

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(30)

O.A. No. 2435/90
T.A. No.

199

DATE OF DECISION 17-5-1996

Smt. Sushma Mutreja and others Petitioner

Shri M.L. Ohri with Sh. S.S. Bhalla Advocate for the Petitioner(s)

Versus
Union of India & Others Respondent

Shri P.H. Ramchandani Advocate for the Respondent(s)

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Mr. K. Muthukumar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.2435/90

New Delhi, this the 17th day of May, 1996

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Hon'ble Shri K. Muthukumar, Member (A)

1. Smt. Sushma Mutreja, UDC SS-III	{	Govt. of India, Ministry of Labour, Shram Shakti Bhavan, New Delhi.
2. Smt. Lajjawati, UDC in the Library.		
3. Smt. Subhash Mallick, UDC (L.S.III Section)(c)		

.... Applicants

By Advocate: Shri M.L. Ohri with Shri S.S. Bhalla

Vs.

1. Union of India
through the Secretary,
Ministry of Labour,
Govt. of India, Shramshakti Bhawan,
New Delhi.
2. Department of Personnel & Training,
Nirvachan Sadan,
Parliament Street,
New Delhi.
3. Sr.No. in the Sr.List

Working in different
offices of Min.of Labour

3. 68. Smt. Shammi Sahni	Asstt./MS
4. 68A Sanjiv Kumar	Asstt./DGE&T
5. 69. O.P. Garg	Asstt./MS
6. 70. Roshan Singh	Asstt./POE Bombay
7. 71. R.C. Chopra	Asstt./DGE&T, Delhi
8. 72. S.N. Gupta	Asstt./DGE&T
9. 73. N. Dayanandan	Asstt./MS
10. 74. D.C. Sharma	-do-
11. 75. Ajay Kumar (SC)	-do-
12. 76. Smt. Kamlesh Bhalla	-do-
13. 77. P. Bhattacharya	Asstt./DGE&T
14. 78. Vimal Kumar Sharma	Asstt./MS
15. 79. Surinder Singh	Asstt./DGE&T
16. 82. R.K. Tiku	Asstt./MS
17. 84. Vinod Kapur	Asstt./MS
18. 86. Bholu Nath	Asstt./MS
19. 88. Y.D. Sharma	Asstt./MS
20. 89. Smt. Rajeshwari Mohani	Asstt./MS
21. 91. Ashish Chatterjee	Asstt./CLC(C)
22. 92. Maha Singh	Asstt./DGE&T
23. 93. M.L. Jajoria (SC)	Asstt./POE, Delhi
24. 94. Mangu Lal(S)	Asstt./POE, Delhi

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25. 95.	B.D. Sharma	Asstt/DGE&T
26. 96.	Nathoo Singh (SC)	Asstt/MS
27. 97.	M. Pandeya	Asstt/DLB
28. 98.	Smt. Tripta Kapur	Asstt/MS
29. 99.	Jai Prakash Sharma	Asstt/MS
30. 100.	Smt. Ravi Sharma	Asstt/MS

.... Respondents

By Advocate: Shri P.H. Ramchandani

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicants, who are working as Upper Division clerks (UDCs), are aggrieved by the Memorandum No.A-32015/1/90-Adm.I dated 22.2.90 intimating to them that promotions from the post of UDCs to Assistants will be made on the basis of the existing approved seniority list i.e. the list of 1987 and refusing to promote them on the basis of the 1989 seniority list which they claim is the correct list.

2. The brief facts of the case are that the applicants joined the Ministry of Commerce (Office of the Chief Controller of Imports and Exports), New Delhi as L.D.Cs in the Central Secretariat Clerical Service (CSCS) Cadre on 7th March, 1967 on the basis of the selection held by the Staff Selection Commission.

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In 1982 they were nominated by the Department of Personnel and Training under the Zoning Scheme to the U.D.C. cadre of the Ministry of Labour against long term vacancies and joined in November, 1982. According to them, on their joining the Ministry of Labour in the U.D.C. cadre, their inter-se seniority vis-a-vis those included in the select list of U.D.Cs of the Ministry of Labour, should have been determined in accordance with the Central Secretariat Clerical Service Rules, 1962, (hereinafter referred to as CSCS Rules). The applicants submit that under Rule 25 of the CSCS Rules, in the light of the interpretation given by the Department of Personnel and Training, whose decision is final, the seniority of the applicants as UDCS were fixed at Sr.Nos. 63, 65 and 67 respectively in the seniority list circulated by the Ministry of Labour dated 1.12.89 (Annexure 2).

Shri M.L. Ohri, learned counsel for the applicants submits that once the seniority has been fixed by the competent authority i.e. the Department of Personnel & Training, that becomes the settled position and the applicants are entitled to the next promotion in accordance with that list. The learned counsel for the applicants submits that certain persons at Sr.No. 49 and 50 of the seniority list dated 1.12.89 i.e. S/Shri S.S. Sharma and Y.N. Sota, who are of the same batch in the Clerical Grade Examination as the applicants, have been promoted as Assistants since 1984 whereas the applicants

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are still working as UDCs. Another grievance of the applicants is that even after the circulation of the seniority list by the Ministry of Labour in December, 1989, Ministry of Labour continue to make promotions on the basis of the wrong old seniority list of 1987 thereby ignoring the claims of the applicants for promotions. He relies on the Ministry of Home Affairs O.M. dated 26.11.1969 with regard to decentralisation of the CSCS cadre.

3. Shri M.L. Ohri, learned counsel for the applicants relies on Rule 11 of the CSCS Rules read with Regulation 3(4) of the Central Secretariat Clerical Service (Seniority of Transferred Officers) Regulations, 1963 (hereinafter referred to as 'the Regulations'). He submits that since the applicants have been transferred to another cadre, when they got transferred from the Ministry of Commerce to the Ministry of Labour, their seniority should be fixed in the new cadre below the juniormost permanent or temporary officer, as the case may be, appointed to the grade after the appointed date i.e. 1.11.62 in the new cadre "who has obtained a higher rank in the competitive examination on the results of which the transferred officer was recruited, or who has been recruited on the results of an earlier examination." The learned counsel further submits that Regulation 3(3) does not apply to the applicants, which has been relied upon by the respondents. They have, in the

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amended. It sought quashing of the seniority list of UDCs prepared by the Ministry of Labour dated 26.2.91 and to promote the applicants to the post of Assistants from the date their juniors have been promoted with all consequential reliefs.

4. The respondents have filed their reply denying the above averments made by the applicants. They have stated that the select list of UDCs for the year 1987 has been prepared as per the advise of the DOP&T based on the relevant provisions of CSCS Rules and Regulations. They have further clarified the position regarding the advise given by the DOP&T in their supplementary affidavit filed on 9.8.95. Shri P.H. Ramchandani, learned counsel for the respondents has submitted that the impugned seniority list has been correctly prepared in accordance with the provisions of Rules 11(2) and 17 of the CSCS Rules read with Regulation 3(3). Shri P.H. Ramchandani, learned counsel for the respondents has referred to the Office Memorandum issued by the DOP&AR dated 30.9.82 in which it has been stated that a decision has been taken to nominate the applicants, LDCs of the Ministry of Commerce to the Ministry of Labour for appointment as UDCs on long term basis under the Zoning System. According to him, this is a transfer of the applicants as LDCs and then the appointment on promotion as UDCs



in the Ministry of Labour, in accordance with the second proviso to rule 11(2) of the CSCS Rules. According to him, under these provisions, if there were vacancies of UDCs in any cadre they shall be filled by the appointment of persons included in the Select List for U.D.Cs cadre. Thereafter any vacancies remaining unfilled shall be filled first among the persons approved for inclusion in the Select List and thereafter by the temporary promotion on the basis of seniority subject to the rejection of the unfit of officers of the Lower Division Grade in that Cadre who have rendered not less than eight years approved service in the grade. He submits that on the decentralisation of the CSCS cadres as given in the O.M. issued by the DOP&AR dated 29.7.83, as which is the same/that issued by that Department in O.M. dated 17.12.81, ^{the} ~~zone~~ for making temporary promotions to the Upper Division Grade were to be drawn up. He submits that in the decentralisation cadres primarily promotions/ confirmations were to be effected within the cadre. Under Rule 11(2) of the CSCS Rules, promotions can be made on temporary vacancies as prescribed therein. The learned counsel submits that since there were not sufficient posts of UDCs available to the applicants in the Ministry of Commerce, the applicants were transferred to

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where there were vacancies the Ministry of Labour and their seniority has, therefore to be fixed in accordance with ^{the} CSCS Rules and Regulations made under Rule 17(5) of the CSCS rules.

5. Shri P.H. Ramchandani, learned counsel for the respondents submits that on clarification given by the DOP&T the seniority of the applicants has been fixed. The clarification is to the effect that if an LDC goes on transfer to another cadre on promotion as UDC on temporary basis under Rule 11(2) of the CSCS Rules, he is assigned seniority below all such temporary officers of the grade in the new cadre having longer or same length of service as UDCs which is in accordance with Regulation 3(3). He has referred to the definition of "cadre" which means the group of posts in the Upper Division and Lower Division Grades of the service in any Ministry or Office specified in column (2) of the First CSCS Schedule to the Rules. "Grade" has been defined under Rule 2(k) to be the grades specified in Rule 3 which are 'Upper Division Grade' and 'Lower Division Grade'. The 'range of seniority' has been defined in Rule 2(oo) in relation to any grade meaning the range specified by the Central Government in the DOP&AR in the common seniority list for that grade for additions to Select List or for temporary promotions, as the case may be. Rule 11 deals with

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recruitment to the Upper Division Grade and sub-rule

(2) deals with filling up of temporary vacancies in that grade and includes officers of the Lower Division Grade in that cadre who have rendered not less than eight years approved service and are within the range of seniority.

The learned counsel submits that the applicants have been promoted as UDCs under the provisions of Rule 11(2) and their seniority has been dealt with in Regulation 3(3), and not Regulation 3(4) as contended by the applicants. He submits that in terms of Regulation 3(3), the seniority of the applicants has been correctly assigned i.e. below all existing temporary officers of the grade in that cadre i.e. below the officers who are in the cadre in the Ministry of Labour to which cadre the applicants were transferred from the Ministry of Commerce, where there were no vacancies in the higher grade. The learned counsel also clarified that the DOP&T had agreed that the seniority list of UDCs of CSCS Cadre of the Ministry of Labour issued in 1987 is in accordance with Regulation 3(3) read with Rule 17 of the CSCS Rules. He has submitted that since the applicants could not be promoted for want of vacancies in their own cadre in the Ministry of Commerce, they were considered for promotion as they came within the range of seniority as specified by DOP&AR and were considered for promotion only in terms of the second proviso to Rule 11(2).

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The learned counsel submits that while in the Ministry of Labour there were vacancies in the Upper Division Grade, sufficient number of persons were not available and hence they had taken the persons who are qualified, like the applicants specified by the DOP&T, on transfer basis in that cadre. He, therefore, submits that in the additional affidavit filed by the respondents, they have clarified that the seniority list dated 26.2.91 is also in conformity with the rules and regulations and the applicants have been assigned seniority by placing them en-block below all existing UDCs belonging to the Ministry of Labour, who were appointed earlier than ~~the date of appointment of~~ the applicants as UDCs in accordance with Regulation 3(3). In the circumstances, the learned counsel submitted that the application may be dismissed.

6. The applicants have filed a rejoinder to the supplementary affidavit filed on behalf of respondents. Shri M.L. Ohri, learned counsel has reiterated the stand taken by the applicants, in the rejoinder that the seniority of the officers transferred under the Zoning Scheme from other Ministries was required to be fixed in terms of the ranks obtained by them in the examinations in which they qualified for appointments to the post of L.D.C. and the persons who qualified in earlier examinations were required to be ranked senior to those who qualified in later examinations

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in terms of Regulation 4(4). Shri M.L. Ohri, learned counsel has also relied on the Ministry of Home Affairs O.M. dated 26.11.89 which describes how the decentralisation of the CSCS Grade is to be done. His contention was that since the applicants were appointed as LDCs and were then transferred to another cadre, their seniority has to be fixed in the new cadre below the juniormost permanent or temporary officer, as the case may be, appointed to the grade after the appointed day i.e. 1.11.62 in the new cadre, who has obtained a higher rank in the competitive examination on the results of which the transferred officer was recruited or who has been recruited on the results of an earlier examinations. The learned counsel further reiterated that in view of Rule 25 of the CSCS Rules and the DOP&T advice given to the Ministry of Labour on the basis of which seniority of UDCs was issued on 1.12.89, no further seniority list ought to have been issued in 1991 and the seniority list of 1989 should, therefore, be finalised.

7. In furtherance to the Tribunal's orders dated 13.10.95, respondent No.2 - Department of Personnel and Training has filed an affidavit on 22.12.95 in which they have answered the following queries raised by the Tribunal whether -

- (i) the ruling under Rule 25 given, which has been reproduced in 1989 seniority list, still holds good or;
- (ii) whether it has been rescinded. If it has been rescinded, a copy of the order issued under rule 25 should be furnished with the affidavit.
- (iii) whether the reply dated 23.7.90 contradicts the ruling given under Rule 25 reproduced to the 1984 seniority list;

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(iv) whether the meeting took place as mentioned in the supplementary affidavit on 10.1.91 and whether in that meeting DOP&T took the stand either, explicitly or by implication, that the ruling given under Rule 25 stands superseded and that the principle underlying the 1987 seniority list is valid;

(v) The second respondent should also indicate clearly as to the level at which the decision was taken in this meeting held in January, 1991.

They have, *inter alia*, stated as under -

" If the officers within the range of seniority are not available in a cadre for making additions to the Select List from officers of category ^{alone} (i.e. LDCs in their cadre who have rendered not less than eight years approved service and who are within the range of seniority in that grade) such additions are made from a panel, furnished by the Central Government in the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions of officers serving in the other cadres.

" It would follow that vacancies in the UDC Grade earmarked for being filled by promotion of LDCs on the basis of seniority are to be filled first from amongst eligible LDCs in the cadre and covered in the 'range of seniority' specified by this Respondent subject to rejection of unfit. Such of these vacancies as may remain unfilled due to non-availability of sufficient number of LDCs within the cadre, are to be filled by appointing LDCs nominated by this Respondent from the Central Panel consisting of eligible LDCs covered within the zone, but not promoted in their own cadres due to non-availability of sufficient vacancies therein, and willing to get promoted in other cadres. The persons who come from the other cadres to the new cadre their seniority in the new cadre will be determined according to Regulation 3(3) of Central Sectt. Clerical Service (Seniority of Transferred Officers) Regulations, 1963."

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Respondent No.2 has also clarified that they have not rescinded the above interpretation of the Rules/Regulations and have agreed with the stand taken by the other respondent i.e. Ministry of Labour in their reply. They have also referred to the discussions between/officials of Ministry of Labour and their representative held on 10.1.91 and confirm that the seniority list prepared by Respondent No.1 in December, 1987 is in order.

8. We have carefully considered the arguments of both the learned counsel for the parties and perused the records.

9. The main issue in this case is with regard to the determination of seniority of persons who have been appointed in the Upper Division Grade from LDCs in another cadre in terms of Rule 11 second proviso of the CSCS Rules. In particular, the question is whether the seniority should be determined in terms of Regulation 3(3) or Regulation 3(4) which have been made under Rule 17(5) of the Rules. The relevant provisions of Rule 11(1) and Rule 11(2) read as under -

11(1). Substantive vacancies in the Upper Division Grade of the Service in any cadre shall be filled by the substantive appointments of persons included in the Select List for the Grade in that cadre, such appointments being made in the order of seniority in the Select List except when, for reasons to be recorded in writing, a person is not considered fit for such appointment in his turn.

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11(2). Temporary vacancies in the Upper Division Grade in any cadre shall be filled by the appointment of persons included in the Select List for the Upper Division Grade in that Cadre. Any vacancies remaining unfilled thereafter shall be filled first from among the persons approved for inclusion in the Select List and thereafter by the temporary promotion on the basis of seniority, subject to the rejection of the unfit, of officers of the Lower Division Grade in that Cadre who have rendered not less than eight years approved service in the Grade, and are within the range of seniority. Such promotions shall be terminated when persons included in the Select List for the Upper Division Grade become available to fill the vacancies;

..... (not relevant)

Provided further that if officers within the range of seniority are not available in a cadre for promotions, the appointments 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.

..... (not relevant)

The relevant provisions of Regulation 3(3) and Regulation 3(4) read as under -

3(3). A member of the Service appointed to the Upper Division Grade of any cadre on transfer from another cadre under the second proviso to Rule 11(2) of the Rules shall be assigned seniority in the Upper Division Grade in the new cadre below all existing temporary officers of the Grade in that cadre. If two or more such officers are appointed on the same date, under the second proviso to Rule 11(2) aforesaid, to the Upper Division Grade of the new cadre by transfer from the same cadre, their inter se seniority shall be as in the Lower Division Grade of the Service in the old cadre, and if they are so appointed from two or more different cadres, their inter se seniority shall be determined in accordance with the seniority admissible to them in the Lower Division Grade of the new cadre under clause (1) of clause (4) of this regulation, as the case may be.

3(4). A permanent or temporary officer of the Lower Division Grade appointed to that Grade in any cadre after the appointed day shall, on his transfer to another cadre be assigned seniority below the juniormost permanent or temporary officer, as the case may be, appointed to the Grade after the appointed day in the new cadre, who has obtained a higher rank in the competitive examination on the results of which the transferred officer was recruited, or who has been recruited on the results of an earlier examination.



10. The applicants belong to the Lower Division Grade in the cadre of the Ministry of Commerce as contained in Rule 2(e) read with ^{the} first schedule to the CSCS Rules. They were nominated by the Govt. of India, Ministry of Home Affairs (Department of Personnel and Administrative Reforms) O.M. dated 30.9.82 to the Ministry of Labour for appointment as UDCs on long term basis under the zoning scheme. It was further stated that the transfer of the applicants/ LDCs was to be governed by the principles laid down in para 7 of the Department's O.M. No.5/7/81-CS-II dated 17.12.81 (page 51 of the paperbook). Para 7 of the O.M. reproduces the earlier O.M. of the Ministry of Home Affairs dated 2.5.70 which provides, *inter alia*, that-

"ordinarily only persons who are to be promoted in accordance with the zoning scheme will be transferred to the new cadres in case there are no available vacancies in their own cadres."

In this case, the applicants who could not be promoted in their own cadre in the Ministry of Commerce were nominated for appointments by the competent authority i.e. the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs to another cadre i.e. in the Ministry of Labour, which is in accordance with proviso (2) of Rule 11(2). The Central Secretariat Clerical Service (Seniority of Transferred Officers) Regulations, 1963 has been made in pursuance of Rule 17(5) of the CSCS Rules, which

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deals specifically with the seniority of a member of the service transferred from one cadre to another under the second proviso to sub-rule (2) of Rule 11. The contention of the learned counsel for the applicants is that ~~the~~ Regulation 3(4) should apply. We are unable to agree with this contention because in this case the applicants who were in the Lower Division Grade in the Ministry of Commerce have not been transferred to another cadre in the Ministry of Labour in that grade, in which case the person is to be assigned seniority below the juniormost permanent or temporary officer who has obtained a higher rank in the competitive examination on the results of which the transferred officer was recruited, as contended by them. In this case, the O.M. of DOP&AR dated 30.9.82 states that the applicants in this case who are LDCs have been nominated to the Ministry of Labour for appointment as UDCs on long-term basis under the Zoning Scheme, i.e. on a higher grade. In the facts of the case, therefore, we are of the view that the transfer has been made under the second proviso to Rule 11(2) which has to be read in conjunction with Regulation 3(3). Clause (3) of Regulation 3 provides that on transfer from another cadre, their seniority in the Upper Division Grade of the new cadre shall be assigned below all existing temporary officers of the Grade in that cadre, which in this case will be the UDCs in the Ministry of Labour and

they cannot get seniority based on the ranks they might have obtained in the competitive examinations for recruitment as LDCs. Therefore, having regard to the facts of the case and the relevant rules read with Regulation 3(3), the impugned seniority list of 1987 cannot be faulted.

11. The learned counsel for the applicants had argued that there was contradiction in the advice given by the DOP&T which is the nodal department for the Central Secretariat services whose decision should have been final, as provided in Rule 25 of the CSCS Rules as regards the later seniority list prepared in 1989 with which the applicants have no grievance. In this connection, we have seen the additional affidavit filed by Respondent No.2. They have clarified the position that they have not rescinded their earlier stand that the seniority list prepared in 1987 is in order subject to some minor suggestions. In any case, on a plain reading of the relevant rules/regulations we are of the view that when a person is considered for inclusion in the Select List under the second proviso to Rule 11(2) of the CSCS rules, the seniority of such a person can be fixed only in accordance with the provisions of Regulation 3(3). In this view of the matter, the seniority of UDCs, as revised by Respondent No.1 by O.M. dated 26.2.91, is in order and in accordance with the

relevant rules and regulations. The applicants have been placed en bloc below all existing UDCs belonging to the cadre in the Ministry of Labour on their transfer. We are further of the view that since the impugned seniority list has been prepared in accordance with ^{the} relevant rules and regulations, any earlier list prepared contrary thereto, even if it is based on an earlier advice given by the DOP&T as contended by the applicants, cannot assist them, as it is against the law. We do not find any merit in this application which calls for any interference or quashing of the impugned seniority list of 1987 or the subsequent revised seniority list of UDCs issued in 1991.

12. In the result, the application fails and is dismissed. No order as to costs.

(K. MUTHUKUMAR)
MEMBER(A)

(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

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