

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1549/94

New Delhi, this the **5th** day of December, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri N. Sahu, Member (A)

1. Shri A.K. Srivastava,
1600, Sector V, R.K. Puram,
New Delhi.
2. Shri J.L. Chugh,
C-4-B/311-A, Pocket 13,
Janakpuri, New Delhi.
3. Shri H.S. Taggar,
1478, Laxmi Bai Nagar,
New Delhi.
4. Shri A.K. Sinha,
C-414, Albert Square, Gole Market,
New Delhi.
5. Smt. Hardevi G. Lala,
w/o Shri G.M. Lal,
II-E/1, Lajpat Nagar,
New Delhi.
6. Smt. Aruna Merani
W/o Shri G.R. Merani,
B/203/2, East of Kailash,
New Delhi.
7. Shri N.K. Sehgal,
1347, Laxmi Bai Nagar,
New Delhi.
8. Shri A.K. Soni,
B-1/11, Brij Vihar,
Pritam Pura, Delhi.
9. Shri Ramesh Chand,
H.No. 945-E, Babarpur,
Near Chajju Gate Park
Shahdara, Delhi.
10. Shri C.B. Singh,
V-53, Arvind Mohalla,
Brahmpuri, Shahdara,
Delhi.
11. Smt. Urmil Sharma
w/o Shri D.K. Sharma,
G-429, Double Storey,
Timarpur, Delhi.
12. Shri S.K. Kohli
c/o Admn.III
Ministry of Home Affairs,
North Block, New Delhi. Applicants

(By Advocate: Shri C. Harishankar)

Union of India through

1. Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Department of Personnel & Training,
Ministry of Personnel, P.G. & Pension,
North Block, New Delhi. Respondents

(By Advocate: Shri K.R. Sachdeva)

O R D E R

Dr. Jose P. Verghese, Vice-Chairman (J)--

The 12 petitioners in this case were working as UDCs in the Central Sectt. Service, Ministry of Home Affairs, Government of India and at present they are Assistants in the said service. They were all promoted as UDCs on the basis of seniority-cum-merit subject to rejection of unfit on 7.4.1980, alongwith a number of other LDCs. On behalf of the petitioner it was submitted that the promotion to the cadre of UDC in CSCS is governed by the Central Sectt. Clerical Service Rules, 1962, hereinafter referred to as Rules. Rule 11 of the said rules provides for promotion to the cadre of UDC by 2 different methods viz. on the basis of seniority-cum-merit subject to rejection of unfit and the other on the basis of limited departmental exam. In accordance with the statutory rules, the respondents have issued regulations for the purpose of determining the seniority and regulation 2 to the 3rd schedule to rules being relevant to the present case is reproduced hereinbelow:

"2. Maintenance - (1) Subject to the provisions of Clause (2) of this regulation, additions to the Select List in any cadre after its constitution under regulation 1 shall be made in such numbers

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as the cadre authority may determine from time to time, keeping in view the existing and anticipated vacancies, and in the proportion of 3 : 1 from:-

(a) Officers of the Lower Division Grade in that Cadre who have rendered not less than eight years' approved service in the grade are within the range of seniority in that grade subject to the rejection of the unfit;

Provided that where an officer of the Lower Division Grade is rejected as unfit, the reasons for such rejection shall be recorded in writing and communicated to the officer concerned; and

(b) members of the Lower Division Grade selected on the results of the Limited Departmental Competitive Examinations held by the Staff Selection Commission for this purpose from time to time in the order of their merit.

Persons of the two categories referred to above being included in the Select List by taking alternatively three persons from category (a) and one person from category (b) above, and so on, in that order.

NOTE: If officers within the range of seniority are not available in a cadre for making additions to the Select List from officers of category (a) above, such additions shall be made from a panel, furnished by the Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs of officers serving in the other cadres.

Thus in accordance with the said regulation, the names of persons promoted by both the methods were to be included in the seniority list by taking alternatively 3 persons from the category of promotees promoted on the basis of seniority-cum-merit subject to rejection of unfit and one person from those promoted on the basis of limited departmental exam.

On 1.10.1979 consequent to the decision to restructure 1600 posts of UDCs were rendered vacant. Promotion to these posts were made on the same date namely 7.4.1980. Departmental exam for filling up of the remaining posts was also held in 1980 itself and the

seniority list was prepared on 21.8.1982.* It was submitted on behalf of the petitioner the said seniority list was not in accordance with the regulation 2. Accordingly some of the affected UDCs approached this court vide OA 214/86 in the matter of Harbagwan Vs. UOI and this court by an order dated 1.2.1993 allowed the said OA and directed the respondents to recast the entire seniority of UDCs in accordance with Regulation 2 appended to the 3rd schedule to the CSCS Rules, 1962, after giving opportunity to all persons likely to be affected by such revised seniority list. The respondents were to prepare the said seniority list within six months from the date of receipt of the copy of the said judgement.

However, the seniority list in pursuance to the above said decision happened to be issued only on 2.6.94. The petitioners alleged that the seniority now issued in pursuance to the said decision of this court dated 1.2.1993 was nothing but an eye wash. It was submitted that the respondents placed the 3 persons in the said case en bloc just above all the other UDCs without making any consequential changes in the seniority list as per the directions of this court dated 1.2.1993. Finding that the seniority list prepared and notified on 2.6.94 was not in accordance with the judgement dated 1.2.1993, notices were issued to the respondents and especially to Shri S.K. Tuli, US, MHA who is said to have promulgated the said seniority list of 1994. Prima facie we found that the decision of this court dated 1.2.93 has been given a go-bye and this court directed them to file a separate affidavit explaining the circumstances in which the impugned seniority list of 2.6.94 was issued in spite of clear directions by this court on 1.2.1993. In pursuance

****which was subsequently replaced by the impugned seniority list dated 19.12.1984"**

corroborated vide court's order
dated 10.8.98 in RA. 23/98

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to the said directions an affidavit was filed on 22.8.1997 and Shri Tuli was present in the court and we accepted the affidavit and even though it was not in accordance with our order dated 1.2.1993 the circumstances have been fairly explained in the said affidavit.

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By way of reply the respondents stated that the present applicants were not available for being promoted on the basis of seniority cum fitness in 1980 itself and according to their seniority in the common seniority list of LDCs they cannot find a place in the zone of consideration for appointment in 1980. It was also stated in the reply that the judgement given by this court in OA 214/86 dated 1.2.1993, was a judgement in personam and not judgement in rem and as such they made alterations in the seniority list of 1992 with respect to the said petitioners in the said OA alone. It was also contended by the counsel for respondents that the promotion of the petitioners to UDC should have been considered further subject to their range of seniority or zone of promotion. The number fixed in the said case was 681. They could be considered for giving regular promotion in accordance with the rules to the cadre of UDCs. The zone of promotion or to the range of seniority was further elaborated by OM issued by the respondents on 17.12.1981. It was stated that the petitioners do not fall within the said zone of seniority and they would not be entitled to be included in the seniority list of promotees of UDCs.

We have considered the rival contentions of the parties and gone through the pleadings and heard the counsels. We find that the averments made by the respondents that the judgement dated 1.2.1993 is not a

judgement in personam rather judgement in rem. Para 3 of the said judgement had clearly stated that for the reasons stated in the above paras of the judgement, the petition stands allowed and the respondents were directed to recast the seniority list of UDCs. It is pertinent to mention that the direction was not to recast the seniority only with reference to 3 petitioners therein rather the entire seniority list of UDCs was to be recast in accordance with Regulation 2 appended to schedule 3 to CSCS Rules 1962 after giving opportunity to all the persons likely to be affected. Such a decision cannot be termed as decision in personam and the respondents were under the wrong impression that the judgement given by this court on 1.2.1993 was a judgement in personam. There was a reference to the 3 petitioners in the latter part of para 2 of the judgement but we are afraid that was stated only by way of clarifying the issue raised by the respondents and decided with reference to those petitioners in the said case only. While the operative part of the judgement in clear terms indicates that the said judgement requires the respondents to revise the entire seniority list of UDCs in accordance with the said regulation, we have no hesitation to hold that the said judgement was a judgement in rem.

The second contention of the respondents is that the petitioner herein as well as those 3 petitioners in the above said OA could not claim seniority under regulation 2 as it claimed in the said OA since these petitioners do not fall within the range of seniority nor in the zone of promotion as the case may be. We are afraid that this contention was raised by the respondents in the decision of this court dated 1.2.1993 and the latter part of para 2 had dealt with this contention in detail and the

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previous court had proceeded to reject the same and to bring back the said contention over again, in our opinion is hit by the vice of res judicata.

Finally to confine the decision of this court dated 1.2.1993 only to the 3 persons therein and not to implement the said orders of this court and revise the entire seniority list in accordance with regulation 2 in our opinion is unbecoming of the respondents. It is relevant to mention that the above referred decision had become final after the S.L.P. filed by the respondents have been rejected. The respondents could have filed any further application for review or clarification if in their estimate some further lacunae has crept in the judgement. without doing so, to adamantly stick to the view of the respondents which was urged and rejected by the court, is certainly not in good taste. In any event the submissions made by the respondents are not tenable in law.

In the circumstances the following directions are issued:

- (1) The respondents shall recast the seniority list of UDCs as per the regulation 2 appended to the CSOS Rules, 1962 and issue the final seniority list within 3 months from the date of receipt of a copy of this order.

19.12.1984

of ~~11.8.1982~~

(2) Since the seniority list already been quashed by our order dated 1.2.1993, the seniority list wrongly issued in pursuance to our orders of 2.6.1994 is also hereby quashed.

(3) The petitioners will be entitled to all consequential reliefs.

In the circumstances, this CA is allowed to the extent stated above and no order as to costs.

N. Sahu

(N. Sahu)
Member (A)

(Dr. Jose P. Verghese)
Vice-Chairman (J)

⑩ Substituted with
Court's order dated
10.8.89