

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**Original Application No.276/2004****New Delhi, this the 10th day of March, 2005****Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Ganga Singh
S/o Late Shri Happu Ram
Under Secretary
Central Electricity Authority
Sewa Bhawan (N)
Room No.531
R.K.Puram, New Delhi.
R/o 1031, Sector-IV
R.K.Puram
New Delhi – 110 022.

... Applicant

(By Advocate: Sh. G.D.Bhandari)

Versus

Union of India through

1. The Secretary
Department of Personnel & Training
Ministry of Personnel, PG & Pensions
New Delhi.
2. The Secretary
Ministry of Water Resources
Shram Shakti Bhawan
Rafi Marg
New Delhi – 110 001.
3. The Chairman
Central Ground Water Board
CGO Complex NH-IV
Faridabad (Haryana).

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4. The Secretary
Ministry of Power
Shram Shakti Bhawan
Rafi Marg
New Delhi - 110 001.
5. The Secretary
UPSC, Dholpur House
Shahjahan Road
New Delhi.
6. Mrs. Usha Gandhi
Under Secretary
C.W.C., Sewa Bhawan (South)
R.K.Puram
New Delhi - 110 066.
7. Shri S.K.Khurana
Under Secretary (O-II)
Ministry of Defence
Room No.311-DI
Sena Bhawan
New Delhi.
8. Shri A.K.Puri
Under Secretary Ministry of Health & FW
Nirman Bhawan
New Delhi - 110 001.
9. Shri C.B.Lal
Under Secretary
Ministry of Water Resources
Shram Shakti Bhawan
Rafi Marg
New Delhi.
10. Shri Hara Singh Choudhary
Under Secretary
Central Water Commission
Sewa Bhawan (S)
R.K.Puaram, New Delhi.

11. Ramesh C. Batra
Under Secretary
Central Water Commission
Sewa Bhawan
R.K.Puram
New Delhi.

... Respondents

(By Advocate: Sh. K.R.Sachdeva for R-1 to R-4 and None for Rs-5 to 11).

ORDER

By Mr. Justice V.S.Aggarwal:

The Central Secretariat Service (CSS) consists of the following four grades:

Grade	Classification
Selection Grade (Deputy Secretary)	Group 'A'
Grade-I (Under Secretary)	Group 'A'
Section Officers' Grade	Group 'B' – Gazetted
Assistants' Grade	Group 'B' Non-Gazetted

2. The grades of Deputy Secretaries and Under Secretaries are centralized while other two grades, namely, Section Officers' grade and Assistants' grade are decentralized into 33 cadres. Appointment to the decentralized grades are made cadre-wise by the 33 cadre controlling authorities and the seniority in these two grades is also maintained cadre wise.

3. The mode of recruitment to the four grades is:

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Grade	Mode of recruitment	Quota	Feeder Grade for promotion/source of recruitment
Selection Grade of CSS (Dy. Secy)	Promotion	100%	Under Secretaries having 5 years qualifying services on the basis of Seniority-cum-fitness.
Grade I of CSS (Under Secretary)	Promotion	100%	Permanent SOs/Private Secretaries of Central Secretariat Stenographers' Service (CSSS).
Section Officers	i) Direct Rectt.	20%	Civil Service Exam. Assistants Assists. & Steno. Gr. 'C' of CSSS with 8 years of service are eligible for consideration.
	ii) Promotion (80%)		
	a) Seniority-cum-fitness b) Limited Deptl. Exam.	40% 40%	
Assistants	i) Direct Rectt.	50%	Graduate Level Exam. Upper Division Clerks
	ii) Promotion (seniority-cum-fitness)	50%	

4. The promotion of CSS Officers to the grade of Deputy Secretaries and Under Secretaries are made in accordance with CSS (Promotion to Grade-I and Selection Grade) Regulations, 1964 framed under CSS Rules, 1962. For this purpose, selection lists of

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Deputy Secretaries and Under Secretaries are required to be prepared as per the aforesaid Regulations.

5. Applicant is a Scheduled Caste candidate. He joined the service on 26.7.1963. He was promoted as Section Officer on 1.7.1981. He was further promoted to Grade-I of the Central Secretariat Service (for short 'CSS') on 18.12.1991 and was posted in the Ministry of Water Resources.

6. The applicant contends that in terms of the OM of 18.12.1991, the promotion had been given to him in continuation of Department of Personnel & Training's OM dated 6.12.1991 whereby Officers belonging to reserved quota were promoted to Grade-I of CSS from 4.12.1991, subject to other conditions. Earlier to that, the applicant had been sent on deputation to the Central Ground Water Board as Senior Administrative Officer (for short 'SAO'). While the applicant was working as SAO on deputation, Respondent No.2 is stated to have issued an Office Order dated 12.4.1993, whereby the Under Secretaries shown therein were relieved of their duties and they were appointed as Under Secretaries in Ministries/Departments. Another order is stated to have been issued on 9.7.1993, whereby Section Officers who were appointed as Under Secretaries on personal basis, were

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approved for appointments as Under Secretaries in the Ministries/Departments. The applicant's name has also appeared therein and he was allotted to the Biotechnology Department.

7. The plea of the applicant is that though he was promoted as Grade-I Officer of the CSS from 4.12.1991 but the Ministry of Water Resources vide order of 26.10.1992 deemed the applicant to have been promoted in absentia. Thus, applicant was given the colour of regular, substantive and permanent promotion.

8. Vide Office Memorandum of 9.5.2000, the official respondents issued select lists of the Officers of the CSS for appointment to Grade-I (Under Secretary's Grade), consequent to the decision of the Supreme Court dated 9.5.1997 in Amrit Lal & Others case. The Supreme Court had directed the Government that the final common seniority list should be drawn.

9. Respondent No.1 issued OM dated 12.8.2002, whereby select lists for the years 1991, 1992, 1993 and 1994 of Officers Grade-I (US) of the CSS were published. It was stated that appointment of the said officers on regular basis could not be notified in due course for reasons mentioned in the said Office Memorandum dated 9.5.2000. The applicant's grievance is that the Reserved Quota Officers had not been given proper seniority position. In the select list of the year 1989-90, while 270 Section

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Officers have been empanelled for the year 1989 and 1990 for appointment to Grade-I (US), only 4 Scheduled Tribe Officers and 1 Scheduled Caste Officer had been empanelled and many others could not find their place. He also contends that so far as the General Category Officers are concerned, they were promoted as Under Secretary, Grade-I of CSS on ad hoc basis in the years 1992, 1993 and 1994. The applicant was given ad hoc promotion in the year 1991 and ought to have been considered for regular promotion accordingly but it had erroneously been decided and the private respondents had been allowed to score a march over him.

10. By virtue of the present application, he seeks setting aside of the letter of 19.8.2003 and the O.M. of 12.8.2002, whereby select lists for the years 1991 to 94 of Grade-I CSS (US) have been erroneously issued and Respondents No.6 to 11 have been placed in the select lists of the years 1991, 1992 and 1993. The applicant also seeks consequential benefits.

11. The application is being contested.

12. Respondents plead that select lists of Grade-I officers (Under Secretaries) had been prepared for the year upto 1986 in accordance with the Regulations. The process for preparing the select list for the year 1987 was initiated by issuing the common eligibility list of Section Officers. Some Section Officers had filed

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OA 1659/1987 before this Tribunal challenging the method of preparing the combined eligibility list of the promotee and directly recruited Section Officers. This Tribunal had held that the rota quota system had broken down and, therefore, the combined seniority list of directly recruited and promotee Section Officers should be prepared in accordance with the length of continuous service.

13. Against the said order, an appeal was filed and the Supreme Court directed that seniority list prepared by the Government in pursuance of its direction be modified/updated by applying every provision of the relevant Rules/Regulations.

14. As per the directions of the Supreme Court, a common seniority list was prepared. It was again challenged before this Tribunal in OA No.996/1993 by Amrit Lal & Others. This Tribunal quashed the seniority list and held that it was contrary to the provisions of the CSS Rules/Regulations. In compliance of the said direction, a final combined seniority list of Section Officers was prepared. In the meanwhile, the direct recruit Section Officers filed Special Leave Petition before the Supreme Court, which was allowed. The Supreme Court directed that final combined seniority list dated 15.5.1996 should be redone.

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15. So far as the applicant is concerned, it was pointed that he was appointed on ad hoc basis on 4.12.1991. It was a promotion on personal basis. He had proceeded on deputation and was given promotion in absentia. The name of the applicant had been included in the select list for regular appointment only in the year 1993 and earlier to that, he was only promoted on ad hoc basis. So far as the private respondents are concerned, it has been stated that they were senior to the applicant. The earlier DPCs had been held. The DPC could not approve the name of the applicant for inclusion in the select lists of the years 1991 and 1992 on the basis of his ACRs and overall seniority because adequate number of Scheduled Caste Section Officers senior to him were available. He, therefore, could only be empanelled in the year 1993. Thus, the applicant could not be empanelled in the earlier years because of the number of Scheduled Castes and Scheduled Tribe candidates being available.

16. We have heard the parties' counsel and have seen the relevant record.

17. During the course of the submissions, reliance has been placed to urge that the applicant has regularly been appointed on an earlier occasion in the year 1991 and thus his name could not have been brought later in the year 1993.

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18. To appreciate the said contention, we refer to the facts, which cannot be disputed. On 18.12.1991, the order was issued in the following terms:

"In continuation of this Department's O.M. of even number dated 6th December, 1991, the Officers belonging to Scheduled Caste/Scheduled Tribe, where names figure in the enclosed list, shall also stand promoted to Grade-I of CSS w.e.f. 04.12.1991 subject to the same terms and conditions as laid down in the O.M. of even number dated 4th December, 1991. Any discrepancy/omission in the list may be brought to the notice of this Department for corrective action.

(K.Srivastava)
Dy. Secy. to the Govt. of India"

19. It was followed by the order of 26.10.1992 when the applicant was on deputation to Central Ground Water Board as Senior Administrative Officer. Herein also, they reiterated the conditions of his promotion to be the same as indicated in the Ministry's order of 23.1.1992. The said order reads:

"OFFICE ORDER NO.1078/92

Shri Ganga Singh, Section Officer, borne on the Cadre of the Ministry of Water Resources and presently on deputation to the Central Ground Water Board as Senior Administrative Officer, is hereby deemed to have been promoted in absentia to Grade-I of CSS (Under Secretary) in the pay scale of Rs.3000-4500 with effect from 04.12.1991 (FN) in terms of FR-22 (II) (old Rule 30 (1)).

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It is certified that Shri Ganga Singh fulfills all conditions relevant to the grant of officiating Proforma promotion as laid down under FR-22 (II).

The other condition of his promotion would remain the same as prescribed in this Ministry's Order No.89/92 (F.No.2/3/90-Admn.) dated 23rd January, 1992.

Sd/-
(R.K.Saigal)
Under Sect. To the Govt. of India"

20. Necessarily, therefore, one has to refer to the earlier orders of the Ministry. The order of 4.12.1991 specifically provides that it was ad hoc appointment and it reads:

"All ad-hoc appointments made in Grade I of the CSS pursuant to the instructions issued by the Deptt. of Personnel & Training in the past shall be discontinued forthwith. The cadre authorities are requested to ensure that only officers whose names find place in the aforesaid Eligibility List of 1987 are promoted in order of ranking against existing vacancies and for the remaining vacancies, they may wait for nominations to be made by this Department."

21. Even the order of 30.1.1992, repeats the same thing:

"2. In the course of hearing of the contempt petition No.355 of 1991 filed by the respondents in Civil Appeal No.3797 of 1991, the Hon'ble Supreme Court has been pleased to clarify that the eligibility list referred to in the interim order of 20.9.91 was the eligibility list prepared by the Government and sent to the UPSC in November, 1987. In the light of this direction, it has now been decided that in modification of this Ministry's OM of even

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number dated 4.12.91, only the officers from the enclosed list strictly according to the ranking in the eligibility list of November, 1987 shall remain promoted to Grade I of the CSS with immediate effect. The remaining officers promoted ad hoc or promoted consequent on the OM dated 4.12.91 as mentioned in para 1 above, barring those who have been granted stay against reversion by the Central Administrative Tribunal, will stand reverted with immediate effect.

3. The above promotions are subject to the approval of the UPSC and the final decision of the Supreme Court in Civil Appeal No.3797 of 1991 referred to above. As the number of officers who would stand promoted vide para 2 above is in excess of the number of vacancies (460) in Grade I of the CSS, the excess promotions would be treated as personal to the officers concerned until they are adjusted against future vacancies."

22. These facts clearly show that because of the litigation, the ad hoc appointments have been allowed. This was clarified by the Supreme Court and resultantly, the promotion would be in terms of the said orders which were ad hoc. Indeed, this argument so much thought of, therefore, must be rejected.

23. The learned counsel for the applicant in that event, even had drawn our attention to the statement in the Parliament to take advantage of the fact that all Section Officers to Grade-I, whose names were included in March, 1987 provisionally in the eligibility list, have been promoted to Grade-I to fill up the quota reserved for those categories. The **question** was:

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"(a) whether it is a fact that the Department of Personnel and Training had issued an O.M. dated the 4th December, 1991, promoting all the Section Officers to the Grade-I of Central Secretariat Service whose names were included the March, 1987 provisional Eligibility List;"

and the answer was:

(a) Yes Sir. All those whose names find a place in the Eligibility List of March 1987 and who were eligible for promotion as on 4.12.1991 stand promoted. Some more officers belonging to Scheduled Castes and Scheduled Tribes have also been promoted to fulfil the quota reserved for these categories."

24. We need not dwell into this controversy. When private respondents are not affected, the said statement will not affect the rights of those individuals.

25. The learned counsel for the applicant in that event had urged that the selection had to be made on the vacancy based roster as was the law in the year till the decision in the case of R.K. SABHARWAL v. STATE OF PUNJAB, (1995) 2 SCC 745 and consequently, the name of the applicant could not be excluded.

26. It is patent from the pleadings of the parties that there was a prolonged litigation over the issue on inter-se seniority between the direct recruit and promotee Section Officers. The select lists of Under Secretaries for the year 1987 and onwards could not be prepared in time. After the decision of the Supreme Court, the common seniority list of

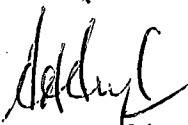
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Section Officers was issued on 3.12.1997. Thereafter, proposal for finalisation of the select lists of Under Secretaries for 1987 and 1988 is stated to have been sent to UPSC in February, 1999. After meeting was held in March, 2000, the same was drawn. The subsequent panels were prepared in June, 2002 and were notified in August, 2002. So far as the applicant is concerned, it has been reiterated that there was sufficient number of ^{Senior} Scheduled Caste candidates available and, therefore, the name of the applicant could not come in the panel at that time.

27. We find that the said fact has not been shown to be incorrect. If sufficient number of Scheduled Caste Officers, senior to the applicant, were available, and the name of the applicant thus did not find place in the panel, there is nothing illegal about it.

28. The private respondents as is apparent from the list placed with the counter, indicates that they were senior to the applicants though they were General Category. Thus grievance of the applicant in this regard seemingly has no basis.

29. For these reasons, the Original Application being without merit, must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman