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Central Administrative Tribunal
Principal Bench

O.A. No. 80/2001 with
M.A.No.52/2001 ^A

New Delhi, dated this the

6th February 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Tapan Kumar Ghosal,
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S/O Late Shri Sudhir Ranjan Ghoshal,
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 2. Vinod Kant Notiyal,
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S/o Late Shri G.N. Notiyal,
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 3. Ram Chander
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S/o Shri Kundan Lal,
Vill. & P.O. Chandpur,
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 4. Arunabha Bandyopadhyay
Assistant,
S/o Late Shri Purnendu Bandyopadhyay,
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 5. Miss Anita Rani,
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D/o Shri D.L. Nagpal,
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 6. Smt. Vijaya Lakshmi,
W/o Shri S. Ganapathi Subramanian,
Qr.No.671, Lodhi Road Complex,
New Delhi-3.
 7. D.S. Mohd. Khasim,
S/o Shri Raja Sahib,
Gole Market,
New Delhi-1
- ..Applicants.

(By Advocate: Ms. Geetanjali Goel).

Versus

1. Secretary
Department of Personnel & Training,
North Block,
New Delhi.
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2. Secretary,
Department of Secondary Education & Higher
Education
Ministry of Human Resource Development.
Shastri Bhawan,
New Delhi .. Respondents.
(By Advocate: Shri D.S. Mahendru)

ORDER

S.R. ADIGE, VC (A)

Applicants impugn the seniority list of UDCs dated 3.8.99 (Annexure.A-1) and letters dated 2.2.2000 and dated 29.9.2000 (Annexure.A-2 Colly). They seek a direction to respondents to prepare a revised seniority list of LDCs from 1980 onwards and on that basis prepare a revised select list for Assistants, with consequential benefits.

2. Applicants are presently posted as Assistants, earlier being UDCs of CSCS and are borne on the cadre of HRD Ministry with their service particulars given in para 4.2 of the O.A. As per CSCS Rules, recruitment to the grade of UDC is made by substantive appointment of persons included in the select list for the grade, such that 75% of the officers included in the select list are drawn from LDCs with not less than 8 years approved service in the grade on the basis of seniority subject to rejection of the unfit, and the remaining 25% are drawn from LDCs selected on the basis of the LDCE results in order of merit. Persons belonging to the aforesaid two categories are to be included in the select list by taking alternatively 3 persons from the first category and one person from the second

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category, in that order. Applicants belong to LDCE quota and their date(s) of appointment stretch from 1983 to 1987.

3. Applicants' grievance is that respondents have filled up 36 vacancies in excess of the notified vacancies in 1981, 13 vacancies in excess of the notified vacancies in 1982, and 95 vacancies in excess of the notified vacancies in 1983 from persons belonging to seniority quota, without following the aforementioned 3:1 ratio, and in violation of the rule position, as a result of which the seniority of persons such as applicants who belong to LDCE quota has been depressed, and persons who would be junior to them rank higher at the next promotional level of Assistants.

4. Respondents in their reply deny their contentions. They state that the impugned seniority list has been prepared strictly in accordance with the directions contained in CAT PB orders dated 10.7.90 in TA No.1066/85 (CW No.2514/84) V.Venkatraman & Ors. Vs. UOI & Ors. (Annexure.A-6) and dated 23.1.98 in OA No.1816/92 CTNN Nair & ors. Vs. Secretary, Deptt. of Personnel & Ors., and has been finalised only after inviting objections and disposing of the same after due consideration..

5. We have heard both sides.

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6. As per para 2.7 of the Brochure on Preparation of Select List and Method for Reporting of Vacancy Position for decentralised grades of CSS(Annexure A to rejoinder) while drawing up of select list for UDCs all vacancies of seniority quota or departmental quota are to be carried forward in the next select list year and divided in the ratio of 3:1 in the seniority quota. and departmental exam.quota.

7. Applicants have not denied in their rejoinder, (and in fact in their written submissions, they themselves rely broadly on these figures) that for the select list year 1980, 56 vacancies became available, (including 2 vacancies on account of retirements). During hearing we were informed by respondents' counsel that these 56 vacancies were divided in the ratio of 42:14 or 3:1 for seniority quota; LDCE quota in accordance with aforesaid para 2.7 of the Brochure. Against the 42 vacancies in seniority quota, 6 were filled up and against 14 vacancies in LDCE quota, all 14 were filled up. The $42-6=36$ unfilled vacancies for the select list year 1980 were carried forward to the next year i.e. select list year 1981 and were added to the 40 fresh vacancies that had arisen that year making a total of $36+40=76$ vacancies in all. These 76 vacancies were again divided in the ratio of 3:1 i.e. 57:19 for seniority quota; LDCE Quota. Against the 57 vacancies in seniority quota all 57 were filled up while against 19 vacancies in LDCE quota 10 were filled up. The remaining 9

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unfilled vacancies were carried forward to the next year i.e. Select List year 1982 and were added to 28 fresh vacancies that had arisen that year making a total of 37 vacancies in all. These 37 vacancies were again divided in the ratio of 3:1 i.e. 28:9 for seniority quota; LDCE quota. Against the 28 vacancies in seniority quota, all were filled up, while against 9 vacancies in LDCE quota 7 were filled up. The remaining 2 unfilled vacancies were again carried to the next year i.e. select list year 1983 and were added to the 133 fresh vacancies that had arisen that year making a total of 135 vacancies in all, which were again divided in the ratio of 102 :33 or 3:1 for seniority quota: LDCE quota. Out of 102 vacancies in seniority quota 99 were filled up and out of the 33 vacancies in LDCE Quota, 10 were filled up. The 3+23+26 unfilled vacancies were carried forward to the next year, and so on.

8. These assertions have also broadly been made by respondents in their reply to para 4.4 of the OA, which have not been specifically denied by applicant in the corresponding para of the rejoinder. What applicants aver in the corresponding para of the rejoinder is thus

"While it is not denied that additions to the select list can be made, it is submitted that the same could not been done once the vacancies are already notified because the number of vacancies notified is to include the carried forward vacancies. What the respondents have done is to add the

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vacancies after the vacancies were notified and then fill up the additional vacancies from the promotees in total disregard of the Rules and the 3:1 ratio to be maintained between the promotes and LDCE candidates. Hence it is reiterated that the vacancies were unduly inflated by the Respondents and filled up contrary the rules."

9. As per rules of pleadings, the burden of proving an assertion in a case lies upon him who makes the assertion and no conclusive materials have been furnished by applicants to substantiate their assertion that the vacancies notified for being filled up in the aforementioned select list years did not include the number of unfilled vacancies of the previous select list year which were carried forward, and respondents added the vacancies after the vacancies were notified and then filled up the additional vacancies from the promotees.

10. Apart from the absence of conclusive materials furnished by applicants to support their assertions, the figures referred to in para 7 above regarding the number of vacancies occurring each select list year; the number filled up under each quota; the number unfilled and carried forward to the next select list years; the number filled up under each quota for that year, and so on, lead us to conclude that even if respondents acted in the manner alleged by applicants in para 8 above, ⁷ ~~as~~ no relief can be given to applicants at this stage. As averred by respondents, in the select list year 1980, 56 vacancies became available. Applicants in

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their written submissions have taken the figure as 54, but that would not change the principle involved. These 56 vacancies had to be, and were divided by respondents in the ratio of 3:1 i.e. 42:14 for seniority quota; LDCE Quota. Against the 42 vacancies in the seniority quota only 6 were filled, while against 14 vacancies in LDCE quota, all 14 were filled. It is not the case of applicants that for the Select List Year 1980 the number of vacancies in LDCE quota was not 14 or that some of these 14 vacancies were arbitrary and illegally kept unfilled. The 36 vacancies in seniority quota which remained unfilled (42-6) were then carried forward to the next select list year i.e. the select list year 1981. That year 40 fresh vacancies had become available. If only those 40 fresh vacancies were to have been filled up, they would have been filled up in the ratio of 30:10. As it is only 10 vacancies in LDCE quota were filled up, but after adding the 36 carried forward vacancies, the vacancies were to have been filled up in the ratio of 57:19. However, it is not applicants' case that they were amongst the aspirants for the 9 unfilled LDCE quota vacancies (19-10) in select list year 1981 which was illegally and arbitrarily denied to them. Indeed if they were eligible for these 9 LDCE quota vacancies, which had been illegally and arbitrarily denied to them they should have raised their grievance at that point of time itself within the period of limitation, but no materials have been shown to us to establish that they did so.

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11. These 9 unfilled LDCE quota vacancies were carried forward to the next select list year i.e. the select list year 1982. That year 28 fresh vacancies became available. If only those 28 fresh vacancies had to be filled up they would have been filled up in the ratio of 21:7. As it is the 7 vacancies in LDCE quota were filled up, but after adding the 9 carried forward vacancies, the vacancies were to have been filled up in the ratio of 28:9. Here again it is not applicants' case that they were aspirants for the 2 unfilled LDCE quota vacancies(9-7) in the select list year 1982, which was illegally and arbitrarily denied to them and indeed if they had been eligible for the 2 LDCE quota vacancies which had been illegally and arbitrarily denied to them they should have raised their grievance at that time itself within the prescribed period of limitation, but no materials have been shown to us to establish that they did so.

12. Indeed the 2 LDCE vacancies remaining unfilled were carried forward to the next select list year i.e. the 1983 select list year and were added to the 133 fresh vacancies that had arisen that year, and the total of 135 vacancies were again divided in the ratio of 3:1 or 102:33 against which 99 were promoted in seniority quota and 10 were filled up out of LDCE quota, but it is not applicants' case that they were aspirants for the 23

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(33-10) unfilled vacancies in LDCE quota in the select list year 1983 but were illegally and arbitrarily excluded from the same.

13. Unless applicants can establish that they were aspirants for the unfilled LDCE quota vacancies in 1981, 1982 or 1983 select list year and the same was illegally and/or arbitrarily denied to them which applicants have not succeeded in doing, . We are compelled to hold that no material prejudice has been caused to them by respondents' action so as to warrant interference in this OA.

14. The OA is therefore dismissed. No costs.

A. Veda Valli

(DR. A. VEDAVALLI)
MEMBER (J)

/ug/

S. R. Adige

(S. R. ADIGE)
VICE CHAIRMAN(A)