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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. 1138/1986.

DATE OF DECISION: September 5, 1990

K. Padmanabhan	Applicant.
Shri B.B. Ravel	Counsel for the Applicant.
	V/s.	
U.O.I. & Anr.	Respondents.
Shri Arun Sharma Proxy Counsel for Shri P.P. Khurana	Counsel for the Respondents

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether Reporters of local papers may be allowed to see the judgement? *yes.*
2. To be referred to the Reporter or not? *yes.*
3. Whether their lordships wish to see the fair copy of the judgement? *No.*
4. To be circulated to all Benches of the Tribunal? *No.*

J.P. Sharma
(J.P. SHARMA)
Member(J)

P.C. Jain
5/9/90
(P.C. JAIN)
Member(A)

(P) (12)

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Shri Arun Sharma
Proxy Counsel for
Shri P.P. Khurana Counsel for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

JUDGEMENT

The applicant, who is working as Upper Division Clerk (U.D.C.) in Research & Analysis Wing (R&AW), Cabinet Secretariat, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 in respect of his grievance to the effect that Respondent No.2 has not complied with the rules pertaining to general principles of seniority and quota system by rotation of vacancies with effect from 21.10.1975. He has prayed for:

- (1) a direction to the respondents to follow Government of India Rules in deciding seniority;
- (2) to strike down as illegal and arbitrary promotions made after his representation;
- (3) order the due seniority as per rules to the applicant in the grade of UDC;
- (4) order to consider the applicant for the post of Assistant as per rules; and
- (5) protection of his pay and payment of arrears.

As an interim relief, he prayed for immediate stay of any further promotion made after the applicant's

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representation to the grade of Assistant; a direction to the respondents to put the applicant above those promoted illegally, arbitrarily and in violation of rules and norms; and protection of the pay of the applicant.

2. Request for the interim reliefs prayed for was rejected vide order dated 16.2.1987, subject, however, to the remarks that all promotions will be subject to the decision of this application.

3. Relevant facts, in brief, are that the applicant was recruited as a Lower Division Clerk (IDC) in R&AW on 24.7.1974. He qualified in the Limited Departmental Competitive Examination (LDCE) for the post of U.D.C. held in July, 1982 and joined as U.D.C. on 14.3.1983. He first represented on 10.12.1984 regarding restructuring of his seniority. This was followed by representations and interviews with the officers on 13.11.1985, 30.5.1986, 27.6.1986, and first week of October, 1986, 18.11.1986 / 28.11.86. He was informed vide Memo dated 25.11.1985 that the matter was under examination and a decision will follow in due course. In continuation of this Memo, he was informed vide Memo dated 25.6.1986 that the quota system comes into operation only at the maintenance stage and that he had already been informed about this by Additional Secretary (E), on 19.6.86 during personal hearing. Vide Memorandum dated 1.8.86, he was informed that his case regarding fixation of seniority was being reviewed in consultation with the Government and he would be informed of the decision as soon as the same is received. Vide Memorandum dated 3.9.86, he was informed that his application dated 27.6.86 had been seen by the Secretary and the same had been referred to Cabinet Secretariat for their decision,

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which was still awaited. On 27.10.86, he was informed that the matter was still under examination.

4. R&AW was formed by bifurcating the Intelligence Bureau (IB) in September, 1968. R&AW (Recruitment, Cadre and Service) Rules, 1975 were notified on 21.10.75. The applicant's case, in brief, is that the vacancies in the grade of UDC are to be filled up from more than one source and he should be allotted a slot for the category from which he was promoted by following the system of quota and rota rule in accordance with the general principles of seniority laid down in the Ministry of Home Affairs Office Memorandum No.9/11/55 EPS, dated 22.12.1959 read with Rule 116 of R&AW (Recruitment, Cadre and Service) Rules, 1975 along with Schedule XIII thereof. It is contended that the same principle has been followed in the matter of Section Officers who belong to the same cadre and are governed by the same Rules, but this is being denied to the applicant, which is discriminatory and violative of Articles 14 and 16 of the Constitution. It is further stated that on a reference made by Respondent No.2 to Respondent No.1, Respondent No.1 gave its opinion to Respondent No.2 in favour of the applicant, but the same has not been implemented by Respondent No.2. Respondent No.1 is Union of India through Cabinet Secretary, Govt. of India and Respondent No.2 is the Secretary, R&AW, Cabinet Secretariat. It is also his contention that the service to which he belongs came to be constituted on the notification of the 1975 Rules (supra) on 21.10.1975.

5. The case of the respondents, in brief, is that the seniority and promotion in the rank of UDC of the applicant cannot be with effect from 21.10.75 and that his seniority in the rank of UDC will have to be reckoned on the basis of merit list of all incumbents as given in the result of the LDCE, but the date of joining, namely, 14.3.1983 is material for the purpose of further benefits.

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Further, the quota system as envisaged under Rule 116 read with Schedule XIII of the R&AW (RC&S) Rules, 1975 is to be valid after the initial constitution of the Cadre and the claim of the applicant to the effect that quota system be adopted prior to that date is misconceived and is refuted. It is admitted in the counter-affidavit that seniority list was yet to be notified, but the last promotee from the rank of UDC to Assistant was appointed as UDC on 28.11.77, while the applicant was promoted as U.D.C. on 14.3.1981 and, as such, he could not be in the zone of consideration for promotion at this stage. It is further stated that the applicant's case cannot be compared with the case of Section Officers, as before the promulgation of the 1975 Rules, the seniority of Section Officers who came from I.B. at the time of bifurcation was determined in accordance with Recruitment Rules applicable to them in I.B., as they were recruited / promoted according to those rules, but the applicant was directly recruited as L.D.C. in R&AW on 24.7.74 and his seniority has been duly protected in that grade. As regards the opinion of Respondent No.1, it is stated to be under further examination.

6. We have carefully perused the documents on record and have also heard the learned counsel for the parties.

7. The Research & Analysis Wing (Recruitment, Cadre and Service) rules, 1975 (referred to as the 1975 Rules) came into force on 21st October, 1975. These pertain to various cadres under the organisation. Relevant rules pertaining to Secretarial, Ministerial and Accounts Cadre are contained in Chapter XIII. This cadre comprises four sub-cadres, the General Duty Ministerial Cadre being one of these four. The

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applicant belongs to this sub-cadre. There are four posts in this sub-cadre, e.g., Section Officer, Assistant Upper Division Clerk and Lower Division Clerk. Rule 114 is about the initial constitution and sub-rule (1) thereof states that the initial constitution of the Secretarial, Ministerial and Accounts Cadre shall be from such date as the Government may, by notification, specify and as provided in sub-rules (2) to (6). The Central Government specified 1.2.1983 as the date of initial constitution for this Cadre, vide Notification No.A-12018/2/83-DO-I, dated 29th January, 1983. Sub-rule (2) of Rule 114 provides that the permanent directly recruited personnel serving in each grade of each sub-cadre at the commencement of these rules, including those transferred from Intelligence Bureau to R&AW after the formation of the latter but before the commencement of these rules, shall be absorbed permanently in the grade equivalent to their substantive grades on the date of absorption unless they are appointed in a substantive capacity to higher grades in accordance with sub-rules (4), (5) and (6). As per sub-rule (3) of Rule 114, after making permanent appointment in the manner specified in sub-rule (2), the Controlling Authority shall constitute a Special Selection Board consisting of three members nominated by it for filling the vacancies both permanent and temporary, in each grade of each sub-cadre. As per sub-rule (4), the Board is to make selection from amongst (a) all directly recruited personnel who were temporary or regularly officiating in each grade including those transferred to the R&AW Wing from the I.B. after the formation of the R&AW but before the commencement of these rules; and (b) the personnel from other Government Departments and Services serving in the corresponding grades and those eligible for

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appointment to the corresponding grades in accordance with the provisions of rule 116, preference being given to the personnel already on deputation to the R&AW. As per sub-rule (5), the Board shall prepare a Select List of the personnel referred to in sub-rule (4) for absorption in each grade of each sub-cadre and arrange the names of the selected directly recruited personnel in the order of seniority and thereafter place the names of the selected personnel from other Departments and Services in the order of their merit. As per sub-rule (6), the permanent vacancies will be filled from the Select List in the order in which the names are included in the Select List.

8. Though the applicant had joined as L.D.C. in the organisation of Respondent No.2 before the commencement of the 1975 Rules, yet he being not permanent in that post on the relevant date, was not covered by sub-rule (2) *ibid*; his case as L.D.C. would be covered by sub-rule (4)(a). He could not have any claim for being considered for absorption as per the initial constitution of the Service in regard to his post of U.D.C. because he was appointed as U.D.C. on 14.3.1983, i.e., after the date specified for initial constitution of the Service.

9. Rule 115 of the 1975 Rules deals with seniority. Sub-rule (1) thereof provides that the seniority of the personnel absorbed in each grade of each sub-cadre at its initial constitution shall be determined in the manner specified in sub-rules (2) and (3). Sub-rule (2) provides that the personnel whose seniority is governed by the orders which were in force immediately before the issue of the Government of India, Ministry of Home Affairs Office Memorandum dated 22.12.1959, shall continue to retain their seniority in accordance with those orders. Sub-rule (3) provides that the personnel whose seniority

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is governed by the orders contained in the Office Memorandum dated 22.12.1959 shall have their seniority fixed on the basis of their confirmation in the respective grades either on absorption in the R&AW or in the Department or Service to which they belonged immediately before such absorption, whichever is earlier.

10. The applicant is, thus, to be governed in the matter of seniority by provisions of sub-rule (3) of Rule 115 in respect of the post on which he has been confirmed. His date of confirmation on the post of L.D.C. ~~xxxxxxxxxxxxxxxx~~ as disclosed in his representation dated 27.6.1986 is 1-2-1983 i.e., the date of initial constitution of the Cadre.

11. Rule 116 of the 1975 Rules deals with maintenance of the Cadre and provides that after the initial constitution of the various grades in the Secretarial, Ministerial and Accounts Cadre has been completed, the cadre shall be maintained by appointment on promotion, deputation, re-employment after retirement and by direct recruitment in accordance with the provisions contained in Schedule XIII. As per Schedule XIII, the posts of U.D.C. are to be filled to the extent of 75% by promotion and 25% by Limited Departmental Competitive Examination, failing both methods, by deputation/re-employment. Rule 159 of the 1975 Rules provides that the percentages prescribed for different methods of appointment or for promotion from different categories shall be calculated on the number of posts in the grade, and not on the number of vacancies arising at any given time.

12. From the above provisions, it is clear beyond any doubt that the maintenance stage of the cadre will commence after the initial constitution of the various
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grades of the cadre has been completed. This date has been specified by Notification dated 29th January, 1983 (supra) as 1.2.1983. Therefore, the maintenance stage starts after 1.2.1983 and not from 21.10.1975 as contended by the applicant. The quota-rotation system for the posts of U.D.C., so far as the applicant is concerned, would thus also start after 1-2-1983 because the seniority before the initial constitution of the Service is to be determined in accordance with Rule 115.

13. The learned counsel for the applicant laid great emphasis on the general principles of seniority laid down in annexure to the O.M. dated 22.12.1959. It is seen that these general principles do not specifically touch on the question of seniority in cases where initial date of constitution of a Service / Cadre is different than the date of coming into force of the relevant service rules. General Principle 6 in the O.M. dated 22.12.1959 deals with 'Relative seniority of Direct recruits and Promotees' and states that the relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. This general principle may not be strictly applicable to the case of the applicant before us inasmuch as there is no direct recruitment to the posts of U.D.C. and the question of relative seniority of direct recruits and promotees does not arise. Even on the ground of analogy, this cannot supersede the specific provisions

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in the relevant Recruitment Rules, the relevant provisions of which have already been discussed above. Moreover, this general principle refers to rotation of vacancies while in accordance with Rule 159 of the 1975 Rules, it is the number of posts which is relevant and not the number of vacancies. It may also be stated that the organisation of Respondent No.2 is an organisation to which all the general instructions issued by the Government do not automatically apply, as is evident from a perusal of the 1975 Rules.

14. The learned counsel for the applicant also emphasised the point of discrimination in the matter of determination of seniority with reference to the grade of Section Officers, which admittedly belongs to the same sub-cadre. We have already stated above the reply of the respondents in their counter-affidavit on this point, according to which the seniority of Section Officers who came from I.B. at the time of bifurcation was determined in accordance with the Recruitment Rules applicable to them in I.B. as they were recruited / promoted according to those Rules. So far as the applicant is concerned, he was also recruited under the I.B. Rules as he had been appointed as L.D.C. on 24.7.1974 before the promulgation of the 1975 Rules, but he was recruited in R&AW and not in I.B. In reply to the M.P. No.2443/1989 filed by the applicant, the respondents have stated that "The seniority of the petitioner has been drawn on the analogy of the seniority of Section Officers." As the seniority list is admittedly yet to be notified, the grievance of the applicant in regard to determination of seniority in accordance with the 1975 Rules would appear to be premature. After the seniority list is notified and the applicant, if aggrieved, avails of the departmental remedies, he would be free to agitate his grievance

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in that regard before the Tribunal if he feels aggrieved at that stage as well. At this stage, it should suffice to direct the respondents to fix the seniority of the applicant in accordance with the relevant rules, as prayed for by the applicant in this application.

15. As regards further promotion to the post of Assistant, it will have to be governed by the final seniority list for the posts of U.D.C., which is yet to be notified. The reply of the respondents shows that the last promotee from the rank of U.D.C. to Assistant was appointed as U.D.C. on 28.11.77, while the applicant was promoted as U.D.C. with effect from 14.3.83. Thus, prima-facie, the applicant does not appear at present to have been superseded in the matter of promotion to the post of Assistant. On the finalisation of the seniority list for the posts of U.D.C., if it is found that a person junior to the applicant has been promoted as Assistant, then the respondents may have to convene a fresh D.P.C. for promotion to the post of Assistant to assess the suitability of the applicant for promotion to the post of Assistant from the date his junior in the final seniority list was so promoted. Till then, it is not possible to strike down as illegal or arbitrary any promotion to the post of Assistant made after the representation of the applicant, as is prayed by the applicant. The applicant has not made any such person a party to this application.

16. We would like to deal with two other points raised by the applicant. One relates to the opinion given by Respondent No.1 to Respondent No.2. According to the applicant, this opinion favours the applicant and Respondent No.2 being subordinate to Respondent No.1 was bound to implement that opinion. We are of the view that

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it is an internal departmental matter and unless a formal Government order is issued, such an advice given by one Department to another or by one officer to another in the hierarchy, cannot be made the basis of determination of legal rights of a Government servant.

17. The second point relates to certain alleged deficiencies in the written statement filed on behalf of the respondents. The applicant has contended that the respondents have violated the provisions of the rules as the verification of the counter-affidavit neither bears the date on which it was signed, nor the signatures of the Advocate, nor any authority has been filed on behalf of the respondents. The learned counsel for the applicant relied in this connection on a decision of the Allahabad Bench of the Central Administrative Tribunal in the case of RAM RAKHA Vs. UNION OF INDIA AND ANOTHER (A.T.R. 1988 (2) C.A. 365), wherein it was held that the replies should be filed by the respondents and in case it is not possible, the replies be filed, signed and verified by persons having the delegated powers or by senior officers duly authorised, and in the absence of such authorisation in writing, the replies filed by any inferior authority should not be accepted by the registry. The written statement filed on behalf of the respondents in the instant case shows that it was filed through a counsel and had been signed by one Shri S.K. Gethi, Director, Cabinet Secretariat, Government of India through the Advocate. Further, the verification is shown to have been done at New Delhi. The month and year are mentioned but the date of the month is not mentioned. The verification is also signed by the same officer, who had signed the written statement. A Director is higher than an Under Secretary. Every Under Secretary and above of the Government of India has

general authority to sign and swear affidavits in courts. We, therefore, do not find much force in this objection.

18. In reply to para 5 of M.P. No.2443/89 filed by the applicant, the respondents have stated as below: -

"5. In reply to para 5 of the petition, it is submitted that on the basis of the note dated 22.8.86 sought to be made a part of the petition by the petitioner a decision has been taken by the Department that in view of the peculiarity of Rule 159 of R&AW (RC&S) Rules, 1975 which type of rule does not exist in other Ministries, the roster system cannot be adopted in this department and that the seniority will be independent of the maintenance of roster and would base on the chronology of selection, those from earlier date of selection being senior to those from a later date of selection."

The above contention of the respondents does not appear to be in accordance with the provisions of Rule 159 of the 1975 Rules. The position in this respect after the initial constitution of the Service has to be governed by the provisions of Rule 159 of the 1975 Rules, until at least the Rules are amended in accordance with the law.

19. In view of the above discussion, the application is disposed of in terms of the following directions: -

- (1) The seniority of the applicant in the cadre of Lower Division Clerks as well as in the cadre of Upper Division Clerks will be fixed by the respondents in accordance with the Research & Analysis Wing (Recruitment Cadre and Service) Rules, 1975, within three months from the date of receipt of a copy of this judgment by the respondents.

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(2) If as a result of the action taken above, the applicant finds that he has been superseded in the matter of promotion to the post of Assistant by any of his juniors in the seniority list of U.D.C.s, he will be free to represent to the respondents and his representation shall be disposed of by the respondents by passing a speaking order.

(3) For promotion to the post of Assistant to be made hereafter, the applicant's case shall also be considered if he is eligible for consideration in accordance with his seniority and the relevant instructions in regard to the zone of consideration.

20. The parties shall bear their own costs.

J. P. Sharma
(J.P. SHARMA)
Member(J)

P. C. Jain 5/9/90
(P.C. JAIN)
Member(A)