professor of Nuclear Medicines by the Governing Body in April, 1997. It also decided to convert the post of Additional Medicines Superintendent to that of Additional Professor of Hospital Administration. In a significant decision the Governing Body authorised its Director to take decision with regard to the lateral entry at level II & III in faculty post within the sanctioned strength.

18. Accordingly, the Head of the Departments of Neurology, Neuro Radiology, Neuro Surgery Medicine and Surgery submitted detailed justifications for filling up the faculty posts in their discipline at level II & III. The Director of the Institute agreed with the proposal and decided direct recruitment on four faculty posts of Associate Professors at level II and three faculty posts of Additional Professors at

level III. All these posts along with some other faculty posts were advertised for lateral entry in June 1997. The petitioners in writ petition along with some others submitted representation and protested against direct recruitment against the faculty posts at level II & III and pressed for filling the posts at level II & III by operation of APS. The Institute Body on 18.09.1997 considered the representation and constituted a Committee for framing guidelines for lateral entry of the faculty members at level II & III. As a result, the interview for selecting candidates for direct recruitment for the advertised posts was postponed. The Committee headed by Mr. P.N. Srivastava submitted its report on 19.12.1997. The Institute Body and the Governing Body after considering this report decided that the question of lateral entry at level II & III on 10 faculty posts may be first considered by the Academic Committee. The Academic Committee on 23.01.1998 recommended for direct recruitment to the post of Additional Professor of Urology, Additional Professor of Neuro Surgery, Additional Professor of Hospital Administration and Associate Professor of Clinical Neuro Physiology but it also recommended creation of one post of Assistant Professor of Nuclear Medicines and one post of Assistant Professor in Neuro Radiology. Remaining two posts of Additional Professor of Surgery and Associate Professor of Medicines were not recommended for direct entry. A meeting of the Governing Body and the Institute Body were held on 14.01.1998 & 23.01.1998 but failed to take a decision. Ultimately, in the meeting dated 27.02.1998 the two Bodies, Governing Body and the Institute Body, approved the filling of seven faculty posts of Associate Professors and Additional Professors at level II & III. Subsequently thereto, interviews were held in third week of March 1998. The appellant and respondent No. 3 were also interviewed but were not selected. Before the interviews were held, the petitioner and respondent No. 3 filed the civil writ petition on 11.03.1998. This court allowed the appointment of the selected candidates subject to the result of this appeal by order dated 29.5.1998 and 13.11.1998.

19. The learned Single Judge while delivering the judgment impugned in this appeal repelled the contention of the petitioner that the Governing Body and the Institute Body were not competent to decide about the lateral entry of the faculty members at level II & III by direct recruitment or that it was not a case where direct recruitment of the faculty members at intermediary level was not needed for functional requirement of the Institute or on account of critical gap at different level. He also dismissed the plea of the petitioner as untenable that the Academic Committee was not consulted or/and the Finance Committee were not consulted or that such financial implications were involved in upgrading the post at the intermediary level that amounted to creation of a new post or simply because it involved extra expenditure of Rs. 14,500/-. The view of the learned Single Judge was that the court is not permitted to sit in appeal over the decision taken by the Institute Body and that it could examine the decision of the Institute to fill post at level II & III by direct recruitment only if the decision is malafide or not rationale.

Learned Single Judge did not find any illegality or infirmity in the decision making process of the Institute regarding recruitment on 7 intermediary level posts. Institute had taken conscious decision and was the best judge of the operational necessity and functional requirement of the Institute. The court lacks expertise and knowledge on such matters, Therefore, hardly had any justification to interfere with these decisions by minute scrutiny. He also held that the rights of the petitioner was not violated as none of the posts, which were proposed to be filled by direct recruitment, were earmarked exclusively for promotion of the faculty members under Assessment Promotion Scheme. Finding no merit in the submission of the petitioner, the learned Single Judge had dismissed the writ petition.

20. The contention of the appellant is that he Along with respondents No. 3 had filed the writ petition on 11.3.1998 alleging that respondent No. 1 and 2 (the Institute and the Governing Body of the Institute) were intending to appoint hand-picked persons who were already in position and working in the Institute and were otherwise ineligible for promotion under the APS to the posts at level II & III. The appellant had also given the names of the persons for whose benefit the exercise of direct recruitment was being done. It was alleged that the post of Additional Professor in the Department of Urology had been advertised for flyover promotion of Dr. A.K. Hemel, Associate Professor, to the post of Additional Professor; the post of Associate Professor in the Department of Nuclear Medicines was advertised to give out of turn promotion to Dr. C.S. Bal, who was working as an ad hoc Assistant Professor in the Department of Nuclear Medicines; the post of Associate Professor in the Department of Neurology was being advertised for the appointment of Dr. M.B. Padma, who was an ad hoc Assistant Professor; the post of Assistant Professor in Neuro Surgery had been advertised for flyover promotion of Dr. V.P. Singh, who was already working as an Assistant Professor in the department; the post of Associate Professor in Neuro Physiology was advertised for appointment of Dr. M. Bhatia, Assistant Professor of the department; and the post of Associate Professor in Neuro Radio Diagnosis was advertised to accommodate Dr. S.B. Gaekwad, Assistant Professor working in the Institute. All these persons were ineligible, having not been completed stipulated years of service in the grade. These submissions were made even before the interviews were held and the selections were made. The prediction of appellant had come true and all these persons have got through the interviews and selected for the coveted higher post at level II & III out of turn illegally. It was also contended on behalf of the appellant that in [S.M. Bose Vs. All India Institute of Medical Sciences and Others](#), a Division Bench of this Court had aptly observed that a faculty member can serve the Institute equally well from the lower posts there being no functional differences in the duties and responsibility of the various faculty basis from level I to IV. The lateral entry for the in-position faculty members, Therefore, is an attempt to give out of turn and flyover promotions to the chosen few. It was also submitted by the appellant that lateral entry may be permissible where the Academic Committee after scrutinising the justification for it

recommended it. The Governing Body and the Institute Body could not take a decision at their own level without getting the justification for direct recruitment of each case closely examined and scrutinised by the Academic Committee.

21. It was urged by the appellant that there was no functional requirement nor was any critical gap at any of the posts which was sought to be filled by lateral entry. The decision as well as the decision making process of the Governing Body and the Institute Body was vitiated. Even in the case of the post of Additional Professor of Urology, the Director of the Institute had stated that there was no critical gap or functional requirement for lateral entry at that level and it was recommended that instead of an Additional Professor the requirement was of having an Assistant Professor Urology. The Governing Body while deciding about the direct recruitment against this post on 19.08.1998 has not given any reason. The post in Urology Department otherwise could not have been filled at the level of Additional Professor as the post was intended to be filled as APS post at Level I since in accordance with APS rules after Dr. N.P. Gupta was selected as Professor in Urology, the post vacated by him had to be filled at the lowest level, Level I as a new post. That post was not available since 1980 as it was abolished by the Governing Body and in lieu thereof the post of Assistant Professor was created which had been advertised. As such, one post cannot exist on two levels. Therefore, post of Additional Professor could not be filled by lateral entry.

22. Further contentions of the appellant are that Rule 6 provides for the Standing Finance Committee for deciding all financial matters pertaining to the Institute. The Finance Committee was an independent Body and simply because some of the members of the Institute Body and Governing Body were on it, it cannot be stated that the decision of the Institute Body or Governing Body dispensed with consideration of financial matters by the Finance Committee simply because the financial implication of filling up of the post at level III was only Rs. 14,500. All the posts had to be filled at the Level I i.e. at the level of Assistant Professor in terms of decision of the Governing Body dated 1.7.1989 and the post once filled at Level I could not be reflected to either Level II or III at the whims and fancy of the Institute. The table submitted by the petitioner for giving the position of vacancies at different levels is erroneous.

23. It was further argued that separate minutes of the deliberations of the meeting dated 14.1.1998 & 23.1.1998 were not recorded which shows the malafide intention of the Institute. Different persons were present in the two meetings and some decisions were also taken in those meetings. The respondent's denial that any decision was taken is false and is indicative of malafide. The post of Assistant Professor of Nuclear Medicines was upgraded to that of Associate Professor without following the mandatory procedure and the clearance of the Standing Finance Committee. The action of the respondent Institute was arbitrary and is violative of Article 14 of the Constitution of India. The petitioner's rights were affected as by

short-circuiting the process their peers in different fields will rank above them in overall seniority at AIIMS and will prejudice their career prospect. The appellant as such has right to challenge the decision of the respondent Institute.

24. Lastly, it was submitted that despite the moratorium by the Election Commission wide ranging decisions were made in spite of the announcement of the general elections and the impending dissolution of the Lok Sabha. Being a caretaker Government it was not permitted to take a major policy decision but wide range policy decisions were taken by the Institute with Minister of State for Health of the Union Government as its head.

25. The contentions of the respondent Institute, conversely, are that the process of direct selection to the limited number of posts of Associate Professors and Additional Professors at level II and level III in no way affected the promotional prospects of the petitioner or any other faculty member under the Assessment Promotion Scheme. All the posts which are now being filled by direct recruitment were created long back and were required to be operated at the level II and III. On 29.7.1983 the Institute Body had taken conscious decision for creation of certain posts at Level II & Level III keeping in view the functional requirement of the department. These posts are now being operated on those very posts at their level. The APS came into effect from 1.7.1983. Assistant Professors working at Level I with four years experience were considered for promotion to the post of Associate Professor at Level II by seniority-cum-selection process. Under the APS which is in operation since 1989/1992 100%, Assistant Professors were eligible for promotion to Level II under this scheme. Similar promotional avenues were available under this scheme to the Associate Professors working at Level II to the level III post of Additional Professor with the stipulation that the number of officers so promoted would be restricted to 75% of the officers. This promotion was also available on completion of four years service subject to the seniority and the merit of the candidate. As a result of promotion under APS, there is no resultant vacancy. The only difference which is brought about is that the incumbent who was available at Level I or II was functional at Level II & III, as the case may be. For instance, if the original sanctioned strength of the posts of Assistant Professor was 3 and 2 of them got promotion under the APS to the post of Associate Professor, the change will not be the total number of posts in the faculty but the change would be level wise and consequently, the number of posts of Assistant Professors would come down by 2 leaving 1 Assistant Professor at Level I and the number of Associate Professor will go up by 2. the general rule underlying the APS scheme is digressed in exceptional circumstances in accordance with the decision of the Competent Body, Governing Body, Institute Body or other authorities working under their directions or the Director having the authority from the Governing Body to take the decision in this behalf if there was functional requirement and critical gap at intermediary Level II or III. In the event there was need to provide for development of newer areas or specialties/super specialties etc., it is necessary to make appointments at the level

of Assistant Professor or Additional Professor, as the case may be, at Level II and III. The appellant has not questioned the right of the respondent Institute to make appointment by direct selection for consideration of patient care and larger public interest. The Institute Body, the Governing Body and all other Authorities concerned with the appointment have always taken into account the functional requirement or the critical gap for recruitment of faculty members at Level II and III in order to ensure that the Institute discharges the functions which have been assigned to it under the Act. Even on 8.3.1990 the Governing Body in continuation of the earlier decisions and guidelines laid down on 29.7.1983 decided to fill the vacant posts which were originally sanctioned or created at the same level, level II or Level III, at which it was created. During 1989 and 1990 it went ahead to fill 32 posts at level II and Level III by lateral entry and advertised for selection of candidates. The Governing Body initially decided that the selected candidates may be offered post at Level I but later on, in view of the representations received from, members of the Institute Body, Members of Parliament and other faculty members decided to give appointment to the selected candidates at the level at which their names were recommended by the Select Committee for appointment. On 9.6.1992 the Governing Body again reviewed its decision dated 25.4.1992 and directed that the direct selection in future would be at the level of Assistant Professor and Professor and the post at the intermediary Level II & III shall be filled through APS. It further decided that in case the Director was of the view that in a particular department there would be a critical gap at the intermediary level, it should refer the matter to the Academic Committee which after due consideration should recommend the same to the Governing Body for consideration. In such exceptional cases the Governing Body could permit direct selection at intermediary level. It was also decided by the Governing Body in the meeting that the seniority of selected candidates who are being offered post at intermediary level having been selected for those posts will be fixed below the faculty members who get their promotion under APS. The direct recruits challenged the decision in Dr. S.K. Sharma and Ors. v. UOI and Ors., CWP 2004 of 1992 and a Division Bench of this Court by an interim order dated 12.4.1993 directed the respondent Institute not to treat the direct recruits as junior to the persons promoted under APS. The writ petition is still pending. The faculty members who got promotion under APS also filled a writ petition being Dr. U. Singh v. UOI and Ors., CWP No. 3150 of 1992 which is also pending. In July and August, 1993 the Governing Body made appointment at Level I and Level IV in a number of disciplines. In accordance with the decision of the Governing Body reservation for Scheduled Castes and Scheduled Tribes were to be made at the entry level i.e. Level I. The Faculty Association of the Institute challenged this reservation by filing a writ petition being Faculty Association of AIIMS v. UOI and Ors., CWP No. 4223 of 1994 and this Court directed the respondent not to give effect to the reservation. The writ petition is still pending. Thereafter no appointment by way of regular selection could be made at the entry Level I, at the post of Assistant Professor till now. This has created critical gap in a number of

disciplines including super specialities. Even if direct selections are to be made in near future at Level I, the appointment by way of APS from level I to Level II and from Level II to Level III would require another four years and more to make them eligible for consideration for promotion under APS. It was for this reason that the Governing Body took a conscious decision in April, 1997 keeping in view all the critical gaps in various disciplines and super specialities that certain posts at Level II and level III along with the post at Level IV i.e. the post of Professors were advertised for direct recruitment. 3 posts were approved by the Governing Body on 19.8.1996 and 4.4.1997 for advertisement. Those were the post of Additional Professors Urology, Additional Professor Hospital Administration and Associate Professor Nuclear Medicines. It also authorised the Director to take decision relating to the lateral entries at level II and Level III against the core/ sanctioned strength of the department. After getting detailed justification and taking note of critical gap, 7 more posts were identified and were advertised in June, 1997 with the approval of the Director. They were also approved by the Academic Body, Finance Committee Governing Body and the Institute Body. The post of Associate Professor Nuclear Medicines was upgraded from that of Assistant Professor on 4.4.1997 by the Governing Body. The protests and representations were made by some faculty members against direct recruitment which were considered by the Director and the exercise was put in abeyance. Thereafter the matter was reconsidered in detail with the head of the departments and faculty members and ultimately the Institute Body decided to constitute a Committee for framing guidelines for filling up posts at Level II and Level III by direct recruitment. Professor P.N. Srivastava who headed this Committee submitted his recommendations. The interviews for direct selection of Professors at Level IV for promotion under APS and for filling 3 posts at intermediary level by lateral entry, which was approved by the Governing Body, were postponed. The report of the Dr. Srivastava Committee was on the lines similar to the position of the Governing Body taken on 8.3.1990 that when post fell vacant at any level due to any reason, it would be filled at the level at which it was originally sanctioned and created. The Governing Body and Institute Body considered these recommendations in meetings on 14.1.1998 and 23.1.1998 but the decision was postponed and in the meantime it was directed that the Academic Committee shall consider the filling of 10 posts at intermediary level by lateral entry. The Academic Committee then met on 23.1.1998 and on the same date its recommendations were placed before the Governing Body and the Institute Body. These Bodies in their meeting on 27.2.1998 decided to fill 7 posts out of 10 posts by way of lateral entry. The Institute Body in the same meeting also decided for review of the APS. The direct recruitment to the post of level II and III, thus, was strictly in conformity with the guidelines laid down by the Governing Body and the Institute Body and also in the best interest of the patient care and the health services. Global advertisements were issued for selection of the best talent for manning the Institute. These appointments were to be made against already existing sanctioned post and in no way marred the chance of promotions of the faculty members under APS. The

selections were not being made to give promotions to hand-picked few faculty members. There was no malafide intention. The selections were made by a duly appointed Selection Committee out of the candidates who submitted applications some of whom were the existed faculty members and their appointment have been made strictly in conformity with the rules and regulations and also under the conscious decision by the Governing Body and the Institute Body. No policy decision has been taken after the general elections were announced. All these decisions were being taken by Governing Bodies and the Institute Bodies from time to time in the best interest of the Institute when different political parties were in power in the Centre. There is no infirmity and malafide in the direct recruitment and selection for lateral entry at level II and III. The petition, Therefore, should be dismissed.

26. At the outset Ms. Geeta Luthra, the learned Counsel appearing for the appellant has candidly stated that this writ petition is not a public interest petition.

27. The first question for consideration is whether the writ petition was not maintainable and the petitioner had no locus standi to file it. The arguments of the learned Counsel for the Institute are two-fold. Firstly, the appellant was a faculty member and he was eligible for consideration for promotion to the higher post at Level II & III in accordance with APS and direct recruitment to the post at Level II & III will not mar his chances of promotion as would be clear from the operation of the APS. He submitted that non availability of a post at a higher level No. II & III does not deprive a faculty member from his promotion to the higher level post since the faculty member promoted shall carry his lower post with him to the higher level. The only stipulation would be that he was otherwise eligible to be considered for promotion and was selected in accordance with the criteria of length of service and merit being fulfilled and the number of posts not going more than the number of sanctioned posts in a faculty. It was, Therefore, stated that the appellant cannot be said to be a person aggrieved and his rights are not affected by lateral entry at intermediary Level II & III. Accordingly, he has no locus standi to challenge the direct recruitment against the 7 posts which was processed by the Institute in the case.

28. The second contention is that the recruitment against 7 faculty posts were processed to be filled by issue of a global advertisement and all those persons who fulfilled eligibility criteria including the members of the faculty of the Institute in position, could apply for selection. The appellant, amongst others, had applied for his direct selection for the post at level III and he was also interviewed but failed to get through. The learned Counsel argued that once the appellant participated in the selection process, he could not be allowed to raise objection to the direct selection process. Therefore, this appeal is not maintainable.

29. Repudiating the arguments of the learned Counsel appearing for the respondent the learned Counsel for the appellant has submitted that the appellant and respondent No. 3 had filed the writ petition jointly as members of the faculty of the Institute. The appellant was a liaison officer for the Scheduled Caste and

Scheduled Tribe faculty members in the Institute and was vitally interested in the issues which have been raised in the writ petition. It was also urged that the Faculty Association of the Institute has already moved an application in this appeal seeking permission to intervene in the matter on the ground that the Faculty Association, known as FAIMS, was a registered Body of the faculty members with its object of promoting welfare and efficient functioning of the faculty etc. The rights of the appellant and other faculty members are affected by direct recruitment because their peers in different field would rank above them in over all seniority causing prejudice to their rights. They were also vitally interested in the Institute developing into renowned institution of medical education and research not only in the country but the world over. Further they oppose the lateral entry to the intermediary level post in order to ensure highest standard of professional activity and to stop nepotism and favoritism in the selection of a few chosen persons. It was submitted that FAIMS had already made several representations to the Institute Body against its decision to give flyover promotions to some favorite persons by lateral entry and urged the Institute Body to fill the post under APS. It is submitted that for this reason also the appellant being office bearer of the FAIMS can maintain the writ petition.

30. The learned Counsel has further argued that the participation of the appellant in the selection process by appearing at the interview for the post of Additional Professor does not debar him from challenging the decision of the Institute to fill posts by direct recruitment instead of filling them by promotion under APS.

31. For invoking jurisdiction of this court under Article 226 of the Constitution the appellant has to establish that some legal right of him or a group of faculty members is being infringed by the Institute by filling post of Associate Professor and Additional Professor at intermediary level by the method of direct recruitment. The rights of the appellant and other members of the faculty cannot be infringed unless it is proved that they had right to be promoted or considered for promotion to the posts which are intended to be filled by direct recruitment and the law has cast a duty upon the Institute to fill those post under APS. Since the question will require consideration of Assessment Promotion Scheme and the manner in which it operates, Therefore, the locus of the appellant and other members of the faculty who have submitted the intervenor application shall be taken up for adjudication at an appropriate stage later. Suffice to mention here that the appellant has not challenged the process of selection in which he had participated. He has, on the other hand, questioned the right of the Institute to go for lateral entry at Level II and Level III. Neither the decision of the Selection Committee nor is the selection process under challenge in (his appeal. Participation of the appellant in the interview and the selection process, Therefore, will not debar him from challenging the decision of the Institute impugned in the appeal.

32. During the last over 40 years the prestigious AIIMS has carved out a niche for itself as a premier Institution in the areas of medical education, training of doctors, super specialist, medical research and patient care. Dispute is raised by a faculty member and association of faculties for appointment on certain faculty posts by direct recruitment, which in normal course could be filled by promotion of persons from lower level.

33. A cursory look at the various provisions of the Act, Rules and Regulations is enough to know that the Institute Body is supreme. The power and functions of the Institute Body have been elaborately enumerated in Section 14 of the Act. The Institute Body has full control on the administration and management of the Institute. Section 14(i) read with Rule 7 gives ample power to the Institute to create posts and make appointment on them. The only embargo on this power put by this Rule is that the posts shall be created similar to the posts under the Government and on the scales of pay approved by the Government and further that post above the post of Additional Professor could be created by the Institute only with the prior approval of the Government. The Institute, as such, has full power to make appointment on a duly created and sanctioned post. These posts can be filled by the Institute by direct recruitment or by promotion. It is admitted case of the parties that the posts at level I i.e. Assistant Professor and the post at level IV i.e. Professor have always been filled by the Institute by the method of direct recruitment. It is not the case of the appellant that the Institute had no power at all to make direct recruitment to the post of Associate Professor and Additional Professor. His submission is that after the formulation of APS and its implementation the Governing Body and the Institute Body by various decisions taken from time to time have decided to resort to direct recruitment mode for filling post at level II and level III only in exceptional circumstances, where there was functional requirement, in super specialities discipline and where there was critical gap at different level. It is argued by the appellant that none to tense contingencies, which permitted direct recruitment on posts at level II and III, existed in this case.

34. Before entering deeper into the arena of controversies raised in this appeal, it is also necessary to consider the APS and to understand as to how it operates. It has already been noticed that the Sub-Committee headed by Dr. M.L. Dhar had recommended Assessment Promotion Scheme for improving the career prospects of the faculty members of the Institute in 1981. The Governing Body and the Institute Body in their meetings held on 10.11.1981 and 17.02.1982 approved it. The APS was made functional w.e.f. 1.7.1983. In regard to the promotion to the post of Assistant Professors and Associate Professors, the Institute Body decided that the Lecturers who had put in five years service on 1.7.1983 be assessed for promotion to the next higher grade subject to the provision that not more than 75% of those who are eligible, shall be promoted to the post of Assistant Professors in any single year and further that at no point of time the cadre strength of the Lecturer would be allowed to be below 25% of the combined strength of Lecturers, Assistant

Professors and Associate Professors. Regarding Assistant Professors, it was decided that on completion of four years in the grade, they will also be assessed for promotion as Associate Professors provided that not more than 50% of the total number of eligible candidates in the grade of Assistant Professors shall be placed in the grade of Associate Professor in a single year. These promotions were to be made on merit-cum-seniority basis. The faculty members were to get two chances for selection at each level I and II for promotion to next higher post. The Governing Body in its meeting held on 8.3.1990 after considering the question of promotional avenues and the amendment in the recruitment rules in respect of the faculties in the Institute took the following decisions :

"Before considering the item, the Governing Body heard the representative of FAIMS. They started that there should be promotion from Level-3 to Level-4 and Level-4 to Level-5; and that the number of chances at each level for promotion should not be restricted to two and that if a candidate got left out on once occasion due to the ceiling restriction, that turn should not be counted as chance availed. They were also of the view that the total number of opportunities for assessment promotion being restricted to two levels should be removed. The date of implementing the new scheme, they considered should be 1st July, 1989 and promotions should be given from the date they completed 4 or 5 years as per eligibility criteria. All those however, would be subject of merit assessment.

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The Governing Body discussed at length this item and considered points expressed by FAIMS representatives. Keeping in view the facts that some faculty would tend to stagnate at all level, specially at Level 3, though not by design, it was necessary that something be done for those who stagnate at level 1-3. It was also felt that one had to keep in mind the necessity of maintaining excellence and provide opportunities of an All India Competition for the highest level in a national institute such as AIIMS. On the other hand the Senior Faculty should not feel discouraged due to non-availability of posts at higher levels. Keeping all the above in view, the following decisions were taken.

1. A faculty member could avail of a total of three chances at each level in Assessment Promotion Scheme. The time interval between the 1st and 2nd chance would be two years and between the 2nd and 3rd chance three years. The separation by these number of years has been advised to provide opportunity for improvement and fresh assessment of the candidate. It was also decided that in case a candidate is found fit but not given promotion due to ceiling then it should not be considered as a chance availed and he/she be promoted after a year subject to nothing adverse having come up within the year.
2. When a post falls vacant at any level due to any reason, it will be filled in at level at which it was originally sanctioned/created.

3. Experience at pre-designated posts will be taken into consideration for assessment promotion. However, no faculty member will be entitled to double promotion. For assessment promotion, experience at the position held is to be counted and not the total experience.

4. New posts will generally be created at the level of Assistant Professor and Professor.

5. The method of filling up the post of Professor would continue to be by direct open advertisement. This process is vacancy based and would continue to be so.

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9. The operative date of this scheme will be 1 st July every year. However, it was also decided that as per Governing Body's recommendation, the date of implementation of the new assessment promotion scheme would be 1 st July, 1989. It was also noted that till the new scheme is implemented with Government approval, the old scheme would apply".

35 The Governing Body again took a decision on APS and its implementation in its meeting held on 25.04.1992 which may be reproduced as below :-

"The decisions of the two Committees relating to the extension of the Scheme of Assessment Promotion from Level III to Level IV, namely, from Additional Professor to Professor was not acceptable. It was noted that the Governing Body has already decided that the Assessment Promotion Scheme would be 100% from the level of Assistant Professor to Associate Professor and 75% from Associate Professor to Additional Professor and that the posts at the level of Assistant Professor and Professor should be filled up on the basis of open selection. Further, the proposal of the Academic Committee relating to the creation of 30% posts of Senior Professors was not approved.

5(i)

5(ii) The recommendations relating to post of Additional Professors and Associate Professors are not accepted. This is in view of the fact that an Assessment Promotion Scheme exists for promotion of Assistant Professors to these levels. Therefore, the posts of Associate Professor and Additional Professor may be operated at the level of Assistant Professors. However, in exceptional cases, these posts may be operated at the higher levels of Associate Professors/Additional Professor, if there are compelling functional requirements. However, such a course of action can be taken only with the prior approval of the Governing Body".

36. The Governing Body in another meeting held on 9.6.1992 while taking note of the action taken on its previous decision relating to the APS resolved as under :-

"Assessment promotions of the faculty members from the levels of Assistant Professor to Associate Professors and Associate Professor to Additional Professor would henceforth be done by an ad hoc Assessment Promotion Committee and not by the Standing Selection Committee, as assessment promotion is quite distinct from open selection. However, the old cases of assessment promotion which have been referred back by the Governing Body for reconsideration should be remitted to the Standing Selection Committee, as it was the Standing Selection Committee which had earlier taken a view in the matter and made its recommendations. Further, the Governing Body authorized the President to constitute an ad-hoc Committee for assessment promotion Committee."

37. On the representations received against the decision of the Governing Body in the meeting held on 25.04.1992, the Body decided :

".....

While taking the above decision, the Governing Body reaffirmed that henceforth direct selections would be only at the level of Assistant Professor and Professor and the posts at intermediate levels, namely, Associate Professor and Additional Professor, shall be filled in through Assessment Promotion Scheme. However, if the Director was of the view that in a particular department, there would be a critical gap at the intermediate level because of this decision, he could refer it to the Academic Committee, which after considering the circumstances of the case, recommend the same to the Governing Body for consideration. Only in such exceptional cases would the Governing Body permit direct selections at the intermediate level. Governing Body's prior approval must be taken before the process of direct recruitment at intermediate level is initiated"

38. It is evident from the various decisions of the Institute and the Governing Body extracted above that the Institute has not completely abdicated its rights of allowing lateral entries to the level II & III faculty posts but it has only restricted it. In order to give promotional avenues and improve the career prospect of the faculty members the Institute decided to have lateral entry at level II & III post only in case of "compelling functional requirement" or requirement in specialities or super specialities or "critical gap at the intermediary levels" with the prior approval of the Governing Body. In essence, promotion under APS was the rule whereas direct recruitment to level II & III post was an exception.

39. Under the revised Assessment Promotion Scheme which came in force since 1.7.1989/8.3.1990 the promotion from level I to level IV is 100% and from level II to level III is 75% with the stipulation that the person concerned had completed four years of experience in the lower grade. The promotion under the Scheme is by way of merit-cum-seniority and the person promoted carries with him the post from

level I to level II and from Level II to level III. As such, an Assistant Professor at level I after four years service in the grade may be promoted as Associate Professor at level II by selection on merit-cum-seniority basis. Similarly, an Associate Professor shall become eligible for consideration for promotion to the post at level III after he has rendered 4 years service in the grade with the stipulation that not more than 75% Associate Professors will get the benefit under the Scheme.

39A. Further conditions were that a faculty member could avail of a total of 3 chances at each level in APS. The interval between the 1st and 2nd chance would be two years and between the 2nd and 3rd chance 3 years. The operative date of the APS is 1 st July of every year. It is evident that in the case of promotion from level I to level II or from level II to level III no vacancy is caused but the faculty member carries the lower post with him to higher level. Consequently, the total number of the sanctioned post in the department remained unchanged. For instance, if initially the sanctioned post at level I at the level of Assistant Professor are three and if two of them are promoted under the APS to the post of Associate Professor, the change will not be numerical but it will be level-wise and consequently the number of posts at the level of Assistant Professor would get reduced by two and the number of posts at the level of Associate Professor would correspondingly increase by two. By implication, the post which fell vacant at the level II or III on account of retirement, promotion or resignation of the faculty member will normally be filled at level I i.e. Assistant Professor but lateral entry/direct recruitment at the same level at which the post was initially created and sanctioned is not barred but may be filled at the same level if there is functional requirement or need for specialties/super specialties or there is a critical gap between different levels necessitating recruitment at that level.

40. The operation of the APS as detailed above would indicate that direct recruitment and filling post at level II & III would in no way jeopardise the prospects of the appellant and other faculty members working at level I or level II who aspire to be promoted to the higher post at level II and level III. A person enters a service with legitimate aspiration of a steady career progression by promotion. He has a right to be considered for promotion to a selection post on becoming eligible but he does not have a vested right to be appointed at a higher post. None of the rights of the appellant and other members of the faculties have been abridged or infringed by lateral entry at level II and level III. The appellant and the members of the FAIMS, Therefore, cannot be the persons aggrieved by the direct recruitment which is challenged in this appeal, The petitioner, and for that matter, the applicant FAIMS do not have any locus standi to challenge the lateral entry at level II and level III and the appellant must fail for this reason alone. However, this should not detain us from considering the merit of other submissions of the appellant also.

41. The Institute had issued two advertisements in April and June 1997 inviting applications from the eligible candidates from all over the country and abroad for

filling 10 posts at level II and level III and 19 posts at level IV, As regards the post of Professorship at level IV it is always filled in by direct recruitment. The appellants are not opposed to it either for any reason.

42. It is clear that by adopting APS the Institute has merely abridged but has not abrogated its power to make direct recruitment to the faculty post at level II & III. The decisions of the Governing Body and the Institute Body noted in the foregoing paragraphs make it abundantly clear that though the initial recruitment shall ordinarily be made at level I i.e. Assistant Professor in case a post has fallen vacant at level II & III by any reason whatsoever but at the same time lateral entry and direct recruitment at the same level at which the post was initially created and sanctioned was also not barred. The Institute, however, decided to take recourse to lateral entry at higher level of Associate Professor and Additional Professor only in exceptional circumstances where there was functional requirement, for appointment to the super speciality posts or where there was critical gap between different levels of the faculty posts. It is evident from the minutes of the meeting of the Governing Body that the Governing Body and the Institute Body had considered each proposal of creation and upgradation of the post and justification for filling up level II and level III posts by lateral entry critically and took conscious decision wherever there was functional requirement or critical gap at different level in the faculty for filling up the post by direct recruitment from amongst the in house members of the faculty and talents from outside. The decision for filling up 7 posts at level II & III, impugned in this appeal, was also as a result of justification submitted by the head of the department, due consideration by the Director, the Governing Body and the Institute Body. Some of the minutes of the meetings of the Governing Body have already been extracted in brief in the foregoing paragraphs. Some other portions of the minutes of the Governing Body, the letters exchanged between the head of the department and the Director are being reproduced below which will strengthen the plea of the respondent Institute that the decision for lateral entry was taken keeping the overall interest of the Institute in view.

43. The Governing Body in the meeting held on 8.3.1990 while considering the question of promotional avenues and amendment of recruitment rules in respect of faculties in the Institute took following decisions:-

"Before considering the item, the Governing Body heard the representative of FAIMS. They stated that there should be promotion from level-3 and level-4 to level-5; and that the number of chances at each level for promotion should not be restricted to two and that if a candidate got left out on one occasion due to the ceiling restriction, that turn should not be counted as chance availed. They were also of the view that the total number of opportunities for assessment promotion being restricted to two levels should be removed. The date of implementing the new scheme, they considered should be 1st July, 1989 and promotions should be given from the date they completed 4 or 5 years as per eligibility criteria. All those

however, would be subject to merit assessment.

The Governing Body confirmed that the approval of the revised qualification and experience for faculty posts as circulated to the President, AIIMS and members of the Governing Body vide Memorandum No. F-I/22/88-Estt. I dated 17.1.1990 and as recommended by the AIIMS Academic Committee in its meeting held on 3rd July, 1989 which had been adopted by the Academic Committee of AIIMS, held on 3rd July, 1989), The Governing Body also decided that the revised recruitment rules for the post of Professor would be applicable for the post of Medical Superintendent with the proportionate relevant experience.

The Governing Body discussed at length this item and considered points expressed by FAIMS representatives. Keeping in view the fact that some faculty would tend to stagnate at all levels, specially at level 3, though not by design, it was necessary that something be done for those who stagnate at level 1-3. It was also felt that one had to keep in mind the necessity of maintaining excellence and provide opportunities of an All India Competition for the highest level in a national Institute such as AIIMS. On the other hand the senior faculty should not feel discouraged due to non-availability of posts at higher levels. Keeping all the above in view, the following decisions were taken.

1. A faculty member could avail of a total of three chances at each level in Assessment Promotion Scheme. The time interval between the 1st and 2nd chance would be two years and between the 2nd and 3rd chance three years. The separation by these number of years has been advised to provide opportunity for improvement and fresh assessment of the candidate. It was also decided that in case a candidate is found fit but not given promotion due to ceiling then it should not be considered as a chance availed and he/she be promoted after a year subject to nothing adverse having come up within the year.
2. When a post falls vacant at any level due to any reason, it will be filled in at level at which it was originally sanctioned/created.
3. Experience at pre-designated posts will be taken into consideration for assessment promotion. However, no faculty member will be entitled to double promotion. For assessment promotion, experience at the position held is to be counted and not the total experience.
4. New posts will generally be created at the level of Assistant Professor and Professor.
5. The method of filling up the post of Professor would continue to be by direct open advertisement. This process is vacancy based and would continue to be so.
6. A selection grade would be given in the scale of Rs. 5900-7300 to additional Professors. The selection grade would be limited to 30% of the cadre strength of the additional Professor subject to the condition that not more than 30% of eligible

candidates would be given the grade in any one year. The assessment for selection grade would be by the Selection Committee of the Institute on the same basis as Assessment Promotion. The eligibility for selection grade Additional Professor will be 7 years as Additional Professor.

7. A selection grade of Rs. 7300-7600 will be provided to Professors. This grade will not exceed 30% of the total posts of Professor subject to the condition that not more than 30% of the eligible Professors will be promoted in any one year. This promotion will be based on the recommendations of a jury of three experts of eminence and not by interview. The eligibility for selection grade Professors will be 7 years as Professors.

8. The post of Distinguished Professors (not more than 6 at any time) may be created and these posts be open to a national level selection, the incumbent being located at the Institute. The eligibility criteria for these- like the National Professor of UGC should be worked out and be brought up as a separate agenda item. These will be in the pay scale of Rs. 8000/- fixed.

9. The operative date of this scheme will be 1st July every year. However, it was also decided that as per Governing Body's recommendation, the date of implementation of the new assessment promotion scheme would be 1 st July, 1989. It was also noted that till the new scheme is implemented with Government approval, the old scheme would apply."

44. In the meeting held on 4th April, 1997 the Governing Body considered the recommendation of the Selection Committee and took the following decision.

"The recommendations of the Selection Committee held on 20th-23rd January 1997 and on 27th February, 1997 were approved.

With regard to the APS promotions from Associate Professor to Additional Professor for batch 1.7.1996, it was decided to follow the interim orders of the Hon"ble High Court and that the appointment letters may be issued to the candidates subject to the ceiling of 75% as per the Guidelines. This decision would be subject to the final outcome of the court case.

The Governing Body decided that the representation of Dr. Sushma Vashisht may be referred back to the Selection Committee to consider her placing on the "wait list" for the post of Professor of Radio-diagnosis.

One of the GB members raised the issue of Dr. H.C. Agarwal, Additional Professor in Ophthalmology at the RP Centre . The Governing Body noted that the post of Professor of Ophthalmology has been sent for advertisement and Dr. Agarwal may be advised to apply for the same. The Governing Body accepted the suggestion of Dr. K.S.Bhoi, that the practice of keeping persons on the "wait list" may continued to be followed.

With regard to the matter relating to lateral entries at levels 2 and 3 against the core/sanctioned strength of the Departments, the Governing Body authorized the Director to take decisions in such cases."

45. The minutes of the meeting of the Governing Body held on 25th April, 1992 regarding recommendations of the Selection Committee for faculty posts are being reproduced as under.

"(a) Approved, excepting the following:-

(i) The recommendations relating to appointment of Assistant Professor (Cardiology) may be referred back to the Selection Committee in view of the fact that the original recommendations of the Experts and the Committee are not available for all the candidates. The Governing Body also examined the reconstructed expert evaluation sheet. The Selection Committee should, Therefore, reconduct the interview. The Selection Committee should also examine as to how a candidate for the post of Assistant Professor of Cardiology was recommended when he had been declared unfit by two experts.

(ii) The recommendations relating to post of Additional Professors and Associate Professors are not accepted. This is in view of the fact that an Assessment Promotion Scheme exists for promotion of Assistant Professors to these levels. Therefore, the posts of Associate Professor and Additional Professor may be operated at the level of Assistant Professors. However, in exceptional cases, these posts may be operated at the higher levels of Associate Professors/Additional Professors if there are compelling functional requirement. However, such a course of action can be taken only with the prior approval of the Governing Body.

At the same time, the Governing Body decided that the candidates, who have been recommended for these higher posts, may be offered the lower post of Assistant Professor in the same discipline/subject: such candidates may be placed above the candidates, if any, recommended by the Selection Committee for the post of Assistant Professor in the concerned discipline/subject.

(iii) In the case of the representations concerning the post of Assistant Professor (Surgery), it was felt that keeping the totality of the circumstances in view it would be advisable to refer the matter back to the Selection Committee for its consideration.

(iv) The rating given by the Experts to the candidates for the post of Professor of Physiology was looked into, on the basis of the representation received from Dr. V. Mohankumar, and it was observed that the recommendations of the Selection Committee are not in accord with the Experts rating. Therefore, it was decided that the matter may be referred to the Selection Committee. In this context, it was also advised that the representation regarding alleged unreliability of the date published by one of the candidates should be departmentally examined and placed before the

Selection Committee.

(v) In respect of the recommendations of the Selection Committee for the post of Professor of Surgery, the Director pointed out that the same should be reviewed by the Committee, as the candidature of Dr. S.N. Mehta, has not been appropriately appreciated by the Experts. The factual position in this case to the effect that renal transplant surgery is treated in AIIMS as an integral part of the General Surgery Department was fully explained by the Director and it was brought out that somehow the Experts did not appreciate this aspect appropriately, Therefore, the Governing Body decided that the Selection Committee should reconsider the case.

(b) As regards recommendations made by the Selection Committee regarding advertisement of posts, listed in para 2.2, the following decisions are taken after perusing the technical expert's ratings :-

(i) The expert rating in the case of Professor of Biostatistics is very clear and there is, Therefore, no need to readvertise the post. The case may be referred back to the Selection Committee.

(ii) The expert rating in the case of Professor of Anaesthesiology is also very clear and there is, Therefore, no need to readvertise the post. The case may be referred to the Selection Committee.

(iii) No candidate was found suitable for the post of Additional Professor of Community Ophthalmology. In any case, it has been decided to downgrade the posts at this level to Assistant Professor's level.

(iv) No candidate has been found fit for the post of Assistant Professor (Clinical Psychology). The post may, Therefore, be readvertised.

(c) The Governing Body directed that the selection of additional posts as listed at para 2.3 of this agenda should be considered by the concerned committees on grounds of functional requirement and only thereafter the recommendations in this regard should be placed before the Committee. Accordingly, the recommendations concerning the candidates recommended for the said posts were not approved.

(d) The recommendations in respect of Additional Professors and Associate Professors has not been accepted. Hence, the issue regarding Dr. O.P. Singh is now of no relevance. As regards Dr. Sushma Ahlawat recommended for the post of Assistant Professor (Anaesthesiology). It was informed that she has been found to be responsible for a lapse leading to the death of a patient. Therefore, the Governing Body, after examining the enquiry report, decided that the recommendation of the Selection Committee need not be accepted in her case."

46. The minutes of another meeting of the Governing Body dated 9th June, 1992 when it considered reservation of faculty posts in the Institute and representation against direct selection to the post of Associate Professors and Additional Professors

is as under :

"It was noted that AIIMS has always been regarded as a premier scientific/ research organisation. Prior to 11.1.1983, there was no reservation for SC/ST in AIIMS faculty in view of the following decision taken by the Institute in its meeting held on 10.11.1972 :-

"The Institute Body decided that the faculty positions including lecturers, may be exempted from the purview of the reservation orders of the Government in view of the fact that these belong to scientific, technical and research and its organisation and directions are important functions. In case of all other categories proposed, the Institute decided that the status quo may continue."

The Institute in its meeting held on 11.1.1983 observed as under :-

"The Institute Body, after discussion, decided that the policy of Reservations for Scheduled Caste/Tribes, as prescribed by the Government be followed for appointment to faculty posts also.

The above was followed in the light of the Government of India, Department of Personnel & Admn. Reforms OM No. S/2/73/IST(SCT) dated 23.6.75 which concerns reservation of scientific and technical posts and reads as follows:-

"The reservations for SC and ST apply also to appointment made to Scientific and Technical posts up to and including the lowest grade of Group (A) (Class I) in the respective service and such posts are not exempted from the purview of the reservation orders."

Accordingly, since 11.1.1983, the Institute followed for over five years till 20.5.1987 the reservation policy laid down by the Government regarding scientific and technical posts as per the decision of the Institute Body. During this period, it was found that the Institute faced difficulties in finding suitable candidates for posts.

The representations received in connection with the decision of the Governing Body held on 25th April, 1992, regarding direct selection to the posts of Associate Professors/Additional Professors were considered in detail. The Governing Body was of the view that the decision in the last meeting in this regard was both rational and legally correct. However, it recognised that there were certain aspects which could not be considered fully in this was a tabled agenda.

Firstly, posts had been advertised a number of times and the candidates had gone through the process of selection and the recommendations of the Selection Committee on each case has been made. In such a situation it was natural that certain legitimate expectations had been roused and the Governing Body's decision to disapprove the recommendations of the Selection who were expecting appointments to higher posts. Secondly, it is a well accepted principle that the sanctity of the selection process should be maintained and Therefore on bloc

rejection of recommendations in this regard could create some misgivings about the credibility of the selection process. Keeping these considerations in view, the Governing Body decided to review the decision taken regarding direct selection to the posts of Associate Professors and Additional Professors and approved appointments as per details in the Annexure.

While taking the above decision, the Governing Body reaffirmed that henceforth direct selections would be only at the level of Assistant Professor and Professor and the posts at intermediate levels, namely, Associate Professor and Additional Professor, shall be filled in through Assessment Promotion Scheme. However, if the Director was of the view that in a particular department, there would be a critical gap at the intermediate level because of this decision, he could refer it to the Academic Committee, which after considering the circumstances of the case, recommend the same to the Governing Body for consideration. Only in such exceptional cases would the Governing Body permit direct selections at the intermediate level. Governing Body's prior approval must be taken before the process of direct recruitment at intermediate level is initiated.

The Governing Body noted that some representations have been received regarding the impact of the one time exception being made now on the reservation for SC/ST. It has been argued that since reservation is only at the lowest level, viz., Assistant Professor, the decision to undo the downgradation of certain posts of the level of Associate Professor and Additional Professor would take away certain posts from the purview of reservation quota. However, it was appreciated that as in the case of majority of such posts, persons being appointed are already holding the lower post of Assistant Professor/Associate Professor, there would be consequent vacancies at the level of Assistant Professor which would be subject to reservations. Only in the case of the posts at the level of Assoc. Prof./Addl. Prof, being filled up by persons from outside the institute, corresponding number of posts of Assistant Professor would but be available, thereby having some adverse impact on the reservation quota. In order to protect the interests of the reserved category, the Governing Body decided that the number of posts which would have remained available for SC/ST but for the appointment of outside candidates to the higher post of Assoc. Prof./Addl. Professor be added to the reservation quota at the level of Assistant Professor over and above the normal prescribed limit.

It was noted that Assessment Promotion for many faculty members was due again on 1.7.1992 and many of them also appeared in the direct selection list. Therefore, if the direct selection was made effective from 2.7.1992, the impact on inter se seniority would be greatly minimised. Hence, the Governing Body decided that all selections to the posts of Assoc./Addl. Professors be made effective only from 2.7.1992.

It was observed that the representation of Scheduled Caste/Scheduled Tribe candidates amongst the recommended candidates is very low. Although there is no

reservation for SC/ST at these levels, it was felt that some preference should be given to qualified candidates from the reserved category who have otherwise performed well in the Selection process keeping in view the true spirit behind the reservations policy. After reviewing the bio-data and performance of all reserved category candidates, it was decided to include Dr. Sudha Prasad in the waiting list for the post of Associate Professor of Gynaecology & Obstetrics.

The recommendations made by the Selection Committee in respect of each post were reviewed. The decision of the Governing Body in respect of each post is contained in the Annexure. In a few cases where the recommended candidates were also eligible to be considered under the Assessment Promotion Scheme due on 1.7.1992, a wait list has also been provided.

The Governing Body considered the recommendations of the Selection Committee in respect of Dr. O.P. Singh for the post of Addl. Professor of Venereology. It was noted that the candidate is currently under suspension and that in the past a penalty was imposed upon him for an offence involving moral turpitude. The recommendation of the Selection Committee, Therefore, was not approved.

In respect of the recommendation of the Selection Committee for the posts of Associate Professor of Radiodiagnosis (CTC), it was noticed that there is a discrepancy between the recommendations of the Selection Committee and the grading given by the technical experts. Under the circumstances, it was decided to refer the case back to the Selection Committee for reconsideration.

The post of Addl. Professor of Hospital Administration (CN Centre) cannot be downgraded to the level of Asstt. Professors in view of the functional requirements. The candidates selected for this post is also required to work as the Addl. Medical Superintendent the CN Centre, which is not possible in case the post is operated at the level of an Assistant Professor. It was, Therefore, decided to convert this post to Addl. Medical Superintendent which shall be non-faculty position and should be advertised as such.

The recommendations of the Selection Committee which have been approved by the Governing Body are indicated in the Annexure. All other posts of Addl. Professors/Associate Professors that remain unfilled after these appointment are made will be operated at the level of Assistant Professor".

47. The Institute Body in its meeting held on 18.9.1997 took the following decision.

"The Institute Body discussed the issue of direct recruitment to faculty posts at level II & III and the Assessment Promotion Scheme. It was decided that a Committee be constituted by the President, AIIMS to frame the guidelines for lateral entry at level II & III. The members felt strongly in favor of having lateral entry at level II & III".

48. Extracts of the minutes of the meeting of the Governing Body/Institute Body held on 14.1.1998, 23.1.1998 and 27.2.1998 are as under:

"It was felt by some members that it may be necessary to review and revise the APS in the light of the 15 years experience. It was Therefore, decided that the recommendations of the Dhar Committee with regard to the Assessment Promotion Scheme be circulated to all members Along with the changes that have occurred from time to time.

Regarding 10 posts to be filled in at level II and III, which have been deliberated upon by the Academic Committee on 23rd January, 1998, the Institute Body decided that 3 posts vis. Additional Professor Urology, Additional Professor of Hospital Administration (CTNS) and Associate Professor of Nuclear Medicine, earlier approved by the Governing Body, may be retained and filled up at these levels.

The Governing Body also took note of the requirements of Super-speciality Departments like Neuro Sciences Centre and decided that the posts of Additional Professor of Neuro-Surgery, Associate Professor of Neurology, Associate Professor of Neuro-Physiology and Associate Professor of Neuro-Radiology may also be filled up at these levels. It was noted that the requirements of centres with regard to filling up of the posts at level II & III are different other than department of the Institute keeping in view the requirements and needs of the centres.

The Institute Body up-held the decision of the academic Committee for not filling up of the post of Additional Professor of Surgery. It was decided that the issue of creation of a post of Additional Professor of Medicine may be referred back to the Academic Committee for consideration.

It was also decided that in future if there is any difference of opinion between the recommendations made by the Academic Committee and the Governing Body, the same may be referred back to the Academic Committee for reconsideration. In future, the post to be filled up at level II and III may be placed before the Academic Committee who would examine the same keeping in view the recommendations made by the Committee under the Chairmanship of Prof. P.N. Srivastava".

49. A reading of these minutes will be sufficient to convince that the Governing Body and the Institute Body were taking decisions about each and every appointment whether by direct selection or by promotion under the APS after due application of mind and was not just signing on the dotted lines on the recommendation of the Academic Counsel or the Director.

50. The primary challenge in this appeal, as aforementioned, is to the decision of the Institute Body and the Governing Body to fill post of Associate Professor and Additional Professor at level II and III in pursuance to the advertisements issued in April and June, 1997.

51. The question that arises here is whether the administrative orders passed as a result of the conscious decision by the Institute Body can be reviewed by this court. It is now well settled that the court in exercise of its extraordinary constitutional

jurisdiction can judicially review only the decision making process and not the merits of the decision itself. The court cannot scrutinise the decision as an appellate court while exercising the power of judicial review. The court may review an administrative decision or action when it is visited by arbitrariness, unfairness, illegality, irrationality or unreasonableness. The test is whether the wrong is of such a nature to require intervention by the court or not. Recently the Hon'ble Supreme Court in [Union of India and another Vs. G. Ganayutham \(Dead\) by LRs.,](#) laid down the following parameters for the courts for making judicial review of the administrative orders and actions.

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties, or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU Principles.

(3)(a)

(3)(b)

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

52. Applying the principles of law laid down by the Hon^{ble} the Supreme Court in the above mentioned case to the fact of the present case we do not find it possible to scrutinise minutely the decisions of the Institute in going for lateral entry at level II & III. But in order to satisfy whether the decision of the Institute Body was vitiated by arbitrariness or unfairness or was malafide and in the light of the submissions of the appellant and the documents referred to in support by him may be considered.

53. The Institute had advertised for recruitment to 10 posts, 5 posts of Associate Professor and 5 posts of Additional Professors, in April & June, 1997. The advertisement was published in the newspapers which had wide circulation. It is also alleged to have been circulated among various Embassies in order to attract suitable eligible talent working outside the country. It was a global advertisement for recruitment to the faculty posts in the Institute which has established itself as one of the leading and reputed institution providing medical education, research and hospital services not only in the country but the world over. Earlier in 1992 the Institute Body decided to fill in 32 faculty posts at level II & level III by direct recruitment. The candidates were selected. Faculty members and others raised the objection to the lateral entry to the faculty posts. The Governing Body reconsidered the decision and stalled the appointment of the selected candidates to the post at level II & III and offered for appointment of selected candidates to the posts at level I but later on reviewed the decision considering the functional need of the Institute and allowed the appointment at level II & III. As such, 32 candidates were appointed by direct recruitment process in the year 1993.

53A. It may be noticed that the normal entry level to the faculty post up to level HI is level I i.e. Assistant Professor. The last appointment to the post of Assistant Professor took place in 1993. In July and August, 1993 the Institute made appointment at level I and level IV in a number of disciplines. The Governing Body also took a decision for reservation for Scheduled Castes and Scheduled Tribes at the entry level i.e. level I. The Faculty Association challenged this reservation by filing a writ petition Faculty Association of AIIMS v. Union of India and Ors. (supra) in this regard and the court directed the Institute not to give effect to the reservation. The writ petition is still pending. The respondent could not make regular selection for the post of Assistant-Professor at level I. Consequently, the Institute had no option but to make ad hoc appointment of Assistant Professor. We are told that a large number of ad hoc Assistant Professors are now working. The appellant and other faculty members in position also did not fulfill the eligible criteria for their promotion to the higher post of Associate Professor and Additional Professor. They had only a right of consideration for promotion by selection as the promotion was on seniority-cum-merit basis. The existing faculty members were not eligible for promotion to level II and level III under APS. New candidates could also not be recruited at level I at the post of Assistant Professor, against the vacancies at level II and level III. Even if direct selection are to be made at level I, the appointment by way of APS from level H to level III would require another 4 years and more to make

them eligible for consideration for promotion under APS. In the view of the Governing Body and the Institute Body it was a critical gap in the faculties in a number of disciplines including super specialities which compelled the Institute for lateral entry at intermediary level. The selection for post at intermediary level was perfectly in accordance with the decision of the Governing Body and the Institute Body that the post which fell vacant at level I and level III shall be filled in at that level. The posts which were advertised for lateral entry at level II and level III under the decision of the Governing Body dated 9.8.1996 and 4.4.1997 were decided upon after submission of the detailed justification by the Head of the Department, the Director and the Academic Committee. No fault could be found with the decision of the Governing Body and the Institute Body. The decision cannot be said to be unfair, arbitrary, irrational and malafide.

53B. One of the arguments of the appellant is that Rule 6 provided for constitution of a Standing Finance Committee for considering all proposals involving finances pertaining to the Institute. This Committee, according to the appellant, was an independent Body and simply because some of the members of the Institute Body and Governing Body were also its members it could not be stated that the decision of the Institute Body or Governing Body dispensed with the consideration of financial matters pertaining to the Institute by Standing Finance Committee. Proposal of the upgradation of the post in Department of Nuclear Medicines required examination by Standing Finance Committee even if the financial implication was only Rs. 14500/-. It is argued that since the post which fell vacant at level III was to be filled at level I, its filling at level III through direct recruitment would amount to creation of a new post which could not be done by the Governing Body or Institute Body without the clearance of Standing Finance Committee. However, it has not been denied that as per Regulation 12(v) of Standing Committees including the Standing Finance Committee were only advisory Committees.

54. The proposal of upgradation of a post of Assistant Professor of Nuclear Medicines to the post of Associate Professor of Nuclear Medicine as per the note of the Director submitted to the Governing Body involved financial implication of only Rs.14500/- which considering the constitution of the Governing Body and the Institute Body was not necessary to be placed before the Standing Finance Committee first for its clearance if sufficient amount in budget in the head of salary etc. was available and the Governing Body and the Institute Body were satisfied that the additional expenditure which was very small amount could be easily met. The proposal of upgradation, Therefore, is not in contravention of any of the mandatory Rules, Regulations or the Act. It is pertinent to mention here that a post which existed at level II & III did not stand abolished as soon as it fell]vacant and by operation of APS was in normal course required to be filled in at level I. The sanction of the post at different level and the filling of the post at level I against the vacancies at higher level are two totally different situations. Assuming for the sake of

argument a sanctioned post at level II or III is ceased to exist after it has fallen vacant then there cannot be any resultant vacancy at level I since according to the APS the total strength of the faculty has to remain unchanged.

55. The appellant has found fault with the position of sanctioned and vacant post at Level I, II and III furnished by the respondent which is reproduced below. It is submitted that a cursory look at the figures given in the chart would lead to an anomalous position:

Name of the Post	Original Sanctioned Strength	In Position	Vacant
NEURO-RADIOLOGY			0
Professor	1	1	
Addl. Professor	1	0	0
Assoc. Professor	0	0	
Asst.. Professor	1	0	1
	3	1	2
NEURO-SURGERY			
Professor			1
Addl. Professor			1
Assoc. Professor			1
Asst. Professor	1		1
	9	5	4
SURGERY			
Professor	4	4	0
Addl. Professor	2	0	2
Assoc. Professor	2	1	0

Asst. Professor	4	5	0
	12	10	2
MEDICINE			
Professor	5	4	1-
Addl. Professor	2	3	0
Assoc. Professor	5	4	1
Asst. Professor	4	0	3
	16	11	5
NEUROLOGY			
Professor	2	1	1
Addl. Professor	1	3	0
Assoc. Professor	2	0	2
Asst. Professor	2	0	0
	7	4	3

SI.	Name of the Post	Original	In	Vacant
No.	Sanctioned	Strength	Position	
1.	NUCLEAR MEDICINE +			
	CTC			
	Professor	2	-	2
	Addl. Professor-	- (APS)	4	-
	Assoc. Professor2	2	-	1

2.	Asst. Professor	3	-	-
	UROLOGY AFTER 19.8.1996			
	Professor	2	2	-
	Addl. Professor	1	-	1
3.	Assoc. Professor	1	1	-
	Asst. Professor	2	1	1
	HOSPITAL ADMINISTRATION FOR CTNS CENTRE			
	Professor	-	-	-
	Addl. Professor	1	-	1
	Assoc. Professor	-	-	-
	Asst. Professor	-	-	-

56. As regards faculty of Neuro Radiology it was submitted that the perusal of column 1, 2 & 3 in the post of Additional Professor and Associate Professor showed that there was mathematical inaccuracy. As per admission of the respondent Institute there was no original sanctioned strength at the level of Associate Professor, Therefore, there cannot be any vacancy. Further, neither the Governing Body nor the Director have any authority or power to downgrade or upgrade a post. Attempt of creation of a post is a mala fide exercise without getting the views of the Standing Committees like Standing Finance Committee and Academic Committee. Further, one person was already working as Assistant Professor on ad hoc/permanent basis which has not been reflected in the chart.

57. As to the faculty of Neuro Surgery, the appellant submitted that the post was being sought to be filled at Additional Professor level, level III. There were two permanent and three ad hoc Assistant Professor working against alleged sanctioned strength of four Assistant Professor. The figure of three under column in position

was factually erroneous as it did not project the correct number of permanent Assistant Professors and in position ad hoc Assistant Professors.

58. With regard to the Surgery faculty it is contended that the post was intended to be filled and was advertised but the Academic Committee had rejected the proposal for direct selection, There are mathematical and factual inaccuracy in the above statement since original sanctioned strength of Associate Professor is shown as two and there was one Associate Professor in position when the vacant position should be shown one instead of Nil shown in the statement. It is not possible that against the sanctioned strength of four Assistant Professors five permanent and two ad hoc Assistant Professors were working in the department. Until recently there were six permanent Assistant Professors and two ad hoc Professors one of them having been promoted as Associate Professor recently.

59. As regards Medical faculty the submission is that the actual number of sanctioned posts has not been given. The sanctioned strength of Assistant Professors is shown as four and according to the statement there is no one in position, yet only three vacancies were shown instead of four. It appears that there were three ad hoc/permanent Assistant Professors working in this faculty.

60. According to the appellant in the faculty of Neurology two ad hoc Assistant Professors are in position against the sanctioned strength which has not been shown and in the faculty of Nuclear Medicines the sanctioned strength of Associate Professor given in the statement is contrary to the note submitted to the Academic Committee on 23.1.1998.

61. As regards faculty of Urology it is stated that the post of Additional Professor has been shown as vacant whereas Dr. P.N. Dogra has been appointed as Additional Professor w.e.f. 1.7.1995.

62 The learned Counsel for the appellant urged that for the newly created posts in hospital administration for CTNS centre, recommendation of the head of the department made to the Director and its due consideration by the Standing Finance Committee and Academic Committee, the Governing Body and the Institute Body, were necessary. The Governing Body or the Director have no authority to create any post in contravention of Rule 7.

63. Controverting the allegations of the appellant the respondent Institute in the affidavit filed by its Director submitted that the chart filed by the respondent showed the sanctioned strength, in house position and vacancy as on the date of decision taken by the respondent for operating/filling up the respective posts at level II and level III, as the case may be. The ad hoc appointments were not taken into consideration while giving the position in the chart because the writ petition was filed by the petitioner against the filling of faculty post on regular basis. Three posts were directed to be filled up at level II and III by the Governing Body on 19.8.1996 and 4.4.1997 and remaining seven posts were identified by the Director

after the decision dated 4.4.1997 was taken by the Governing Body. It was asserted that the faculty position in faculty of Neuro Radiology shown in the chart was correct. The sanctioned faculty post in the faculty were Additional Professor 1 and Associate Professor 1. The Professor in position was one and the vacant post have been shown as Assistant Professor 1 and Associate Professor 1. The post of Associate Professor has been shown against the sanctioned post of Additional Professor. Against 3 sanctioned posts one post has been shown in position and two positions have been vacant which makes a total of three posts. The post of Additional Professor was being filled in at the level of Associate Professor in accordance with the decision of the Institute Body taken on 27.2.1998 and the decision of the Governing Body dated 4.4.1997 by which the Director was authorized with regard to the matter relating to the lateral entry at level II and level III against the total sanctioned strength of the department. The sanctioned post of Additional Professor was being operated at present at the level of Associate Professor which is a lower post and has been duly approved by the Institute Body and Governing Body in their decision dated 4.1.1998, 23.1.1998 and 27.2.1998. No post was created as alleged. The post was being filled at the level of Associate Professor while the sanctioned post shall always remain at the level of Additional Professor which post was duly created as per the rules. The ad hoc faculty decision have not been shown in the chart and two Assistant Professors were working as ad hoc in the department of Neuro Radiology.

64. As regards the Neuro Surgery faculty, it was submitted by the respondent Institute that the total sanctioned post are 9, Professor 3, Additional Professor 1, Associate Professor 1 and Assistant Professor 4. In position were Professor 2 and 3 Assistant Professor when the decision was taken by the Director to advertise one post of Additional Professor in June, 1997. At that time the vacant faculty position was Professor 1, Additional Professor 1, Associate Professor 1 and Assistant Professor 1. The present position is Professor 2, Assistant Professor 2 as incumbent of one post of Assistant Professor has resigned. The present vacant faculty position is Professor 1, Additional Professor 1, Associate Professor 1 and Assistant Professor 2. Since the vacant post of Associate Professor was required to be filled in as Assistant Professor the vacant faculty position is Professor 1, Additional Professor 1 and Assistant Professor 3. Besides three Assistant Professors are working on ad hoc basis against the vacant post of Professors/Assistant Professors. As such, no in correct information has been given in the statement.

65. As to the department of Surgery and Medicine, it is stated that no post is being filled in by direct recruitment in view of the decisions of the Institute dated 27.2.1998.

66. It is contended by the Institute that the ad hoc position has not been shown in the chart in respect of Neurology. At present two Assistant Professors are working on ad hoc basis against two vacant faculty posts. One ad hoc Assistant Professor has

resigned on 7.4.1998. At present three faculty posts. Professor 1 and Associate Professor 2 are vacant and no Body is working on ad hoc basis now.

67 As regards faculty of Nuclear Medicines it is urged that when a proposal was placed before the Governing Body on 4.4.1997 i.e. prior to the upgradation of one post of Assistant Professor of Nuclear Medicines to that of Associate Professor of Nuclear Medicines the total original faculties sanctioned strength of the department of Nuclear Medicines including CT centre was 7 i.e. Professor 2, Associate Professor 1 and Assistant Professor 4. After the upgradation of one post of Assistant Professor to that of Associate Professor the original faculty sanctioned strength is Professor 2, Associate Professor 2 and Assistant Professor 3 while the faculty in position remain Additional Professor 4 (promoted under APS) and the vacant faculty position was Professor 2, Associate Professor 1 (advertised post). The original sanctioned strength in this faculty was equal to the faculty in position plus vacant faculty post at the level of Additional Professor, Associate Professor and Assistant Professor under each department as when the faculty member became Additional Professor under APS the sanctioned faculty position would remain same. In order to avoid confusion a proposal was put up before the Governing Body on 4.4.1997 and it was indicated that the faculty sanctioned strength in this department is Professor 2, Additional Professor 4 (means 4 Additional Professors were working after their promotions under APS) and Assistant Professor 1 was shown as working on ad hoc basis. The present sanctioned position was Professor 2, Associate Professor 2 and Assistant Professor 3 and this information was given to the court. Four Additional Professors were working following their promotion under APS while 2 posts of Professor and one post of Associate Professor have been advertised and were to be filled. Besides 2 Assistant Professors were working on ad hoc basis against the sanctioned faculty post. The information"given in this statement was, Therefore, correct.

68. It was stated that the information given in respect of department of Urology was also correct. Orders in respect of Dr. P.N. Dogra for his promotion to the post of Additional Professor under APS w.e.f. 1.7.1995 were issued on 4.4.1997 after the interviews were held in June, 1997. The faculty position had been shown as on 19.8.1996 when the post was approved by the Governing Body on 19.8.1996 and no Additional Professor of Urology was in position at that time either under the APS or through direct recruitment. Moreover, Dr. P.N. Dogra was on long term assignment on EOL without pay since 26.6.1995 and he resumed his duty on 4.4.1997 after completion of his assignment. With regard to the post of hospital administration for CTNS centre it was denied that any post was created or upgraded. One post of Additional Professor of hospital administration of CN centre was created in 1989 and this post was converted as Additional Medical Superintendent for CN centre in 1992. The post of Additional Medical Superintendent for CNT has been recommended to that of Additional Professor of hospital administration with prior approval of the Governing Body on 4.4.1997. No financial implications were involved on conversion

of the post (hat was done as per rules.

69. On consideration of the submissions of the parties on the statement/chart of sanctioned and vacancy strength and vacancy position filed by the respondent showed that the discrepancies were primarily because the persons in ad hoc position were not shown. There was increase and decrease in the number of in position persons at different level because of the promotions by operation of APS. The appellant who is a faculty member in position should have known all these facts.

70. Both the parties have filed some correspondence regarding filling up posts in different faculties by direct recruitment. Some of them relevant for consideration of the submission of the petitioner are extracted as under.

Department of Medicine

31.5.1997

Dr. J.N. Pande

Professor and Head

The Director

A.I.I.M.S.

New Delhi- 110029

Sub : To fill up one post of Associate Professor instead of Assistant Professor of Medicine on regular basis.

I would like to bring to your notice that at present four faculty posts are lying vacant in the Department of Medicine for regular appointment. At present Dr. G.C. Khilnani is working as Assistant Professor of Medicine on ad hoc basis w.e.f. 19.7.1993 and is going to complete four years on the same post which is also the requirement under assessment promotion scheme to promote an Assistant Professor to the post of Associate Professor.

Recently the posts were vacated by Dr. S.K. Sharma and Dr. O.P. Malhotra, who were holding posts of Additional Professors on regular basis and have been promoted to the posts of Professors. It is requested that out of these posts of additional Professors at least one post may be filled in at the level of Associate Professor of Medicine on regular basis to maintain the core strength of faculty and for better services, teaching and research work. By doing this Dr. G.C. Khilnani will be able to apply for the post of Associate Professor while there will be no extra financial burden on account of filling up the post at the level of Associate Professor.

During last few years the Medicine Department has grown and there have been many new activities which include a new Intensive Care Unit and a new Bronchoscopy room. The teaching and training of post graduates have also

expanded and training in ICU have become an integral part of postgraduate curriculum. Dr. Khilnani has been very active in both these activities. He has taken special interest in intensive care and Pulmonary Medicine and was actively involved in starting of the new bronchoscopy room. Also, he looks after the smooth running of the bronchoscopy room and has been performing bronchoscopy for patient care and research purposes.

Dr. Khilnani has had a brilliant academic career and has more than sixty publications to his credit. His teaching skills have been highly appreciated by undergraduates as well as graduates students. He has been involved in many research subjects and has presented his work in India and abroad. He takes keen interest in all the Departmental activities and has been organizing continuing medical education programme. He has been arranging undergraduate and post graduate examinations and has also coordinated examination of National Board of Examination.

By filling up the post as Associate Professor the Medicine Department will have the advantage of having core strength of Faculty without any extra financial burden. Also by getting a proper level of designation the faculty member will get a boost to put in hard work and be more productive.

Thanking You

Yours faithfully

Sd/-

Professor and Head

Department of Medicine

A.I.I.M.S., New Delhi

Prof. T.K. Chattopadhyay

June 5th, 1997

The Director,

AIIMS

New Delhi

Sir,

I am writing to you in response to your letter No. F. 12-13/97-Estt. I/dated/ 25/97. I wish to highlight the following points :-

1. The Department of Surgery has always had three - four Professors. Few additional Professors and few Assistants Professors. This structural strength is necessary for smooth running of the administrative and clinical work of the four units that exists

in the Department of Surgery. Until very recently, there were three Professors in the Department.

2. With the resignation of an Additional Professors (Dr. A.K. Kriplani) and promotion of another Additional Professor (Dr. R.K. Khazanchi) to the post of Professor, at present the Department of Surgery has four Professors, no additional Professors and six Assistant Professors. Additionally, two of the Professors are currently abroad on Sabbatical leave. With the result, the actual working strength of the Department today is two Professors, one recently promoted Associate Professor and five Assistant Professors. The result is that today two of the units are headed by Jr. Faculty Members i.e. a recently promoted Assistant Professor (Unit-1) and an Assistant Professor (Unit IV) Administratively. I think it is not a correct situation because patients from outside come for opinion of senior experienced persons not the Junior ones. Considering the type of patients coming to AIIMS including large number of VIPs and their friends and relatives. This is bound to create an administrative problem sooner or later if corrective measures are not taken immediately. Also the work load in the OPD, Emergency and wards is going on increasing continuously. It will not be out of place to record that the Assistant Professor under the prevailing circumstances are forced to perform the duties of Professors and Additional Professors including teaching training, supervising research in addition to their own academic activities and that of the Department.

3. Under the circumstances, I think it is absolutely essential for smooth administrative and clinical function of the surgical department to have two additional Professors and as early as possible. The matter may please be accorded top most priority.

Yours Sincerely,

Sd/-

(T.K. Chattopadhyay)

71. It will also be pertinent to reproduce the office note approved by the Director of the Institute dated 25.8.1997 as under :-

"Director will recall that regarding the lateral entry at the post of Associate and Additional Professors, letters had been received in the Director's Office and the matter was also discussed in the general Faculty Meeting. On Friday the 22nd August, Director had taken a meeting with M.S., Chief, R.P. Centre, President AIIMS , General Secretary FAIMS on this matter. Dean could not attend the meeting as he was not free from his OPD duties. In the meeting it was decided that advertisements for the lateral entry to the above mentioned posts will be withdrawn. Accordingly draft reply to Dr. Bir Singh is also placed for approval of the Director. Director may like to confirm the above decision as the intimation of cancellation/withdrawn of the advertisements will also required to be published in the newspaper."

72. A reading of all these papers would show that the question of lateral entry was duly considered after it was initiated by the concerned department. It was considered at the level of the Director and also the Academic Committees before it was finally placed before the Governing Body and the Institute Body. The decision taken can by no stretch of reasoning be said to be arbitrary or irrational. After due consideration as the office note would show that the process of direct recruitment was even put in abeyance for some time for its fresh consideration. It was considered at different levels in the administration and the Academic Committee, Governing Body and ultimately in the Institute Body. The decision is not whimsical, capricious or arbitrary taken for extraneous reasons.

73. It is also noteworthy that the Institute Body which is supreme and the Governing Body which has the executive authority have responsible and eminent persons as members, Vice-Chancellor of Delhi University, Director General of Health Services, representative of the Finance and Education Ministry, representative of Indian Science Congress Association nominated by the Government, representative of the Medical Faculties of Indian Universities, Member of Parliament are members of the Institute Body. Similarly, the Governing Body has Director General of Health Services, representative of Ministry of Finance, Member of Parliament and 6 elected members of the Institute as members. They are specialists and experts in their own field. They in their collective wisdom have taken conscious decision about lateral entries at the intermediary level posts. The filling of the posts by direct recruitment at higher level does not effect the rights of the in house faculty members to be considered for promotion under APS. It may also be noted here that as per the decisions of the Institute Body the persons selected for lateral entry on faculty post will be junior to the persons who got promotion under the APS. The promotees under the APS got seniority from retrospective date i.e. 1 st July of the year while the seniority of the direct appointees will be determined from the date they had joined their respective post following the approval of the Governing Body.

74. Much a do has been made by the appellant about appointment of Professor A.K. Kernel, who according to him was ineligible, when appointed first to the post of Additional Professor and then to the post of Professor in the Department of Urology and denial of appointment to Dr. P.N. Dongra. He has referred to an Inquiry held by National Commission for Scheduled Castes and Scheduled Tribes in this regard copy of which was shown to us. The appellant also mentioned delay in appointment to level II and level III posts in Department of Surgery to which he belonged. It was also submitted that on 26.12.1995 the Head of Department of department of Urology had recommended for lateral entry to the post of Additional Professor as the then incumbent Dr. P.N. Gupta was likely to be appointed as Professor and the Governing Body deferred the decision. It is stated that on 28.12.1995 when the matter again came up before the Governing Body the position had changed and the person holding post at level II had become eligible for promotion under APS still the Governing Body decided to fill it at level III. There is objection to Dr. P.N. Dogra not

being promoted to level III on time. There is also objection to the upgradation of the post in Medicine discipline from level I to level II. We have carefully considered all these submissions but fail to find any substance to justify conclusion that the Governing Body/Institute Body while taking decision for lateral entry had been affected by malice towards appellant or some other faculty members or favored some others. It cannot be said that all these decisions were not taken keeping the interest of the Institute and functional requirement in different discipline in view.

74A. It has been argued on behalf of the appellant that the delegation of power to the Director by the Governing Body to take decision regarding lateral entry against faculty post is erroneous and is violative of the rules. It is contended that the Committee could not abdicate its powers to govern and take decision about the matters of the Institute and authorise the Director to take decision about lateral entry in its place. The argument does not have any merit. According to Section 11 of the Act, the Director is the head of the department and in charge of administration of the Institute. The Director is duty bound to discharge the functions assigned to him by Governing Body, The Governing Body being the executive Body of the Institute can direct the Director to examine the proposals for lateral entry. The decision of the Director is not final. It has to be processed and placed before the Governing Body and the Institute Body for their final verdict. The decision for direct recruitment against intermediate level post is not the decision of the Director, who is only executive officer of the Governing Body and the Institute Body. The Governing Body's decision directing the Director of the Institute to take decision about the lateral entry on the faculty post, not being final, cannot be said to be in contravention of any of the provisions of the Rules and Regulations or the Act.

75. It has next been urged by the appellant that separate minutes of the meeting of the Governing Body and Institute Body dated 4.1.1998, 23.1.1998 and 27.2.1998 have not been recorded and instead the combined minutes have been recorded in the meeting dated 27.2.1998 which is illegal, Therefore, the decision taken in these meetings are vitiated. The argument does not carry force. No doubt it is desirable that the minutes of the meeting whether it is Governing Body or the Institute Body should be truthfully recorded separately but because of the recording of the minutes on 27.2.1998 which reflected the discussion held on the previous two meetings would not make the decision itself illegal. It was submitted that as per the newspaper report there was serious differences of opinion in the meeting dated 14.1.1998 and 23.1.1998 which have not been recorded. The newspaper reporting is not an authentic record of the proceedings conducted in the meetings. The Governing Body and the Institute Body had recorded the minutes and the members have considered them and have appended their signatures. None of the members has raised any objection against the correctness of the minute. The petitioner can hardly be allowed to question the veracity of the decision taken.

76. It has been vehemently argued by the learned Counsel for the appellant that the functions and duties of Assistant Professors at level I and the Associate Professors, Additional Professors at level II & III are similar and it has been observed by a Division Bench of this court in *S.M. Bose v. AIIMS and Ors.*, (supra) that a person can serve the Institute equally well even from the lower post, Therefore, there was no functional requirement and critical gap at level II & Level III which would justify direct recruitment against those post. It is submitted that the Assistant Professors and Associate Professors were even heading the different units of the faculties independently and were running the faculties under their charge successfully, Therefore, there was no need to have some outsiders to man them instead of promoting the Assistant Professors and Associate Professors to the higher post under APS. It may be true that Assistant Professors, Associate Professors and Additional Professors and even Professors may be performing near identical duties in medical education and research, or the patient care but it will be incongruous to hold that the post of Assistant Professor is a perfect substitute for the higher post of Associate Professor, Additional Professor and the Professor. There is no fun in having all these higher posts at level II to IV if Assistant Professor is adequate to run the faculties. The post at level I to level IV are not substitute of each other. Each higher post carries with it higher responsibilities. Instances are not wanting where in the vacancies at higher level the junior official perform the duties or function of their seniors and at times very well but it does not mean that senior level post is superfluous. It is pertinent to note that the appellant has no grievance to the exclusion of the post of Professorship from application of APS. If the persons holding level land III are competent enough to discharge functions and duties at level IV i.e. Professorship there is no rationale for excluding it from APS and why the persons holding post at junior level should have no grievance if the post at level IV is filled by direct recruitment. We, Therefore, do not find any merit in the submission of the appellant.

77. Much a do has also been made by the appellant about his allegation in the writ petition that he had disclosed the name of the persons who were going to be selected and appointed against the faculty post by taking recourse to the direct recruitment process. It is stated that their names were disclosed even before the interviews were held by the Selection Committee. They were all in position faculty members. They were being given out of turn and flyover promotion in the garb of a global competitive selection. It was stated that none of the persons selected and appointed is from outside the Institute and none of them was eligible for being promoted under the APS and no reason has been given as to why in position faculty members were selected when they could have discharged the functions of the higher post even when remaining posted at the lower level.

78. It has not been denied by the respondent that all the 7 persons who have been selected and appointed were in position at lower level post and none of the candidate was from outside the Institute. However, the petitioner has also not

denied that candidates were selected by an open competitive selection process. Advertisement was issued in the newspapers inviting applications from all over the country and even from outside the country. The respondent has even placed a chart showing the number of candidates who had applied against each post and the number of persons who appeared at the interview and the number of persons who were selected. The chart is given below

Statement Showing the Details of Candidates Applied, Called and Appeared for Interview and Selected

Name of the Post	No. of Candidates applied			No. of Candi-dates called for interview	No. of Candi-dates appeared for	No. of Candidates selected
	Inter- nal	Ext- ernal	Total			
Assoc. Prof.. of Neuro-Radiology	01	01	02	02	02	01
Addl. Prof.of Neuro-Surgery	01	02	03	02	02	01
Addl. Prof. of Surgery(2 posts)	04	07	11	07	06	02
Assoc. Prof.. of Medicine	02	02	04	03	02*	01
Assoc. Prof. of Neurology	02	01	03	02	02	01

Assoc.						
Prof..						
of						
Cl.	01	01	02	01	01	01
Neuro-physiology						
(Deptt.of						
Neurology)						
Assoc.						
Prof.						
of	01	01	02	01	01	01
Nuclear						
Medicine						
Addl.						
Prof.	01	-	01	01	01	01
of						
Urology						
Addl.						
Prof						
of	01	01	02	01	01	
Hospl.						
Adm.						
(CTC)						

* One candidate not allowed to appear for interview for want of No Objection Certificate.

79. No doubt no Body from outside the country has applied against the advertised posts but it has not been denied that earlier selections, candidates from abroad were appointed in the Institute. It can also not be disputed that outside persons were candidate in the open selection. The Selection Committee comprised of specialists and experts in their respective fields and they took conscious decision and selected the candidates. It will be incongruous to contend that the Selection Committee should not have recommended a candidate simply because he was an in house candidate. The selection process could not have been shelved by the Governing Body or the Institute Body only for the reason that all these candidates recommended by the Select Committee were already working in the Institute at different level.

80. As regards the prediction of the names of successful candidates by the appellant and their mention in the writ petition which was filed few days before the interviews suffice to say that the petitioner was himself an in house candidate. He knew the total number of candidates which were competing against a particular post. Their

number was not large. Being in the service, he must have also known their merits and demerits and their experience and expertise in the discipline, the speciality or super speciality for which they had applied. Any person who has all this information at his hand could easily come out with near perfect predictions. There is no surprise that he before hand gave the names of all the candidates who were likely to be selected and have ultimately been selected.

81. Apart from the allegation made by the appellant that the direct recruitment was a camouflage and a malafide exercise for giving flyover promotions to some in house faculty members named by him no material or evidence has been placed on the record to substantiate it. As said above, his predictions that the persons named in the petition would be selected for appointment will not lead to an inference that the entire selection process for lateral entry was for promotion of those very candidates. The decision was taken at different level by the Standing Committees and also by the Governing Body as well as the Institute Body and at different times. The decision was a conscious decision made for valid reasons. The mere allegations of malafide, Therefore, would not advance the case of the appellant.

81 A, Lastly, it was argued on behalf of the appellant that the decision of lateral entry in the faculties at higher level was a policy decision and in view of the moratorium by the Election Commission because of the announcement of general elections and impending dissolution of the Lok Sabha ought not have been taken by the Governing Body and the Institute Body as the Minister of State for Health was the President and Chairman of the Bodies. Filling of the post in the faculties by direct recruitment or by promotion could by no stretch of imagination be said to be a policy matter.

82. Institute is an independent statutory authority. It is not a Government department. May be the Minister of Health, Government of India is the President but he alone does not constitute the Institute/Governing bodies. He is only one of the constituents. Others are responsible Government functionary and or working in academic field, in or outside the Institute. Making allegations against their bona fides and integrity is absolutely unjustified.

83. The decision for lateral entry was as per the decision taken by the Governing Body and the Institute Body over the years at different times. Three posts were directed to be filled up at level II or level III by the Governing Body on 19.8.1996 and 4.4.1997 and the remaining 7 posts were identified by the Director after the decision dated 4.4.1997 was taken by the Governing Body. These decisions have not been taken by the President or the Director individually. It does not involve policy decision. It has been submitted on behalf of the respondent and has not been denied by the appellant that there were two different Presidents (the Minister of Health Services) in position in 1996/1997 and in January/ February, 1998 when the Governing Body and the Institute Body had finally decided to go for direct recruitment against the faculty post. It was also submitted on behalf of the

respondent and that even otherwise the report of the Selection Committee placed before the Governing Body and the Institute Body when a third person was in position as President (the Minister of Health Services). All those persons belonged to different political parties. The process of identifying the post in different faculties/disciplines for lateral entry at level II & III started long before the general elections. For these reasons, there is no substance in the submission of the appellant.

84. We, Therefore, do not find merit in the appeal. It is dismissed but in the circumstances of the case leave parties to bear their own costs.