

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.611/2012

Order reserved on 17th May 2017

Order pronounced on 15th March 2018

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

1. P S Bhandari
son of Shri H S Bhandari
Aged about 51 years
r/o B-2, Pocket 1, Kendriya Vihar II
Sector 82, NOIDA, UP
2. Shri S S Rawat
s/o late Shri Than Singh
Aged about 53 years
r/o 347, Laxmibai Nagar, New Delhi – 23
3. Shri Devendra Ringh
s/o Shri K S Rawat
Aged about 42 years
r/o House No.282, Street No.6
Guru Ramdas Nagar, Laxmi Nagar, Delhi – 92
4. Shashi Ballabh Naithani
s/o Shri R P Naithani
Aged about 41 years
r/o BD-844, Sarojini Nagar, New Delhi – 23
5. Khazan Chandra Joshi
s/o late Shri M C Joshi
aged about 41 years
r/o BD-13E, DDA Flats, Munirka
New Delhi – 67
6. Mukesh Chandra Kukreti
s/o late Shri Maheshanand Kukreti
aged about 44 years
r/o 8/4C Sector II, DIZ Area
Gole Market, New Delhi – 1
7. Ms. Snehlata Jawas
d/o Sh. D C Jawas
Aged about 43 years
r/o C-143, Type IV, Nanakpura, New Delhi

8. Ashok Kumar
s/o late Shri G D Kain
Aged about 41 years
r/o B-85/1, Mohammadpur
R K Puram, New Delhi – 66

9. Karam Chand
s/o Shri Hari Ram
Aged about 41 yeas
r/o 950, Type IV, NH IV
Faridabad, Haryana

10. A S Rawat
s/o Sh. B S Rawat
Aged about 43 years
r/o 638, Laxmibai Nagar, New Delhi - 23

..Applicants

(Ms. Meenakshi Arora, Senior Advocate (Ms. Ananya Ghosh and
Mr. Rajeev Sharma, Advocates) with her)

Versus

1. Union of India through its Secretary
Ministry of Personnel, Public Grievances & Pension
Department of Personnel & Training
North Block, New Delhi – 110 001

2. Ministry of Law and Justice through its Secretary
Shastri Bhawan, New Delhi-1

3. Ministry of Finance through its Secretary
Department of Expenditure
North Block, New Delhi – 1

4. Union Public Service Commission
Through its Secretary
Dholpur House, New Delhi

5. CSS Section Officers' Association
Through its General Secretary
Shri D N Sahoo, aged about 50 years
s/o late Shri H N Sahoo
r/o 28-E, Sector 4, Pushp Vihar
M B Road, New Delhi - 17

...Respondents

(Mr. R N Singh, Advocate for respondent Nos. 1 to 3,
Ms. Kritika Sharma, Advocate for Mr. Naresh Kaushik, Advocate for
respondent No.4 and
Mr. A K Behera, Advocate for respondent No.5)

O R D E R

Mr. K. N. Shrivastava:

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main reliefs:-

“8.1 Allow the present OA and quash and set aside the Central Secretariat Service Rules, 2009 notified vide G.S.R. 140 (E) Notification dated 27th February, 2009, as a whole, including repealing Rule 24 thereof, by declaring it was discriminatory, manifestly unreasonable, void ab initio, stillborn and ultra vires the provisions contained in Articles 14 and 16 (1) of the Constitution of India and also being violative of Article 77 of the Constitution of India and the Government of India (Transaction of Business) Rules, 1961 and restrain the Respondents from enforcing them and grant all consequential reliefs to the Applicants.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicants were inducted in Central Secretariat Stenographers' Service (CSSS) between the years 1994 to 1998 through Section Officers (SOs) Stenographers (Grade 'B'/Grade-I) Limited Departmental Competitive Examination (LDCE) conducted by the Union Public Service Commission (UPSC) and posted in various Ministries.

2.2 The Central Government has got three Services for its Secretariat, namely, Central Secretariat Service (CSS), CSSS and Central Secretariat Clerical Service (CSCS). These Services were created in the year 1951. The Central Government formulated separate rules for these Services in the year 1962. The Central Secretariat Service Rules, 1962 (for short 'CSS Rules 1962') deal with recruitment / service matters of Assistants, SOs, Under

Secretaries (USs) and Deputy Secretaries (DSs). In other words, these four Grades form part of the CSS.

2.3 As per Rule 12 (2) of CSS Rules 1962, members of CSSS were entitled for integration into CSS at the level of US. The said rule reads as under:-

“12 (2) Vacancies in Grade I shall be filled by promotion of regular officers of the Section Officers' Grade who have rendered not less than eight years' approved service in that Grade and are included in the Select List for Grade I of the Service, prepared under sub-rule (3).”

2.4 As per Rule 13 (6), (7) & (8) read with Fourth Schedule of Rule 13-A of CCS Rules, 1962, Upper Division Clerks (UDCs) of CSCS were to merge with CSS at the Assistants level. The averments made in paragraph 4.3 of the O.A. in this regard are reproduced below:-

“4.3 That the provisions of third proviso to Principal Rule 12 (2) and Note 1 below it, as in force on the appointed day, i.e., the 1st October, 1962, provided that for the purpose of promotion to Grade I (Under Secretary), corresponding Stenographers of the CSS shall count entire approved service rendered in that Grade as if rendered in the Section Officers' Grade and shall be eligible to be considered for promotion to Grade I (Under Secretary) even if they have not been substantively appointed to Section Officers' Grade. Under Principal Rule 13 (3), read with Fifth Schedule, 35 posts in Section Officers' Grade were reserved for the appointment of corresponding Stenographers of the CSSS in various Ministries/Offices whereas the right for temporary appointments was conferred by Rule 13 (4). Their seniority was regulated by the provisions of Rule 18 (5) thereof. Further, provisions of Rule 9, read with Rule 6, of the Principal CSSS Rules, 1962 provided that the Section Officers shall perform functions of the corresponding Stenographers of the CSSS. Provisions of Rule 10, read with Rule 7, of the CSS Rules, 1962 provided that officers of Grades A and B (merged) of the CSSS shall perform the functions on the duty posts of Section Officers of the CSS. The objective of inducting Stenographers as Section Officers and Section Officers as Stenographers under the Rules even for short periods before and as on the appointed day, i.e., 1st October, 1962, was to make Stenographers of the CSSS as part of feeder cadre to the Grade I post of Under Secretary and above.”

2.5 The post of US is also called CSS Grade I and that of DS as CSS Selection Grade. In 1969, re-organization of CSSS took place and 4 distinct cadres were created, namely, Selection Grade, Grade I (both gazetted Group 'B'), Grade II & Grade III. The Selection Grade of CSSS was equivalent to SO of CSS. The CSSS Rules 1962 underwent massive amendments and were replaced by CSSS Rules 1969 w.e.f. 01.08.1969 (Annexure A-7). These Rules captured the four Grades that were created in CSSS.

2.6 The CSS Rules 1962 were amended on 19.01.1970. Rule 12 (2) of the CSS Rules 1962 also underwent amendment. As per the amended Rule 12 (2), 100% promotion to the grade of US (Grade-I) was to be made from SO Grade, who have rendered not less than 10 years' approved service in that grade and of permanent officers of Selection Grade of CSSS, who have rendered not less than 10 years' approved service in that grade and have worked as SO for at least 2 years in accordance with the provisions to Rule 10 and are included in the select list for Grade I of the Service. The amended Rule 12 (2) is reproduced below:-

“2. In the Central Secretariat Service Rules, 1962.-

(i) in the proviso to rule 10, for the words “Grade I”, the words “Selection Grade” shall be substituted;

(ii) in sub-rule (2) of rule 12.-

(a) for the first paragraph, the following shall be substituted, namely:-

“Vacancies in Grade I shall be filled by promotion of permanent officers of the Section Officers' Grade who have rendered not less than ten years' approved service in that Grade and of permanent officers of the Selection Grade of the Central Secretariat Stenographers Service who have rendered not less than ten years' approved service in that Grade and have worked as Section Officers

for at least a period of two years in accordance with the proviso to rule 10 and are included in the Select List for Grade I of the Service prepared under sub-rule (4).

Provided that an officer of the Selection Grade of the Central Secretariat Stenographers Service who has not worked as a Section Officer for the said period of two years shall also be considered for promotion to Grade I if he is otherwise eligible for such promotion and the Central Government in the Ministry of Home Affairs, for reasons to be recorded in writing, are satisfied that such a person was not appointed to the Section Officers' Grade in the exigencies of service.

Note:- In the case of officers of the Selection Grade of the Central Secretariat Stenographers Service appointed at the initial constitution of that Service, approved service shall also include the approved service rendered by them in Grade I of the Central Secretariat at Stenographers Service prior to their appointment to the Selection Grade of that Service. Similarly, in the case of Grade I Stenographers appointed to the Section Officers' Grade after the appointed day who finally opt to continue in the Section Officers' Grade after the coming into force of the Central Secretariat Stenographers Service Rules, 1969, approved service shall also include the approved service rendered by them in Grade I of the Central Secretariat Stenographers Service prior to their appointment to the Section Officers' Grade."

2.7 With a view to meet the requirements of amended Rule 12 (2) of CSS Rules, respondent No.1 issued Annexure A-9 O.M. dated 30.06.1979 for deputation of CSS officers for executive training in the States. Thereafter respondent No.1 promulgated the CSS (Amendment) Rules, 1999 amending certain Sections of CSS Rules 1962. Sub-rules (1), (2) & (3) of Rule 12 were substituted by the following:

"In the said rules, in rule 12, for sub-rules (1), (2) and (3), the following-sub-rules shall be substituted, namely:-

"(1) Vacancies in the Section Grade shall be filled by promotion of regular officers of Grade I who have rendered not less than five years' approved service in that grade and are included in the Select List for the Selection Grade prepared under sub-rule (4).

(2) Vacancies in Grade I shall be filled by promotion of regular officers of the Section Officers' Grade who have rendered not

less than eight years' approved service in that Grade and of regular officers of Grades A and B (merged) of the Central Secretariat Stenographers' Service who have rendered not less than eight years' approved service in that Grade and are included in the Select List for Grade I of the Service prepared under sub-rule (4).”

2.8 The applicants were recruited to the post of Grades ‘A’ & ‘B’ (merged) of CSSS. It is stated in paragraph 4.4 of the O.A. that Rule 9 of CSSS Rules 1969 and the provisions of Rule 12 (2) of the CSS Rules 1962 clearly show that SOs and Private Secretaries (to which the applicants were recruited) belong to one single cadre, as there was close similarity and co-equal responsibility between them for the purpose of promotion to Grade I (US) and there was no real substantial difference between them in respect of nature of work, functions, duties and responsibilities.

2.9 The 5th Central Pay Commission (CPC) recommended to discontinue the practice of lateral entry of Private Secretaries belonging to CSSS to USs. This recommendation of the 5th CPC was examined by a Group of Officers, who recommended to accept it. The matter was taken to the Union Cabinet, through Cabinet Note dated 24.05.2005, who approved the *ibid* recommendations. The Cabinet Note, *inter alia*, envisaged the following 5 distinct Grades in CSSS:

Sr. No.	Grade (designation)	Pay scale
1.	Senior Principal Private Secretary	Rs.12000-16500
2.	Principal Private Secretary	Rs.10000-15200
3.	Private Secretary	Rs.6500-10500
4.	Personal Assistant	Rs.5500-9000
5.	Stenographer Grade ‘D’	Rs.4000-6000

2.10 The Cabinet Note also stipulated creation of some additional posts in the above 5 Grades of CSSS for better promotional prospects for the CSSS officers. The Cabinet decision was duly implemented and as a consequence thereof, Rule 12 (2) of CCS Rules 1962 was amended. Thus the lateral entry of CSSS officers to the post of US in CSS was stopped for good.

2.11 The Central Government had constituted a Committee on restructuring of CSS, who submitted its report in February, 2002. It, *inter alia*, recommended that the entry of Stenographer Grade 'C' through LDCE for the post of SO should be discontinued and simultaneous entry of PS to the grade of US may also be discontinued.

2.12 On 27.02.2009, respondent No.1 made CSS Rules, 2009 in supersession of CSS Rules, 1962 and repealed them by Rule 24 of the CSS Rules, 2009 and regulations made thereunder. The Rule 12 of the CSS Rules, 2009 has completely done away with lateral entry of CSSS officers into CSS.

2.13 Aggrieved by the amendment of Rule 12 (2), the applicants herein filed O.A. No.682/2008 challenging the amendments and seeking, *inter alia*, quashment of CSS (Amendment) Rules. The said O.A. was disposed of by the Tribunal vide order dated 25.08.2009; the operative part of which reads as under:-

“Shri P.S. Bhandari and eleven others have filed this OA under Section 19 of the Administrative Act, 1985 seeking the reliefs in which one of the prayers is to quash and set aside the impugned order No.5/20/2007-C.S.I (Desk) dated the 16th January, 2008 and ad hoc promotions to Grade I (Under Secretary) of the CSS given to 56

Section Officers from the CSL of Section Officers be declared as arbitrary, discriminatory and illegal.

2. Vide order dated 16.01.2008 which is at Annexure A/4 (Page 81), 56 officers were promoted to the post of Under Secretary.”

2.14 During the pendency of O.A. No.682/2008, the applicants also filed another O.A. No.1413/2009, in which they have made the following main prayers:

“8.1 Declare the similarly circumstances applicants/ regular officers of Grades A and B (merged) of the Central Secretariat Stenographers’ Service as the feeder grade to Grade I (Under Secretary), apart from Section Officers, and to direct the Respondents to make/incorporate provisions to that effect in corresponding Rule 11 (3) of CSS Rules, 2009 consistent with the aforesaid declaration, in consonance with the provisions of Articles 14, 16 and 309 of the Constitution of India.

8.2 Hold Rule 11 (3) of CCS Rules, 2009 to be ultra vires and inconsistent with Articles 14, 16 and 309 of the Constitution of India.”

2.15 Utilizing the liberty granted to the applicants by the Tribunal vide its order dated 25.08.2009 in O.A.No.682/2008, the applicants filed yet another O.A. No.2674/2009 seeking the following main relief:-

“8.1 Allow the present O.A. and strike down the CSS (Amendment) Rules, 2008 and CSS (Promotion to Grade I and Selection Grade) (Amendment) Regulations, 2008 published vide notifications GSR 64 (E) and GSR (65(E) dated 1.2.2008, void ab initio, to be ultra vires and inconsistent with Articles 14 and 16 of the Constitution of India, and direct the Respondent to give all consequential benefits to the applicants/other regular officers of Grades A and B (merged) of the CSSS.”

2.16 The O.A. No.2674/2009 was dismissed by the Tribunal vide its order dated 25.07.2011 and R.A. No.308/2011 filed there-against was also dismissed vide order dated 20.10.2011. The O.A. No.1413/2009 was

allowed to be withdrawn by the Tribunal vide order dated 24.08.2011 with liberty; the operative part of the order reads as under:-

“After arguing for sometime, applicant who appears in person seeks to withdraw the Original Application with liberty to file a consolidated OA incorporating all the pleas which could not be averred in the present case.

2. With leave and liberty, as asked for by the counsel for applicant, Original Application is dismissed as withdrawn.”

In pursuance to the liberty granted by the Tribunal vide order dated 25.07.2011 in O.A. No.2674/2009 and order dated 21.08.2011 in O.A. No.1413/2009, the applicants have filed the present O.A. seeking the reliefs as mentioned in paragraph (1) above.

3. In support of the reliefs claimed, the applicants have raised the following important grounds:

3.1 The CSS Rules, 2009 are violative of equality principle enshrined under Articles 14 & 16 of the Constitution inasmuch as they seek to deprive the applicants of promotional prospects and other avenues of growth within CSS and they seek to grant undue advantage to SOs of CSS.

3.2 The inter-service mobility in the Central Secretariat amongst its three branches was in order essentially to provide depth of experience in the functioning of the Central Secretariat and merger of the entity of CSCS and the CSSS into CSS.

3.3 The respondents have ignored that the 6th CPC, in its recommendations contained in paragraphs 3.1.10 to 3.1.12, has also

recommended the merger of the incumbents of CSSS into CSS and to provide uniform designations. The said recommendation has been accepted by the Central Government.

3.4 Having accepted the 6th CPC recommendations and that too after the Cabinet approval, for which respondent No.1 had consulted respondent No.3, the respondents have made sudden summersault by bringing out the impugned CSS Rules, 2009 and 2010 Regulations under these Rules, which are palpably unconstitutional and ultra vires to Articles 14 & 16 of the Constitution.

3.5 Hon'ble Supreme Court in the case of **M/s. M.R.F. Limited v. Manohar Parrikar & others**, (2010) 11 SCC 374 has held as under:-

“16. Further, Rule 10(2) makes it clear that where prior consultation with the Finance Department is required for a proposal, and the department on consultation does not agree to the proposal, the department originating the proposal can take no further action on the proposal. The Cabinet alone would be competent to take a decision. When we see that the disagreement of the Finance Department with a proposal on consultation, deprives the Department originating the proposal of the power to take further action on it, the only conclusion possible is that prior consultation is an essential prerequisite to the exercise of power”.

92. As observed by us earlier, these observations apply equally to the case on hand and in light of this view, we have no difficulty in holding that the Business Rules framed under the Provisions of Article 166 (3) of the Constitution are mandatory and must be strictly adhered. Any decision by the Government in breach of these Rules will be a nullity in the eyes of law. It is in this legal background that the issues raised before us have to be dealt with.”

3.6 Even after the amendment of 2008, Rule 10 read with Rule 7 of CSS Rules 1962, conferred upon the Stenographers of the CSSS the additional

right to be appointed to the duty posts in the SO and Assistant Grades for a period of 2 years and perform its functions, duties and responsibilities. The impugned CSS Rules, 2009 do not have any such provision.

3.7 The action of the respondents is manifestly unreasonable, irrational and discriminatory, as evident by the fact that Rule 17 (4) of the CSS Rules 1962 has been incorporated in the impugned CSS Rules 2009 only so far as the personnel of CSS and CSCS are concerned. Similar provisions with respect to PS/Stenographers of CSSS have been deleted.

3.8 Respondent No.1 has selectively chosen to implement the recommendations of 6th CPC contained in paragraph 3.1.11 of its report in regard to creation of post of Principal Staff Officer (PSO) and has chosen not to take action on the other part of the recommendation to implement the merger of the cadres of CSS and CSSS with uniform designations and full parity, *albeit* respondent No.3, vide I.D. Note dated 14.05.2010, had specifically clarified to respondent No.1 that recommendations of 6th CPC contained in paragraphs 3.1.10 to 3.1.12 of the report had been accepted as a package and respondent No.1 should implement it.

3.9 The amendments dated 01.02.2008 are bad and unconstitutional because SOs of CSS and the applicants of select lists 1994 & 1998 and other Stenographers of CSSS were having the same conditions of service and had right to be considered for the post of US based on a single eligibility list. In this regard, reliance is placed on the judgment of Hon'ble Supreme Court in the case of **State of Mysore v. M N Krishna Murthy & others**, (1973) 3 SCC 559.

3.10 The amendments of 01.02.2008 were bad and unconstitutional, as there is no intelligible differentia between SOs and the applicants of select lists of 1994 to 1998 and other Stenographers of the CSSS.

3.11 The Hon'ble Supreme Court in **Arun Kumar & others v. Union of India & others**, (2007) 5 SCC 580 has held that when '*inter-se*' seniority is to be fixed, the concept of equality has to be kept in mind. Equality before law and equal protection of law are the basic postulates of Articles 14 & 16 of the Constitution.

3.12 The Cabinet Note dated 24.05.2005 was highly misleading and had furnished incorrect fact to the effect that the method of recruitment to the post of US from Grades 'A' & 'B' (merged) of CSSS was by lateral entry, i.e., by direct recruitment, whereas under CSS Rules 1962, the method of recruitment was 100% by promotion from SOs and Grades 'A' & 'B' (merged) of CSSS (PS) with 8 years' approved service.

3.13 The CSS Rules and Regulations of 2009 are bad and unconstitutional, as they deprive the right to be considered for promotion of CSSS officers. The power has not been exercised in bonafide manner.

4. Pursuant to the notices issued, the respondents entered appearance. A common reply been filed on behalf of respondent Nos. 1 & 3. Respondent No.4 (UPSC) has filed a short reply.

5. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 17.05.2017.

6. Mrs. Meenakshi Arora, learned senior counsel appearing for applicants, besides tracing the history of controversy, submitted as under:-

6.1 As per Section 9 of CSS Rules 1962, the duty posts are to be held by the cadre officers only and as per this Rule, the CSSS officers were also entitled to hold the post of US.

6.2 The CSS Rules, 1962 were amended by Gazette Notification dated 24.02.1999 (Annexure A-11), as per which erroneously the requirements of CSSS officers of working as SO for 2 years before they are considered for promotion to the post of US have been done away with, which was stipulated in un-amended sub-rules (1), (2) & (3) of Rule 12.

6.3 The respondents have carried out cadre review of CSSS in the years 2004 and 2010. In these cadre reviews, post of PSO at the level of Director and Sr. PPS at the level of DS have been created for CSSS. The respondents have glossed over the stark fact that the officers of CSSS continue to be eligible for promotion to the post of US even under the CSS (Amendment) Rules, 1999.

6.4 The Departmental Parliamentary Standing Committee on Home Affairs, in its Eighty Third Report (Annexure A-15), has recommended to implement the recommendations of 5th CPC to stop lateral entry of CSSS officers at certain levels in CSS in the following terms:-

“9.16 The V Central Pay Commission, having due regard to the fact that there is acute stagnation in the CSS at the level of Section Officer and Under Secretary to the grades of Under Secretary and Deputy Secretary as also the improved promotional prospects of Central

Secretariat Stenographer Service (CSSS) Officers, in their own line, feels that a review of the existing promotion in terms of which CSSS officers are allowed lateral entry into CSS is overdue. The V Central Pay Commission accordingly has recommended at para 45.37 (iv) that lateral entry of Private Secretaries to the grade of Under Secretary should be discontinued.”

However, it wrongly noted that promotion to the Grade of US is to be done only from SO of CSS on the basis of selection eligibility condition being 8 years of approved service as SO. It failed to note that these recommendations are contrary to the CSS (Amendment) Rules, 1999, wherein, under Rule 12, regular officers of Grades ‘A’ & ‘B’ (merged) of CSSS were also eligible for promotion to the post of US (Grade I) on completion of 8 years’ approved service.

6.5 The Cadre Restructuring Committee of CSS (Annexure A-18) never heard the CSSS Association, as is evident from its Report of February 2002, in which it lists, in paragraph 3.3.1, the names of Associations, who have been heard by it. This list does not include the CSSS Association (p.278).

6.6 The Group of Officers in their Report of January 2004 on Cadre Structure of CSSS (Annexure A-20), in paragraph 3.32, has noted as under:-

“3.32 From the above background it would appear that one of the important considerations in regard to the aspect of lateral entry has been the general principle to maintain the integrity of the service and that by and large, each service should have its own promotional avenues. The Group noted that the Government has deferred decision on this issue and it will need to be posed to it for decision in the light of the background mentioned above.”

6.7 The 6th CPC, in paragraph 3.1.10, has clearly recommended merger of CSS and CSSS cadres. The recommendation reads as under:-

“3.1.10 Presently, distinct Stenographer's cadres exist Secretariat and in the Secretariat as well as in the field offices. The Secretariat Stenographers cadre is identical to the CSS/analogous cadres in non-participating Ministries/Organizations with the exception that the scale of Rs. 14300-18300 does not exist in the hierarchy. Keeping in view the general principle envisaging multi-skilling and de-layering that this Commission is recommending for the entire Government, no justification exists for maintaining a distinct Stenographers cadre in any Government office. The emphasis should be on recruiting multi-skilled personnel at Assistant level to be designated Executive Assistants who will discharge the functions of present day Assistants besides performing all the Stenographic functions. This should not be difficult as almost all the Central Government Offices now use Computers for office work. Keeping this objective in view where the Secretariat and Stenographers cadres would stand merged in future, there is a need for ensuring full parity between these two cadres right from this stage.”

6.8 The Government's Notification dated 29.08.2008 published in the Gazette the same day, in Annex.II, contains the list of 6th CPC recommendations, which have not been accepted by the Government. This list does not include the recommendations of 6th CPC to merge CSS and CSSS cadres. Hence, it should be assumed that the recommendations have been accepted by the Government.

6.9 The Ministry of Finance, Department of Expenditure, in its Note dated 26.02.2009 (Annexure A-30) to respondent No.1 (Department of Personnel & Training (DoPT)), has advised as under:-

“2. The matter has been considered in this Department. In this connection, it is clarified that the entire Report of the Sixth CPC has been accepted by the Government as a package except for the modifications contained in this Department's Resolution No.1/1/2008-IC dated 29.8.2008. Accordingly, the recommendation contained in para 3.1.11 of the Report regarding upgradation of 15% of

posts of Senior PPS + PPS as PSOs in the pre-revised scale of Rs.14300-18300 stands approved by the Government. However, in order to implement the above decision, orders need to be issued for which DoPT (CS Division) is the competent authority.”

Unfortunately, this advice of Ministry of Finance has been ignored by respondent No.1 in bringing out the CSS Rules, 2009.

7. *Per contra*, Mr. R N Singh, learned counsel for respondent Nos. 1 to 3 made the following important averments:

7.1 The CSS Rules 1962 were amended by the CSS (Amendment) Rules 1999. The said amendment, however, did not amend Rule 10 of the CSS Rules 1962 dealing with the duty posts of CSS, which clearly states that every duty post in a cadre shall, unless declared to be excluded from the cadre under Rule 7, or held in abeyance for any reasons, be held by a cadre officer of the appropriate Grade.

7.2 The Central Secretariat Manual of Office Procedure published in September 2010 clearly delineates the duties and responsibilities of various officers working in the Central Secretariat. According to it, the officers belonging to CSSS, namely, Personal Staff Members of Officers, Staff Officer, Sr. PPS, PPS, PS, PA and Stenographer are required to keep their officers free from routine nature of work by mailing correspondence, filing papers, making appointments, arranging meeting and collecting information so as to give the officer more time to devote himself to the work in which he specialized. Their specific functions enumerated in the Manual of Procedure are as under:-

“(i) taking dictation in shorthand and its transcription in the best possible manner.

(ii) fixing up appointments and if necessary cancelling them,

(iii) screening the telephone calls and the visitors in a tactful manner.”

7.3 As per CSS (Amendment) Rules, 1999, the CSSS officials would not have the experience of working as SO for 2 years, and hence cannot be considered for promotion to the post of US.

7.4 The Central Government has got rule-making powers and accordingly, they have made the CSS (Amendment) Rules, 1999. On the issue of rule-making powers, the Hon’ble Supreme Court in the case of **R. Prabha Devi & others v. Govt. of India & others**, AIR 1988 SC 902, upholding the amendment carried out by the Government to CSS Rules 1962 vide Notification dated 29.12.1984 has observed as under:-

“14. The 1984 amendment of the rules providing an eligibility condition of rendering eight years' approved service as section officer for coming within the zone of consideration for promotion to Grade I Post of C.S.S. is not at all arbitrary and unreasonable as it prescribes a minimum period of eight years' of service as Section officer both for direct recruits and promotees as a condition of eligibility for consideration for promotion to the higher post. This rule is, therefore, not violative of Articles 14 and 16 of the Constitution of India.

15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years' approved service in the grade of Section officer as a condition of eligibility for being considered for promotion to Grade I post of C.S.S. This rule is equally applicable to both the direct recruit Section officers as well as the promotee Section officers. The submission that a senior Section officer has a right to be considered

for promotion to Grade I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post, Grade I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can over-ride it in the matter of promotion to the next higher post. The rule in question which prescribes an uniform period of qualified service cannot be said to be arbitrary or unjust violative of Articles 14 or 16 of the Constitution. It has been rightly held by the Tribunal:

"When certain length of service in a particular cadre can validly be prescribed and is so prescribed, unless a person possesses that qualification, he cannot be considered eligible for appointment. There is no law which lays down that a senior in service would automatically be eligible for promotion. Seniority by itself does not outweigh experience."

It has also been observed:

"In any event, the appropriate Rule making Authority is the best judge in this regard. The Rule making Authority is certainly competent to amend the Rule and extend the period from 6 years to 8 years so as to make the direct recruits more experienced and suitable for the higher post. That is a matter for the Rule making Authority; the Tribunal cannot sit in judgment over the opinion of the Rule making Authority. No Court or Tribunal can substitute its own view in a matter such as this. Such a Rule framed by a competent Authority cannot be struck down unless it is shown to be violative of any Fundamental Right guaranteed to a citizen under the Constitution."

16. We do not find any infirmity in the above findings arrived at by the Tribunal.

17. In the premises aforesaid we hold that the third proviso to sub rule 2 of Rule 12 of Central Secretariat Service Rules, 1962 as amended by Notification No. 5/8/80-CS. I. dated 29th December, 1984 is not ultra vires of Articles 14 and 16 of the Constitution. The

judgment and order of the Central Administrative Tribunal is hereby affirmed and the appeals are dismissed without costs.”

7.5 In paragraphs 4 & 9 of the reply filed on behalf of these respondents, the cadre strength of various Grades in CSS and CSSS have been clearly delineated making it clear that CSS and CSSS are two different Services and incumbents of these Services have to get the benefits of career progression, as provided in their respective Services.

7.6 On the recommendations of 6th CPC, post of PSO has been created (Annexure A-13) for bettering the prospects of CSSS officers. Respondent No.1, vide order dated 27.07.2005, has made it clear that on the basis of the Report of Group of Officers on Cadre Restructuring of February 2004, it has been decided to discontinue the lateral entry of members of CSSS into Grade I of CSS.

7.7 The DoPT's order dated 27.07.2005 was challenged in O.A. No.2793/2005, which was dismissed by the Tribunal vide order dated 24.04.2008. The applicant No.3 in the instant O.A. was applicant No.6 in the said O.A.

7.8 The respondent Nos. 1 to 3 rely on the following judgments of Hon'ble Supreme Court:

i) In **Mallikarjuna Rao and others Etc. Etc v. State of Andhra Pradesh and others** 1990 AIR 1251, Hon'ble Supreme Court ruled thus:-

“12. The Special Rules have been framed under Article 309 of the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the

Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution.

ii) In **P.U. Joshi v. Accountant General, Ahmedabad & others**

2003(2) SCC 632, the Hon'ble Apex Court has held as under:-

“We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

iii) In **K. Jagadeesan v. Union of India & others**, (1990) 2 SCC 228, the Hon'ble Apex Court has held as follows:

“8. The next argument advanced before us by the learned counsel for the appellant is that employees in the drilling stream who might be diploma holders could move by promotion to the grade of Director (Drilling) which is equivalent to the post of Director (Mechanical Engineering) and would be further eligible to be considered for the next higher post of Deputy Director General (Engineering Service) on the basis of a common seniority of Directors (Mechanical) and Directors (Drilling). It was submitted that, in this situation, the requirement of a degree for promotion to the post of Director (Mechanical) must be regarded as unreasonable and bad in law. This argument was rejected by the Tribunal on the ground that the fact that for the higher post of Deputy Director General (Engineering Service), it is not necessary to hold a graduate degree is no reason why a degree requirement for the post of Director (Mechanical) should be regarded as unreasonable or bad in law. It is for the Government to decide what qualification was required for the promotion to the post of Director (M.E.) and, unless that requirement was totally irrelevant or unreasonable, it could not be said to be bad in law. In this regard, we agree with the reasoning and conclusions of the Tribunal.”

8. Mr. A K Behera, learned counsel appearing for respondent No.5 stated as under:-

8.1 That vide Notification dated 19.01.1970, the CSS Rules 1962 were amended and the new rules called CSS (First Amendment) Rules, 1970 were brought in, providing for filling up of vacancies in Grade I (US) of CSS by CSSS officers, who have rendered not less than 10 years approved service in Selection Grade of CSSS, out of which 2 years as SO. The said Rule further underwent amendment vide CSS (Amendment) Rules 1999 making it clear that the vacancies in Grade I (US) in CSS shall be filled up by officers of SO Grade of CSS, who have rendered not less than 8 years' approved service. It also provided that regular officers of Groups 'A' & 'B'

(merged) PS of CSSS were also eligible for promotion to the post of US on completion of 8 years of service. However, this scope of lateral entry of CSSS officers to the grade of US of CSS was stopped on the basis of Cabinet decision dated 24.05.2005, following which the Notification dated 01.02.2008 was brought out doing away with the scope of lateral entry and the CSS Rules, 2009 have been promulgated repealing the 1962 Rules. The above decision of Cabinet of doing away with the lateral entry of CSSS to CSS at the level of US was based on the recommendations made in the following four Reports:

- i) Report of 5th CPC,
- ii) Eighty Third Report of Departmental Related Parliamentary Standing Committee on Home Affairs.
- iii) The Report of Committee on Cadre Restructuring of CSS in February 2002; and
- iv) The Report of Group of Officers of January 2004 on Cadre Structure of CSSS.

Hence it may be noted that the decision of Union Cabinet of stopping the lateral entry of CSSS in CSS was a conscientious decision taken after a great deal of deliberations.

8.2 From relief 8.2 claimed in this O.A., it is quite clear that the officials of CSSS had no grievance till the year 2007. The O.A. No.3294/2009 with connected O.As. was disposed of by this Tribunal on 16.12.2011. The

applicants therein, along with other reliefs, had also claimed the following reliefs:-

“8.2 Declare the applicants/regular officers of Grades A and B (merged) of the CSSS to be eligible to be considered for promotion to the post of Under Secretary against the vacancies for the years 2003 to 2007, in accordance with Rule 12 (2) & (3) of CSS Rules, 1962 and CSS (Promotion to Grade I and Selection Grade) Regulations 1964 in force for the vacancies and consistent with Articles 14 and 16 of the Constitution of India.”

8.3 Since the aforesaid O.A., along with connected O.As., was dismissed by the Tribunal, hence this relief stands denied. The applicants in this O.A. cannot be allowed to claim a relief, which has already been denied.

8.4 The applicants have submitted to the Tribunal on 30.01.2013 that they are not pressing for relief 8.3 seeking merger of CSS with CSSS cadre.

Mr. Behera thus concluded that a very thoughtful and careful decision has been taken by the Central Government to segregate the cadres of CSS and CSSS, and hence the relief claimed in this O.A. cannot be granted.

9. Replying to the arguments of learned counsel for respective respondents, Ms. Meenakshi Arora, learned senior counsel for applicants submitted that in paragraph 3.32 of its Report of January 2004, the Group of Officers on Cadre Structure of CSSS had deferred the issue of lateral entry of CSSS to CSS. It did not make any recommendation with regard to stoppage of lateral entry.

10. We have considered the arguments of learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

11. It is not in dispute that in Rule 12 (2) of CSS Rules 1962, there was a provision for promotion of CSSS officers of merged Groups 'A' & 'B' to the post of US in CSS. For this, eligibility of 10 years' approved service was prescribed, of which 2 years should be as SO. It is also a matter of record that the Central Government had a programme of sending the CSSS officers to the States for familiarizing themselves with the executive functioning. The requirement of 10 years' approved service was reduced to 8 years in CSS (First Amendment) Rules, 1970. This applied to eligible officers of both CSS and CSSS for promotion to the post of US. Thus the requirement of 2 years' experience as SO for CSSS was done away with. However, the Central Government, on the basis of recommendations of 5th CPC, decided to revisit the provision of lateral entry of CSSS officers to CSS at the level of US. For this purpose, the Central Government constituted two Committees, namely, Committee on Cadre Restructuring of CSS and Committee of Group of Officers on Cadre Structure of CSSS.

12. Finally, on the basis of recommendations of these Committees, the Central Government decided to have a complete segregation of CSS and CSSS cadres. As noticed hereinabove, accepting the report of the Committee on Cadre Restructuring of CSSS cadre, the Central Government created additional posts at various levels in CSS cadre, as also created a post of PSO at Director level on the recommendations of the 6th CPC. All these things were apparently done by the Central Government to see that

the career prospects of CSSS officers were, in no way, inferior to those of the CSS officers. It is important to mention that in CSS cadre, the posts identified are:

- | | | | |
|------|------------------|---|----------------|
| i) | Director | - | Rs.14300-18300 |
| ii) | Deputy Secretary | - | Rs.12000-16500 |
| iii) | Under Secretary | - | Rs.10000-15200 |
| iv) | Section Officer | - | Rs.6500-10500 |
| v) | Assistant | - | Rs.5500-9000 |
| vi) | UDC | - | Rs.4000-6000 |

On the similar lines in CSSS cadres, the following posts are identified:

- | | | | |
|------|------------------------|---|----------------|
| i) | PSO | - | Rs.14300-18300 |
| ii) | Sr. PPS | - | Rs.12000-16500 |
| iii) | PPS | - | Rs.10000-15200 |
| iv) | PS | - | Rs.6500-10500 |
| v) | Personal Assistant | - | Rs.5500-9000 |
| vi) | Stenographer Grade 'D' | - | Rs.4000-6000 |

13. Looking at the above posts and their pay scales, it is clear that the post of PSO is equal to Director, Sr. PPS is equal to the DS, PPS is equal to US, PS is equal to SO, PA is equal to Assistant and Stenographer Grade 'D' is equal to UDC. Hence, we are of the view that the Central Government has been absolutely fair to both CSS and CSSS cadres in regard to their service prospects.

14. The rule-making powers of the Central Government cannot be questioned as has been held by the Hon'ble Apex Court in **R. Prabha Devi** (supra).

15. The Union Cabinet approved the recommendations contained in Cabinet Note dated 24.05.2005 referred to in paragraph 2.9 (supra) and thus the lateral entry of CSSS into CSS at the level of US has been done away with. Accordingly, the amendment to CSS Rules 1962 was effected and the impugned CSS Rules, 2009 were notified.

16. The contention of learned counsel for applicants that 6th CPC had recommended merger of CSS and CSSS cadres and that Ministry of Finance, in its Note dated 26.02.2009, had intimated respondent No.1 that the report of 6th CPC has been accepted by the Central Government and hence in accordance with Article 72 of the Constitution, the respondents could not have dispensed with the promotional entry of CSSS officers at the level of US in CSS, is specious and unacceptable. After all, the Union Cabinet, while considering the Cabinet Note dated 24.05.2005, had taken a conscientious decision to do away with the lateral entry arrangements. Needless to mention that the recommendations of 6th CPC are only recommendatory in nature and it is up to the Central Government to accept them or not. Even after having accepted the recommendations, nothing prevented the Central Government to withdraw its acceptance in respect of certain recommendations of the 6th CPC. Furthermore, the DoPT order dated 27.07.2005 was challenged in O.A. No.2793/2005, which was

dismissed by the Tribunal vide order dated 24.04.2008. The applicant No.3 in the instant O.A. was applicant No.6 in the said O.A.

17. In the conspectus of discussions in the foregoing paragraphs, we are of the view that the Central Government has taken a well thought out policy decision to maintain CSS and CSSS cadres as completely separate and distinct from each other. While doing so, the Central Secretariat Manual of Office Procedure has also been taken into account by the Government. Such a decision cannot be subjected to judicial review. As noticed hereinabove, the rule-making powers of Central Government cannot be questioned. The Central Government has replaced the CSS Rules 1962 by CSS Rules 2009. The 2009 Rules have made it clear that the post of US is a promotional post for SO of CSS. The scope of lateral entry of CSSS officers to it has been thus done away with. Hence, we do not find any merit in this O.A. It is accordingly dismissed. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/sunil/