

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00736/2016

Friday, this the 12th day of February 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

Pradeep.A.,
Protector of Emigrants,
Thiruvananthapuram.
Residing at TC 41/2512,
Andu Vilakathu Veedu,
Manacaud P.O., Thiruvananthapuram. ...Applicant

(By Advocate Mr.S.Mohammed Al Rafi)

v e r s u s

1. Union of India represented by its Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training,
New Delhi – 110 001.
2. The Under Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training,
Lok Nayak Bhavan, New Delhi – 110 001. ...Respondents

(By Advocate Mr.S.R.K.Prathap, ACGSC)

This application having been heard on 28th January 2021, the Tribunal on 12th February 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

This O.A was filed on 26.08.2016 by the applicant, Shri.Pradeep.A., who was then posted as Protector of Emigrants in Thiruvananthapuram. At present he has been transferred and posted as Under Secretary in the Department of Personnel & Training (DoP&T), Government of India, New

Delhi. The application was filed against Annexure A-1 order No.4/11/2015-CS-I(D) dated 08.03.2016 issued by the 2nd respondent to the extent that the applicant was excluded from the impugned promotion list to the post of Selection Grade (Deputy Secretary) (ad hoc) in the Central Secretariat Service (CSS). He claims not only that he was excluded from promotion to the post of Selection Grade (Deputy Secretary) but that his juniors were all promoted by superseding him.

2. The background of the matter is that the applicant had appeared for the Civil Service Examination 2000. He secured rank 391 in the examination but was denied appointment by the 1st respondent on the ground of non availability of vacancies. He filed an O.A before this Tribunal and thereafter an O.P before the Hon'ble High Court of Kerala. Based on the judgment of the Hon'ble High Court of Kerala, he was appointed as Section Officer in July, 2007. In the normal course, he would have joined the service in January, 2002; however, due to the stand taken by the 1st respondent he was able to join the service after a gap of several years only through the directions of the Hon'ble High Court of Kerala. After joining the CSS in 2007, respondents provided consequential benefits such as pay fixation, placing him in old pension scheme, accommodating him in an appropriate place in the seniority list of the Section Officers, giving an ad hoc promotion in time to the level of Under Secretary etc. However, when the select list of Under Secretaries was prepared, the proposal of the applicant was sent to Union Public Service Commission (UPSC) with the remark that the non-availability of Annual Confidential Reports (ACRs) of

the applicant was due to late joining caused by the litigation. UPSC then asked the DoPT – CS-I Division to come up with a decision in consultation with its own Establishment Division as to whether he could be considered in the appropriate select list without the ACRs for the period for which he was not in service for obvious reasons. The CS-I Division of the DoP&T, in consultation with the Establishment Division, sought legal opinion from the Ministry of Law. The applicant submits that the non-availability of ACRs for the period in which he was not in service was not due to his fault and he cannot be penalized for his late joining of service after a legal battle.

3. The applicant submits that the respondents had issued an O.M dated 31.12.2008 by which a common seniority list (CSL) of Section Officers was published (at Annexure A-2). In the Annexure A-2 CSL, the applicant has been placed at CSL No.5758-A. However, the respondents refused to give him a promotion on the basis of this seniority on the ground of non-availability of ACRs. He made several representations to the respondents to include him in the Under Secretary Select List 2007 (USSL 2007) keeping in view the decisions of the Government while considering the promotion of Direct Recruit Section Officers of CSS. He was informed by a letter dated 08.04.2013 (Annexure A-3) that the matter was under examination in consultation with the Establishment Division of DoP&T. However, without taking any decision on Annexure A-3, the 2nd respondent issued the Annexure A-1 order, superseding the applicant and promoted his juniors to the post of Selection Grade (Deputy Secretary) (adhoc). In Annexure A-2 seniority list, the applicant was at Sl.No.5758-A and his juniors who are

placed at Sl.Nos.5759, 5760, 5763, 5765, 5766, 5771 and 5772 were promoted to the post of Selection Grade (Deputy Secretary). His contention is that the respondents have arbitrarily and illegally excluded him from promotion. He has given a representation requesting to redress his grievances and to promote him to the post of Deputy Secretary on the basis of the proper seniority, vide Annexure A-4. However, no action has been taken so far.

4. He claims that he was penalised for no fault of his and not given promotion in time citing non-availability of ACRs though he was denied appointment till 2007 unjustly. He submits that he was given promotion as Under Secretary (ad hoc) without insisting on the ACRs. Only now, in the case of promotion to the post of Deputy Secretary (ad hoc), the respondents are illegally and arbitrarily insisting for the production of ACRs. He has prayed for reliefs as follows :

(a) To call for the records leading to Annexure A-1 and quash the same order to the extent the applicant was excluded from the promotion to the post of Selection Grade (Deputy Secretary).

(b) Direct the respondents to promote the applicant to the post of Selection Grade (Deputy Secretary) with effect from 08.03.2016 and to pay all the consequential benefits immediately.

(c) Direct the 1st respondent to consider Annexure A-4 and to pass appropriate order promoting the applicant to the post of Selection Grade (Deputy Secretary) with effect from 08.03.2016 and disbursing the consequential benefits.

(d) Award costs of these proceedings.

And

(e) Grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the interest of justice.

5. Per contra, Respondents filed a reply statement on 13.10.2017. They accept that the applicant had successfully qualified CSE 2000 with rank 391. The respondents did not allot him any service due to non-availability of OBC vacancy. On the basis of the Hon'ble Supreme Court judgment in Civil Appeal Nos.5505-5507 dated 05.04.2006 in *Union of India v. Satyaprakash*, the Hon'ble High Court of Kerala had disposed of the Writ Petition No.22585/2003 filed by the applicant vide its order dated 31.05.2006, allowing all benefits to him. The respondents, in compliance with this judgment dated 31.05.2006, allocated him to the Central Secretariat Service (CSS). Accordingly, he was posted vide O.M.No.9/1/2001-CS.I dated 22.03.2007, as Section Officer in the Ministry of Shipping, Road Transport and Highways and he joined the Ministry of Shipping on 23.04.2007. The respondents also issued an O.M dated 01.10.2007 clarifying that the Cadre Controlling Authorities should determine seniority, pay scale etc. of candidates who joined service very late after directions of courts in the light of the judgment dated 02.03.2007 from the C.A.T., Principal Bench, New Delhi, in O.A.No.216/2004 in the case of Shri.Rajesh Kumar Sah. In light of this, the following consequential benefits were given to the applicant :

(i) He has been interpolated in the SO CSL and allotted CSL No.5758-A.

(ii) He has been notionally placed in Non Functional Scale of Rs.8000-275-13500 w.e.f 01.07.2005 ie. after completion of four years deemed approved service in Section Officer Grade.

(iii) He has been appointed as Under Secretary on adhoc basis w.e.f 26.05.2010.

(iv) He has been included in USSL-2011 vide O.M.No.5/13/2012-CS.I(U) dated 23.09.2013 (Annexure R-1).

6. The relevant rules at that time as applicable to the Central Secretariat Service Officers were the Central Secretariat Service Rules, 1962 (CSS Rules, 1962) which has been produced at Annexure R-2. Promotion to Under Secretary level (Grade-I) is regulated in accordance with Rule 12 (2) of CSS Rules, 1962, as per which, eight years of approved service in the grade of Section Officer is required for promotion to Under Secretary Grade. As the applicant qualified the CSE 2000, his approved service in the grade of Section Officer is counted from 01.07.2001 ie. 1st July of the year following the year in which the examination for direct recruitment was held. Hence, he was eligible for consideration for USSL-2009 on completion of 8 years of approved service. For consideration of his case for inclusion in USSL-2009, Annual Personal Assessment Reports (APARs) upto the year 2007-2008 were to be reckonable. Since he actually joined only on 23.04.2007, only one APAR was available; thus, he could not be assessed by the Departmental Promotion Committee (DPC) for want of APARs for inclusion in USSL-2009. The same was the case for USSL-2010 since by then only 2 APARs was available. Subsequently, he was included in USSL-2011 as a regular Under Secretary vide O.M.No.5/13/2012-CS.I(U) dated 23.09.2013 (Annexure R-1).

7. The respondents have issued the impugned order at Annexure A-1 dated 08.03.2016 by which 12 Under Secretaries have been promoted to the Selection Grade (Deputy Secretary) on an adhoc basis. The respondents submit that the applicant has wrongly claimed that he was excluded from the promotion to the post of Selection Grade (Deputy Secretary) and that his juniors were promoted by superseding him. It is submitted by them that the promotion to the Deputy Secretary grade is made from the next below grade in the hierarchy, which is the grade of Under Secretary. The applicant figures in the Under Secretary Select List of 2011 (USSL 2011) whereas all the aforesaid Under Secretaries who have been promoted on adhoc basis belong to USSL 2007. His claim that he is superseded is not correct. These Under Secretaries belong to the Section Officer Select List (SO SL 1993) (Promotees) whereas the applicant belongs to SO SL 2000 (Direct Recruit). He was interpolated with them for the purpose of issue of CSL of Section Officers vide Annexure A-2 of the O.A. Therefore, according to the respondents no officer junior to him in the grade of Under Secretary was promoted vide the aforesaid order dated 08.03.2016. The Under Secretaries of USSL 2011 are yet to be promoted to the post of Selection Grade (Deputy Secretary) in CSS either on an adhoc basis or on a regular basis.

8. It is submitted by the respondents that Rule 15 (1) of CSS Rules, 1962 stipulates that : “*every direct recruit to the Section Officers' Grade or the Assistants' Grade shall initially be appointed on probation, the period of probation being two years from the date of appointment.*” Accordingly, the applicant had completed his probation only on 23.04.2009 as he had

joined on 23.04.2007. The respondents submit that he was therefore eligible for promotion to Under Secretary Grade only from the USSL 2009 as per both the eligibility condition and probation point of view as he completed 8 years approved service only on 01.07.2009 (counting his approved service with effect from 01.07.2001) and as his probation was completed only on 23.04.2009. The respondents have produced Annexure R-3 O.M dated 24.09.1997 which is based on a Hon'ble Supreme Court judgment in *R.Prabhadevi & Ors. v. UOI*. The judgment holds that *“Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfills the eligibility condition 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.”* Hence, the applicant's contention for promotion to Deputy Secretary grade has no factual or legal basis.

9. The Applicant filed a detailed rejoinder dated 20.10.2017. The applicant again submitted that it was not his fault that his appointment was delayed and he got appointed after litigation only on 23.04.2007. Normally, having qualified the CSE 2000, as per the CSS Rules, 1962, his service should have been counted from 01.07.2001. Further, he was eligible for promotion as Under Secretary on completion of 8 years ie. from 01.07.2009 but was not assessed by the DPC for want of APARs for

inclusion in USSL 2009 and USSL 2010. The respondents have arbitrarily placed him in USSL 2011 citing non availability of ACRs for the period in which he was not in service at all due to the long pending litigation. This is in gross violation of the operative part of the order of the Hon'ble C.A.T., Principal Bench, New Delhi in O.A.No.216/2004 in *Rajesh Kumar Sah* produced at Annexure A-5. Paragraphs 13 and 14 of the said order reads as follows :

13. “.....Resultant position will be that the applicants are to be treated as persons who had been illegally overlooked in the matter of their appointment, having been selected by the Union Public Service Commission and who require to be conferred with appointment.....

14. Persons, who had been selected along with them might have improved their career substantially. Therefore, applicants have to be placed at appropriate position, if possible by accepting their preferences, or in any case conferring on them residuary positions, duly taking note of principles of allotment statewide and other attendant requirements. They have to be accommodated at appropriate place in the seniority positions, as if they had come to the service, from the date on which persons below their respective ranks came to be appointed. The assignment of seniority should be with notice to affected persons. They will be deemed as having joined duty as above for all purposes, including fixation but monetary benefits will be confined and available only from the day they join duty.”

10. The applicant has cited the judgment of Hon'ble Supreme Court in **Pilla Sitaram Patrudu & Ors. v. Union of India (1996) 8 SCC 637** to urge rejection of the contention of the respondents that he can be promoted only with effect from the date of completion of his probation on 23.04.2009 as it has been directed in Paragraph 3 that :

“.....Since he was selected by direct recruitment he is entitled to be appointed according to rules. His appointment was delayed for no fault of his and he came to be appointed in 1981. He is, therefore, entitled to the ranking given in the select list and appointment made accordingly.....”

11. The applicant also submits that the respondents are not ready to maintain his seniority as a Direct Recruit Section Officer (DRSO) of CSE 2000, in the CSL of Section Officers for promotions to higher grades of Deputy Secretary & Director as has been done in the case of a similarly placed officer, Smt.Garima Singh, another DRSO of CSE 1996 and other DRSOs including those belonging to CSE 1999. The respondents ought to have included him in the select list for promotion to the post of Under Secretary by including him in USSL 2007 going by these cases. Regarding the averment that he belongs to SO SL 2000 (Direct Recruit) and he was interpolated with others only for the purpose of a Common Seniority List of Section Officers, he submits that the selection to the post of Section Officer is made through promotion and direct recruitment. However, in the cadre of Section Officers, a common combined seniority list is prepared and further promotion to the post of Under Secretary is effected in accordance with the interse seniority position in the common seniority list. No special concession or relaxation is made available to the promotee Section Officer for promotion to the post of Deputy Secretary as per CSS Rules, 1962. He was at Sl.No.5758-A in Annexure A-2 common seniority list and his juniors were as indicated by the Sl.Nos below him. They were promoted to the post of Selection Grade (Deputy Secretary) and, merely, because these officers are promotees who belong to SO SL 1993, they cannot claim any preference or right over the applicant. Once the applicant is included in the common

seniority list, further promotion can be effected only in accordance with the interse seniority position maintained in the common seniority list. In addition, O.M.No.AB-14017/12/88-Estt(RR) dated 25.03.1996 of DoP&T indicates as follows (produced by respondents in their Additional Reply Statement at Annexure R-5) :

“To avoid such a situation the following note may be inserted below the relevant service rules/column/in the Schedule to the Recruitment Rules.

*Where junior who have completed their qualifying eligibility service are being considered for promotion their seniors would also be considered provided they are not short of the requisite qualifying eligibility service or two years, whichever is less **and have successfully completed their probation period for promotion to the next higher grade** along with their juniors who have already completed such qualifying/eligibility service.”*

(emphasis added)

12. The applicant submits that this DoP&T O.M has amended the earlier O.M dated 18.03.1988 in para 3.1.2, based on Hon'ble Supreme Court judgment in *R.Prabha Devi & Ors. v. Government of India & Ors.* in Civil Appeal Nos.3040-42 of 1987. As per this judgment and the resultant O.M dated 25.03.1996, the applicant is entitled to be promoted by the relaxation of two years. The same has been confirmed in the Garima Singh case and subsequent judgments by which the seniority in CSL SOs of all the DR SOs of CSS, except that of the applicant, was kept intact for their further promotions to the level of Deputy Secretaries and Director. On the other hand, his immediate juniors in the Under Secretary grade viz. Shri.Dinesh Kumar (CSL No.5759) and all others, got promotions purely because, though they were juniors to the applicant in the Section Officer level, they

had completed the eligibility criteria of 8 years in the year 2007 whereas the applicant completed 8 years approved service in 2009 only. The above referred O.M sought to meet this issue of seniors becoming juniors in promotion grade by giving relaxation in qualifying service by more than half of such qualifying/eligibility service or two years, whichever is less. The C.A.T., Principal Bench had given its orders in Garima Singh case as well in the case of G.Ravinder, a direct recruit SO of CSE 1999. The respondents in their case restored their seniority and promoted them as Deputy Secretary before their juniors who were below them in their respective CSL of SOs. However, in his case the respondents are not ready to implement the law as laid down in Garima Singh case and G.Ravinder case. The respondents have, therefore, discriminated the applicant against other DR SOs like Smt.Garima Singh and Shri.G.Ravinder in clear violation of Articles 14 & 16 of the Constitution by allowing his juniors like Shri.Dinesh Kumar and others to be promoted before him. He too should have been considered on the same basis for USSL 2007. Out of the 12 Under Secretaries who were promoted to Deputy Secretaries vide the impugned order dated 08.03.2016, 7 were juniors in the CSL of SOs. It was only due to an unprecedented rise in strength of Under Secretaries to 1400 due to the restructuring of the Central Secretariat Service cadre that a large number vacancies became available from 2003 providing an opportunity to accelerated promotion of Section Officers. The applicant was marginally short of the eligibility criteria which as per statutory rules is the completion of 8 years of approved service in feeder cadre of Section Officer. Though junior to the applicant at the Section Officer level, the above 7 officers

completed their eligibility criteria of 8 years of approved service in 2007 whereas the applicant completed 8 years of approved service in 2009 only. It is reiterated that the respondents have tackled this issue of seniors becoming juniors in promotion grade by the issue of various O.Ms including the above referred O.M of 25.03.1996. In the Garima Singh case it was mentioned by the C.A.T., Principal Bench that the O.M's can well be considered as if issued in the legislative power conferred by Article 73 of the Constitution on the Executive unlike what was allowed by the judgments in the Garima Singh and G.Ravinder cases and also as per the O.M's mentioned, including the O.M dated 25.03.1996, it is being wrongly submitted by the respondents that the applicant is junior to these Under Secretaries. They are actually junior to him as per the CSL of SOs.

13. In addition, the contention of the respondents that the applicant can be considered for promotion to the grade of Under Secretary only with effect from 23.04.2009 is also not tenable as it is against the respondents' own proposals agreed by the Department of Legal Affairs by the file notings in Para 10 in File No.5/1/2010-CS.I(U)(Pt.I) on note pages 25-26 which clearly state that the late joining and late completion of probation cannot be attributed to him (these notings have been later produced by the respondents as Annexure R-7 in their additional reply statement). The applicant submits that in the light of the aforementioned cases, O.Ms as well as the notes and conditions of Department of Legal Affairs, he should be placed in the Under Secretary Select List 2007 (USSL 2007) instead of Under Secretary Select List 2011 (USSL 2011). The respondents are unnecessarily insisting on

strict implementation of the CSS Rules in the matter of his promotion knowing very well that his case is one of a peculiar nature, which needs a special dispensation as mentioned in the file notings of the respondents. The placement in USSL 2011 will delay his promotion for another 8 years to the grade of Deputy Secretary. Many others who won similar litigations on the basis of the Supreme Court judgment in Satyaprakash case (supra) have been given due interse seniority along with their batchmates and also given due promotion without difficulty.

14. In response to this the respondents have filed a detailed additional reply statement on 06.04.2018. They have drawn attention to Rule 15 relating to the Central Secretariat Service Rules, 1962 which requires satisfactory completion of probation and also to the stipulations as to “Probation” which have been provided in the said Rules. The Rules clearly state in Rule 15(1) that direct recruit Section Officers shall initially be appointed on probation and that the probation period shall be of two years from the date of appointment. Rule 15(3) also mentions that probation period may be extended by further period not exceeding one year. Further, Rule 16 stipulates “Confirmation of probationers” and requires all probationers to successfully complete their probation to the satisfaction of the appointing authority so as to be eligible for confirmation. It also states that until a probationer is confirmed, he shall continue to have the status of probationer. Similarly, with reference to both the Rules 15 and 16, the CSS Rules 1962 also define “Permanent Officer, Probationer and Regular Officer” in Rule 2(n), 2(o) and 2(ooo). Hence, as per these Rules, the

respondents submit that it is clear that the applicant had joined as direct recruit Section Officer on 23.04.2007 and was in probation till 22.04.2009. Till the completion of the two years probation period, the applicant was neither in the status of “Permanent Officer” nor a “Regular Officer” but was in the status of “Probationer”. It was only due to non availability of APARs that he was not assessed fit for inclusion in USSL 2009 and 2010 and instead placed in USSL 2011. There has been no gross violation of the operative part of the Order of C.A.T., Principal Bench in O.A.No.216/2014. The benefits given to the applicant in light of this Order have already been indicated earlier. These include the benefit of a notional placement in a Non-Functional Scale which was granted from a date when the applicant was not even borne in the Service. Hence, the claim made by the applicant that Department had not taken cognizance of the Orders made in the case mentioned above is completely wrong and misleading.

15. Further, as regards the Garima Singh case, the respondents submit that it is on the basis of a separate C.A.T., Principal Bench Order dated 09.05.2011, that Garima Singh had been initially provisionally interpolated and placed in USSL 2003 in relaxation of two years eligibility service and also granted adhoc promotion in Deputy Secretary Grade. The background was that she was a DR SO recruited through 1996 CSE and she joined service on 06.07.1998. She completed 8 years of approved service as per the normal calculation on 01.07.2005 and was therefore included in the USSL 2005. She was given adhoc promotion of Deputy Secretary grade, after she had been given the benefit of relaxation of two years eligibility

service and also provisionally interpolated and placed in USSL 2003 on the basis of the C.A.T., Principal Bench order dated 09.05.2011. Later, on the basis of Review DPC held on 03.06.2015, she has been formally included in USSL 2003.

16. The respondents have already submitted that the 12 Under Secretaries who were promoted on adhoc basis vide Annexure A-1 belong to USSL 2007 whereas the applicant figures in the USSL 2011 and, hence, he has not been superseded. The respondents again reiterate that these 12 Under Secretaries belong to the SO SL 1993 (Promotees) whereas the applicant belong to SO SL 2000 (Direct Recruit) and he was interpolated with them only for the purpose of issue of CSL of Section Officers as per Annexure A-2 of the O.A. Hence, no officer junior to him in the grade of Under Secretary has been promoted vide order dated 08.03.2016. Further, the applicant has claimed the benefit of two years promotion seniority under the DoP&T's O.M dated 25.03.1996 brought out at Annexure R-5. The respondents submit that this O.M is executive in nature whereas CSS Rules, 1962 are statutory rules framed under the provisions of Article 309 of the Constitution. Hence, the statutory rules shall prevail over the executive instructions. Under these Rules the issues related to completion of probation have been clearly defined and mandated under Rules 15 and 16. The applicant has also himself admitted the requirement of completion of probation period as one of the conditions for consideration for promotion while drawing attention to DoPT's OM dated 25.03.1996 in para 5 of the rejoinder. A clear reading of O.M dated 25.03.1996 is self explanatory and

it shows that he is not entitled to be considered for earlier promotion unless and until he had completed his probation which he did only on 23.04.2009. A simple reading of the O.M indicates that the '*senior*' concerned would have had to *“.....have successfully completed their probation period for promotion to the next grade.....”*

17. The respondents point out that it should be noted that Smt.Garima Singh had joined service as a DR SO on 06.07.1998 and, therefore, she had completed her probation period by 06.07.2000, long before she was given the two years relaxation of eligibility service placing her from USSL 2005 to USSL 2003. On the other hand, the applicant joined as a DR SO on 23.04.2007 and was still in probation till 22.04.2009. Till the completion of the two years probation period, he was neither in the status of a “Permanent Officer” or a “Regular Officer” but was in the status of a “Probationer”. As already stated, he was thus eligible for promotion to Under Secretary grade from USSL 2009 both from the eligibility condition as well as the probation point of view. Hence the requested relaxation of two years in the eligibility condition is to be seen in the context of the date of completion of the probation period also. Similarly, Shri.G.Ravinder had joined service on 05.02.2001 as a DR SO recruited through 1999 CSE. He completed 8 years of approved service on 01.07.2008 and was included in the USSL 2008. He too had completed his probation period on 05.02.2003, long before he was given two years relaxation of eligibility service and provisionally interpolated from USSL 2008 to USSL 2006. The respondents submit that the case of Shri.G.Ravinder is also therefore different from that of the

applicant, as Shri.Ravinder had already completed his probation. The respondents submit that the applicant is claiming promotion from a date (USSL 2007) when he had not even completed his probation, which is against the Rules and would create a bad precedent if implemented.

18. Further, the notings in the DoP&T (Establishment D) file No.5/1/2010-CS.I(U)(Pt.I) have been produced by the respondents at Annexure R-7. They submit that it is mentioned in Point (iv) of sub-para (b) of para 10 of the notings as follows :

*“ In the instant case, as a special dispensation, considering the peculiarity of circumstances, we may consider notional promotion of the two officers to the higher grades, **subsequent to their confirmation, with reference to the date of promotion of their juniors, by assessment of available ACRs on the date of the promotion of their juniors or the date of confirmation whichever is later,** with actual financial benefits being allowed from the date of assumption of the charge of the post to which promoted. Some of the officers have been promoted to Grade I on adhoc basis.”*

(emphasis added)

19. The respondents submit that these notes related to the case of the applicant and another officer, who were both similarly situated. The notes would show that the Establishment D Division of DoP&T, the nodal Division in the matter of promotion, recommended to consider notional promotion with reference to the date of promotion of juniors or the date of confirmation whichever is later. It is submitted that no junior Direct Recruit Section Officer of CSE 2000 is available in the CSS Cadre. The applicant is the only Direct Recruit Officer of 2000 batch as of now. He was interpolated with SO SL 1993 (Promotees) for the purpose of issue of CSL of Section Officers. Accordingly, by length of service, Shri.Dinesh Kumar

(CSL No.5759) whom the applicant is claiming to be his junior, has been placed in USSL 2007, whereas the applicant has been placed in USSL 2011. As the date of completion of probation of the applicant is 23.04.2009 he cannot be placed in USSL 2007. It is submitted that the Department of Legal Affairs had concurred with the proposal of Establishment D of DoP&T as contained in para 10 at pages 25-26/N in file noting on page 29 (Annexure R-7).

20. The respondents have also brought out in their additional reply statement that directions by C.A.T., Principal Bench in *O.A.No.1070/2014 filed by Shri.S.D.Kaushik* dated 01.03.2017 hold, inter-alia, “.....we are of the considered opinion that there were valid reasons for not filling up all the available vacancies and the opinion of the Government in this regard cannot be faulted. In any case, while exercising power of judicial review, this Tribunal cannot go into the merits of the decision of the competent authority so long as the decision is rational and not mala fide.....” The applicant had been allocated USSL 2011 based on availability of reckonable APARs and on completion of probation period. The respondents submit that the applicant is eligible to be considered for promotion only on completion of his probation period on 23.04.2009 and not before that. He was eligible for promotion to Under Secretary grade from USSL 2009 only as per eligibility condition and probation point of view. He was placed in USSL 2011 primarily as sufficient APARs were not available for consideration for placing in USSL 2009 and USSL 2010. All this was done as per Rules in force and there is no illegality.

21. As this is a complex case involving the matter of interpretation of Rules, directions by various Courts as well as Government notings we have brought out the issues elaborately in the previous paragraphs. We have also closely heard Shri.S.Mohammed Al Rafi, learned counsel for the applicant and Shri.S.R.K.Prathap, ACGSC, learned counsel for the respondents. We have also gone through the documents produced and perused the main cases cited.

22. We feel that in summary there are three issues to be decided. The first issue is **whether the applicant has been discriminated vis-a-vis promotion of his apparent 'juniors'**. This is at the crux of the case. The respondents have repeated and reiterated in their reply statements that the officials in the Annexure A-2 CSL of Section Officers appearing below the applicant who appears at CSL No.5758 A and who have been promoted vide Annexure A-1 order to the level of Deputy Secretary Selection Grade on an adhoc basis cannot be termed as 'juniors' to the applicant in the Under Secretary Select List. It is their submission that the Annexure A-2 CSL is a list where the interpolation of DR SOs belonging to the CSE 1999 and 2000 was done along with promotee Section Officers in a Common Seniority List. It is submitted that these officers falling below the applicant and whom he has been calling 'juniors' are Section Officers of the 1993 seniority whereas the applicant having been recruited after CSE 2000 can only have approved service counted only from 01.07.2001. Hence, they were placed, even though their names fall below the applicant in Annexure A-2, to form part of the USSL of 2007, whereas the applicant was only eligible to be promoted

as Under Secretary from 2009 on completion of 8 years approved service as per the CSS Rules, 1962. However, this is vehemently contested by the applicant by citing cases of two other officers, O.Ms etc. The respondents have countered this on the grounds of the confirmation after probation being a necessary condition under the Rules and that no O.M can override the statutory Rules. We are of the view that, in such cases, unless clear and convincing facts are brought to the contrary, the position taken by the respondents is to be generally accepted. Hence we do not hold that Annexure A-1 promotion list of 12 Under Secretaries to the Selection Grade (Deputy Secretary) needs to be quashed on the ground that it promotes juniors over a senior by excluding him. The judgment cited in S.D.Kaushik *supra* is also relevant. In our view, the respondents have adequately explained the matter by indicating that by no means these officers can be considered as “juniors” to him in the grade of Under Secretaries. They were eligible much earlier to him to be promoted as Under Secretaries and have therefore got promoted in 2007 itself, whereas the applicant becomes eligible at the earliest only in 2009. The court judgment cited in R.Prabhadevi *supra* makes a clear distinction between seniority and eligibility and should be taken as a guide. The applicant was eligible only in 2009 as per the conditions of service (“confirmation”) and also length of service. He could not be promoted earlier. Hence Annexure A-1 select list need not be quashed or amended to include him.

23. Following from the above, the second issue to be decided is **whether the respondents were justified in not promoting the applicant as part of the USSL 2009 when he completed 8 years of service in the grade of Section Officer and was also apparently eligible under the rules.** It is also seen that the applicant had completed his probation by 22.04.2009 after joining on 23.04.2007. He had also, in terms of the order of the C.A.T. Principal Bench in O.A.No.216/2004, been given certain consequential benefits including being placed in Non-Functional Scale of Rs.8000-275-13500/- with effect from 01.07.2005 ie., after completion of four years of deemed approved service in Section Officer Grade. We note that the Non-Functional Scale was given to him even though he was not in service as he had joined only on 23.04.2007, after orders were passed in his case following the Hon'ble High Court judgment. We have considered various aspects in this regard carefully. The fact of the matter is that the applicant was clearly under 'probation' under Rule 15 of the CSS Rules, 1962. The Rules required satisfactory completion of probation and 'confirmation' under Rule 16. The probation period of the applicant was only completed on 22.04.2009. The respondents also admit that he was definitely fit to be considered for the Under Secretary Select List of 2009. The only ostensible reason as to why he was not counted for USSL 2009 was that only one APAR was available for assessment in his case by that time. Similarly, he was not taken into consideration for USSL 2010 since only two APARs were available. However, he was then included in USSL 2011 as a regular Under Secretary. We note, by that date, only three APARs would have been made available, which means that there still has been an element of special

dispensation granted to him, considering that normally a minimum of five APARs are generally required in the lower grade for assessment. This is also given in the Departmental notes brought at Annexure R-7, Para 10 (b) Point (iii). Through the same notings the Department of Legal Affairs had agreed to the proposal for notional promotion of the two officers including the applicant to higher grades, subsequent to their confirmation with reference to the date of promotion of the juniors by an assessment of available ACRs on the date of promotion of their juniors or on the date of confirmation whichever is later. It is not disputed that the applicant was confirmed in service on 23.04.2009. We feel, therefore, that in his case his promotion as Under Secretary could have been considered with effect from 24.04.2009 in the USSL of 2009, for which he was eligible both from an eligibility (8 years) and 'confirmation after probation' point of view. The issue relating to the availability of only one ACR till that period can surely be overlooked, due to the special nature of his case and the circumstances of his joining late. We note that Non-Functional Scale with effect from 01.07.2005 was granted notionally, after completion of four years, when he was not even in service.

24. We also note that there are provisions in the rules which are helpful for considering this. For example, Sub Rule 3 under Rule 15 relating to probation states as follows :

3. The period of probation or trial specified in sub rules (1) and (2) may, if the appointing authority deems fit, be extended or curtailed in any case, but the total period of extension of probation or trial shall not, save where it is necessary by reason of any departmental or legal proceedings pending against the officer, exceed one year.

25. From the above, it is clear that the period of probation can be curtailed though perhaps not completely done away with. Hence, there should be no issue in considering placing of the applicant in the USSL of 2009 and giving him a regular promotion with effect from the date of completion of his probation even with the availability of only one APAR till that period. We also, in addition, note that under Rule 25(a) power to relax the CCS Rules, 1962 is given as follows :

25(a). Where the Central Government in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, and in consultation with the Commission, relax any of the provisions of these rules with respect to any class or category of persons or posts.

26. Hence, we direct that the respondents may take necessary steps using the above provisions appropriately to consider promotion of the applicant with effect from the date of completion of probation and consequent confirmation ie. 24.04.2009 as Under Secretary by considering him for inclusion in the USSL of 2009. We note that he was eligible, both in terms of length of service as he was recruited as DR SO on the basis of CSE 2000 as well as on the basis of the completion of probation and confirmation with effect from 22.04.2009.

27. While we have already discussed this earlier, we still would like to address the third issue ie., **the request of the applicant to be given further benefits under O.M.No.AB.14017/12/88-Estt.(RR) dated 25.03.1996 (produced at Annexure R-5) keeping in view Court directions and what**

was done in the cases of Smt.Garima Singh and Shri.G.Ravinder, both DR SOs who were recruited during 1996 and 1999 Civil Service Examinations and who were given two years relaxation of eligibility service. We first of all note that the respondents have indicated that the probation period in cases of these two officers were completed in the normal course after they joined service in time. In the case of the applicant his probation period took place much after his due joining date which in the normal course should have been in 2002. Of course, an argument that can be adduced on his behalf is that this was not his fault. If he was allowed to join at the normal time he would have finished his probation much earlier, perhaps by 2004. However, the Rules as they stand do not allow consideration until the probation period is complete, even if curtailed, and he is confirmed in service. We do not think it proper to allow him to be placed as part of the USSL of 2007 by relaxing his eligibility for two years by waiving his probation through the process of invoking the power to relax under Rule 25(a). The period of probation and confirmation is sacrosanct and is crucial in the moulding and training of an officer. It is the period given to the Government to take a final call on whether the official has the right qualities of head and heart for public service. Suspending the period of probation and subsequent confirmation in effect to make the applicant a part of USSL 2007 is thus not justified in our view. Nor should the existence of O.Ms as well as Court Orders which have occurred in different contexts be taken as the final guide. That is why even the O.M of 25.03.1996 (Annexure R-5) also insists on successful completion of probation. We, thus, feel that the applicant has a right to be considered as a

special case only in the USSL 2009 by waiving the requirement of the required APARs but there is no sufficient reason for placing him in USSL 2007.

28. We, therefore, do not find that the reliefs sought for in the O.A in terms of quashing or amending Annexure A-1 order for promoting him to the post of Selection Grade (Deputy Secretary) with effect from 08.03.2016 can be granted. We, however, direct that the applicant be considered for USSL of 2009 in place of USSL of 2011 in which he is currently placed. Consequent to this, his promotion to the Selection Grade (Deputy Secretary) should be considered on the basis of his seniority as granted under USSL of 2009 as and when he becomes so eligible. Subject to the above directions, the O.A is disposed of. No order as to costs.

(Dated this the 12th day of February 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00736/2016

- 1. Annexure A-1** – A copy of the Order No.4/11/2015-CS-I (D) dated 08.03.2016 issued by the 2nd respondent.
 - 2. Annexure A-2** – A copy of the Office Memorandum No.4/10/2000-CS.I dated 31.12.2008 issued by the 1st respondent.
 - 3. Annexure A-3** – A copy of the Letter No.5/1/2010-CS.I(U) dated 08.04.2013 issued by the 1st respondent.
 - 4. Annexure A-4** – A copy of the representation dated 31.05.2016 before the 1st respondent.
 - 5. Annexure A-5** – A copy of the Order dated 02.03.2007 in O.A.No.216/2004 of the Central Administrative Tribunal, Principal Bench.
 - 6. Annexure A-6** – A copy of the Order No.E(o)I/2004/SR-6/17 dated 07.09.2017 issued by the Under Secretary, Ministry of Railways.
 - 7. Annexure R-1** – A copy of the O.M.No.5/13/2012-CS.I(U) dated 23.09.2013 of the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, Government of India.
 - 8. Annexure R-2** – A copy of the Central Secretariat Service Rules, 1962 (CCS Rules 1962).
 - 9. Annexure R-3** – A copy of the DOPT's O.M.No.AB-14017/12/97-Estt.(RR) dated 24.09.1997 of the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, Government of India.
 - 10. Annexure R-4** – A copy of the Minutes of meeting of the Screening Committee held on 24.07.2012 under F.No.4/14/2011-CS.I(D).
 - 11. Annexure R-5** – A copy of the DOPT's O.M.No.AB.14017/12/88-Estt. (RR) dated 25.03.1996.
 - 12. Annexure R-6** – A copy of the Minutes of meeting of the Screening Committee held on 27th November 2014 under File No.4/3/2014-CS.I(D).
 - 13. Annexure R-7** – A copy of the File notings from pp 21-29/N of F.No.5/1/2010-CS.I(U)(Pt.I).
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