

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR  
ORDER SHEET

O. APPLICATION NO.: 162/1997

Applicant(s)

Paras Kumar m. A - 280/2007  
Advocate for Applicant(s)  
S.P. Sharma

Respondent(s) U.O.I.

Advocate for Respondent(s) T.P. Sharma

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

17/1/08

Mr. Sanjiv Prakash Sharma, counsel for the applicant  
Mr. T.P. Sharma, (counsel) for the respondents

Heard, the learned Counsel  
for the parties.

order reserved.

(T.P. Sharma)

Admn. member

(M.L. Chauhan)

Judl. member

18/1/08

order pronounced today in the  
open court by the aforesaid Bench

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18/1/08.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 18<sup>th</sup> day of January, 2008

ORIGINAL APPLICATION No.162/1997

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR. J.P.SHUKLA, ADMINISTRATIVE MEMBER

1. Paras Kumar Jain s/o Shri Tara Chand Jain
2. J.N.Saxena s/o Shri B.R.Saxena
3. Ashok Bapna s/o Shri D.L.Bapna
4. Jagdish Kukreja s/o Shri D.R.Kukreja
5. Shankar Lal Kumawat s/o Shri Rameshwar Prasad
6. Damodar Das Mundra s/o Shri Hanuman Das

Working on the post of Assistant, at Regional Office, Employees State Insurance Corporation, Panchdeep Bhawan, Bhawani Singh Road, Jaipur

.. Applicants

(By Advocate: Shri Sanjiv Prakash Sharma)

Versus

1. Employees State Insurance Corporation, Panchdeep Bhawan, Kotla Road, New Delhi through its Director General
2. Regional Director, Employees State Insurance Corporation, Panchdeep Bhawan, Bhawani Singh Road, Jaipur
3. Shri L.N.Sen, Recovery Inspector, E.S.I. Corporation, Panchdeep Bhawan, Bhawani Singh Road, Jaipur
4. Smt. Sadhna Mahrotra, Assistant, E.S.I. Corporation, Panchdeep Bhawan, Bhawani Singh Road, Jaipur
5. Shri Bimal Duggal, Assistant, E.S.I. Corporation, Panchdeep Bhawan, Bhawani Singh Road, Jaipur
6. Shri Gopal Lal Pareek, Assistant, E.S.I. Corporation, Panchdeep Bhawan, Bhawani Singh Road, Jaipur
7. Smt.Vilasani P.K.Assistant, E.S.I. Corporation, Panchdeep Bhawan, Bhawani Singh Road, Jaipur

8. Shri Rakesh Mehra, Assistant, E.S.I. Corporation, Panchdeep Bhawan, Bhawani Singh Road, Jaipur

9. Shri K.K.Sharma, Assistant, E.S.I.Corporation, Panchdeep Bhawan, Bhawani Singh Road, Jaipur

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

O R D E R

Per Hon'ble Mr. M.L.Chauhan, M(J)

This case has got chequered history. Initially this OA was dismissed by this Tribunal being barred by limitation vide order dated 24.5.2002 by observing that the seniority list was finalized on 3.4.1995 (Ann.A14) and the OA has been filed on 15.4.1997, thus the present OA cannot be entertained in view of the law laid down by the Apex Court in the case of S.S.Rathore vs. State of M.P., AIR 1990 SC 10 and Ramesh Chandra Sharma vs. Udhampur Singh Kamal and Ors., ATJ 2000 (1) SC 178. The matter was carried to the Hon'ble High Court by filing Writ Petition No. 4178/2002 and the Hon'ble High Court remitted the matter back to this tribunal with directions to the applicant to move a formal application for condonation of delay explaining the delay in that application and if that application is filed within two weeks from the date of receipt of the order, the Tribunal shall consider the application for condonation of delay and if delay is condoned, then decide the OA on merits.

Pursuant to the said order passed by the Hon'ble High Court, the applicant moved a Misc. Application No. 168/2004 for condonation of delay and this Tribunal vide order dated 24.02.2005 allowed the application and condoned the delay and the OA was restored to its original number and ordered to be listed for hearing on merits.

Thereafter the matter was listed from time to time and finally OA was dismissed for non-prosecution vide order dated 20.7.2005. Thereafter the applicants moved a Misc. Application No.315/05 for restoration of the OA. Reply to the said MA was filed by the respondents. The applicants had also filed rejoinder. The said MA was heard in part on 8.11.2006 and was listed on 27.11.2006 for further hearing. The applicants were directed to personally present in the next date of hearing. However, the said MA was finally dismissed on 23.7.2007 on the ground that the MA has been filed in total violation of Rule 15(2) of the CAT (Procedure) Rules. Against this order, the applicants again filed D.B.Civil Writ Petition No.6539/2007 before the Hon'ble High Court and the Hon'ble High Court vide its order dated 26.10.2007 observed that whole consideration of the matter by the Tribunal was hyper technical and lacked justice oriented approach. Consequently, the order dated 23.07.2007 of this Bench was set-aside and application for restoration of the applicant was allowed and Original Application No.

162/1997 was restored to the file of this Bench and parties were directed to appear before the Tribunal on 26.11.2007. The Tribunal was directed to dispose of the OA on that date or on any other date that may be fixed by it. It is how this matter has again been listed for hearing.

2. Before we proceed with the matter, it will be relevant to notice the relief claimed by the applicant in this OA. The present application has been filed by Shri Paras Kumar Jain and 5 other persons for seeking directions to quash and set aside the seniority list dated 7.12.1994, order dated 9.2.95 and final seniority list of Assistants/Head Clerks dated 3.4.95 being contrary to the provisions made by Hon'ble Supreme Court as well as the orders passed by this Tribunal in Review Application No.82/94 with further direction to revise the seniority by maintaining 3:1 quota of promotees promoted by the DPC and the promotees selected through departmental examinations with all consequential benefits.

3. Brief facts of the case are that the seniority list was issued in respect of the UDC in Employee State Insurance (ESI) Corporation on 25.1.1988. Some of the private respondents filed OA No. 639/89 namely L.N.Sen & ors. vs. Director, General, ESIC, New Delhi for quashing the said seniority list before this

Tribunal and prayed for re-determination of seniority of the UDCs on the basis of date of appointment. The present applicants were respondents in the said OA. The said OA was finally heard and decided vide order dated 19.8.1994. The impugned seniority list dated 25.1.1988 was quashed and direction were given to the official respondents to comply with the direction given by the Principal Bench in OA No. 1147/88 which was decided on 21.12.1989. The present applicants filed Review Application which was disposed of vide order dated 11.11.1994. The said Review Application was filed on the basis of the order of the Hon'ble Supreme Court dated 7.10.1991 which was allowed and it was clarified that quota and rota rule be kept in view while re-casting the seniority. In the meanwhile, a tentative seniority list was issued by the official respondents on 28.10.1994. Based on this tentative seniority list, final seniority list of UDC was published on 6/7.12.1994. The grievance of the applicants was that the said seniority has not been prepared in conformity with the order dated 11.11.94 passed in Review Application. The applicants being seriously prejudiced filed Contempt Petition No. 53/95 before this Tribunal. The said Contempt Petition was finally disposed of vide order dated 4.3.1997 observing that the applicants would be free to file afresh OA challenging the order. Immediately

thereafter the applicants have filed the present OA on 15.4.1997.

This OA has been filed on number of grounds as mentioned in Para 6 and its sub-para of the OA. The main ground taken by the applicants is that the seniority list has not been prepared as per the directions issued by this Tribunal in Review Application vide order dated 11.11.1994 (Ann.A3) and in the light of the judgment passed by the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has clearly laid down that quota rota principle of 3:1 shall be maintained while preparing the seniority list. For that purpose the applicants have pleaded that tentative seniority list was issued on 28.10.1994 i.e. prior to passing of the order in the Review Application on 11.11.94. Thus, final seniority list is wholly contrary to the rules and the judgment passed by the Hon'ble Supreme Court. The second ground raised by the learned counsel for the applicants is that vide judgment in OA No.639/89 dated 19.8.1994 (Ann.A2), the third direction given by the Tribunal was that the persons already promoted on the basis of the existing practice shall not be reverted and they shall be accommodated in the promotional post by creating supernumerary posts. For that purpose, the learned counsel for the applicants has drawn our attention to group (G) of para 5 where date of regular promotion of the applicant Nos. 1 and 4 on the post of

Assistant/Head Clerk was changed. The third ground pleaded by the applicants is that the applicants as well as all the employees had appeared in the departmental test and only few persons were selected against 25% quota of departmental competitive examination which is purely a merit quota and persons who have failed in the departmental test have been placed senior to that of the applicants. Although the applicant have also prayed for quashing the seniority list dated 3.4.1995 prepared in respect of the category of Assistant but main grievance of the applicants is regarding final seniority list of the UDCs dated 6/7.12.1994 on the basis of which official respondents held the review DPC and has also granted promotion to various persons in the category of Assistant vide order dated 9.2.1995. Even the applicants in para 4 of the rejoinder have specifically stated that they need not to implead persons who have been promoted vide order Ann.A9/I to A9/VII dated 9.2.95 as the said promotion order has been passed on the basis of seniority list of UDC dated 6/7.12.1994 which seniority list has not been prepared by following quota rota rule. In other words, the case of the applicants is that in case the aforesaid seniority list of UDC, which has not been correctly prepared, is set-aside, the order of promotion will be of no consequence as further

promotion will have to be made on the basis of old seniority list dated 25.1.1988.

At this stage, it may also be noticed that initially the applicants have impleaded only respondent No. 1 and 2 i.e. official respondents as party, however, subsequently MA No.149/02 was moved whereby the private respondents were arrayed as respondent Nos. 3 to 9 in the OA who were affected persons.

4. Notice of this application was given to the respondents. The respondent No. 1 and 2 have filed detailed reply. The official respondents have categorically stated that the seniority list dated 7.12.1994 was prepared by maintaining 3:1 quota for promottees and test appointees in conformity with the direction given by this Tribunal as well as by the Hon'ble Supreme Court. It is further stated that the applicants have qualified the limited departmental competition test held on 26.6.83 for promotion to the post of UDC and on the basis of result declared on 1.9.1983 whereas applicant Nos. 2 to 6 have been granted promotion w.e.f. 6.5.82, 1.1.83, 1.1.83, 8.12.83 and 8.12.83 respectively on the basis of their seniority in the feeder post of LDC. The applicant No.1 has been given appointment w.e.f. 1.9.83 when he has qualified the limited departmental examination.

Thus, according to the respondents, the applicant Nos.

2 to 4 have been granted promotion in the cadre of UDC prior to passing the limited competitive examination which result was declared on 1.9.83. Accordingly, they have been assigned higher seniority vide impugned seniority list dated 7.12.1994. It is further stated that no doubt that applicant No.5&6 have qualified the limited departmental test w.e.f. 1.9.83, however, they have been granted promotion on the basis of their seniority in the feeder grade from 8.12.1993 loosing the appointment by about 3 months. It is further stated that on the basis of the said promotion w.e.f. 8.12.83 they have been assigned higher seniority at Sl.No.58 and 62 respectively, otherwise they would have got seniority at Sl.No.71 and 72 respectively. It is further stated that the applicant Nos. 2, 3 and 4 got seniority on the basis of seniority in the feeder post at Sl.No.34. 45 and 55 respectively whereas on the basis of their appointment against the test quota they would have got seniority at Sl.No. 64, 68 and 70 respectively. Thus, according to official respondents, the applicants have got more benefit in the seniority on the basis of promotion against promotee quota. It is further stated that applicant Nos. 5 and 6 have been promoted as Assistants/Head Clerks on 16.12.1993 and such promotion has not been effected by review DPC. Regarding applicant No.1 respondents have categorically stated that applicant No.1 was appointed as LDC w.e.f. 30.1.80 vide order No. 15-A/36/13/1/77-  
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Estt. dated 15.2.80 and thus has completed 3 years of service as LDC on 29.1.83 and thus became eligible for appearing in the limited competitive test for the post of UDC on 30.1.83 which test he qualified on 1.9.93 and thus has been assigned seniority against the test quota slot in the recruitment year 1983. Thus, according to the official respondents the question of considering the applicant No.1 for the vacancies pertaining to the year 1982 does not, therefore, arise. Further the respondents in para 8 of the reply affidavit have given detailed facts as how the seniority list issued vide memo dated 7.12.94 was prepared on the basis of quota and rota rule, recruitment year-wise from the recruitment year 1977 onwards. At this stage, it will be useful to quote relevant portion of para 8 of the reply, which thus reads:-

"... It is stated that in the recruitment year - 1977, 10 posts had been filled up, out of which, 8 were for promotee quota and 2 for test quota, keeping in view the ratio 3:1 between the two categories. Thus, the persons at S.Nos. 1,2,3,5,6,7,9 and 10 in the said seniority list have bee promoted against the promotion quota whereas the persons at S.Nos. 4 and 8 have been appointed against the test quota. Further, during the recruitment year 1978, no recruitment had taken place. Further, during the year 1979, 5 posts were filled up, out of which , 4 pertained to the promotion quota and one to the test quota, against which, persons at S1.No. 11,13,14 and 15

have been promoted against the promotion quota and the person shown at Sl.No.12 has been appointed against the test quota. Further, during the recruitment year 1980, 3 posts were filled up, out of which, two were for the promotee quota and one for the test quota. However, as no person for appointment against the test quota was available during that year, the said vacancy was carried forward and against the two posts for the promotee quota, persons at Sl.Nos. 16 and 17 had been promoted. During the recruitment year 1981, no recruitment had taken place for want of vacancies. It is further stated that during the recruitment year 1982, there were 51 vacancies, out of which, 38 were for promotee quota and 13 for test quota. However, against the said test quota of 13 vacancies, only two persons became available, whose names are mentioned at S.Nos. 19 and 23. Against the 38 posts for promotee quota, persons at Sl.Nos. 18,20,21,22,24 to 57 have been mentioned in the said seniority list, which includes the applicant Nos. 2,3, and 4 at S.No.24, 45 and 55 respectively. IT is also relevant to say that these applicants, alongwith applicant Nos. 1,5 and 6 had also passed the limited departmental test held in 1983 but they had been treated as promotees of 1982 on the basis of their seniority in the feeder post of L.D.C. and promotions were given to them on 6.5.1982, 1.1.1983 and 1.1.1983 respectively. It is further stated that during the recruitment year 1983, 14 posts became available, out of which 11 posts were to be filled up from the promotee quota and three from the test quota. It is stated that all the applicants had passed the departmental test held on 26.6.1983. However, against the test quota of 3 posts, 3 applicants

Nos. 1,5 and 6, namely S/Shri Paras Kumar Jain, Shankar Lal Kumawat and D.D.Mundra, have been shown at S.Nos. 60,64 and 68 respectively as the applicant Nos. 2,3 and 4 had been treated as promotees against the promotee quota for 1982 on the basis of their seniority in the feeder post. It is relevant to state that in case the applicant Nos. 1,2 and 3 had been adjusted against the three test quota posts of 1983, applicant Nos. 4,5 and 6 would have been adjusted against the carry forward test quota vacancies and they would have been given appointment w.e.f. 1.9.1993 and they would have been assigned still lower seniority. Against the promotee quota, persons at S.Nos. 58,59,61,62,63,65,66,67 and 69 have been shown. It will, thus be seen from the aforesaid position that in each recruitment year, the quota and rota rule has been strictly followed, and the applicants have been placed at their respective appropriate placed in the said seniority list..."

Regarding second contention raised by the learned counsel for the applicants that their date of promotion has been changed contrary to the direction given by this Tribunal in OA No.639/89 whereby their reversion was protected, the respondent in Para 10 of the reply have specifically stated that promotion of four applicants has been protected. Regarding applicant No.1 it has been stated that he was treated as having been given regular promotion w.e.f. 16.12.1993 but was treated as holding the post of Assistant from 15.5.1989 to 15.12.93 and he has not

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been reverted from the post of Assistant. Similarly, regarding applicant No.2 it is stated that he was earlier given promotion from 15.5.1989 and regular promotion w.e.f. 5.9.90 on the basis of his position in the revised seniority list and for the period from 15.5.89 to 4.9.90 he was treated as holding the said post without entailing reversion. Similarly, applicant No. 3 and 4 who had earlier been promoted on 4.8.89 and 5.9.90 respectively had been given regular promotion w.e.f. 16.12.1993 on the basis of their placement in the revised seniority list and they were treated as holding the posts of Assistant from the dates of their earlier promotions to 15.12.1993 and they had also not been reverted. Thus, according to the respondents, the contention raised by the learned counsel for the applicant deserves rejection.

5. Private respondents have not filed any reply.

6. The applicants have filed rejoinder thereby reiterating the submissions made in the OA.

7. We have heard the learned counsel for the parties and gone through the material placed on record.

8. The question which requires our consideration is whether final seniority list dated 7.12.1994 based on tentative seniority list dated 28.10.1994 has been

correctly prepared in terms of direction given by this Tribunal while disposing of the Review Application No.82/94 vide order dated 11.11.94 which Review Application was disposed of on the basis of the direction given by the Hon'ble Apex Court in Civil Appeal No. 16735/90 dated 7.10.91. In order to appreciate the matter in controversy it may be stated that earlier private respondents in this OA namely L.N.Sen and others have filed OA No.639/89 before this Tribunal in which some of the applicants were party. It is admitted case between the parties that the said OA was filed against the seniority list of UDC dated 25.1.88 as prepared by the official respondents. The said OA was allowed vide order dated 19.8.1994 (Ann.A2) based on the decision of the Principal Bench in OA No.1147/88 R.D.Gupta and ors vs. UOI and ors and it was directed that the seniority shall be prepared on the basis of total length of service in the feeder cadre in accordance with regulation 28(2) of the Employees State Insurance Corporation (Recruitment) Regulations, 1965 and it was further observed that the period of service followed by regular promotion rendered in the capacity of adhoc/temporary or officiating basis shall also be counted except adhoc period based on stop gap arrangement. It is also not in dispute that the said order was reviewed vide order dated 11.11.94 in Review Application No.82/94 (Ann.A3) and it was clarified that the seniority will be

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prepared in the light of the decision of the Hon'ble Supreme Court in OA No.1147/88 Naresh Kumar and ors. Vs. R.D.Gupta decided on 7.10.1991 and order of this Bench stood modified to this extent. The order of the Apex Court in the case of Naresh Kumar and ors. vs. R.D.Gupta dated 7.10.1991 passed in SLP No.16735 of 1990 has been placed on record as Ann.A10. At this stage it will be useful to quota the said order, which thus reads:

"Permission to file S.L.P. granted. Heard learned counsel for the parties. It is not disputed that the relevant rule refers to the quota of 3:1. The direction of the Central Admn. Tribunal as granted to by learned counsel for the respondents is clarified that while the directions are implemented the quota and rota shall be kept in view.

The petition stands disposed of accordingly."

Now the question which requires our consideration is whether the final seniority list based on the tentative seniority list of the UDCs has been prepared in accordance with the aforesaid order passed by the Hon'ble Supreme Court. The respondents have filed detailed reply. In para 8 of the reply, relevant portion of which has been reproduced in earlier part of the judgment, the respondents have clarified how the quota of 3:1 has been worked out since 1977 onwards. The official respondents have also given the

details of the vacancies occurred after 1977 and how quota was applied when the vacancies were available and how the vacancies were carried forward as Ann.R3. In this case, the dispute relates to the year 1982 to 1983. From perusal of Ann.R3, it is evident that in the year 1980 three posts were filled up out of which two were for promotee quota and one for limited department test quota. However, as no person from test quota was available during that year, the said vacancy was carry forward and against two posts persons at Sl.No.17 and 18 had been promoted. During recruitment year 1981 no recruitment had taken place for any of vacancy. From perusal of Ann.R3 it is also clear that during recruitment year 1982 there were 51 vacancies out of which 38 were for promotee quota and 13 were for test quota. Against 38 posts for promotee quota persons at Sl.No.18,20,21,22, 24 to 57 as mentioned in final seniority list Ann.A1 were promoted which included applicant Nos. 2, 3 and 4 whose names find mention Sl.No. 34, 45 and 55 resspectively of the said seniority list. Against the test quota of 13 vacancies only two persons became available whose names find mention at Sl.No.19 and 23 of the seniority list Ann.A1. At this stage, it will be relevant to mention that none of the applicant has either appeared or qualified the limited departmental test against the vacancy occurring in the year 1982. All the private respondent No. 3 to 9 were given promotion as UDC

against the vacancy arising for the recruitment year 1982 on the basis of 75% promotion quota post of seniority in the cadre of UDC including the applicant No. 2,3 and 4. Thus it is not understood how the applicants who have not appeared and qualified the limited departmental test against 1982 vacancies can be placed senior to respondent No.3 to 9 who were granted promotion in accordance with rules against 75% quota on the basis of their seniority in LDC cadre. The fact remains that all the applicants appear in the limited departmental test held in the year 1983 against 14 vacancies which occurred in that year. It may be stated that out of the total vacancies which occurred in the year 1983, 11 were meant for promotee quota being 75% of the vacancies and 3 were meant for limited departmental test quota being 25% of the vacancies. The examination for limited departmental test for the year 1983 was held on 26.6.1983 and result of which was declared on 1.9.1983. Thus, the persons who have qualified limited departmental test on 1.9.1983 against the test quota slots available in the year 1983 could have been adjusted against the vacancies arising in the year 1983 and not against the vacancies occurring in the year 1982 especially when they have not appeared against the vacancies arising out of recruitment year 1982 against the slot of limited departmental test. Thus claiming the seniority over and above persons including private respondents

in this OA who have been granted promotion against 75% quota for vacancies arising in recruitment year 1982 is without basis.

From the material placed on record it is also evident that applicant No. 1, 5 and 6 had qualified the limited departmental test against the vacancies arising for the year 1983 on 1.9.1983. They have been promoted w.e.f. 1.9.1983, 8.12.1983 and 8.12.1983 respectively. Applicant No.1 has been adjusted against the slot meant for limited departmental test by granting promotion to him w.e.f. 1.9.1983 when he qualified the test. The respondents have stated that applicant No.2 to 6 have been considered against promotion quota and have been assigned seniority on that account which was more beneficial to these applicants as they have been assigned seniority at Sl.No.34,45,55,58 and 62 respectively otherwise against limited departmental test quota they would have been granted seniority against Sl.No.64,68, 70,71 and 72.

Thus, according to us, all the applicants have been fairly treated by the respondents and we see no infirmity whereby the private respondents No. 3 to 9 have been assigned seniority higher than that of the applicants as they were promoted against the vacancies arising in the year 1982 against 75% quota and the fact remains that the applicants have never appeared against the vacancies arising in the year 1982 against

the vacancies meant for limited department test quota, result of which was that as many as 11 posts out of 13 remained unfilled against this quota.

Further, we see no infirmity in the promotion order passed on the basis of aforesaid seniority list of UDC of 7 persons as promoted vide Ann.A9/i to A9/vii dated 9.2.95 on the post of Assistant and also seniority list of the Assistants/Head Clerks dated 3.4.95.

We will fail in our duty if we do not consider the judgment cited by the learned counsel for the applicants. The learned counsel for the applicants placed reliance on the judgment in the case of Swapan Kumar Pal and ors. vs. Samitabhar Chakraborty and ors. (2001) 5 SCC 581 and argued that ad-hoc services rendered by the private respondents could not have been taken into consideration for the purpose of seniority. We fail to understand how this judgment is relevant to the facts and circumstances of this case. That was a case where seniority in the cadre of Senior Clerk was in issue. Promotion to the Senior Clerk was to be made from the category of Clerk against 66 2/3 % quota as well as appointed for the said grade against 33 1/3 quota through limited departmental competitive examination by way of promotion from the cadre of Office Clerk. The question arose for consideration whether the Clerk who have been promoted against 66 2/3 % quota on account of seniority on ad-hoc basis,

their ad-hoc services should be counted for the purpose of seniority. The Apex Court while considering para 302 held that on plain reading of the aforesaid provision, it is crystal clear that date of regular promotion after due process of selection would be the date from which seniority in the cadre of Senior Clerk would count. Thus, the Apex Court had held that in terms of aforesaid provision ad-hoc promotion can by no stretch of imagination be held as promotion after due process of selection. No such provision has been brought to our notice where there exists any provision to the aforesaid effect regarding seniority in the cadre of UDC. The another judgment on which reliance has been placed by the learned counsel for the applicant is Awadh Prasad Singh and ors. vs. The State of Bihar, 1990(3) SLR 20. That was a case where promotions were made in excess of quota of promotees and from the quota of direct recruitment. Subsequently direct recruitment was made within the quota. It was held that such promotees will be pushed down and will be absorbed in the subsequent years and the direct recruit would be deemed to be senior to these promotes recruited in excess of then quota. According to us the learned counsel for the applicant can also not draw any assistance from this judgment. As already stated above, private respondents have been adjusted against the vacancies arising in the year 1982. In fact there were 51 vacancies which occurred during that year, out

of which 38 were meant for promotees. In the recruitment year 1982, only 38 promotees were promoted as UDC against 75% quota and out of 13 vacancies which were meant for direct recruitment only two persons qualified the limited departmental test. Thus, it cannot be said to be a case where the respondents have made promotion during the year 1982 in excess of quota. As already stated above, it is not a case of promotion between direct recruits and promotees. In fact it is a case where promotion to the post of UDC is made from in service candidates i.e. LDC in the ratio to 75 (by promotion) and 25% (by limited departmental test). This the principle of seniority as applicable in the case of direct recruits and promotees is not applicable in the instant case. The learned counsel for the applicants has also pleaded reliance upon the instructions issued by the Ministry of Personnel, Public Grievances and Pension, dated 7.2.86 and argued that the seniority list has not been prepared in terms of Ministry of Home Affairs OM No. 9/11/55-RPS, dated 22.12.1959 and modified instructions became applicable only w.e.f. 7.2.86. We are not impressed with this argument also. The circular dated 7.2.86 relates to seniority to be maintained between direct recruits and promotees. As already stated above, it is not a case of such nature. It is a case where promotion has to be made only from in service candidates though from two sources. We fail

to understand how the seniority from earlier date can be given to a person who was even not eligible to appear in the limited departmental test and had in fact not appeared. The right in favour of the person like the applicants who appeared in the limited departmental test and qualified the same will accrue only from the date when <sup>the</sup> after fulfilling the minimum eligibility criteria of 3 years service as UDC, appears and qualifies the departmental examination and not from earlier date. It is not the case of the applicants that the department had not conducted the examination in the year 1982, as such they were precluded from appearing in the examination. At the cost of repetition it is stated that in fact in the year 1982 also the limited departmental test was held and as against 13 vacancies only two persons qualified, whereas private respondents were promoted against the post of UDC on the basis of their seniority prepared in terms of Apex Court judgment and thus, has to be treated as appointees of 1982.

9. For the foregoing reasons, the OA is bereft of merit, which is accordingly dismissed with no order as to costs.

  
(J.P.SHUKLA)

Admvt. Member

R/

  
(M.L.CHAUHAN)

Judl. Member