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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.3179/2001

This the 12th day of Dec., 2002.

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

1. A.K.Boruah,
Assistant,
Aviation Research Centre,
New Delhi.
2. G.V.Pillai,
Assistant,
Aviation Research Centre,
New Delhi.
3. R.Sethy,
Assistant,
Aviation Research Centre,
New Delhi.
4. B.Parida,
Assistant,
Aviation Research Centre,
New Delhi.
5. P.K.Mohanty,
Assistant,
Aviation Research Centre,
New Delhi.
6. Ms. Manju Das Rabha,
Assistant,
Aviation Research Centre,
New Delhi.
7. Rupraj Nandy,
Assistant,
Aviation Research Centre,
New Delhi.
8. Ms. Nisha Vasavan,
Assistant,
Aviation Research Centre,
New Delhi.

... Applicants

(By Shri V.S.R.Krishna, Advocate)

-versus-

1. Union of India through
Cabinet Secretary, Govt. of India,
Rashtrapati Bhawan,
New Delhi.
 2. Director General of Security,
Cabinet Secretariat,
Block-V (East), R.K.Puram,
New Delhi-110066.
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3. Director/Special Secretary,
Aviation Research Centre,
Cabinet Secretariat,
Block-V(East), R.K.Puram,
New Delhi-110066.
4. Assistant Director,
Directorate General of Security,
Coordination Cell, R.K.Puram,
New Delhi-110066.
5. Ms. Santilata Mohanty,
Section Officer,
Aviation Research Centre,
Cabinet Secretariat,
Block-V(East), R.K.Puram,
New Delhi-110066.

... Respondents

(By Shri K.C.D.Gangwani, Advocate for Respondents 1-4
& Ms. Arati Mahajan, Advocate for Respondent No.5)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

Applicants, 8 in number, who are working as Assistants in the Aviation Research Centre (ARC) have challenged Annexure A-1 dated 16.4.2001 whereby respondent No.5, Ms. Santilata Mohanty, on promotion as Section Officer, has been posed in the ARC.

2. The brief facts of the case are that Directorate General of Security (Secretarial) Service (DGSSS) came into existence on 4.11.1975. It consisted of four units, namely, SSB, ARC, SFF and CIOA. The cadre of DGSSS was controlled by DGS Coordination Cell headed by Joint Director (P&C) under the office of Principal Director as the cadre controlling authority. DGSSS consists of four cadres : (1) secretarial cadre, (2) ministerial cadre, (3) stenographers cadre, and (4) accounts cadre. All posts included in DGSSS are filled in terms of DGSSS rules notified on 4.11.1975. The process of filling up of three vacancies of Section

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Officers meant for Limited Departmental Competitive Examination (LDCE) was initiated vide memorandum dated 5.6.2000 (Annexure R-5). A written test for the same was held on 11/13.9.2000. Before finalisation of the result, the SSB along with CIOA (constituent units of DGSSS) was transferred to Ministry of Home Affairs vide memorandum dated 15.1.2001 and CIOA was merged with SSB. Applicants allege that whereas respondent No.5, Ms. Santilata Mohanty, was selected for promotion to the post of Section Officer on the basis of aforestated LDCE and was posted in SSB Directorate but vide the impugned order dated 16.4.2001 was brought back to ARC on re-allocation. This action of respondents has resulted in denial of opportunity to applicants for promotion to the post of Section Officer and would cause stagnation in the cadre of Assistants working in the ARC for all times to come. Applicants have sought quashing and setting aside of Annexure A-1 and direction to respondents to consider applicants for the post of Section Officer as a result of quashing of Annexure A-1.

3. The learned counsel of applicants contended that when vide order dated 15.1.2001 SSB had been transferred from Cabinet Secretariat to Ministry of Home Affairs with immediate effect, respondent No.5 could not have been posted to ARC, especially when she had been posted and promoted to SSB. He further stated that the post of Section Officer in ARC belonged to the quota of promotion and as such respondent No.5, a non-cadre officer, could not have been brought back to the cadre. The learned counsel also relied on Annexure R-12 dated



16.4.2001 relating to apportionment of DGSSS to SSB on transfer of SSB from Cabinet Secretariat to Ministry of Home Affairs. It is stated therein that a meeting had been held on 23.1.2001 convened by the Special Secretary with the heads of various component units of DGS in which it was agreed that the ministerial staff of DGSSS should be apportioned on 'as is where is basis'. The learned counsel stated that in this light also respondent No.5 could not have been brought to ARC.

4. On the other hand, the learned counsel of respondents relied on a similar case, namely, O.A. No.790/2001 : **S.Thankachan v. Union of India & Ors.**, decided on 30.10.2002. The said OA was dismissed with the following conclusions :

"20. We have considered the matter carefully. Two main questions arise for consideration, namely, (i) whether the promotion of Respondent No.4 as Section Officer after selection through the concerned LDCE and on the recommendation of the DPC is void due to the alleged incompetency of the authority who has given his permission/approval for the said promotion; (ii) whether the applicant has any legally enforceable right to be promoted to the said post held now by him Respondent No.4.

21. Re question No.1 it is seen that with reference to the statement of the official respondents in their reply that the Directorate General of Security (Secretarial) Service Rules, 1975 are still in vogue and the Cabinet Secretariat's order dated 15.1.2001 transferring SSB and CIOA alongwith the office of Principal Director SSB to Ministry of Home Affairs is only a transfer order and does not indicate any change in the aforesaid rules, the applicant has not been able to deny the said contentions with supporting material. He has also not been able to establish as to how he is competent to question the competency of Principal Director SSB to give his approval/recommendation regarding the promotion of Respondent No.4 to the post of Section Officer since he himself has not

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participated in the concerned LDCE held in September 2000. We find that the applicant has not been able to show that the aforesaid existing rules i.e. DGS (Secretarial) Service Rules, 1975 have been repealed/modified or amended duly in accordance with law and that new Rules have come into existence regarding the trifurcation or bifurcation of the cadre or that separate Rules for each category have been promulgated. He has also not been able to prove with supporting material as to how the Principal Director SSB is not competent to approve/recommend the promotion of Respondent No.4 as there is still no change in the existing rules. Moreover, the applicant admittedly has not appeared in the aforesaid LDCE held in September, 2000.

22. In view of the above, we find no merit in the contention of the applicant regarding alleged incompetency of the authority who has approved/recommended the promotion of Respondent No.4 to the post of Section Officer by the impugned order.

23. Re the question No.2 it is seen from the reply of the respondents as noted earlier, inter alia, that none of the vacant posts of Section Officer filled through the aforesaid LDCE are meant for promotee quota and even otherwise the applicant's name appears at Serial No.14 of the seniority list of Asstts. in the DGS (Secretarial) Service (Annexure R-2). The respondents have also stated that the applicant, therefore, cannot claim promotion as a matter of right above his seniors against the posts fallen vacant in the promotion and even otherwise, no post of Section Officer is lying vacant against the promotion quota at present.

24. On a consideration of the matter, we are of the view that the applicant has not been able to establish with supporting material that the promotion of Respondent No.4 to the post in question has resulted in the violation of any of his vested legal rights."

5. The learned counsel of respondents stated that although a decision had been taken to transfer the SSB from Cabinet Secretariat to Ministry of Home Affairs vide memorandum dated 15.1.2001, the actual transfer took place much later, i.e., on 23.8.2001. He further stated that the process of promotion initiated on the basis of

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LDCE could be completed by posting the successful candidates as Section Officers in the component units of DGSSS. He too relied on Annexure R-12 dated 16.4.2001 which has stated, "Before necessary Notification regarding trifurcation of DGS Secretarial Service into SSB Secretarial Service, ARC Secretarial Service, SFF Secretarial Service, as per their sanctioned strength discussed above are issued, comments/views of ARC, SFF, DACS & IFU are requested for." The learned counsel stated that obviously the apportionment of DGSSS to SSB had not taken place till 16.4.2001. The learned counsel stated that Shri B.K.Moharana, Assistant, ARC, who was promoted against promotion quota and respondent No.5 who was promoted against LDCE quota were allocated to SSB and ARC respectively on the basis of their representations which could not be objected to as per Annexure R-12 as the notification regarding trifurcation had not yet been issued on finalisation of trifurcation.

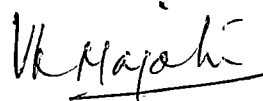
6. We have considered the rival contentions of both sides. Whereas Cabinet Secretariat vide order dated 15.1.2001 had decided to transfer SSB from Cabinet Secretariat to Ministry of Home Affairs, lot of administrative action was required to be taken before actual transfer. As per Annexure R-12 dated 16.4.2001, comments and views of component services such as ARC, SFF, DACS and IFU had been invited which would have been considered by Cabinet Secretariat before issue of

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notification regarding trifurcation of DGSSS. These trifurcation orders were issued on 23.8.2001 (Annexure R-8). Adjustments in the strength of various services could be resorted to before their apportioned strength. Annexure R-12 is not the final order of apportionment of services but Annexure R-8 dated 23.8.2001 is indeed the final order of trifurcation of DGSSS and apportionment of different services on trifurcation of DGSSS. Applicants have not challenged the LDCE held in September, 2000 on the basis of which respondent No.5 was selected for promotion to the post of Section Officer. Respondent No.5 originally belonged to ARC. On her promotion as Section Officer she was posted to SSB headquarters. There was one vacancy of Section Officer lying at ARC headquarters against Shri B.K.Moharana who was promoted. Both Shri Moharana and respondent No.5 had submitted representations. These were representations for mutual exchange. The competent authority before actual trifurcation of DGSSS effected the re-allocation of these personnel. Applicants have not established that they fall within the zone of consideration for promotion as Section Officers nor have they qualified in the LDCE. As such, they do not have a legal right for promotion as Section Officers as yet. The impugned order, in our view, has been issued by the competent authority before trifurcation of DGSSS had taken place. We do not find any infirmity in the impugned orders. The ratio of the case of **S.Thankachan** (supra) is squarely applicable to the facts and circumstances of the present case.



7. On the facts and circumstances of the case and in view of the above discussion, we find that the OA is devoid of any merit. The same is, therefore, dismissed. No costs.



(V. K. Majotra)
Member (A)



(V. S. Aggarwal)
Chairman

/as/