

**Central Administrative Tribunal
Principal Bench**

O.A.No.2718/2004

New Delhi, this the th8 day of November 2005

Hon'ble Shri M.P. Singh, Vice Chairman (A)
Hon'ble Shri Mukesh Kumar Gupta, Member (J)

1. DK Minocha
205, Sector-1, Sadiq Nagar
New Delhi-49
2. Debapriya Barua
E-127, Sarojini Nagar, New Delhi
3. Jasbir Singh
31-D/LIG (DDA) Flats
Jhilmil Colony, Delhi-95
4. NK Gangoly
1275, Sector 8
Faridabad – 121006

..Applicants

(By Advocate: Shri G.K. Aggarwal)

Versus

1. Union of India through Secretary
Department of Personnel & Training
3rd Floor, Loknayak Bhawan
Khan Market, New Delhi-3
2. Union of India through Secretary
Department of Commerce (Supply)
Nirman Bhawan, New Delhi-11
3. Secretary
Union Public Service Commission
Shahjahan Road, New Delhi-11
4. SC Khatri
President of CSS.(DRs) Assn
Section Officer, M of Health & Family Welfare
Nirman Bhawan, New Delhi-11
5. CM Pant
Section Officer
Department of Company Affairs
Shastri Bhawan, New Delhi-1

..Respondents

(By Advocate: Shri A.S. Singh for Shri R.V.Sinha for respondents 1 to 3 &
none for respondents 4 & 5)



O R D E R

Shri M.P. Singh:

By filing this OA, the applicants, four in number, have claimed the following reliefs:

"Declare and order that the impugned seniority list of Asstts for 1989 vide D Pers & Trg OM No.6/11/98-CSI, dt. 10.12.2003 (Annex-A1 hereto), shall be amended as under:-

- (a) Seniority-Quota Asstts shall be arranged in the order of their inter-se seniority in the common seniority list of Upper Division Clerks;
- (b) Direct-Recruitment-Quota Asstts shall be arranged in accordance with their merit-position in the Examination, those through earlier Exams being senior to those through later Exams;
- (c) SQ:DR ratio for 1989, 1991 shall be 2:1;
- (d) DR-Asstts appointed in 1992, 1993 thro' any Exam in 1989-DR vacancies, shall rotate with SQ-Asstts of 1992, 1993 and not with those of 1989, no back-dated 'slots' shall be kept vacant for DR-Asstts.
- (e) Grant all consequential and subsequential relief to the Applicants, including regular promotion from Assistants to Section Officers, from back dates with arrears with interest at 12% per annum, grant any other relief with costs."

2. The brief facts of the case are that the applicants were recruited as Lower Division Clerks (LDCs) and were promoted subsequently to the post of Upper Division Clerks, (UDCs), Assistants and Section Officers (SOs) on ad hoc basis in Central Secretariat Service (CSS). According to the applicants, the post of Assistant is filled up partly by promotion and partly by direct recruitment (DR). The ratio between seniority quota (SQ) Assistants and DR Assistants is 1:1 under Central Secretariat Service Rules, 1962 (for short "Rules 1962"). However, vide DOPT order dated 12.11.1991, it was changed to SQ:DR quota 2:1 for the years 1989 and 1991 only. Departmental promotion through Departmental Promotion Committee from LDCs to UDCs and from UDCs to Assistants is Ministry-wise (also referred to as cadre-wise because every Ministry and Union Public Service Commission is called a 'cadre') but promotion from LDCs to UDCs through LDCE and appointment to Assistants grade through DR by examination are both on the basis of combined examination and merit list for all cadres. While temporary promotions from LDCs to UDCs and from UDCs to

Assistants through DPC were made cadre-wise substantive promotions made sure that common seniority comprising all the cadres were not disturbed (subject to dropping of the 'unfit'). Thus, the impugned Supplementary Common Seniority List of regular Assistants ought to have been drawn on the following principles:-

- (a) Among promotees (SQ) Assistants, the inter-se-seniority ought to retain in the inter-se-seniority among UDCs on common seniority list for all the cadres put together, subject to relegating those who were not promoted in their normal turn because of being declared unfit.
- (b) Among direct recruits (DR) Assistants, the inter-se seniority ought to be in the order of merit in the particular examination, all those through earlier examination being senior to all those through later ones on common merit list for all the cadres put together.
- (c) Seniority inter-se SQ Assistants and DR Assistants in common seniority list for all the cadres put together ought to be on principles directed by this Tribunal to be followed in terms of final order A-3 dated 13.12.2001 in OA-1981/01 **Rakesh Mishra v. Union of India** along with OA-2532/01 **Ram Kumar v. Union of India** relating to the inter-se seniority of the same population of Assistants in CSS as in the impugned SCSL-1989 (A-1). It was held:

"(i) The ratio between SQ:DR for the years 1989 and 1991 shall be 2:1

(ii) The DR-Asstts of 1989-DR vacancies appointed in 1992 or 1993 through examination conducted in 1991, shall be rotated with SQ-Asstts of 1992 or 1993 and not with SQ-Asstts of 1989-select list (SL-1989).

3. According to the applicants in the impugned seniority list, the persons junior in UDC grade are shown senior in Assistant grade, e. g., Shri CM Pant (respondent 3) at Sl.No.18 in A-1 as Assistant was promoted as UDC through LDCE 1981, whereas applicant 2 at Sl.Nos. 911 in A-1 as Assistant was promoted as regular UDC on 7.4.1980; applicants 1, 3 & 4 at Sl.Nos. 928, 904 and 917 respectively in A-1 as

Assistants were promoted as regular UDCs through LDCE 1980. The impugned seniority list does not show the seniority inter-se SQ-Assistants and DR-Assistants in the ratio of 2:1 for the year 1989. ^{It also} Rotates DR-Assistants appointed in 1992 and 1993 through 1991 Examination in DR vacancies of 1989 with SQ Assistants of 1989 instead of SQ Assistants of 1992 and 1993. It is because of these illegalities committed by the respondents that the applicants have been deprived of their regular promotion from Assistant to SO. According to them, there are about 715 regular SOs to be appointed by promotion. All the applicants would get promoted as regular SOs if correct seniority was assigned to them in the feeder grade of Assistants. Since the respondents have not given the correct seniority to the applicants, they have filed this OA.

4. The respondents in their reply have stated that recruitment to the grade of Assistant is made as per the provisions laid down in para 13 (6) of Rules 1962. The select list of Assistant grade is prepared as per the provisions laid down in Regulation 2A of the 4th Schedule and the seniority is fixed as per the provisions laid down in Regulation 3 of the Fourth Schedule of the Rules 1962 (Annexure R-5). The Assistant grade is decentralized amongst 33 cadres comprising one or more Ministries/Departments as mentioned in the rules. The concerned 33 cadre controlling authorities maintain the cadre-wise seniority of all the Assistants in their respective cadres. The DOPT also prepared and maintained a combined/common All Secretariat List, known as the Supplementary Common Seniority List (for short "SCSL") of all the Assistants working in 33 cadres for the purpose of promotion in accordance with Regulation 3 of the Central Secretariat Service (Preparation of Common Seniority List) Regulations, 1970. As per the said Regulation "a common seniority list of officers of the Assistants' Grade of all cadres, who have rendered not less than 8 years' approved service in the grade shall be prepared as on the 1st January of every year". The said Regulation further states that "For this purpose the Government shall obtain from the cadre authorities, the names of all such officers of the Assistants' Grade included in their respective cadres". The Rules/Regulations and instructions contained on the issue are clear and there is no room for ambiguity. The averments made in para 4.01 (a), (b) and (c) by the applicants for preparing the SCSL of

Assistants for the year 1989 are denied as they have failed to appreciate the principles of the relevant rules and regulations.

5. The inter-se-seniority of promotee and DR Assistants is fixed in accordance with the provisions laid down in Regulations 3 of the Fourth Schedule of the Rules 1962. According to this Regulation, the inter-se-seniority is to be assigned, vis-à-vis, the quotas for DR and promotion. Through the relaxation of rules, the quotas of vacancies for seniority and DR was revised to 66 2/3% and 33 1/3% respectively from 50:50 for the years 1989 and 1991. Since the quotas for DRs and promotees stand modified for select list years 1989 and 1991, it has been decided vide DOPT's OM dated 24.5.1991 that inter-se-seniority between promotees and DRs be fixed in the ratio of 2:1 for these select lists (Annexure R-8).

6. The Central Secretariat Service (Preparation of Common Seniority List) Regulations, 1970 provides that a common seniority list of officers of the Assistants' grade of all cadres is to be prepared on the basis of information obtained from the cadre authorities. The names of the officers in the common seniority list is to be arranged in the following orders:-

"Subject to their inter se seniority in their respective cadre being maintained, the names of those officers appointed to the grade as direct recruits on the basis of competitive examination shall be arranged according to their order of merit in the competitive examination, persons appointed from an earlier examination being placed above those appointed from a later examination. In this combined list of direct recruits, the names of persons regularly appointed to the grade from the select lists for that grade shall be arranged by placing each such officers immediately above the senior most direct recruit who is junior to him in his cadre.

Provided that all such promotee Assistant, who do not find a place in the Common Seniority List because of the absence of direct recruits belonging to a particular year shall be placed en bloc at the bottom of the Common Seniority List pertaining to that year, below the last direct recruitment, on the basis of their date of confirmation without disturbing their inter se position.

Accordingly, the SCSL of Assistants for the year 1989 has been prepared by arranging the Direct Recruits according to the rank obtained in the Assistant's Grade Examination, 1989 and by placing just above two promotee Assistants who have been interpolated with those direct recruits in their respective cadres and by placing en bloc the remaining promotee Assistants of

1989 Select List at the bottom after the last direct recruit on the basis of their date of appointment or date of inclusion in the Select List, whichever is earlier, without disturbing their inter se position in the respective cadres."

7. The respondents have also submitted that the grade of Assistants being decentralized amongst 33 cadres, it is not possible to maintain the inter-se-seniority of UD grade on centralized basis with the DOPT while preparing the Common/Combined Seniority List of Assistants. Moreover, there is no such provision in the CSS/Rules/Regulations in this regard. As per the CSS Regulations, 1970, subject to their inter-se-seniority in their respective cadre being maintained, the names of those officers appointed to the grade as DRs on the basis of competitive examination shall be arranged according to their order of merit in the competitive examination, persons appointed from an earlier examination being placed above those from a later examination. In this combined list of DRs, the names of persons regularly appointed to the grade from the select lists for that grade shall be arranged by placing each such officers immediately above the senior-most direct recruit who is junior to him in his cadre, provided that all such promotee Assistants, who do not find a place in the Common Seniority List because of the absence of the DRs belonging to a particular year shall be placed en bloc at the bottom of the Common Seniority List pertaining to that year, below the last DR, on the basis of their date of confirmation without disturbing their inter-se position. In this process, it may so happen that a junior promotee officer of UD grade in a particular cadre, who has been interpolated with a DR Assistant (who obtained a higher rank in the competitive examination) in that cadre would find a place above that DR in the common seniority list, vis-à-vis, senior promotee officer of UD grade in some other cadre, who has been interpolated with DR Assistant (who obtained a lower rank in the competitive examination) of his cadre by virtue of which he finds a lower place in the common seniority list of Assistants. All the remaining promotee officers of UD grade in various cadres, who do not find a place in the common seniority list because of the absence of the DRs in their cadre belonging to a particular year are placed en bloc at the bottom of the list after the last DR on the basis of their date of regular appointment as Assistant or date of inclusion in the select list of Assistant, whichever is earlier, without disturbing their inter-se-seniority.

8. According to the respondents, the DR Assistants appointed through Assistant Grade Examination for the DR vacancies of the year 1989 have been correctly rotated with promotee Assistants appointed against SQ vacancies for the select list year 1989 as per the provisions laid down in the CSS Regulations 1970. They have also submitted that the common seniority list has been prepared strictly in accordance with the CSS Regulations 1970. The list has been drawn by giving inter-se-seniority between promotee and DRs in the ratio of 2:1. The list may not reflect the absolute ratio of inter-se- position because of the absence of particular promotee or DR due to retirement/resignation/promotion by LDCE. In view of the submissions made hereinabove, the respondents contend that the OA has no merit and deserves to be dismissed.

9. We have heard the learned counsel appearing for the parties and have perused the material placed on record.

10. The question that came up for consideration before us is whether the seniority of the applicants in the grade of Assistant has been assigned to them as per the instructions issued by the DOPT and also as per the relaxation granted by the DOPT for preparing the select list for the year 1989 and 1991 in the ratio of 2:1. Sub para 6 of para 13 of Compilation of Rules & Regulations of the Central Secretariat Service (Annexure R-4) provides as under:-

"(6) ASSISTANTS' GRADE

Fifty per cent of the regular vacancies in the Assistants' Grade in any cadre shall be filled by direct recruitment on the basis of results of a competitive examination held by the Staff Selection Commission for this purpose, from time to time and the remaining vacancies shall be filled by regular appointment of persons included in the Select List for the Assistants' Grade in that cadre.

(6A) The appointments under sub-rule (6) of the persons whose names have been included in the Select List shall be made in the order of seniority in that Select List:

Provided that where a person is not considered fit for such appointment in his turn, the reasons therefore shall be recorded in writing:



Provided further that if sufficient number of candidates are not available for filling up the vacancies in a cadre in any recruitment year by direct recruitment, the unfilled vacancies in that cadre shall be filled by appointment of persons included in the Select List of Assistants' Grade in that cadre."

11. Vide OM dated 24.5.2001 (Annexure R-8), the DOPT have issued instructions for fixation of inter-se seniority of DR and promotees Assistants in the Select List of Assistants for the years 1989 and 1991. According to these instructions, the inter-se-seniority of promotee and DR Assistants is fixed in accordance to provisions laid down in Regulation 3 (3) of the Fourth Schedule of the CSS Rules, 1962. According to this Regulation the inter-se seniority is to be assigned according to the quotas for DR and promotee. Through the relaxation of rules, the quotas of vacancies for SQ and DR was revised to 66 2/3% and 33 1/3% respectively from 50% each for the years 1989 and 1991. Since quotas for promotees and DRs stand modified for select list years 1989 and 1991, it has been decided that inter-se seniority between promotees and DRs be fixed in the ratio of 2:1 for these select list years and thereafter for other Select Lists in which recruitment has been made through SQ and DR in the ratio of 50:50 the principle of fixation of seniority in the ratio of 1:1 for promotees and DRs may be followed.

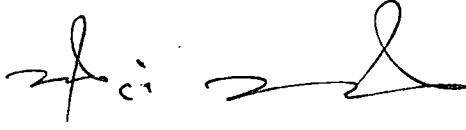
12. During the course of arguments, learned counsel appearing for the applicants has submitted that the benefit of the judgment of this Tribunal in **Rakesh Mishra & others v. Union of India & others** (OA-1981/2001 & OA-2532/2001) decided on 13.12.2001 be extended to these applicants. In the said case, the applications were filed by the directly recruited Assistants and they were aggrieved by the OM dated 24.5.2001 issued by the DOPT whereby it was decided that the inter-se seniority between the promotees and the DRs in respect of the recruitment years 1989 and 1991 will be fixed in the ratio of 2:1. On an earlier occasion by their OM dated 25/29.4.1997, the same respondent had clarified that the aforesaid ratio would be 1:1. Based on the grievance arising from the aforesaid OM dated 24.5.2001, the applicants were aggrieved by the seniority list dated 29.6.2001 issued by the respondents in pursuance of the policy clarified by the DOPT through aforesaid OM dated 24.5.2001. The Tribunal vide its order dated 13.12.2001 dismissed the aforesaid two OAs.



13. The respondents in their reply, in para 4.01, have stated that the SCSL of Assistants for the year 1989 has been prepared by arranging the DRs according to the rank obtained in the Assistants' Grade Examination, 1989 and by placing just above two promotee Assistants who have been interpolated with those DRs in their respective cadres and by placing en bloc the remaining promotee Assistants of 1989 Select List at the bottom after the last DR on the basis of their date of appointment or date of inclusion in the Select List, whichever is earlier, without disturbing their inter se position in the respective cadres. They have also stated in para 4.02 (a) that Assistants' Grade being decentralized amongst 33 cadres, it is not possible to maintain the inter-se-seniority of UD grade on centralized basis with the DOPT while preparing the Common/Combined Seniority List of Assistants. Moreover, there is no such provision in the CSS/Rules/ Regulations in this regard. It has further been stated that as per the CSS Regulations, 1970, subject to their inter-se-seniority in their respective cadre being maintained, the names of those officers appointed to the grade as DRs on the basis of competitive examination shall be arranged according to their order of merit in the competitive examination, persons appointed from an earlier examination being placed above those from a later examination. In this combined list of DRs, the names of persons regularly appointed to the grade from the select lists for that grade shall be arranged by placing each such officers immediately above the senior most direct recruit who is junior to him in his cadre, provided that all such promotee Assistants, who do not find a place in the Common Seniority List because of the absence of the DRs belonging to a particular year shall be placed en bloc at the bottom of the Common Seniority List pertaining to that year, below the last DR, on the basis of their date of confirmation without disturbing their inter-se position. These facts stated by the respondents in their reply have not been controverted by the applicants in their rejoinder. The applicants have failed to prove their case and have also not produced any documentary evidence in support of their claim. Moreover, the law laid down by the Hon'ble Supreme Court is that the seniority settled long back should not be unsettled. In this case, the applicants are claiming seniority after about 15 years on the basis of 1989 & 1991 select list. We are, therefore, of the considered view that there is no ground to interfere in the matter.



14. For the reasons recorded above, we do not find any merit in the case and the same is accordingly dismissed without any order as to costs.



(Mukesh Kumar Gupta)
Member (J)



(M.P. Singh)
Vice Chairman (A)

/sunil/