

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO.2617/1999
AND
OA NO.1006/1998

(V)

New Delhi, this the 11th day of the April, 2001

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. S.A.T.RIZVI, MEMBER (A)

OA No.2617/1999

Shri M.L. Sharma,
S/o Sh. S.L.Sharma, aged 53 years,
r/o A-112, Pratap Nagar,
Patparganj, Delhi.
And Working as Joint Director, Legal,
Dept. of Company Affairs, Shastri Bhawan,
New Delhi.

... Applicant

(By Advocate: Shri S.S. Tiwari)

V E R S U S

1. Union of India through,
Secretary,
Dept. of Company Affairs,
Ministry of Finance,
'A' Wing, 5th Floor, Shastri Bhawan,
Dr. R.P. Marg, New Delhi.
2. U.P.S.C.
through the
Chairman, U.P.S.C.,
Shahajahan Road, New Delhi.
3. Sh. Sameer Biswas, working as
Regional Director (Western Region),
Mumbai.
4. Sh.C.D.Paik, working as
Regional Director (Eastern Region) Calcutta.
5. Sh.L.M. Gupta, working as
Regional Director (Northern Region) Kanpur.
6. Sh. V.S. Rao, working as
Regional Director (Southern Region),
Chennai.
7. Sh.U.C. Nahata, working as
Director of Inspection & Investigation,
New Delhi.
8. Sh. R.Vasudevan, working as
Director, Dept. of Companies,
Bangalore.
9. B.M. Anand, working as
Registrar of Companies,
Bangalore. (Respondents 3 to 9 to be served
through Respondent No:1) ... Respondents
(By Advocate: Shri Rajinder Nischal and
Shri K.B.S. Rajan)

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Sh.S.P. Vashishtha,
 s/o Late Sh.G.N.Vashishtha,
 aged 58 years,
 r/o B-134, Sector-14,
 Noida, (U.P.),
 And retired as Joint Director, Legal,
 Dept. of Company Affairs, Shastri Bhawan,
 New Delhi.

... Applicant

(By Advocate: Shri S.S. Tiwari)

V E R S U S

1. Union of India through,
 Secretary,
 Dept. of Company Affairs,
 Ministry of Finance,
 'A' Wing, 5th Floor,
 Shastri Bhawan, Dr. R.P. Marg,
 New Delhi.
2. U.P.S.C.
 through the
 Chairman, U.P.S.C.,
 Shahajahan Road,
 New Delhi.
3. Sh. Sameer Biswas, working as Adhoc
 Director Inspection & Investigation.
 New Delhi.
4. Sh.C.D.Paik, working as Adhoc
 Regional Director (Eastern Region), Calcutta.
5. Sh.L.M. Gupta, working as Adhoc
 Regional Director (Northern Region), Kanpur.
6. Sh. V.S. Rao, working as
 Registrar of Companies, Chennai.
7. Sh.U.C. Nahata, working as
Registrar of Companies, Ahmedabad.
8. Sh. R Vasudevan, working as
Jt. Director (Accounts), Mumbai.
9. B.M. Anand, working as
 Joint Director (Inspection)
 Mumbai.
 (Respondents 3 to 9 to be served through
 respondent no:1.)

... Respondents

(By Advocate: Shri Rajinder Nischal and
 Shri K.B.S. Rajan)

ORDER (ORAL)

By Hon'ble Shri S.A.T. Rizvi, Member (A) :

Both these OAs deal with the promotion of
 Joint Directors (Legal)/Grade-I officers to the SAG



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of the Central Company Law Services (for short CCLS). The facts and circumstances in both the cases are similar. The issues raised are also the same. Accordingly with the consent of the parties, both these OAs are being disposed of by this common order.

2. The applicant in OA No.2617/1999 is aggrieved by respondents Office Memorandum dated 4.12.1998 by which his representation dated 6.11.1998 on the subject of non-consideration of his name by the review DPC held on 19.5.1998 has been rejected. He is further aggrieved by the fact that his name was not considered in the earlier DPC of 6.2.1997 also. Another grievance raised by him is that the respondents have considered for promotion even those who were not eligible in terms of the relevant Recruitment Rules (RRs). The applicant in the other OA, being OA No. 1006/1998, is similarly aggrieved except that he has not represented in the matter before the respondents. This latter applicant has retired from service on 31.1.1998.

3. The respondents have sought to contest both the OAs and have filed separate replies on behalf of the official respondent No.1 and the private respondents Nos. 7 and 8 (OA No. 2617/1999) and private respondents No.3 and Nos. 5 to 9 (OA No.1006/1998). In OA No. 2617/1999, replies have been filed also on behalf of the private respondents No.1, No.3 and No.6 and no

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replies have been filed on behalf of the official respondent No.2 and private respondent Nos.4, 5 and 9. Similarly, no replies have been filed on behalf of official respondent No.2 and the private respondent No.4 in OA No. 1006/1998. Rejoinders have been filed by the applicant in OA No. 2617/1999 in reply to the counter filed on behalf of the official respondent No. 1 and the private respondents Nos. 7 and 8. No rejoinders have been filed by the applicant in OA No. 1006/1998.

4. The facts of the case in OA No. 2617/1999 briefly stated are that the applicant rose to become a Joint Director (Legal) in the Office of the Respondent No.1 with effect from 7.8.1990 even though he was recommended for promotion to the said post by the UPSC in June, 1990 itself. He had completed five years of approved/regular service by the time the meeting of the DPC was held on 6.2.1997 for promotion to SAG in CCLS. However, he was not considered by the DPC. Accordingly, the applicant approached this Tribunal by filing OA No. 428/1997 which was decided on 3rd October, 1997. By the said order the proceedings of the DPC held on 6.2.1997 were cancelled and a direction was given to the respondents to hold a review DPC. As directed by the Tribunal, a review DPC was held on 19.5.1998, but this time again the applicant was not considered. Also, though the proceedings of the DPC held on 6.2.1997 had been cancelled, the officers promoted on the basis of the recommendations of that

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DPC were not reverted. According to the applicant, the private respondents Nos. 3 to 9 have wrongly been treated as appointed to Grade-I of the CCLS w.e.f. 1.1.1986. The aforesaid private respondents have not been promoted to Grade-I with effect from the said date (i.e. 1.1.1986) in accordance with Rules 6 and 8 of the CCLS Rules, 1965, which, inter alia, stipulate consultation with the UPSC. UPSC has, according to the applicant, not been consulted. The aforesaid private respondents have accordingly not been formally promoted/appointed and no order of promotion/appointment has been issued in respect of any of them. The respondents have also not cared to circulate a fresh seniority list in terms of the direction of this Tribunal in the aforesaid case (OA No. 428/1997). The private respondents Nos. 3 to 9 have, according to the applicant, been wrongly placed in the Grade-I of CCLS w.e.f. 1.1.1986. According to him, the aforesaid private respondents could acquire practical experience of working in Grade-I only from 1.1.1990 and not from a back date (1.1.1986). The private respondent No.9 has, in particular, been wrongly treated as senior to the applicant as according to the applicant, the seniority of the said private respondent No.9 could count only from 1994. The respondents have also failed to circulate the combined seniority list of Legal and Accounts Branches and that is the reason why the applicants could not assail the seniority assigned to the private respondents Nos. 3 to 9. The other applicant (in OA No. 1006/1998) was

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appointed as Joint Director (Legal)/Grade-I Officer w.e.f. 17.8.1989, i.e. from a date prior to the date of appointment of the other applicant. The applicant in OA No. 1006/1998 had filed two OAs, being OA No. 145/1997 and OA No. 272/1997, on the basis of the grievance exactly similar to the grievance made out by the other applicant in OA No. 2617/1999. Both the OAs have been disposed of by this Tribunal by the same order dated 3rd October, 1997, already referred to.

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5. We have heard the learned counsel on either side at great length and have perused the material placed on record in both the OAs.

6. The official respondent No.1 has submitted that the DPC held on 6.2.1997 had considered only those Grade-I officers, who had completed 8 years of qualifying service even though the RRs then in force had stipulated a qualifying service of 5 years only for promotion to the SAG of the CCLS. The new RRs were notified on 25.4.1997 and these stipulated a qualifying service of 8 years in Grade-I for promotion to the SAG. In accordance with the direction of this Tribunal given in its order dated 3rd October, 1997, a review DPC was convened and officers with 5 years of qualifying service in Grade-I were considered for promotion to the SAG. Three (3) unserved vacancies were available on that occasion and these related to the year 1996-97. The review DPC was held in UPSC on 19.5.1998 in

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accordance with the RRs then in force. Simultaneously a fresh DPC was held again in the UPSC on the same date (19.5.1998) for filling up of four (4) unreserved vacancies for the year 1997-98. At this meeting of the DPC, the new RRs which had come into force w.e.f. 25.4.1997 were applied and accordingly only those officers were considered, who had a minimum of 8 years of qualifying service in Grade-I to their credit. In both the meetings of the DPCs held on the same date, namely, on 19.5.1998, the applicant in OA No. 2617/1999 could not be considered for the reason that insofar as the 1996-97 vacancies are concerned, the applicant was not found to be senior enough so as to be included in the zone of consideration while in the other meeting of the DPC held on the same date the applicant could not be considered as he had not completed 8 years of qualifying service in Grade-I as required under the new RRs notified on 25.4.1997. Insofar as the other applicant (OA No.1006/1998) is concerned, he was duly considered by the review DPC held on 19.5.1998 and the result in respect of him has been kept in sealed cover which will be opened in accordance with the direction of this Tribunal. The aforesaid official respondent has also submitted that the relevant RRs do not provide for separate quotas for Accounts and Legal Branches of Grade-I officers for the purpose of promotion to the SAG. According to this very official respondent, the officers from both these branches are considered and included in the zone of consideration strictly in

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order of the dates of recommendations of the UPSC in respect of their promotion to Grade-I and in keeping with the seniority allotted to them by the UPSC in its recommendations.

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7. Before we proceed further with discussion in this case, we find it useful to recall, howsoever briefly, the systemic changes made by the respondents in the CCLS service (now ICLS) by way of merger of grades and cadre review. By their order dated 12.7.1990, the respondents merged grade -II into grade -I of the erstwhile CCLS thereby constituting one single Grade carrying the pay scale of Rs.3700-5000. By the same order, the respondents also down graded 11 posts of Grade-I to Grade-III w.e.f. 1.1.1990. The re-structuring thus carried out resulted in a new configuration of posts totalling 167 in all with regional re-distribution of officers in various grades (excluding the erstwhile Grade-II). A super time grade in the pay scale of Rs.4500-5700 was separately provided with a total of six officers in that grade. In addition to region-wise distribution of posts, posts in various grades were earmarked also for the Department of Company Affairs (Headquarters at New Delhi) and separately for the Company Law Board. The aforesaid order of re-structuring came into force w.e.f. 1.8.1990 except the part related to the merger of Grades I and II into one common grade which was to take effect from 1.1.1986. Inevitably, re-structuring involving merger etc. as above led

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to cadre review. As a result of cadre review 25 additional posts were created in the CCLS (now ICLS) and the posts, 192 (167 + 25) in all were redistributed in accordance with the cadre review order dated 1.9.1994. By the said order, six new posts in the SAG carrying the pay scale of Rs.5900-6700 were created and six posts in the Functional Selection Grade carrying the pay scale of Rs.4500-5700 were abolished. At the same time 15 posts in the Non-Functional Selection Grade carrying the same pay scale of Rs.4500-5700 were down graded to the next lower grade (Junior Administrative Grade). We have just noted that as a result of the aforesaid exercises of re-structuring and cadre review, the erstwhile Grades I and II have been merged not prospectively, but from a back date i.e. from 1.1.1986. The new grades created as a result of cadre review are the SAG in the pay scale of Rs.5900-6700, the Junior Administrative Grade (JAG) in the pay scale of Rs.3700-5000, Senior Time Scale (STS) in the pay scale of Rs.3000-4500 and Junior Time Scale (JTS) in the pay scale of Rs.2200-4000. We also note that as a result of merger of the erstwhile Grades I and II posts, the posts in Grade-I have been re-designated as JAG, and it is from this level (JAG) that promotions will now be made to the SAG.

8. Following re-structuring and cadre review in the manner prescribed in the previous paragraph, the respondents issued two seniority lists of JAG

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(Grade-I) officers. These were issued separately for the Accounts and the Legal branches in accordance with the extant RRs of 1965. Both the lists were issued on 15.11.1996. The list relating to the Accounts Branch contained 25 names and the one relating to the Legal Branch contained 12 names. The RRs for the posts in the SAG of the ILCS were notified, however, only on 25.4.1997, along with the RRs for the other posts forming part of the ILCS. The RRs of 1965 have been placed on record. Copies of the new/revised RRs notified on 25.4.1997 were provided to us by the learned counsel during the course of hearing. These too have been taken on record.

9. The learned counsel appearing in support of the OA has advanced several pleas, most of which centre around the definition of approved service available in the aforesaid RRs. The definitions are reproduced below for the same of convenience ad seriatim -

RRs of 1965 "2.(a) "approved service" in relation to any grade means the period or periods of service in that grade, rendered after selection, according to prescribed procedure, for long term appointment to the grade, and includes any period or periods during which an officer would have held a duty post in that grade but for his being on leave or otherwise not being available for holding such a post and includes such weightage, if any, as may be given at their discretion by the Selection Committee referred to in rule 5 at the time of the initial constitution of the service."

RRs, 1997

"2. Definition

d (a) "Approved service" in relation to any grade means the period or periods of service in that grade rendered after selection according to prescribed procedure for regular appointment to the grade and includes any period or periods during which an officer would have held a duty post in that grade but for his being on leave, deputation or otherwise not being available for holding such a post."

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It will be seen that both the definitions (reproduced above) are quite similar and essentially imply that approved service in relation to any grade would mean the period of service rendered in that grade after selection to that grade in accordance with the procedure prescribed for regular appointment to the grade. Having regard to the aforesaid definition of approved service, the learned counsel appearing on behalf of the applicants has argued that the private respondents in these OAs could not be said to have rendered approved service of 5/8 years in accordance with the aforesaid RRs, and therefore, all of them were ineligible to be considered for promotion to the SAG, whereas the applicants had undoubtedly rendered approved service of 5/8 years as stipulated in the aforesaid RRs. According to him, back dating the merger of Grade-II posts into Grade-I posts cannot mean that the private respondent acquired actual work experience in Grade-I/JAG w.e.f. 1.1.1986, and on this basis they could not be considered for promotion to the SAG particularly in preference over the applicants in these OAs. On the relevant question of duration of approved/regular service as distinguished from actual work experience, the

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11. Before we revert to the question raised by the learned counsel for the applicant regarding approved service, we find useful further to go into the judgement rendered by this Tribunal in the aforesaid 3 OAs in order to see what other directions have been given by this Tribunal and the manner in which the respondents have proceeded to comply with the same. We find that one of the important directions which this Tribunal had then given was in respect of holding of DPC or review DPC for the purpose of promotion of officers to the SAG. By the said order dated 3rd October, 1997, the Tribunal had directed the respondents not to hold DPC or review DPC for the purpose of aforesaid promotion without finalising the seniority list of JAG (Grade-I) on the lines suggested in the Tribunal's order. Further, in paragraph 12 of the aforesaid order dated 3rd October, 1997, the Tribunal had further directed the respondents to give full effect to the orders of merger and cadre review issued respectively on 12.7.1990 and 1.9.1994 and to revise the seniority list of officers belonging to the JAG/Grade-I only thereafter, further directing/reiterating that the review DPC for filling the posts of SAG should be held thereafter. We find that the respondents have meticulously and scrupulously followed all the directions given by the Tribunal on 3rd October, 1997. For instance, there is, on record, a letter dated 22.10.1997 (R-1) by which a further provisional seniority list (up-dated as on

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21.10.1997) was circulated. This was followed by the respondents' Office Memorandum dated 28.1.1998 by which the duly finalised seniority list has been circulated. The aforesaid OM together with the final seniority list has been filed by the applicants in the present OAs. We have perused the aforesaid OM of 28th January, 1998 and find that the respondents have therein examined each and every aspect of the decision rendered by this Tribunal on 3rd October, 1997 and have, at the same time, examined the representations filed by both the applicants as well as the others in response to the provisional seniority list circulated by the respondents' letter of 22.10.1997. We also find that one of the applicants (Shri M.L. Sharma) has withdrawn his representation against the seniority list circulated by the respondents by their letter of 22.10.1997. We also find that, insofar as the applicants in the present OAs are concerned, their position in the seniority list has not undergone any change at the stage of the finalisation of the list. We note that the final seniority list has not been impugned by the applicants.

12. Right at this stage, we find it necessary to state that by accepting their respective seniority as finally determined by the respondents, the applicants can be assumed to have accepted their relative position in the seniority list in all its implications. That is to say, it is not open to the applicants now to say that the acceptance of the

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seniority list by them was, in any manner, a conditional acceptance: In other words, they can be presumed to have accepted the fact that they will gain or lose in service in terms of promotion in accordance with their respective positions in the seniority list. Among the foremost implications of the seniority list, is the fact of merger of grade-II into grade-I from a back date (1.1.1986), placing grade-II on par with grade-I in all respects and without any reservations. In this view of the matter, the argument advanced on their behalf, based on the concept of approved service becomes untenable. Seniority is, afterall, the basic consideration in matters concerning promotions and this is so in all services.

13. Reverting again briefly to the argument based on the concept of approved service, we note that one of the significant pleas advanced by the learned counsel for the applicants is that merger of posts etc. and cadre review carried out by the Government has not been carried out in accordance with the RRs. Insofar as the legality/constitutionality of merger is concerned, the matter was considered by this Tribunal, in some detail, in its order dated 3rd October, 1997. It has been held, after relying on certain judgements of the Supreme Court that a policy decision concerning merger of posts is not open to judicial review until it is malafide, arbitrary, on bereft of any discernible principle. No such ground was

advanced by the applicants before the Tribunal then and the applicants in the present OAs also have nothing more and nothing different to say on this issue. On the other hand, the learned counsel appearing for the respondents has relied on S.P. Shivprasad Pipal Vs. Union of India and Others decided by the Supreme Court on 15.4.1998 and reproduced as (1998) 4 SCC 598. It has been held therein that the power to regulate recruitment and conditions of service is wide and would include the power to constitute a new cadre by merging certain existing cadres. In the same judgement the Supreme Court has further held that -

"it is possible that by reason of such a merger, the chance of promotion of some of the employees may be adversely affected, or some others may benefit in consequence. But this cannot be a ground for setting aside the merger, which is essentially a policy decision."

In the case on hand, the grievance arises mainly because the applicants' chances of promotion to SAG have been adversely affected. If one has regard to the above mentioned observation of the Supreme Court, the applicants are prevented from agitating the matter regarding constitutionality/legality of merger, and since they have done it, they must fail.

14. We have noticed that the respondents have prepared the seniority lists in question on the basis of the merger of Grade-II into Grade-I of the CCLS, taking effect from 1.1.1996. The obvious implication of the method followed is that all

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Grade-II officers will be treated, in the manner held by the Tribunal in its order of 3.10.1997, as those working in Grade-I/JAG w.e.f. 1.1.1986. That being so, it bears repetition that the applicants cannot be allowed now to dwell on the concept of approved service as defined in the RRs to thwart what has been legalised by the Presidential orders of merger etc. and cadre review and up-held by this very Tribunal in unequivocal terms. Thus, the learned counsel appearing on behalf of the applicants placing reliance on the following clarification rendered by the DOP&T in their OM dated 24.9/1997 cannot assist the applicants either, moreso because the same deals with promotion as distinguished from merger of posts ^{which} clearly has the effect of wiping out whatever distinction existed between the merged posts for all purposes.

"Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility conditions prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can over-ride it in the matter of promotion to the next higher post."

Going back again to the plea advanced by the learned counsel for the applicants that back-dating of merger w.e.f. 1.1.1986 cannot amount to actual work experience from the said date and hence approved service cannot count from 1.1.1986, the learned counsel appearing for the respondents has, contrary

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to the applicants plea, placed reliance on UOI and Others Vs. K.B. Rajoria decided by the Supreme Court on 28.3.2000 and reproduced in (2000) 3 SCC 562. In the aforesaid case, the Hon'ble Supreme Court has held that -

"20. In the context of this case, the High Court erred in equating the words "regular service" with "actual experience" relying on the decision in Union of India V. M. Bhaskar. In that case the eligibility criterion expressly was of completion of 2 years' experience in Grade II".

The aforesaid plea raised by the learned counsel for the applicants, therefore, also deserves to be set aside.

15. Laying stress on the relevance of seniority in matters of promotion, something to which we have already adverted in an earlier paragraph, the learned counsel for the respondents has sought to rely on Bal Kishan v. Delhi Administration & Another decided by the Supreme Court on 6.10.1989 and reproduced in 1989 Supp (2) Supreme Court Cases 351. This is what the Supreme Court has held in that case -

"9. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution".

If one has regard to the aforesaid observation of the Supreme Court, it is clear to us that having

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accepted their relative seniority positions, the applicants cannot proceed to take a contrary stand by insisting on completion of approved service when it comes to promotion to the next grade of SAG. By this reason also the plea advanced by the applicants cannot be sustained.

(b) X

16. The learned counsel appearing for the applicants has, as already indicated, made repeated references to the RRs, both old and new mainly in order to derive strength from the concept of approved service defined in the Rules. That matter has already been dealt sufficiently in the preceding paragraphs. We are now left to deal with the plea raised by him by placing reliance on the following provisions made in Rule 4 (2) of the new RRs notified on 25.4.1997.

"Grade II provided under the Central Company Law service Rules, 1965 stands abolished."

Based on the aforesaid provision, the learned counsel's plea is that Grade II of the CCLS in any case existed till 25.4.1997 and, therefore, its merger into Grade I w.e.f. 1.1.1986 can have no meaning. We do not agree. We have already seen that Grade II stood merged in Grade I by the Presidential order of 12.7.1990, the legality/constitutionality of which cannot be questioned. By the same Presidential order, the aforesaid merger was ordained to take effect from 1.1.1986. Furthermore, by the words used in the

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aforsaid provision culled from Rule 4 (2) of the RRs notified on 25.4.1997, the respondent authority, in our view, has simply recognised the fact that Grade II already stood abolished. The aforesaid provision has not gone on to say that Grade II stands abolished with immediate effect. The interpretation that we have attached to the aforesaid provision is also wholly consistent with the aforesaid Presidential order. The applicants cannot, therefore, derive any support from the aforesaid plea taken on their behalf.

(b)

17. Insofar as the preparation of seniority lists of Grade-I/JAG is concerned, the applicants have incorrectly advanced the plea that the respondents were required to prepare a combined seniority list of officers working in the Accounts and the Legal Branches of the CCLS. We find that no such obligation has been cast on the respondents by the Tribunal's order of 3rd October, 1997. Thus, the respondents have correctly prepared two different seniority lists in respect of the Accounts and the Legal Branches. And, as we have seen, for promotion to SAG, they have gone by seniority computed from the dates of appointment, irrespective of the list to which an officer belongs, barring the case of Shri Anand, which we will be dealt with in the following paragraph.

18. We have carefully perused the final seniority final seniority lists prepared by the

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respondents in respect of Grade-I/JAG officers of the CCLS. The dates of appointment of all the private respondents excepting one Shri B.M. Anand fall prior to the dates of appointment of the two applicants in the present OAs, namely, Shri M.L. Sharma and Shri S.P. Vashishtha, who were appointed on 7.8.1990 and 17.8.1989 respectively. Thus, barring Shri B.M. Anand, both the applicants are junior to the private respondents in these OAs. Insofar as Shri B.M. Anand is concerned, the fact brought out by the respondents in their OM dated 28.1.1998, already adverted to in an earlier paragraph, is that Shri Anand was selected by the UPSC for Grade II in 1986 itself, but his selection was ~~subjected~~ to de-reservation of the ST vacancy that was yet to be carried out. The procedure for de-reservation took a long time to be completed and consequently Shri Anand joined Grade-I only on 7.6.1994. The rule position is that persons appointed as a result of an earlier selection by the UPSC are senior to those appointed as a result of subsequent selection. Accordingly, in line with the advice of the DOP&T, Shri Anand was given seniority below one Shri R. Vasudevan alongwith whom he was selected in Grade II in 1986, but above Shri B.L. Sinha who was selected by the UPSC in Grade-I in 1989. We find that, in the circumstances, Shri Anand was correctly bracketed with Shri R. Vasudevan, who happens to be his batch-mate in 1986. His seniority over that of the applicants, for promotional purposes, cannot therefore be questioned either.

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19. The learned counsel appearing for the respondents has, towards the end of his arguments, referred to one of the provisions made in the new Rules which provides that a person shall not ordinarily be eligible for promotion to a duty post in the SAG unless he has completed 8 years of approved service in a duty post in the JAG. The corresponding provision in the old Recruitment Rules of 1965 relates to promotion to the Super Time Grade and the period provided is 5 years. He has very ably argued that merger etc. of posts and the consequential cadre review carried out by the Government was an extra-ordinary event and thus the rule providing for completion of 5/8 years of approved service could as well be deviated from. In support of his contention, the learned counsel has relied on B. Parameshwara Rao v. D.E., Telecommunications (Hyd). In that judgement, the word "ordinarily" came in for judicial consideration. Law laid down in several cases was cited therein. In re-Putta Ranganayakulu AIR 1956 AP 161 (FB), the then Chief Justice had held that the word "ordinarily" means habitually and not casually and that it could not obviously mean "always". In another case Kailash Chandra v. Union of India AIR 1961 SC 1346, their Lordships, while explaining the meaning of the word "ordinarily" had held that the said word means in the large majority of the cases but not invariably. Likewise, in

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K.J.C. Bose v. Government of India ATR (1986) 1
CAT 169 the Madras Bench of this Tribunal had held
as follows:

"No doubt, the expression 'ordinarily' occurring in that section will indicate that the Tribunal has some sort of discretion in the matter. But such a discretion cannot be exercised in all the cases and that has to be exercised in extraordinary situations."

If one has regard to the meaning attached to the word "ordinarily" by the Courts as above, we cannot help accepting the plea advanced by the learned counsel for the respondents. We note, however, that this is only one of the grounds on the basis of which completion of approved service has not been found by us to be relevant in the circumstances of this case.

20. Relatively insignificant issues raised on behalf of the applicants as in paragraph 4 of the order can also be set aside now that the main issues have already been dealt with and decided. For instance, reversion of pvt. respondents consequent upon cancellation of 6th Feb., 1997 DPC would clearly have been inconsistent with the decision rendered by the Tribunal on 3.10.1997 inter alia on the main issue of merger of posts and we cannot thus find fault with the aforesaid action of the respondents. For the same reason, and having regard to the fact that, as already held, upgradation by way of merger is entirely different from promotion,

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the respondents were not required to issue orders promoting pvt. respondents to Grade-I/JAG.

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21. For all the reasons mentioned in this order, both the OAs are found to be devoid of merit and are dismissed. The proceedings of the DPC dated 19.5.1998 in respect of the applicant in OA No.1006/1998 kept in the sealed cover will, however, be opened if doing so is otherwise in order, and necessary action taken in the light thereof in accordance with relevant rules and instructions. No costs.

S.A.T. RIZVI
(S.A.T. RIZVI)
MEMBER (A)

ASHOK AGARWAL
(ASHOK AGARWAL) —
CHAIRMAN

(pkr)