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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.No.3033/2004

**Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Shri M.K. Misra, Member (A)**

New Delhi, this the 23rd day of September, 2005

E. NAGACHANDRAN
S/o Shri P. Easwaran
Assistant Director
Central Statistical Organisation
Ministry of Statistical and Programme Implementation
Sardar Patel Bhawan
Parliament Street
New Delhi – 110 001.

... Applicant

(By Applicant in person)

Vs.

1. Union of India
Through the Secretary
Ministry of Statistics and Programme Implementation
Sardar Patel Bhawan
Sansad Marg
New Delhi – 110 001.
2. S. Chandiramani
Deputy Director
Special Data Dissemination Standards
Department of Agriculture and Co-operation
Ministry of Agriculture, Krishi Bhawan
New Delhi – 110 001.
3. Balwant Singh
Assistant Director
Central Water Commission
Ministry of Water Resources
Sewa Bhawan
R.K.Puram
New Delhi – 110 066.

... Respondents

(By Advocate: Sh. H.K. Gangwani R-1)

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ORDER

By Justice B. Panigrahi, Chairman

This application is directed to quash the Office Memorandum No.12012/4/2002-ISS, dated 13.04.2004 whereby the seniority list for the Grade-IV (Junior Time Scale) of the Indian Statistical Service as on 01.11.2001 was circulated and to further grant the applicant the seniority in Grade-IV from the date of his appointment and to grant further seniority to the promotees from the date on which they were regularly appointed to the Grade-IV (JTS) of the Indian Statistical Service in accordance with Rule 9-C of the Indian Statistical Service Rules, 1961.

2. The facts of this case lie within the narrow compass. The applicant was appointed in the Indian Statistical Service as a direct recruit in the year 1999 through Union Public Service Commission (for short 'UPSC') Examination. The private respondents are promotee officers of the same service at Grade-IV. Respondent No.2 has been promoted to the Senior Time Scale. The service conditions of the applicant are controlled, governed and regulated by the Indian Statistical Service Rules, 1961 (hereinafter called as 'Rules'), which was promulgated and has been enforced on 01.11.1961. Indian Statistical Service was constituted from 01.11.1961, i.e., from the date of enforcement of the Rules by encadering numerous posts carrying statistical functions in various ministries of the Government of India. The said Rules had been divided into four Grades, namely, Grade-I, Grade-II, Grade-III and Grade-IV. Now it has Higher Administrative Grade, Senior Administrative Grade, Junior Administrative Grade, Senior Time Scale and Junior Time Scale as per Rule 5(1) of the Indian Statistical Service Rules, 1961. The officers of the Indian Statistical Service are classified as Class-I (now 'Group-A') Officers.

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3. Rule 8 of the Indian Statistical Service Rules, 1961 envisaged that 60% of the Grade-IV posts shall be filled up by direct recruit whereas the rest 40% by promotion. The dispute had emerged as far back as in 1986 between the promotees and the direct recruits in Grade-IV service. Hon'ble Supreme Court vide its Judgement dated 11.2.1986 in **NARENDER CHADHA AND OTHERS** Vs. **UNION OF INDIA AND OTHERS** reported in AIR 1986 SC 638 interalia held as under:

"Thus the prescribed quota of appointment from the two different sources was not maintained right from the commencement of the constitution of the Services."

It is seen that there has been always propelling, ill will and rancor amongst the officers who have been recruited directly and the officers appointed to the said Grade-IV post by promotion. Once again a similar situation arose before the Hon'ble Supreme Court in **B.S. KAPILA Vs. CABINET SECRETARY's case** and the Hon'ble Supreme Court has issued mandatory directions to Union of India to follow the principles laid down broadly in **Narender Chadhas's case** (supra).

4. The applicant has averred, in an affidavit sworn by First Respondent before the Kolkata Bench of the Central Administrative Tribunal in OA No.968/2002, that there was no vacancy for promotee quota upto 1992. The draft seniority list was prepared and circulated on 30.8.1996 for the Grade-IV of the ISS as on 1.7.1996, which included the names of 228 officers. The First Respondent in OA No.968/2002 pending before the Central Administrative Tribunal, Calcutta Bench in which they have made the following averment:

"3.7. As per the existing rules, in Grade IV (JTS) category of ISS the promotion quota of 40% is filled on the recommendations of the Departmental Promotion Committee (DPC) held by the Union Public Service Commission (UPSC). The Respondent Ministry had initially submitted a proposal to the Commission in November, 1997 for filling up the vacancies in JTS against promotion quota. The Secretary (UPSC) called a meeting on 28.11.1997 in the

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context of the pending proposals of the Respondent Ministry. The Commission advised to send a fresh proposal after determining the number of vacancies pertaining to promotion quota w.r.t. the number of year-wise vacancies and also sorting out the legal issued related to the proposal...."

5. From the Annual Report published by the Ministry, it is reflected that the vacancies covered were 56 and 56 such officers were selected by the UPSC but the 1st Respondent has not published their names. Names of 35 officers who were in service as on 16.10.2001, had been mentioned. In the impugned list of seniority, the number of vacancies covered were 46 and such number of officers were selected by the UPSC, of which 41 including Respondent No.3 were given due seniority from 1988 above the applicant and 5 were placed below the direct recruits who joined in 2000. Of these 24 officers, including Respondent No.3, out of the first 41 and 4 out of the last 5 were still in service on 7.10.2003. Thus, the total strength in the Grade-IV has been mentioned as 260 during these years.

6. The applicant purportedly submitted a representation against the seniority list of 2004 but First Respondent observed stoic silence over the matter, which has resulted in filing of the present application.

7. The main grievance of the applicant is that despite the direction issued by the Hon'ble Supreme Court in ***Narender Chadha's case (supra)*** that all appointments shall be made in accordance with Rules and seniority of officers shall be regulated under Rule 9-C of the said Rules, but the First Respondent has followed the said guidelines issued by the Supreme Court in ***Narender Chadha's case*** more in its breach than observance.

8. To appreciate the controversy, Rule 9-C is quoted here below for reference:

"9-C. Date of Appointment.- The date of appointment of a person to any grade or post on a regular basis shall –

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- (a) in the case of a direct recruit to any grade or post be deemed to be the date on which he was recommended by the Commission for appointment to such grade or post, as the case may be, and
- (b) in the case of promoted officer to any grade or post be the date on which he was included in the Select List for promotion to that grade or post as the case may be, or the date on which he was appointed to the grade or post as the case may be, whichever may be later."

(Emphasis added)

9. The action of First Respondent, in appointing officers in 1997 and 2000 on ad hoc basis, is not only in contravention of the Rules of 1961 but also in clear violation of the directions issued by the Hon'ble Supreme Court in ***Narender Chadha's case (supra)***.

10. Thus the applicant has prayed for the application of the quota rule of seniority, when the quota rule has been broken down, not adhered to, it is unjust, iniquitous and improper as per the guidelines of the Hon'ble Supreme Court.

11. First Respondent filed his counter to the application in which it has been averred that the application is not at all maintainable inasmuch as the petitioner has questioned the seniority position of about 59 officers (35 officers were promoted vide order dated 16.10.2001 and 24 officers were promoted vide order dated 7.10.2003), without making them as parties to the present proceedings. Therefore, in the absence of these persons having been impleaded, their interests cannot be allowed to be jeopardized.

12. It is further stated that in the case of **RAJBIR SINGH Vs. STATE OF HARYANA & ANR.**, [Civil Appeal No.1530/96 (arising out of SLP(C) No.77/93, the Hon'ble Supreme Court, interalia, held that claim for inter se seniority shall not be maintainable without impleading the necessary parties. The applicant has

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challenged the Office Order dated 26.9.2003 whereby the ad hoc promotion had been given. It is barred by limitation not having been filed within one year from the date of accrual of cause of action. First Respondent has prepared and finalized the seniority list of Junior Time Scale in a very fair, legal and in appropriate manner, keeping in view the service rules and guidelines issued by the Department of Personnel & Training from time to time. The applicant has sought seniority from the date of his appointment which has been granted by First Respondent. Therefore, there is no cause available to the applicant for filing this case. If such a seniority list is interfered at this stage, there would be turmoil, chaos and also mismanagement in the administration. The respondents have maintained the ratio of maintaining 60% : 40% in case of direct recruitment and promotion to the Junior Administrative Grade.

13. In **Narender Chadha's case (supra)** the authority failed to give due seniority to the promotees. Therefore, the promotees filed a case before the Tribunal which ultimately went on to the Hon'ble Supreme Court where the Hon'ble Supreme Court granted the seniority to the ad hoc appointees treating them to be on regular basis in terms of provisions of Rule 8(1)(a) of ISS Rules, 1961 since such service was continuous in nature. Those promotees had been selected in the years 1970, 1982 and 1984. Therefore, they were assigned seniority with effect from the date on which they were allowed to officiate continuously. By the time of their appointment, the direct recruits were never born in the cadre. Pursuant to the said directions, First Respondent had prepared a draft seniority list in Grade-IV which was subsequently updated from time to time. On the basis of year-wise calculation, the number of posts belonging to the direct recruit as well as promotees have been maintained properly without intruding into the sphere of others.

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14. In B.S.Kapil's case (supra), the Hon'ble Supreme Court has issued the following directions:

"After the matter was heard at length we had suggested to the UOI that in view of the palpable injustice which the appellants before us in these appeals have been exposed to in the matter of fixation of their seniority – obviously for no mistake of theirs – the benefit of promotion on the basis of their own entitlement should be conferred on them and they should not be made to suffer, we are happy that on instructions from Mr. N. Thyagarajan, Deputy Secretary to the Ministry concerned who is present in Court, Mr. A. Subba Rao appearing for the UOI, informs us that the suggestion made by us has been accepted subject to the condition that the appellants who get the benefit and others similarly situated who are entitled to the benefit would not claim consideration of their past service for readjustment of inter se seniority. When they are promoted to the higher grade, their seniority will count from the date of such promotion and they would be entitled to all benefits on the basis of such promotions until superannuation. The posts which UOI has agreed to create and/or to which on promotion, fitment would be done would lapse with the superannuation of each of incumbents of the benefit and would not be treated to be a permanent post in the cadre. We make it clear that apart from the promotion to the higher post and benefits accruing in future no past benefit is available to the applicants. Mrs. Pappu appearing for the appellants has assured us that no such claim would even be laid".

"Mr. Subba Rao has agreed that the promotion shall be given effect to from 1.10.1990. He indicates to us that apart from the appellants, if there be any who are entitled to this benefit, such persons would be free to approach the concerned Ministry and on being moved they would also be entitled to the same benefit."

15. Further plea has been taken by the First Respondent that consequent to change of controlling authority from the DoPT to First Respondent in October, 1984 and subsequent encadrement of more statistical function posts obtained in various Ministries/Departments, after due consultation with UPSC, the list of statistical function posts recognized as feeder posts for promotion to Grade-IV (JTS) were upgraded. Consequently, the First Respondent had circulated the list

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in September, 1996. Accordingly, they took appropriate action to finalise the seniority list of feeder post holders after consultation with the Ministries/Departments. Thereafter, steps have been taken to fill up the vacancies against the promotee quota and the proposal was initially submitted to UPSC in July, 1997. The year-wise vacancy of the promotee quota was intimated to the UPSC for favour of taking action on the subject. In 1993-94, 34 vacancies; 1994-95, 8 vacancies and 1995-96, 14 vacancies were available for appointment. There was a protracted correspondence to the Commission on the subject. Finally, the First Respondent constituted a DPC on 4th & 5th September, 2001 and sent the recommendations to the Ministry. Based on the select panel given by the Commission, the respondents issued promotion orders on 16.10.2001. After the said appointment order was issued, the seniority list in question was circulated. The respondents, therefore, appointed the private respondents and others against promotee quota for the subsequent years 1996-97 till 2001-2002. The First Respondent has never transgressed into the sphere of direct recruit quota. In the meanwhile, there has been another proposal sent to the UPSC pursuant to the recommendations of the DPC held on 23.9.2003, for filling up the vacancies of the years 1996-97 till 2001-2002. After getting the concurrence from the UPSC, the First Respondent issued the promotion orders of 7.10.2003. Therefore, their action cannot be characterized as illegal or irregular.

16. In **Narender Chadha's case (supra)**, the Hon'ble Supreme Court has, interalia, held that the candidates who were selected earlier sometimes in 1970, 1982 and 1984 shall have to be assigned seniority with effect from the date on which they commenced to officiate continuously in the posts prior to their selection. Thus, seniority list was in fact maintained in pursuance of Clause (a)

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of Rule 9-C and there was never departure from the aforesaid Rule. Hon'ble Supreme Court never observed that the following of such rota-quota rule system was impermissible under the Rules. The ratio of the Judgement in **Narender Chadha's case (supra)** as well as **Kapila's case (supra)** had been followed and implemented by the respondents' Ministry in true letter and spirit. Since there is no merit in this application, therefore, the respondents prayed to dismiss the same.

17. The applicant was present in person. Apart from filing written memo of arguments, he has submitted that he joined Grade-IV (JTS) of the Indian Statistical Service on 12.7.1999. It has been further argued that since the private respondents joined on 16.10.2001 and on 7.10.2003, thus it is not understood as to how they could be so senior to the applicant in the draft seniority list prepared by the respondents. Therefore, such seniority list should be quashed. The matter of seniority between direct recruits and the promotees shall be governed by Rule 9(a) of the ISS Rules, 1961. There is no provision in the Rules for fixing the seniority between the direct recruits and promotees in Grade-IV of ISS. Hon'ble Supreme Court in **Narender Chadha's case (supra)**, has also maintained that the authority shall follow the Rule 9(C) of the Rules while fixing the seniority. The action of the First Respondent in appointing some officers in 1997-2000 on ad hoc basis is clearly violative of the provisions of the Constitution vis-à-vis the ISS Rules, 1961.

18. The applicant was appointed to Grade-IV on 12.7.1999 whereas the promotee officers were appointed on 16.10.2001 and 17.1.2003. It is strange to notice that even though they were subsequently promoted but their names had been figured above the applicant. Therefore, he has prayed for the direction



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against the First Respondent to re-fix seniority by placing the applicant above the private respondents.

19. Mr. H.K. Gangwani, the learned counsel appearing for the respondents has also filed memo of arguments apart from making submissions in the Court. In memo of arguments, it has been reflected that 59 officers and 74 officers respectively were given promotion on ad hoc/regular basis from JTS to STS Grade. The applicant has questioned the seniority list drawn by the First Respondent by applying the principle of rota quota system which is against the principle laid down by the Hon'ble Supreme Court in **Narender Chadha's case (supra)**. The proposal for filling up of vacancies in 1993-94 to 1995-96 was initially submitted to the UPSC in July, 1997 but it could not unfortunately be finalized, despite exchange of correspondence. It could be finalized only in 2001, i.e., after a lapse of about 4 to 5 years. It is stated that as per the Rule 9 (C), the seniority of the promotee officers shall be reckoned when they were included in the select list for promotion. Since the DPC had selected them between 1993 and 1997, therefore, their seniority accrued from the date they were selected and not from the date of issue of formal order, which was notified on 16.10.2001. There was never intrudement or encroachment into the direct recruitment cadres by giving promotion to the other promotees beyond their number of posts. 35 officers were given promotion to the JTS cadre with effect from 16.10.2001 on regular basis and other 24 officers were promoted with effect from 7.10.2004. Therefore, altogether 59 persons were promoted. Although they were holding the posts on ad hoc basis continuously but those were regularized with effect from the aforesaid dates. In the impugned seniority list, the applicant has been placed against Sl. No.199. Promotees promoted vide order dated 16.10.2001 against the vacancies from 1993-94 to 1995-1996 are

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listed between Sl. Nos.65 to 109. Similarly, promotees who received promotion orders dated 7.10.2003 against the vacancies meant for promotion cadre from 1996-1997 to 2001-2002 have been placed between the Sl. Nos.112 to 236. The seniority of the promotees as well as the direct recruits has been fixed by applying the DoPT's instructions. Promotees have been given seniority from the year of select panels. Therefore, by no stretch of imagination, the applicant could claim seniority over private respondents.

20. In the reply, it is further stated that the applicant was direct recruit of the 1998 batch and joined ISS with effect from 12.7.1999. He has been given due seniority from the date of his appointment. Therefore, the First Respondent has contended that the application being devoid of merit is liable to be dismissed.

21. We have heard the parties' counsel at length and also carefully gone through the averments stated in the application as well as the counter. The controversy between the direct recruits and the promotees has been continued over years. The Indian Statistical Service Rules, 1961 (hereinafter designated as ISS Rules) came into force from 1.11.1961. Four Grades have been included, namely, Grade-I, Grade-II, Grade-III and Grade-IV. All the above grade posts have been classified as Class-I Officers from time to time. There are two sources of recruitment – one is direct selection through UPSC and the other is by promotion. Their proportionate number of posts varied from time to time depending upon the policy decision of the First Respondent. At this juncture, 60% of posts are to be filled up by direct recruits whereas the other 40% by promotion. The said controversy arose sometime in 1985 when some of the promotees approached the highest Court of the country in CWP No.1595/1979 and Civil Miscellaneous Petition No.2604/1985 in the case of **Narender Chadha Vs. Union of India.** The grievance of the promotees is that their matter of

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promotion has not been taken up in time by the authority concerned. As a result thereof, they have not been assigned due seniority. In the past, an identical question appeared before the Supreme Court in **Narender Chadha's case (supra)**. In the said case, the Hon'ble Supreme Court held in the following manner:

"But we are faced in this case with the problem of resolving conflicts which have arisen on account of a violent departure made by the Government from the Rules of recruitment by allowing those who were appointed contrary to the Rules to hold the posts continuously over a long period of time. The question is whether after such a long period it is open to the Government to place them in seniority at a place lower than the place held by persons who were directly recruited after they had been promoted, and whether it would not violate Articles 14 and 16 of the Government

is allowed to do so. Promotions of officers have been made in this case deliberately and in vacancies which have lasted for a long time. A letter dated August 11, 1978 written by Shri S.D. Patil, Minister of State for Home Affairs, personnel Department to Shri Ganga Bhakt Singh, Member of Parliament substantiates the conclusion. The relevant part of the letter reads:

"Government resorted to making ad-hoc appointments as it was separately considering proposals to reorganize Grade IV of the two Services. Pending such reorganization Govt. has taken a deliberate decision to restrict direct recruitment for the present. It is, therefore, not correct to say that ad hoc appointments have been made due to non-availability of direct recruits. I may add that but for his deliberate decision, most of the officers holding adhoc posts in Grade-IV would have continued to stagnate in the lower posts of investigators."

At one stage it was argued before us on behalf of some of the respondents that the petitioners who have not been appointed in accordance with Rule 8(1) (a) (ii) could not be treated as members of the Indian Economic Service or of the Indian Statistical Service at all and hence there was no question of determining the question of seniority as between the petitioners and the direct recruits. This

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argument has got to be rejected. It is true that the petitioners were not promoted by following the actual procedure prescribed under rule 8 (1) (a) (ii) but the fact remains they have been working in posts included in Grade-IV from the date on which they were appointed to these posts. The appointments are made in the name of the President by the competent authority. They are being paid all along the salary and allowances payable to incumbents of such posts. They have not been asked to go back to the posts from which they were promoted at any time since the dates of their appointments. The orders of promotion issued in some cases show that they are promoted in the direct line of their promotion. It is expressly admitted that petitioners have been allowed to hold posts included in the Grade IV of the aforesaid services, though on an ad-hoc basis. (see para 21 of counter-affidavit filed by Shri P.G. Lele, Dy. Secretary, Department of Personnel and Administrative Reforms). It is, therefore, idle to contend that the petitioners are not holding the posts in Grade IV of the two services in question. It is significant that neither the Government has issued order of reversion to their former posts nor has nay body so far questioned the right of the petitioner to continue in the post which they are now holding. It would be unjust to hold that this distance of time that on the facts and in the circumstances of this case the petitioners are not holding the posts in Grade IV.....".

22. The aforesaid judgement has also been followed in the case of UNION OF INDIA AND ANOTHER Vs. SHRI PRATAP NARAIN AND OTHERS, AIR 1992 SC 1363 and the Hon'ble Court has expressed their view that there could be no distinction between the cadre or ex-cadre posts as held in the case of **Narender Chadha's case (supra)**. In this case, while examining the contention of the applicant, we have taken the seniority list as well as the grounds stated by the First Respondent. The main grievance of the applicant is that the private respondent – S. Chadiramani, who was appointed on regular basis on 16.10.2001 could not have been shown above the applicant, whose Sl. No. is 199. To this, the respondents have in their reply described that the private respondents and others have been given promotion meant for the promotees. For the years 1993 to 1995-1996 likewise the proposal was sent to the Commission in 1997 but the DPC could be convened only in 2001. Therefore,

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the seniority has to be maintained from the date when actual vacancy arose within the cadre meant for promotion. Another striking feature cannot be overlooked. In between the names of the private respondents – S. Chandiramani and the applicant, several others who were either direct recruits or promotees have never raised any objection with regard to the said seniority list. These vacancies, which have been filled up meant for promotion were from 1995 till 1997-1998 before the applicant actually took birth into service. It is not understood how could he have any grievance against the seniority. In case, these promotees have been given promotion meant for the direct recruits, then some arguments could have been advanced by the respondents that the promotees could not usurp their cadre posts.

23. In the case of SURAJ PRAKASH GUPTA & OTHERS Vs. STATE OF JAMMU & KASHMIR AND OTHERS, AIR 2000 SC 2386, the Hon'ble Supreme Court held "service of the promotees who were regularized with retrospective effect from the date of vacancy counts for seniority." Since the applicant came to the cadre only after he was appointed in the year 1999, he could not have claimed seniority over the private respondents and other similarly situated persons who were appointed in Grade-IV posts against the vacancy available to them before the said appointment of the applicant. Thus, by taking a comprehensive view of the situation, it would be injudicial, iniquitous and illogical to ask the First Respondent to place the applicant over the private respondents.

24. In the result, we do not find any merit in this application. Accordingly, the same is dismissed.


(M.K. MISRA)
Member (A)

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(B. PANIGRAHI)
Chairman